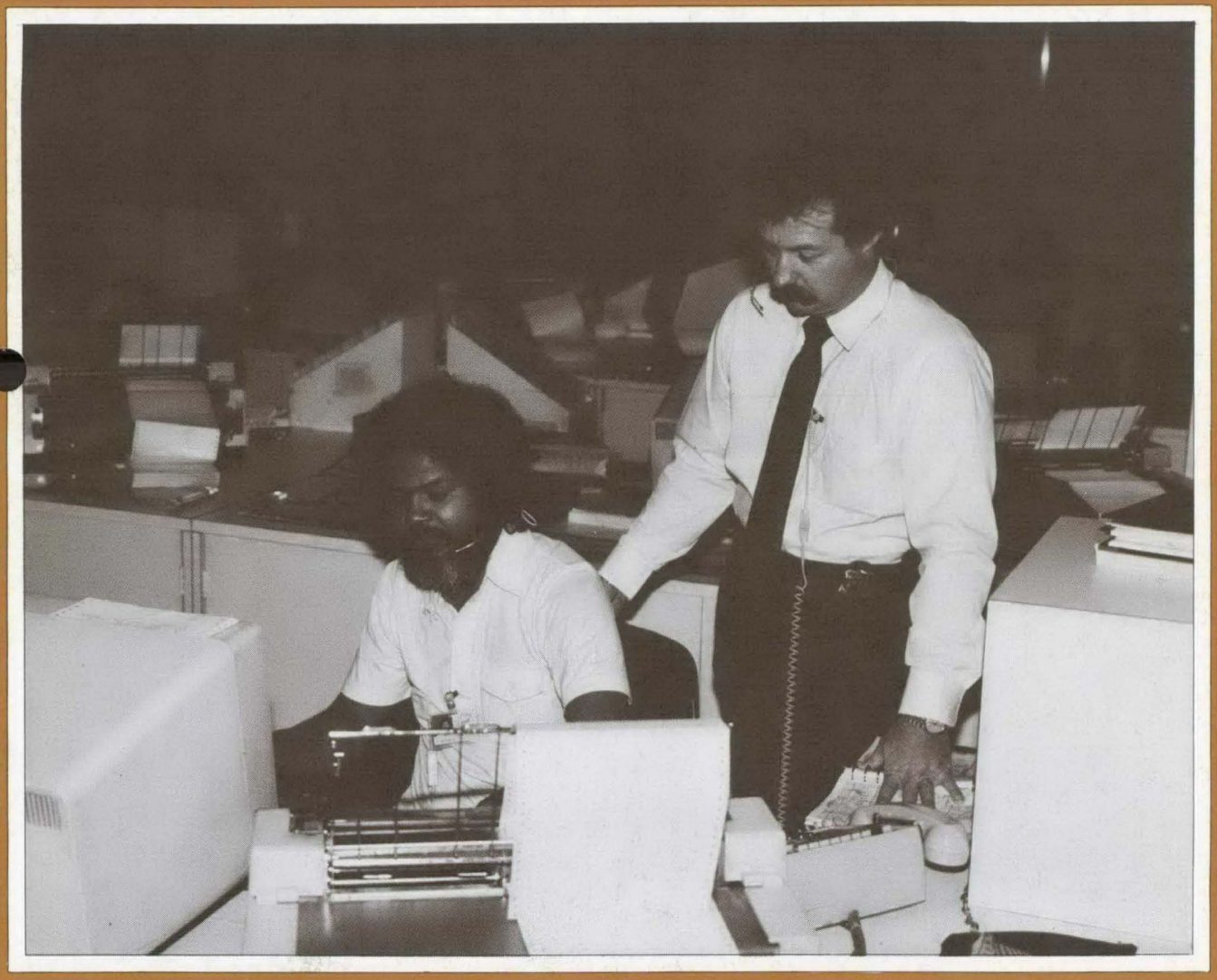
FBI LAW ENFORCEMENT BULLETIN

APRIL 1985

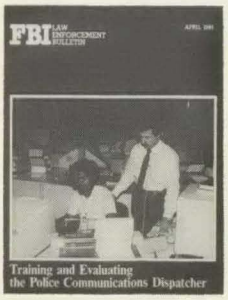


Training and Evaluating the Police Communications Dispatcher

FBI LAW ENFORCEMENT BULLETIN

APRIL 1985, VOLUME 54, NUMBER 4

Contents



The Cover:
A comprehensive training program will help police communications personnel to perform successfully their duties and responsibilities. See article page 16.

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

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

Published by the Office of Congressional and Public Affairs, William M. Baker, *Assistant Director*

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Kevin J. Mulholland
Writer/Editor—Karen McCarron
Production Manager—Jeffrey L. Summers
Reprints—Regena E. Archey

ISSN 0014-5688 USPS 383-310

EDITOR'S NOTE: Material published in the FBI Law Enforcement Bulletin is solely for the information and assistance of law enforcement personnel. While brand names and companies may be mentioned from time to time, this is done in a strictly objective manner to help present articles in their entirety from authoritative sources. In such instances, publication of the article in the BULLETIN should not, under any circumstances, be construed as an endorsement or an approval of any particular product, service, or equipment by the FBI.

VIDEO GAMES

Concepts and Latent Influences

(Conclusion)

By
WILLIAM L. HOLMES
Special Agent
Document Section
Laboratory Division
Federal Bureau of Investigation
Washington, DC

Comparison of Amusement and Gambling Video Display Devices

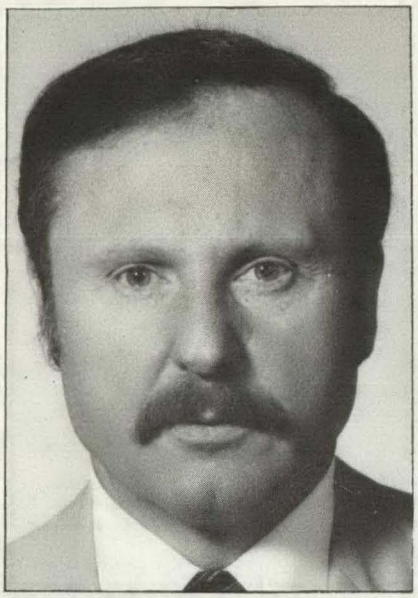
The advanced nature of the electronic slot machine's microprocessor and the advances in computer technology of the mid-1970's led to the development of the electronic video display devices of today.

There are two types of video gambling devices—a casino-type device which dispenses coins and a noncasino-type which does not contain a hopper but registers credits awarded on a meter displayed on the video screen. Except for the payoff method, these two devices function identically.

The noncasino gambling device contains several operational characteristics not present on the casino-type device—knock-off switches, two meters, and a video display credit meter.[11] These items, which are built into the wiring harness by the manufacturer, enable the owner to monitor the operation of the device.

Since the casino-type device is already recognized by the judicial system and the gambling industry as a gambling device per se, only a comparison of the noncasino gambling device with the amusement video device will be addressed.

This "Draw Poker" device is a casino-type gambling device which dispenses coins for winning combinations.



Special Agent Holmes

Video gambling devices and amusement devices use the same electronic components, such as printed circuits, ROMS, PROMS, EPROMS, microprocessors, and video screens. These devices differ in the program which reflects the nature of the game depicted on the screen. The characteristics of the game determine whether it is a game of chance or a game of skill.

Knock-off Feature

The knock-off feature, used only on gambling devices, removes any accumulation of credits left on the credit meter, thereby preventing a subsequent player from playing the device without charge or from being reimbursed for credits earned or accumulated by a different player. This knock-off function is performed by several methods, some of which are designed to disguise their true purpose. These methods include a button, a key-operated switch, a remote switch wired from the device to a remote location, or a switch activated by a radio frequency transmitter, such as a garage door opener. On the newer models, the knock-off function is performed by pressing a series of buttons in a predetermined sequence.

Meters

The noncasino-type device contains two six- or eight-digit meters. One meter records the number of coins inserted into the device; the other, unused credits removed from the credit meter.

On the early models, these meters were located inside the device. However, newer models display these meters on the video screen. To display the knock-off meter, buttons are pressed in a predetermined sequence. This coded feature maintains the confidentiality of data.

An amusement device does not require a knock-off meter. It has but a single meter used to record coins accepted by the device.

This "Draw Poker" machine is a noncasino-type gambling device which records credits in lieu of dispensing coins for winning combinations.

Power Interrupt Circuit

Most of the noncasino video devices have a power interrupt circuit (PIC) which is activated when a power failure occurs. Without this feature, all accumulated credits recorded would be removed when power was restored. Since credits and coins hav

value, loss of either would represent a large financial loss to the player. (The New Jersey Gaming Control Commission requires all electric gambling devices to have a PIC to protect the player from losing his wagers or winnings.) [12]

On amusement devices, there are no large accumulations of credits or games/replays. One exception is when the device will accept quarters only, and the player receives five plays or games per coin. Credits for these games will be recorded on a credit meter, but the player can use only one game or credit at a time. Each game is independent of all others, except for those devices which display the current highest score. A power failure would merely cause a delay in play, and at most, require the operator to reactivate the device to continue play. Theoretically, this would cost the operator the value of the consideration or cost of one game.

Multiple-coin Feature

Both noncasino video gambling devices and slot machines have multiple-coin features that allow the player to deposit several coins before play begins. These coins are translated into credits and are recorded on a credit meter. The player has the option of playing one or more credits on the next play.

An amusement device generally does not have a multiple-coin feature. A player can, as a rule, insert only one coin at the start of each play. However, there are two exceptions which would occur when the amusement device has additional provisions: 1) When two or more players play the same device at the same time, and 2) when the amusement device will accept more than one coin at a time, even though the player can only play one coin or credit for each game. This is one of the more obvious differences between amusement and gambling devices.

Replay Versus Credit

A "replay" is defined as playing again or playing over and may be interpreted as a free game. Amusement devices use replays, meaning that the player will receive, as a bonus, all that an amusement device has to offer for the price of one play.

On the other hand, a "credit" can apply only to a gambling device. A player may accumulate credits and use one or several on each replay. Credits are used to increase payoff ratios and to activate additional features.

Both a replay and a credit have the same value as the coin used to initiate play whether it be an amusement or gambling-type game. However, replays are more commonly found on amusement devices and not on gambling devices. The term "replay" should not be used interchangeably with "credit."

Coins Versus Credits

"Credit," when used in conjunction with electronic video display gambling devices, is defined as something of value. When a coin is inserted into a device which does not have a ticket, token, or coin payout feature, a credit will be recorded on a meter displayed on the video screen.

The credits recorded for coins inserted and credits awarded for winning combinations accumulate on the same meter. Therefore, since no distinction is made, they must be of the same value, namely, the value of the coin required to begin play.

One exception to the process is if the device accepts only one coin at a time. The credit for this coin is recorded on the bet meter. If the player wins, the credits awarded are recorded on the credit display meter. When the player makes additional bets, these credits are subtracted from the credit display meter and recorded on the bet meter. Although the credit recording process differs, the value of the credit equals that of the coin inserted to initiate play since both the coin credit and awarded credit are recorded on the bet meter when a wager is made.

Time of Play

Characteristically, play on a noncasino video gambling device, as well as other types of gambling devices, is of short duration. Gambling devices are designed to operate on a timed cycle, the length of which is determined by the nature of the game. Once the device is activated, the player cannot alter the time cycle.

Some video gambling devices, such as a "Draw Poker" device, have multiple time cycles. There is no limit on how long a player may take between activating the "play" or "bet" button and the "deal" button. Once the deal button is pressed, the images of five cards appear on the screen. This is a timed cycle and cannot be altered or extended by the player. The player then decides which cards (images) to discard—a procedure that is not timed. Once the discards are chosen, the draw button is pressed and a second timed cycle begins.

This illustrates that time of play on a video "Draw Poker" gambling device appears to be extended by the action of the player when long pauses are used between the start of each phase of play. This time extension is not a result of a player's skill, but

merely a result of inactivity.

A video amusement device will begin a sequence of events once a coin is inserted, depending upon the type of game. For instance, in Pac-Man, an image manipulated by the player moves through a maze devouring dots and avoiding monster images. When the Pac-Man image devours a "blinking" dot, it turns and devours monster images and scores points for each one devoured. An average player can play 4 to 5 minutes for a single coin.

If a player paused while playing an amusement device such as Pac-Man, time of play would tend to be shorter since the Pac-Man image would probably be overtaken by the monster, thereby ending that phase of the game. With this type of strategy, very few points would be scored by the player.

An amusement device also has a timed cycle. However, it differs from a gambling device's timed cycle in that a player can extend or interrupt the cycle of an amusement device by, for example, manipulating the Pac-Man image through the maze to devour the dots and avoid being devoured by the monsters. Thus, a player's ability will affect the outcome of play. In addition, the more an individual plays an amusement device, the more skilled he or she is likely to become. On a gambling device, which always employs an element of chance essentially beyond the control of the player, a player will reach a certain level of ability, but from that point on, will not become a better player regardless of the frequency of play.

CHARACTERISTICS OF SLOT MACHINES, VIDEO GAMBLING GAMES, AND VIDEO AMUSEMENT GAMES

Characteristics	Slot machine	Video gambling device	Video amusement device
Multiple-coin Feature	Yes	Yes	No
Multiple-play Options	Yes	Yes	No
SKILL—Play Can Influence Final Outcome of Play	No	No	Yes
Time of Play	Short	Short	Varies
Payoff Method	Coins Credits	Coins Credits	None
House Percentage of Retention Ratio	Yes	Yes	No
Number of Meters	1 or 2	2 or more	1
Knock-off Feature	Some	Yes	No
Power Interrupt Circuit	Yes	Yes	No
Gives Player All Game Has to Offer for One Coin	No	No	Yes
Interaction*	No	No	Yes
Fixed Payoff (Same Reward for Identical Combinations)	Yes	Yes	No
Casino-type Game (Retains All Losing Decisions)	Yes	Yes	No
Game Specifies Winning Combinations	Yes	Yes	No

**Interaction occurs where the action of one player influences the action of another player relative to play.*

Skill Factor

The element of skill becomes a primary factor in determining whether an electronic video device is a gambling device. The term "skill" has several definitions and interpretations, all of which conclude that an activity is skillful if a player can significantly affect the final outcome of play as a result of his own actions. A gambling device, however, is based wholly or predominantly on chance, which would preclude the player's ability from significantly affecting the final outcome of play.

Poker is recognized as a game of skill because factors come into play when interaction occurs with other players, which can determine the success ratio of a "skilled" player. The skill of a poker player is usually gauged by the amount of money he or she won by the end of a playing session and not by the number of times he or she had a winning hand. This monetary success ratio depends on the betting strategy of the skilled player, which includes the choice of not playing bad hands as well as betting appropriately on good hands.

Five elements constitute poker skill: 1) Knowledge of the game's mathematics, 2) money management, 3) psychological deception, 4) card memory and analysis, and 5) betting courage.[13] However, only knowledge of a game's mathematics may assist a player of video gambling devices to increase his winning percentage.

For example, if a player has a pair, the odds are 6 to 1 against improving his hand to two pairs, 8 to 1 against improving his hand to three of a kind, etc. Knowledge of the law of probability gives the player insight as to what type of hand he has the best *chance* of obtaining. The result of the draw is still a product of chance ar

will not guarantee him a consistent winning ratio. If a player uses this knowledge consistently, the results will occur in an unpredictable sequence due to the random nature of the device.

The number of times a knowledgeable player wins does not necessarily result from knowledge (expertise). For example, if a player discarded one card in an attempt to draw a straight or flush and drew a card which gave him a winning pair, this does not result from a player's skill, since the intent was to fill a straight or flush.

To be effective, knowledge of the law of probability as it applies to the game of draw poker must be used in conjunction with the other four skill factors mentioned previously. However, play of an electronic video gambling device does not involve interaction which includes the other four skill factors. Since video draw poker devices are preprogrammed to retain a certain percentage of all coins inserted into the devices and/or credits won, the effect of a player's knowledge of the law of probability is reduced in the final outcome of play. A player of an electronic video draw poker device will attain only limited success regardless of skill, because of the lack of interaction and the limitations of the device.

On the other hand, an amusement device allows the player to apply skill by manipulating levers, buttons, balls, and flippers relative to visual interpretation of images and fields of play. The level of skill a player demonstrates significantly affects the final outcome of play.

Ploys or Diversions

The use of ploys or diversions is just as prevalent today as it was in 1902. Manufacturers of noncasino video gambling devices disguise their devices as amusement devices in order that they won't be classified as gambling devices.

Mislabeling is one type of ploy used extensively by owners and manufacturers. Most video gambling devices bear labels which state "for amusement only." True amusement devices do not need and are not labeled as such. The label "skill points" merely describes the credits awarded for winning combinations because, in fact, little or no skill is actually required to win these credits.

"Dwarfs Den" uses images of dwarfs in place of cards.

A popular but less obvious ploy is to change the primary appearance of the game while retaining all of the original characteristics of play. Manufacturers are replacing the images of cards with images of dwarfs, castles, roman tallies, balloons, etc.

For example, a video display device identified as "Dwarfs Den" displays images of 5 dwarfs consisting of 4 different color groups numbered 1–13. The 4 groups of 13 dwarfs have obvious similarities with a deck of 52 cards consisting of 4 suits. The characteristics of play of "Dwarfs Den" are identical to those of the video draw poker device. When a player places a bet of one or more coins or credits, five images are displayed on a video screen, and the player chooses his discards, which are replaced with new images. Tables 3 and 4 illustrate the operational, display, and play characteristics of the "Dwarfs Den" device compared with those of a video display draw poker device.

Latent Influences

Computer technology has affected all facets of society—business, science, medicine, commerce, military, education, law, and recreation—by modernizing operational concepts to produce efficiency and economy. The evolution of video technology in conjunction with the computer concept had a most noticeable impact upon the automatic coin-operated vending machine industry. The high resolution video graphics and programmable capabilities of microprocessors provided the means to produce a generation of video display devices depicting games of "skill" (amusement devices) and "chance" (gambling devices).

The explosive growth of high-tech industry has created a formidable self-interest group with great financial resources and the potential for influencing public attitudes relative to video displays devices.

The potentially detrimental aspects of the phenomenal popularity of video games has fostered dissenting public opinion which is pitted against

Table 3

OPERATIONAL CHARACTERISTICS

"Dwarfs Den"	"Draw Poker"
1. Five images of dwarfs, four colors, each color numbered 1 through 13, total 52 dwarfs.	Five images of cards, four suits, aces through ten, Jack, Queen, King, total 52 cards.
2. Five "ZAP" buttons used to discard choice of dwarfs.	Five "DISCARD" buttons used to discard choice of cards.
3. "PLAY POINTS" button to play 1 to 8 credits per play.	"BET/ANTE" button to bet 1 to 8 credits per hand.
4. "START" button used to display 5 dwarfs.	"DEAL" button used to display 5 cards.
5. "REPLACE" button used to replace dwarfs discarded.	"DRAW" button used to replace cards discarded.
6. "UNZAP" button used to cancel choice of dwarfs to be discarded.	"CANCEL" button used to cancel choice of cards to be discarded.

The operational characteristics of "DWARF DEN," though labeled differently, perform the identical functions as the operational features of the video "DRAW POKER" device.

the pro-video, self-interest group. Because of the enormous profit potential of this industry, a confrontation of these factions has created a potential breeding ground for public corruption.

The National Foundation for the Study and Treatment of Pathological Gambling has made a preliminary assessment of the effects of the video game craze. Important questions arise as to whether intensive video game playing will influence the future gambling behavior of youths. Will there be an increase in the number of pathological gamblers a few years hence? Is this effect the same for the adult video game participant? Current data suggest a potentially harmful influence on young people's behaviors and various societal problems.[14]

Judicial and Law Enforcement System

Video game technology has placed the law enforcement community in a tenuous position. The sophisticated nature of these devices has hindered the police officer in categorizing them relative to existing statutes. The judicial system does not clearly define the elements which denote a gambling device. For example, the "reward" element defines a "free game" as having no value, when in fact it has the same value as the initial consideration.[15] Another statute uses the phrase "any piece of money, coin, token or other object representative of and convertible into money";[16] a credit or free game is not defined within this definition. These inconsistencies compound the problems for the law enforcement community.

Police agencies are experiencing the negative influence of the video game concept in the form of a rising crime rate, i.e., thefts, burglaries, robberies, muggings, and occasionally, loss of life. In most instances, the perpetrator of the crime admits that the criminal act was committed to support a video game habit.

Complaints from parents, spouses, school administrators, and occasionally, video arcade and bar owners increase the involvement of police agencies in the video game issue. Truancy, vandalism, theft, loss of paychecks or welfare checks, and public disturbance charges have been increasing police agencies workloads and manpower allocations.[17]

The adverse publicity regarding video games prompted local governments to legislate stringent controls regulating the location and operating hours of arcades, the number of arcades permitted to operate in a specified area, and age limits of customers allowed on the premises, as well as food and beverage guidelines.

Computer technology is widely used by private industry, law enforcement, and the judicial system, primarily for administrative and scientific functions. The familiarity implied by this popularity has not been applied to the legislative process relative to enacting new laws, revising existing statutes, or interpreting these statutes.

Existing statutes do not specifically address the legal issue of the electronic video display gambling device. The language of these gambling statutes is often vague and provides a wide latitude for interpretation by the courts and prosecuting attorneys.

If the statute contains language that is relevant, the court may interpret the phraseology literally. For example, if a "Sweet Shawnee" device is the subject of litigation, one of the elements of the violation may state:

> "Any so-called slot machine or any other machine or mechanical device, an essential part of which is a drum or reel with insignia thereon."[18]

A court, using a literal interpretation, may rule that this device does not have a drum or reel; therefore, this device would not fit within the criteria established by an element of this statute. The fact that the device uses an electronic reel as opposed to a mechanical reel does not alter the concept or final results of play because the electronic reel performs the same function as the mechanical reel.

Conclusion

Video technology has been

will remain an important factor affecting all facets of society—business, science, medicine, commerce, military, education, law, and recreation. In all of these areas except recreation, video technology is only one element of a total system. This one element produces a more efficient, and therefore, more productive system.

In the area of recreation, video technology becomes the system, and as such, efficiency and productivity are in doubt. Uniqueness and easy accessibility of video games (amusement and gambling) caused a surge of unanticipated popularity, and as with any explosive occurrence, problems developed.

The first problematic symptom was a rise in the crime rate, which affected the judicial and law enforcement systems. A second wave of problematic symptoms, which affected the mental and physical health systems, appeared as an addiction to play video games. The major concern of this symptom is that the elements of this alleged addiction are similar in nature to those of a problem gambler.

The video game industry is dynamic. Constant change is necessary to retain the high interest level it now enjoys. If the interest factor subsides to the level of other amusement-type devices, the initial problem area may disappear. However, the video gambling device will remain an issue until these devices are defined, using this concept's technical terminology relative to the existing statutes or the redrafting of new legislation. **FBI**

Table 4

DISPLAY CHARACTERISTICS

	"Dwarfs Den"	"Draw Poker"
1.	Four-digit display meter, upper left-hand corner of screen, records credits for each coin inserted.	Four-digit display meter, upper left-hand corner of screen, records credit for each coin inserted.
2.	Two-digit display meter, upper right-hand corner of screen, records credits played per game.	Two-digit display meter, usually lower right-hand corner of screen, records credits bet per hand.
3.	"Wild Dwarfs" come into play when specific number of credits played.	"Wild Jokers" come into play when specific number of credits are bet.
4.	Designated winning combinations:	Designated winning combinations:
	Thin Twins	Pair Aces
	Double Twins	Two Pair
	Triplets	Three of a Kind
	Green Brothers	Flush
	Lavender Gang	Flush
	Blues Brothers	Flush
	Red Brothers	Flush
	Generation	Straight
	Family	Full House
	Quadruplets	Four of a Kind
	Solid Generation	Straight Flush
	Quintuplets	Five of a Kind
	Fat Generation	Royal Flush

The display and play characteristics of "Dwarfs Den," though labeled differently, are identical and perform the same function as those of an electronic video display "Draw Poker" device.

Footnotes

[11] The majority of noncasino devices can be converted to the casino type with minimal modification.

[12] B. Lampa, "Security and Control of the New Microprocessor Slots," *Public Gaming Magazine,* July 1982, pp. 15–17.

[13] J. Scarne, *Scarne's New Complete Guide to Gambling* (New York: Simon and Schuster, 1979).

[14] L.B. Nadler and T. Meeland, "Pathological Gambling and Military Readiness: Its Nature, Prevalence, Impact, and Resolution," *National Foundation for Study and Treatment of Pathological Gambling,* September 1982.

[15] *Commonwealth of Pennsylvania* v. *Two Electronic Poker Games,* Pa. Sup. Ct. J#133–83, p. 2, which gives only free games as a reward for successful play are nevertheless gambling devices *per se* when they also possess a knockdown button and a meter to record the number of free games knocked down.

[16] Art. 27, Annotated Code of Maryland, sec. 264B.

[17] B. Kurtz, "Our 'cades: Troublemakers? Use Sugar instead of Vinegar," *Play Meter Magazine,* August 15, 1982.

[18] 15, USC, 1171–143–1. 1.

Psychological Factors

The Overlooked Evidence in Rape Investigations

". . . the major coping task of the rape victim is not to avoid sexual contact but to survive."

By
GARY L. GRIFFITHS
Special Agent
U.S. Army Criminal Investigation Command
Falls Church, VA

The rape investigation is frequently one of the most challenging and frustrating tasks a police investigator can undertake. When the victim is beaten into insensibility and requires immediate medical treatment or is discovered half dead, nude, and tied to a tree, an investigator can reasonably conclude that a criminal offense has occurred. The investigator is then tasked to collect and preserve evidence and to identify the perpetrator(s). Fortunately, a large percentage of rapes reported to police involve little, if any, physical injury to the victim. The major task confronting the investigator is to prove that the sexual act occurred "by force and without consent."

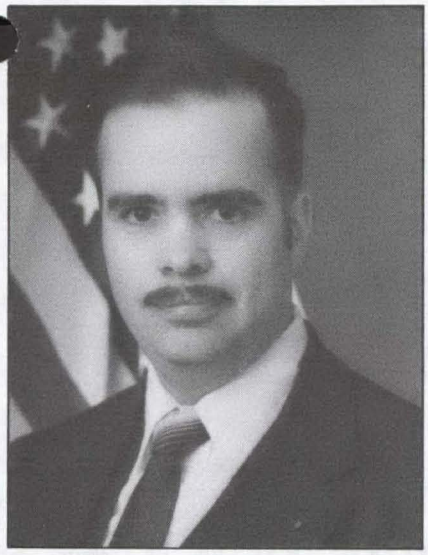
Juries have been reluctant to convict accused rapists unless the victim was clearly brutalized. Thus, the victim with scars on her body left by a knife-wielding rapist will have little trouble proving her case, while the woman who bears only the mental scars is unlikely to see justice done.

This problem is exacerbated when the behavior of the victim during and after the incident is in some manner contrary to what is traditionally expected of someone who has just experienced a "fate worse than death." Woe be unto the rape victim who, for reasons of shock, fear, humiliation, or confusion, waits more than a matter of minutes to report her ordeal. Even if she reports the incident within minutes, investigators and jury members are likely to be skeptical of her report if she appears calm and collected. Similarly, she is expected to engage in at least passive resistance; submissive acts during the incident are very often equated with consent.

This situation is changing rapidly, however. Behavioral scientists studying both rapists and their victims have made some rather startling findings about the behavior of rape victims. Many of these findings expose traditional views of "appropriate" victim behavior as having been based solely on myths and misconceptions inherited from bygone eras. These studies have emphasized the life-threatening nature of the rape episode, which is often difficult for males to understand. Yet, evidence indicates that females are affected by fear to a much greater extent than males.[1]

The typical rape victim's behavior is terror-induced, pseudocalm, and detached during the rape episode. One prominent researcher found:

> "The first and immediate response of all individuals to sudden unexpected violence is shock and disbelief. When realization sets in, the vast majority of victims then experience fright which borders on panic. This fright-panic response is especially true when the individual feels his life to be in imminent danger. In violent crimes, particularly crime where there is prolonged contact with the criminal, such as in the crime of rape, the feeling of impending peril



Mr. Griffiths

to the victim is deliberately produced by the criminal. He shows the victim a knife or a gun, sometimes hits the victim, and always makes extreme verbal threats to the victim's life unless she complies. When a victim experiences fright bordering on panic there is a heightened distortion of perceptive thinking and judgment. All behavior is directed at self-preservation. Most learned behavior seems to evaporate, and the victim responds with the adaptive and innate patterns of early childhood. I have called this response traumatic psychological infantilism." [2]

Thus, the major coping task of the rape victim is not to avoid sexual contact but to survive.

Examination of a victim's coping strategies by mental health professionals can often result in expert testimony that explains questionable actions the victim may have taken. To preserve such evidence properly, the interviewing officer should document not only the sequence of events but also the coping behavior of the victim during the attack.

Victim Coping Strategies During Sexual Attacks

The first coping behavior expected by the public of a rape victim is physical resistance. A major study revealed, however, that only about one-fourth of rape victims physically struggle with their attackers.[3] Even many of those who initially struggle quit when they realize they cannot escape. The majority opt for verbal tactics, such as stalling for time, reasoning with the assailant to try to change his mind, trying to gain his sympathy, flattering him, bargaining with him, trying to change his perception of them, verbal aggression, or joking and sarcasm. While the rape is in progress, some victims try screaming and crying in the hope of attracting help, while others talk quietly with their assailant in hopes of avoiding additional violence. Then, when the attack is over, the victim may have to bargain with the rapist for her freedom by promising not to report the incident or not to move for a specified time. Other victims adopt cognitive strategies, such as concentrating on how to escape, how to keep calm, or how to avoid injury. They may also recall advice given to them by others about what to do in a rape situation or how they have handled violent situations in the past. Some concentrate on the rapist's physical description, vehicle, and remarks to provide leads for the police. Finally, many victims simply comply with the rapist's demands as a strategy to "speed it up . . . get it over with." [4]

This behavior may readily be misinterpreted as consent by persons not familiar with the psychodynamics of stress in violent situations. In point of fact, research disclosed that:

> "The behavior of the vast majority of women during their contact with rapists demonstrates this traumatic psychological infantilism. In the atmosphere of primal terror, not only do people submit, but also psychological infantilism, with its consequent helplessness, makes it appear to the outsider that their behavior was friendly and cooperative. It is a response of frozen fright that

"The source of most psychological evidence of force lies in the nature of the victim's reactions after the incidents."

> confuses everyone; the rapist, the victims's family, her friends, the police, and even the victim herself. . . . The frozen fright response of psychological infantilism looks like cooperative behavior. The victim may smile, even initiate acts, and may appear relaxed and calm. But frozen fright has its roots in profound primal terror. The individual submits in order not to be killed." [5]

The response is similar to that observed in many animals when in danger of imminent attack from others of their own species. Many times, they will expose their most vulnerable parts to the attacker in a apparent attempt to prevent further violence.[6]

Reasons for Delayed Reports

After the rapist departs, the victim must decide whether to report the incident to the police. If she reports the rape, no matter what her mental status, she'd better hurry, since ". . . evidence showing the presence of 'fresh complaint' has been allowed . . . on the theory that if a woman is actually sexually violated, she will report that violation at the earliest available opportunity, and that undoubtedly she will be a study in hysteria when she does so." [7] In the past, it was a truism among many legal experts that a lack of a fresh complaint was tantamount to a false complaint. However, modern case law considers the rape victim's delay in reporting the crime as simply a factor to be weighed when determining the credibility or consent of the victim. Delays in reporting the commission of a rape may be easily overcome with a credible explanation of the delay.[8]

The principle of "fresh complaint" does not take into account the shock, humiliation, confusion, and fear the victim may be experiencing immediately after the incident. The numbing fear that produces traumatic psychological infantilism is not easily dissipated. As one psychologist who was raped at gunpoint reported, "I felt endangered everywhere. Every noise startled me. Every leaf was camouflage for an assassin. For months a friend of mine described [me] searching the faces on the street as if to ask, 'Are you the one?' " [9]

Another psychological factor which may prevent the victim from promptly reporting the rape is a perverse sense of gratitude. This response is very similar to certain aspects of the "Stockholm Syndrome" observed in hostages. Indeed, the situations are very similar. The rape victim becomes a hostage of the rapist, forced to do his every bidding in order to survive. Although most rape episodes are considerably shorter than the typical hostage incident, time becomes very subjective for the victim. Most rape victims report that the attack seemed interminable.[10] Therefore, depending on the nature of the attack and the victim's psychological makeup, the victim may either identify with the offender or transfer feelings of gratitude, kindness, or understanding. Since the rapist has complied with the victim's ultimate wish—he allowed her to live—she may not report the incident at all or report it only after time has diminished the impact of the incident and her gratitude for being released. Therefore, a delayed report must be viewed in the light of the original Stockholm hostage incident, in which the hostages refused, years later, to testify; a female hostage even married one of the hostage takers.

The stressors involved in a rape situation are clearly equivalent of those experienced by hostages. In fact, the third edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM–III) of the American Psychiatric Association associates rape with "a recognizable stressor that would evoke significantly symptoms of distress in almost everyone." [11] Other similar stressors are military combat, floods, earthquakes, car or airplane crashes, bombings, torture, and death camps. Thus, the investigator interviewing a rape victim must understand the victim's point of view of the incident in order to document the reasons behind those otherwise puzzling aspects of her behavior.

Although expert testimony can not explain much of the rape victim's behavior which would otherwise damage her credibility, the jury is still faced with an extremely difficult task in having to arrive at a verdict when the vast majority of evidence presented consists basically of "her word against his."

Fortunately, an entirely new category of psychological evidence is becoming available to make the task of proving force easier in the absence of corroborating physical evidence. Recent studies have identified specific stress reactions in victims which may be linked to the crime of rape and

thus serve as a basis for corroborating their testimony. The police investigator should be familiar with the nature of such stress-related evidence and with ways to develop and document such evidence to serve as a basis for substantiating the victim's allegations when other traditional evidence is not available.

The Rape Trauma Syndrome

The source of most psychological evidence of force lies in the nature of the victim's reactions after the incident. This pattern of reactions is so specific and so universally observed by mental health professionals in dealing with rape victims that it was labeled the "rape trauma syndrome" by the first researchers to extensively study such victims.[12]

The rape trauma syndrome ". . . is the stress response pattern of the victim following forced, non-consenting sexual activity. It consists of somatic, cognitive, psychological, and behavioral symptoms resulting from an active stress reaction to a life threatening situation." [13] It usually has two phases.

The first phase begins about the time the victim is released by, or escapes from, her attacker. It is characterized by disorganization, in which the victim's life is disrupted by the impact reactions of the rape incident. Depending on the severity of the attack, the victim may experience feelings of shock or disbelief, followed by or alternating with fear and anxiety. She will then usually develop one of two styles of coping with her emotions: An expressed style in which she displays her feelings by crying, sobbing, smiling, and becoming restless or tense; or a controlled style in which she masks her feelings behind a calm, composed, or subdued appearance. The number of victims adopting either style is approximately equal.[14] Regardless of the style the victim develops, questions concerning her feelings about the incident will elicit a wide gamut of responses, ranging from fear, humiliation, and embarrassment to anger, revenge, and guilt.

The second phase of the rape trauma syndrome typically begins about 2 to 3 weeks after the attack and is characterized by reorganization. Here, the victim tries to reassemble her lifestyle, integrating the rape experience into it. During this phase, she will attempt to cope with the rape with psychological and behavioral reactions directed toward assuring herself that she will not again be so victimized.

To collect this evidence, the investigator must be cognizant of the specific diagnostic criteria used by psychologists to document this disorder.

The Posttraumatic Stress Disorder

The rape trauma syndrome is now accepted as a subcategory of the specific type of anxiety disorder classified as the "posttraumatic stress disorder" in the DSM-III. Accordingly, the DSM-III diagnostic criteria will be presented, followed by examples often resulting from the rape trauma syndrome, and where appropriate, suggestions for eliciting this type of information during interviews. These examples have been gleaned from the writings of noted mental health professionals, such as those referenced in the footnotes. The major concern in gaining such information is, of course, to avoid "leading" the victim into describing symptoms she hasn't experienced because she believes that the interviewer expects her to undergo such feelings. Therefore, it is essential to use indirect questioning techniques to elicit such information.

The first major criterion noted in the DSM-III is the *existence of a recognizable stressor that would evoke significant symptoms of distress in almost anyone.* Rape is specifically mentioned as such a stressor in the DSM-III. Therefore, the task of the investigator is to inquire about any other traumatic event that might recently have occurred in the victim's life. The absence of such events will help establish that the rape is the sole source of the victim's symptoms.

The DSM-III lists the second major criterion necessary to substantiate this disorder as *reexperiencing of the trauma as evidenced by at least one of the following:*

Recurrent and intrusive recollections of the event—Rape victims are frequently plagued by their inability to keep from thinking about the incident. The victim can be encouraged to report such a phenomenon by a nondirective comment such as, "I don't imagine it's easy to forget something like this."

Recurrent dreams of the event—Nightmares characterized by violence either to the victim or in her presence are commonly reported. At first, the theme of the dream may be similar to the actual event, in which the victim wishes to do something but then wakes up before acting. As the victim adjusts to the trauma, the theme of the dream may change, with the victim gaining mastery of the situation by being able to fight off or even muti-

"Phobic fears of crowds, elevators or stairs, people behind them, or of being alone are typical victim reactions, depending on the circumstances of the rape."

late or kill her assailant. A third type of dream may involve symbolic representations of some theme from the rape, which will require a qualified mental health professional to interpret. The investigator should inquire whether the victim has had any trouble with sleeping or dreaming since the incident and should carefully document the content of any dream the victim is willing to discuss.

Sudden acting or feeling as if the traumatic event were reoccurring because of an association with an environmental or ideational stimulus—Often, victims will complain of momentary panic after seeing something they associate with the incident or something they regard as threatening, such as a strange man "acting suspiciously." They may take action to rid themselves of things which remind them of the incident, such as discarding the purse, shoes, or other items they were wearing during the attack. When informed that it will be necessary for police to temporarily obtain their clothing for evidence, they may express a desire not to have it returned. Victims attacked in their homes may even go so far as to discard furniture present during the attack, which they may associate with the incident.

The third major criterion of the posttraumatic stress disorder is *numbing of responsiveness to or reduced involvement with the external world, beginning some time after the trauma.* Many rape victims directly report that they were in a state of shock, felt numb, or that it didn't feel real. They may typically state that they just can't believe it happened. Other evidence of this criterion can be shown by at least one of the following:

Markedly diminished interest in one or more significant activities—Many victims who once enjoyed sports, walking, and outdoor activities will stop participating in such activities. They may fear that such activities will expose them to danger again. Some victims, especially those attacked outdoors, become phobic of the outdoors and become, in effect, immobilized. They may request friends or relatives to accompany them on routine errands, such as grocery shopping. Conversely, those attacked in their homes or other buildings may feel trapped indoors and seek to be outside or at some other location, such as the workplace.

Feeling of detachment or estrangement from others—Victims frequently describe feeling isolated and estranged from others. One victim described how she ". . . went through the ritual of talking to people. It always seemed as if I were talking through glass or underwater." [15] Another stated that she preferred to ". . . stay in my own little world by myself, now." [16]

Constricted affect—This refers to a withdrawal from life. Rape victims who previously displayed outgoing, "life of the party" personalities may become very defensive and rigid in their behavior. They may refuse to attend social functions, quit work or school, even withdraw from their families. Interviews with friends, coworkers, and family members may be used to document such behavior changes.

The final DSM-III criterion calls for at least two of the following symptoms that were not present before the trauma:

Hyperalertness or exaggerated startle response—Rape victims often develop paranoid feelings. They may believe they are being watched or followed. One victim's mother reported that she wouldn't go to bed until she checked the locks on every door and window in her house at least three times. Another victim reported that she now slept with her clothes on so she could run out of the house if attacked. They may believe others can tell they were raped just by looking at them. They may also run or scream when they feel endangered, such as upon hearing footsteps behind them, being confronted with a "suspicious" man, etc. They frequently will panic and jump or scream upon being startled by an unexpected noise or touch. Also, they will often withdraw convulsively from even a casual touch by a male. The interviewing officer can often observe these reactions directly or might mention that the victim seems "jumpy" and ask if this has been a problem or source of embarrassment for her.

Sleep disturbance—Rape victims often report they are unable to sleep or awaken shortly after falling asleep, then be unable to get back to sleep. Victims who were attacked in their sleep may awaken each night at the time they were attacked.

Guilt about surviving when others have not or about behavior required for survival—Guilt is an especially characteristic feeling among rape victims. Because of society's traditional attitude of blaming rape on the victim, she may accept those standards and impose this judgment on herself. She may also blame herself for her inability to get away from participating in the

crime, even when she clearly had no alternative.

Memory impairment or trouble concentrating—Due to the nature of the rape episode, the victim normally experiences a crisis reaction which results in cognitive, affective, and behavioral disruption. The victim may experience difficulty in remembering details of the incident, especially during the hours immediately following the attack. She may remember being bound, for example, but be unable to remember whether her hands were tied in front of her or behind her back. Her recollection of the details surrounding the attack may prove faulty, and she may be inconsistent in responding to questions about such details. Unfortunately, such inconsistency is often interpreted by the interviewing officer as an indication of deception when it is, in fact, a result of the rape trauma. Details which may have been forgotten or unclear to her at the time of the initial interview will often be recalled in greater detail during the followup interviews after the impact reactions have subsided.

Avoidance of activities that arouse recollection of the traumatic event—Women who were picked up at bars or clubs and later raped may avoid frequenting such establishments. Phobic fears of crowds, elevators or stairs, people behind them, or of being alone are typical victims' reactions, depending on the circumstances of the rape. Descriptions of such phobic reactions can be elicited during later interviews by mentioning what happened to the victim could really change her outlook on whatever her activity or location when the incident took place.

Intensification of symptoms by exposure to events that symbolize or resemble the traumatic event—Victims who were forced to engage in oral sex may gag when eating or have difficulty in swallowing, singing, or speaking. They may also experience "anniversary" reactions on the day or time of the month the incident occurred. Another event symbolizing the rape for some victims is sexual activity. The victim may abstain from sexual relations for an indefinite period or markedly decrease her sexual activity. Slightly over 25 percent of such victims reported such a decrease, however.[17] Conversely, some victims increase their sexual activity, possibly to gain security from the associated cuddling and holding.[18] The interviewing officer should avoid probing the victim for such intimate details, but should be aware that an apparent attitude or promiscuity in the victim after the incident may result from her increased need for security.

Additional Rape Trauma Symptoms

In addition to the criteria which specifically support a DSM–III diagnosis of posttraumatic stress disorder, there are several other symptoms which are associated with the rape trauma syndrome. They include loss of appetite or eating problems, rapid mood changes, depression, excitability, frequent crying, or frequent loss of temper. Many victims also complain of nausea and may state that they become nauseated just thinking about the rape. In the reorganization phase, many victims will change residence, remove their name from mail boxes, and discontinue telephone service or change to unlisted numbers. Usually, such measures are taken due to the haunting fear that the rapist will return or will take revenge because the incident was reported. Many victims also experience a need to "get away" and will take trips or visit relatives they don't usually see often.

Collecting Rape Trauma Evidence

More than one interview with the rape victim will be necessary to observe and document evidence of the rape trauma syndrome. The initial interview will, of course, concentrate on the details of what happened, but its scope should be expanded to encompass the feelings and reactions of the victim.

A second interview should be scheduled with the victim about 2 to 3 weeks after the incident. This interview will be useful in clearing up details that might not have been covered in her initial statement; however, the main emphasis of the interview should be on her reactions and lifestyle since the rape. Observations and information reported by the victim which are consistent with the rape trauma syndrome should be thoroughly documented in the investigator's notes. Finally, a third interview should be held at least 6 to 8 weeks after the incident in order to collect psychological evidence consistent with the reorganization phase of the rape trauma syndrome.

"Accusative interrogation tactics have absolutely no place in the interview, unless it is blatantly obvious that the victim is falsifying the entire report."

Techniques For Interviewing Rape Victims

When interviewing the rape victim, the investigator should try to establish rapport by using knowledge of the psychodynamics of violence to mitigate the tendency (learned from experience in interrogations) to view confused, evasive, or contradictory behavior as evidence of deception. While obtaining the details of the incident, the investigator should ask the victim to relate her feelings during the incident and her reasoning behind actions she took or did not take. The "just the facts, ma'am" attitude that is laudable under other circumstances will be counterproductive in a rape interview, since it tends to limit the flow of information about the psychological impact of the event and may even further traumatize the victim if she interprets this as skepticism or hostility. Remember, at this point in the investigation, a maximum amount of empathy and concern for the victim is required. By expressing interest and sympathy, the investigator not only facilitates the collection of psychological evidence but lessens the impact of the rape aftermath by demonstrating concern for her as a person rather than as a mere source of evidence, or worse, as an additional problem.

If any of the victim's coping strategies even remotely aided the investigation, she should be praised for thinking of them. A question that often haunts the rape victim is, "Did I do the right thing?" If she is aware her strategies were beneficial, the victim may be able to overcome feelings of fear and guilt resulting from perceived ineffectiveness. The interviewing officer must also understand that a victim who is undergoing impact stress reaction may not be able to talk about certain aspects of the incident. She should never be forced into lying about some detail she may not clearly remember or be too traumatized to discuss. She should be informed that if there is something she can't bear to talk about, she should simply say so, and the matter will not be pursued at this time. However, she should also be aware that any false statement about the incident, no matter how insignificant, may cast doubt on her testimony. Of course, it is frustrating not to be able to obtain all of the details immediately, but since two or three additional interviews will be conducted, the investigator will find that the victim will remember and relate willingly more details after the shock of the incident has subsided. Accusative interrogation tactics have absolutely no place in the interview, unless it is blatantly obvious that the victim is falsifying the entire report.

Documenting Psychological Evidence

All observations and information provided by the victim and other witnesses about changes in her lifestyle should be documented in the investigator's notes. Investigators, though, should not attempt to draw conclusions or make diagnoses that they are professionally unqualified to make. Any actual diagnosis must be made by a qualified mental health professional. Ideally, the victim will receive followup counseling from such a professional, but many don't. Even when evidence from psychological counseling sessions is unavailable, the mental health professional can, in many jurisdictions, rely on other evidence (such as the investigator's observations) in arriving at a conclusion.

The Admissibility of Psychological Evidence

Questions remain on the admissibility of psychological evidence in support of the victim's testimony, although the bulk of appellate decisions in this area have been favorable. As a general rule, expert testimony may be admitted to explain psychological aspects of sex crimes that are beyond the experience of the average juror,[19] or for ". . . explaining superficially bizarre behavior by identifying its emotional antecedents."[20] Such evidence, when corroborating a victim's testimony, was deemed admissible, ". . . as would be a doctor's testimony in a personal injury case that a party's physical behavior was consistent with a claimed soft tissue injury, although such an injury was not objectively verifiable."[21]

Evidence of the rape trauma syndrome for rebutting defendants claims of consent has been admitted and affirmed on several occasions. One such decision stated, ". . . the literature clearly demonstrates that the so-called 'rape trauma syndrome' is generally accepted to be a common reaction to sexual assault."[22] However, not all appellate decisions have upheld the admissibility of rape trauma evidence, especially when offered along with an expert opinion that the victim was, in fact, forcibly raped. Such testimony was held to be ". . . a legal conclusion which was of no use to the jury" because it "gave a stamp of scientific legitimacy to the truth of the complaining witness's fac-

tual testimony." [23] Nor have all courts agreed that the rape trauma syndrome is generally accepted in the scientific community. One court held that "the scientific evaluation of rape trauma syndrome has not reached a level of reliability that surpasses the quality of common sense evaluation present in jury deliberations." [24] The same court was split in a later case, however, with dissenting justices stating that "such evidence is probative on the issue of consent and thus helpful to the jury in resolving the conflicting facts of this case concerning that issue."[25] One court upheld the admissibility of a rape crisis counselor's testimony, even though she had not personally counseled the victim, but had merely read documents pertaining to the case and observed the victim testifying in court.[26]

Conclusion

Forcible rape produces psychological stressors which are among the strongest possible in human experience. To cope with these stresses, victims are reduced to a primitive, childlike state of mental functioning in which the logical faculties of the adult conscious mind are suspended and all behavior is purely survival oriented. Their behavior is therefore often difficult to understand without expert interpretation. Moreover, these stressors damage the psyche and lead to quantifiable ideational and behavioral changes specifically characteristic of rape victims. Police investigators who are cognizant of the coping behavior and posttraumatic stress reactions of rape victims will be more effective in conducting followup investigations as they will collect additional evidence which may be used to substantiate the element of force. Also, by being concerned with the victim's feelings and reactions, they will reduce some of the trauma associated with the investigation and will encourage victims to cooperate more fully in subsequent prosecutions. Thus, by becoming familiar with a few psychological principles, the police investigator can, in some instances, become the eyes and ears of the expert whose testimony may easily mean the difference between seeing justice done and allowing a dangerous criminal return to society to prey on additional innocent victims. **FBI**

Footnotes

[1] D.L. Smith, "The Aftermath of Victimization: Fear and Suspicion," in *Victims and Society,* ed. E.C. Viano (Washington: Visage Press, 1976), p. 211.

[2] M. Symonds, "The Rape Victim: Psychological Patterns of Response," *American Journal of Psychoanalysis,* vol. 36, No. 1, 1976, p. 29.

[3] A.W. Burgess and L.L. Holstrom, "Coping Behavior of the Rape Victim," *American Journal of Psychiatry,* vol. 133, No. 4, 1976, pp. 414–415.

[4] Ibid p. 416.

[5] Supra note 2, p. 30.

[6] Ibid, p. 31.

[7] J.L. Ross, "The Overlooked Expert in Rape Prosecutions," *University of Toledo Law Review,* vol. 14, No. 3, 1983, p. 708.

[8] *State* v. *Van Doren,* Mo. App., 657 S.W. 2d 708 (1983); *State* v. *Baker,* Or. App., 610 P.2d 840 (1980); *State* v. *Berry,* N.H., 373 A.2d 355 (1977).

[9] D. Metzger, "It Is Always the Woman Who Is Raped," *American Journal of Psychiatry,* vol. 133, No. 4, 1976, p. 406.

[10] Supra note 3, p. 416.

[11] *Diagnostic and Statistical Manual of Mental Disorders,* American Psychiatric Association, 3d ed., p. 238.

[12] A.W. Burgess and L.L. Holstrom, "Rape Trauma Syndrome," *American Journal of Psychiatry,* vol. 131, No. 9, 1974, p. 981.

[13] A.W. Burgess, "Rape Trauma Syndrome," *Behavioral Sciences & The Law,* vol. 1, No. 3, 1983, p. 97.

[14] A.W. Burgess and A. Lazare, *Community Mental Health: Target Populations* (Englewood Cliffs, NJ: Prentice-Hall, 1976), pp. 240–241.

[15] Supra note 9.

[16] Supra note 12, p. 103.

[17] J. Norris and S. Feldman-Summers, "Factors Related to the Psychological Impacts of Rape on the Victim," *Journal of Abnormal Psychology,* vol. 90, No. 6, 1981, p. 565.

[18] Supra note 13, p. 105.

[19] *State* v. *Harwood,* Or. App., 609 P.2d, 1312 (1980).

[20] *State* v. *Middleton,* Or. App., 648 P.2d 1296, 1300 (1982).

[21] Ibid.

[22] *State* v. *Marks,* Kan., 647 P.2d 1292, 1299 (1982).

[23] *State* v. *Saldana,* Minn., 324 N.W. 2d 227, 231 (1982).

[24] Ibid. p. 230.

[25] *State* v. *McGee,* Minn., 324 N.W. 2d 232, 234 (1982).

[26] *United States* v. *Hammond,* 17 M.J. 218 (C.M.A. 1984).

Officer Weaver conducts a performance evaluation with a dispatcher handling a hot pursuit involving several units.

Training and Evaluating the Police Communications Dispatcher

"The key to ensuring optimal performance of all dispatch personnel is intensive training."

By
WILLIAM C. WEAVER, JR.
Training Coordinator
Dispatch Division
Police Department
Houston, TX

Throughout the police profession, there are important choices to make among competing demands. With limited resources and personnel, any department is hard pressed to maximize its efforts in all areas of operation. It is difficult, however, to think of any function in a police department that is more critical than the dispatch function.

Several studies conducted by different research institutions have determined that approximately 95 percent of all police work performed by a department's patrol force is first received, screened, and assigned over police communications systems.[1] Additionally, it has also been stated that of the total number of calls for service, approximately one-third to one-half result in the dispatch of at least one patrol unit.[2] The remaining service requests are handled either by dispatch personnel themselves, diver

Officer Weaver (left) with Lee P. Brown, Chief of Police

to alternative response operations, or referred to other departments or government agencies that can respond to complainants' requests more effectively.

Although some departments integrate calls received and dispatch functions into one position, these are, in fact, two distinct tasks. Operator performance in screening the initial call for service and meeting the needs of the complainant (based upon the information obtained from the requestor) will impact directly two critical areas of daily operation—image perception and credibility and safety of responding units.

The key to ensuring optimal performance of all dispatch personnel is intensive training. However, prior to establishing a training program for police communications personnel, several values should be identified. These values express the basic philosophy of service delivery and the police department's commitment to operational professionalism, its employees, and the community.

A department must be committed to maintaining the highest levels of integrity and professionalism in all its operations. By doing so, a department can ensure that these principles will be the cornerstones which form the basis of personnel selection, training, and advancement.

A department must also be committed to managing its resources in the most effective manner possible. The primary objective is maximizing service delivery functions with minimal "costs" to the citizen. Rapid response to citizens' requests for emergency assistance *must* be the foundation on which this value is predicated. Issues such as training, employee productivity and performance evaluations, and resource allocation must be carefully studied and procedurally addressed.

Training and Evaluation

Many departments have wasted valuable resources (time, manpower, and money) in an attempt to enhance their patrol operations, while neglecting to establish a firm structure on which all service requests are built. In designing a progressive training program for dispatch personnel, several key training tools must be discussed. These include, but are not limited to: 1) Standardized training guidelines, 2) realistic performance expectations, and 3) incremental training.

Standardized Training Guidelines

Each trainee should be furnished a copy of all training guidelines, since this document will be the vehicle by which their performance will be observed and appraised. These guidelines would, of course, contain all policies and procedures relevant to the dispatcher's job description and function. In addition, trainees should be encouraged to supply feedback to instructors or supervisors. No portion of training should be conducted and no decisions made concerning issues related to a trainee's performance without his/her knowledge and input. Trainees should be allowed to review their *daily* training report in the presence of the supervisor, trainer, or evaluator.

Realistic Performance Expectations

In using the daily training report as described above, the performance expectations of the trainee should be identified by using behavioral anchor points or values. These are nothing more than descriptions of desired (or undesired) behavior for each of the categories identified in the training process. An example of such is displayed in figure 1. A sample grading

Figure 1: Behavioral Anchors

Subject: Safety Mindedness

Purpose: To measure the trainee's awareness of the safety needs of the field officer and the ability to dispatch field units with a measurable degree of confidence.

-1-

Clearly Unacceptable Performance

Projects nervousness, insecurity and/or lack of confidence and concern by unnecessarily pausing, hesitating, and/or repeating call information or by using a tone of voice or a voice inflection demonstrating these traits. Gives erroneous or incomplete information when transmitting a call. Transmits incomplete descriptions and/or fails to advise responding units when weapons are involved in an incident. Demonstrates a lack of recognition of potentially dangerous calls by not assigning appropriate backup response units or checking with the assigned units after they remain out of service for extended periods of time. Fails to record locations and license numbers for field units while on traffic stops. Demonstrates great difficulty in tracking and recording locations of field units.

-3-

Minimum Acceptable Performance

Projects inconsistent confidence when dispatching field units on calls for service. Occasionally fails to speak in a clear and even voice. Occasionally repeats or transmits unnecessary information. Occasionally gives incomplete information regarding dispatched calls for service to assigned field unit(s). Occasionally becomes emotional when dispatching calls for service or when responding to emergency requests for assistance from field units. Seldom fails to record license number and location of field units while on traffic stops. Occasionally fails to recognize potentially hazardous situations for responding field units.

-5-

Superior Performance

Projects complete self-confidence and total concern by dispatching field units in a calm, clear voice, without hesitation or repetition. Consistently gives complete and accurate information to responding and assigned field units. Always recognizes potentially hazardous calls by assigning one or more backup units. Consistently checks with field units who are on traffic stops or other out-of-service activities. Always records license number and locations of field units when on traffic stops. Never becomes emotional when dispatching calls for service or when responding to emergency requests for assistance.

sheet is displayed in figure 2.

Incremental Training

The purpose of any training program is to provide the trainee with the knowledge and skills necessary to achieve maximum proficiency. This can be accomplished most effectively by using incremental training strategies which are designed to expose the trainee to the various factors involved in receiving calls for service and dispatching field units. These factors include, but again are not limited to, the following:

Talk Time—The amount of time the dispatcher is involved in bi-directional communication with complainants and/or field units.

Calls Received—The number of calls dispatched for field unit service and disposition, as well as the number received by intake (complaint) personnel.

Manpower Allocation—The number of police units assigned to the dispatcher's area of responsibility. This would also include fire, EMS, and other support personnel (in cases of smaller departments that serve as originating point for all services).

Call Load Distribution—The number of calls dispatched with respect to the percentage of the day's workload (usually associated with agencies that have more than one frequency from which calls for service are assigned).

Peculiarities of the Position—Oftentimes, departments have a frequency from which assignments are handled in a manner completely different than the primary patrol channel(s). This period of training can be quite disruptive to the overall objective. The trainee is required to learn different dispatch procedures. As such, these positions should be "mastered" at the end of the training cycle, after the trainee has acquired a measurable degree of confidence.

Having instituted a progressive training program using standardized training guidelines, realistic performance expectations, and incremental training steps, the department informs each employee exactly what is expected in the entry-level and post-training periods. Also, the employee's evaluation should be conducted on two levels of training—"proximate" and "distal." Proximate evaluations are conducted at the time of entry, during the training process, or after the employee has received the required level of instruction. Distal evaluations are conducted at predetermined periods of service tenure (semi-annual, annual, etc). The end result will be employees who are more effective in handling the multitude of requests and job tasks associated with

". . . although 'the patrol force is the backbone of the department,' the communications division and its personnel compose 'the nerve center.' "

Figure 2: Dispatcher Performance and Training Report Grading Sheet

Employee:_____ Employee No._____
Day:_____ Date:_____ Trainer:_____

X1	Category 1:	Demonstrates Attitude	1	2	3	4	5
X3	Category 2:	Voice Control and Response	1	2	3	4	5
X2	Category 3:	Use of Dispatching Aids	1	2	3	4	5
X2	Category 4:	Stress Response	1	2	3	4	5
X1	Category 5:	Routine Calls for Service	1	2	3	4	5
X2	Category 6:	Priority/Emergency Calls for Service	1	2	3	4	5
X2	Category 7:	Listens/Understands Information	1	2	3	4	5
X1	Category 8:	Knowledge of Dispatch Service Area(s)	1	2	3	4	5
X4	Category 9:	Safety Mindedness	1	2	3	4	5
X2	Category 10:	Language Skills	1	2	3	4	5

Total

Strong Points:_____

Weak Points:_____

Comments:_____

Reviewing Supervisor:_____ Rank:_____

Employee's Signature:_____

X=Weight value of category performance
Maximum Score: 100
Minimum Score: 70

police communications.

Finally, departments must come to realize that although "the patrol force is the backbone of the department," the communications division and its personnel compose "the nerve center." Without effective communications support, management of the patrol, investigative, and planning functions of a department would be, at best, difficult, if not impossible. Response time reports, call activity, incident frequencies, crime analysis data, investigative operations (both covert and overt), Uniform Crime Reports, and other management reports depend heavily on information derived from the same source—calls for service.

The "Unseen" Person

Field officers are obliged to adhere to the instructions of the "unseen" person, the police communications dispatcher. It is the *dispatcher* who services the patrol officer's requests, processes information, and lends guidance in performing duties and responsibilities. It is the *dispatcher* who is the second or third set of eyes for patrol units. It is the *dispatcher* from whom the patrol officer will request assistance in times of urgency. And it is the *dispatcher* who stands ready to mobilize whatever resources are necessary to remove the officer from harm's way.

Conclusion

With the increasing number of calls for service and implementation of calls-for-service management programs (alternative response strategies, e.g., tele-serve, call prioritization, and stacking procedures, etc.), the responsibilities of the police intake operator and radio dispatcher have risen substantially. Therefore, by establishing a comprehensive training program for police communications personnel, the department *and* its administration will have a mechanism whereby it may reward dispatch personnel who perform well, identify those individuals who require remedial or additional training, and identify personnel, both present and prospective, who do not possess the skills necessary to perform effectively. Only then will a department have recognized its share of responsibility to the employee, the community, and itself by taking steps to meet the challenge of the ever-changing environment in the police communications field.

FBI

Footnotes

[1] 1978 Response Time Analysis, Kansas City, MO, Police Department, authorized by Board of Police Commissioners.

[2] Eric Scott, *Calls for Service: Citizen Demand and Initial Police Response,* National Institute of Justice project, 1977.

The Role of the Media During a Terrorist Incident

". . . the inclusion of the media in our counterterrorist planning is a necessity that cannot be overlooked."

By
LT. COL. HAROLD B. WILBER
U.S. Marine Corps
Provost Marshal
Quantico, VA

Terrorism has proliferated in recent years. However, where there used to be a problem in defining terrorists acts, there now seems to be a consensus that this epidemic of violence is simply another means of war. In this war, the bombs have become bigger, the kidnapings more daring, and the threats of mass-scale, high technology extortion more real as terrorists become more willing to kill. In spite of this, terrorists have been unable to translate the consequences of terrorism into concrete political gains. Nor have they yet to reveal a convincingly workable strategy that relates terrorist violence to positive political power. In that sense, terrorism has failed.[1]

Yet, terrorism remains on the rise, and U.S.-related targets are expected to surpass the number which saw them as targets during 1983's terrorist incidents. The terrorists, in their failure, are not slow learners; they suffer from self-delusion in that they wage fantasy wars, thus allowing themselves to commit acts of violence that would otherwise be immoral. And, our characterization of all terrorist acts as a form of warfare either officially or through the media could be playing into the terrorists' hands by elevating them to warrior status.

According to Kupperman, "the media provide enormous political leverage to an act which, on its own, would simply be an act of criminal barbarism." [2] Because of technological strides within the last 10 years, the world is now the terrorists' captive audience. Coverage of hostage situations is broadcast live; events patronizingly unfold to the authorities and the general public simultaneously. We didn't learn of U.S. Army Brigadier General James L. Dozier's captivity, we lived it. When General Dozier was kidnaped by Italy's Red Brigade on December 17, 1981, and until his release on January 28, 1982, we vicariously shared his ordeal through media coverage of that terrorist act. It appears to be a legitimate concern that terrorists will seek out more spectacular methods of attracting publicity as the media lose interest in covering now mundane hijackings and kidnapings. The fanatical attack on the U.S. Marine Headquarters in Beirut, Lebanon, on October 23, 1983, bears this out. Likewise, something more than peacenik campouts around our European missile installations ought to be considered in our counterterrorist planning. Attacks against such installations or the kidnaping of American officials loom. And the inclusion of the media in our counterterrorist planning is a necessity that cannot be overlooked.

Throughout the previous decade, media and terrorism were engaged in an incestuous relationship. Bluntly stated, terrorism is a creature of the media. Thus, terrorism is an act of theater designed to have a strong psychological impact upon a vast audience. The image becomes as important as the reality, for the terrorist victim is rarely the ultimate target.[3] It can no longer be said, too, that the media are unaware of their operative role in the terror syndrome; they must acknowledge their effect.

In the context of the Iranian hostage crisis, the question then becomes whether event-oriented sensationalism is inextricably linked with mundane commercialism, with respect to television and the press. Iran proved once again, beyond any doubt, that terrorism is quintessentially the propaganda that also sells newspapers and increases TV ratings. In April 1977, a major television network

Lieutenant Colonel Wilber

issued a series of internal guidelines for the coverage of terrorist incidents. Yet, throughout the Iranian captivity, these guidelines were ignored to a far greater extent than they were observed. All three television networks, taking advantage of the Iranian drama, developed a blind eye to professional, ethical considerations in a fervent competitive quest for audiences. For example, despite policies prohibiting nonspontaneous interviews, all three networks jumped at the chance to broadcast their correspondents' controlled conversations with the Ayatollah on Sunday evening, November 18, 1979.[4]

There is no doubt that during this period, the embassy militants proved themselves masters of manipulation vis-a-vis American television by scheduling "events" to meet satellite and nightly news broadcast deadlines in the United States. Well might *Newsweek* magazine, during the last week of December 1979, raise the question of just who is actually the hostage of whom.[5]

The role of the U.S. media with respect to the global terrorist challenge is still fuzzy. If television and the press are unable or unwilling to adopt meaningful professional standards and to adhere to reasonable voluntary guidelines relative to the coverage of terrorist violence and its perpetrators, then it is conceivable that at some future date, assertions of national interest may ultimately take priority over the public's historic rights to be informed.[6] It is far better to come to grips with the issue now than to place trust in luck or crisis management. We, in the law enforcement business, must work with the media with the view of establishing mutually acceptable, realistic, and workable standards to be applied by both sides during terrorist incidents. An early goal is to establish a relationship with the media that does not foster the idea of "sides."

Today, the problem confronting officials and the news industry is to balance the right of access to newsworthy events, the right to gather news freely, the right to publish freely, and the right to disseminate information that becomes news against potential injury to hostages and loss of life. We, in our balancing act of dealing with the media, need to be mindful not to go overboard to the extent that the terrorist incident may be further jeopardized by any excessive cooperation. First amendment rights are not absolute, and specifically, "the right to speak and publish does not carry with it the unrestrained right to gather information." [7]

It is nice to talk of a spirit of cooperation with the media, but what in reality can be done? An associate director for programs at the U.S. Information Agency has suggested that a blue-ribbon panel be created to study self-regulation of the media in terrorist situations. The panel would set guidelines to help the media anticipate critical situations where constraints might be necessary.[8]

In my opinion, such an idea could be instituted at the military installation level or local level and could serve as a good "icebreaker" for the public affairs representatives to meet with the media on counterterrorist issues. Membership on such a panel, in addition to the civilian media representatives, should include key representatives of civilian law enforcement agencies, provost marshal or security office representation, appropriate legal personnel representation, and particularly, designated hostage negotiators. The idea would be for all to learn who the key "players" would probably be in a terrorist incident and for them to develop a working rapport with each other. Possible media participation with authorities in simulated terrorist incidents could also prove to be an invaluable training aid for all involved.

If we are uncomfortable with a cooperative stance, we should keep in mind that with or without media help, the exigencies of domestic and world politics have deemed that again, one man's terrorist is another man's hero. The media only reflect that reality. If the media indeed contribute to the terrorist problem, it is not too much to hope that they can also contribute to

its solution. They cannot do so if their own attitude is that *the news is the news is the news.* Nor can they do so if the attitude of those who would become media managers in either the public or private sector is one of hysterical distrust bordering on paranoia.[9] Let us not forget that terrorists may have found chinks in our armor but they have yet to find our Achilles heel. What the media need is a sense of proportion, and this cannot be acquired by government fiat anymore than an individual can do so by such means. If the media can truly see themselves as a part of the problem, they are well on the way to becoming an important part of the solution.[10]

Regretably, terrorist acts cannot be ignored and are newsworthy because they deviate from the norm. They affect the lives of large segments of the population, and they have considerable value as adventurous entertainment. In reporting terrorism, the media must consider five key ingredients of the news.

1) News must be timely. It must have occurred within a short time of the date of publication or broadcast, or it must antedate an event by a reasonable amount of time.
2) To be newsworthy, an event must be unique. It must deviate from the routine monotony of simple everyday existence.
3) An adventure would be newsworthy. Heroes and villians participate in most adventures—especially in terrorist actions—and the public, no matter how sophisticated it appears to be, loves to cheer the hero and hiss the villian.
4) A news event must have some entertainment value, an ingredient which is essentially a generalization from the third point. Derring-do is entertaining and adventurous, and the public assumes that there is some derring-do about the peccadillos of the terrorist.
5) News may require that an event somehow affects the lives of those being informed of it. A terrorist campaign might result in both economic and physical loss for the news audience.

Terrorist activity is by its very nature newsworthy because it affects our lives. Everyone or anyone is a potential victim. And, as the public is entertained by the reports of horror, terror, and catastrophe, it is entertained by the reports of acts of violence and terror. When adventure is added to those reports, there is little that appears to be more entertaining than a revolutionary act, no matter how repulsive it may appear to us rationally. Moreover, a bombing or an assassination is universally accepted as a unique event of universal interest. Finally, the immediacy of a terrorist action cannot be denied, as we realize from the announcements that moviemakers were rushing to prepare films on the Israeli raid at Entebbe.[11]

"No hard rules can be prescribed to govern media performance during incidents of terror and extraordinary violence."

As we deal with terrorist activity and as we deal with the media while dealing with terrorist activity, we must keep in mind that the media are not judicial institutions; their sole role in modern society is to transmit information. How to erase terror is a juridical and ethical question, not a question of the media.

I accept that the media can provide access to the terrorists, but access should never be granted by the barrel of a gun. Journalists are our custodians of the freedoms of the first amendment; they should never give anything to terrorists on the terrorists' terms.

Of course, as shown, the media have no choice but to cover terrorism. Yet, a terrorist incident would never be covered in the Soviet Union because there is no such thing as a free press. Those who would restrain the free press might well deny the citizens of a democracy knowledge of an event about which they need to know.[12]

For example, the Boston Tea Party of 1773, by many measures, was a terrorist act—an objection to a harsh and unjust government. The newspapers of the time had a duty to cover it; the reaction to an unjust tax was clearly a cause that the citizens of Boston deserved to be aware of.

But in many cases today, the media could use more restraint in covering the actions of terrorists, both to deter imitators and to avoid being manipulated. Journalists don't let presidents or members of Congress command or control air time or newspaper space; they don't let millionaires control them; they certainly shouldn't let terrorists control or manipulate them.[13]

No hard rules can be prescribed to govern media performance during incidents of terror and extraordinary violence. However, whatever principles are adopted must be generated by the media themselves, out of a recognition of special public responsibility. In general, the essence of an appropriate approach to newsgathering is summarized in the principle of minimum intrusiveness. Representatives of the media should avoid creating any obvious media presence at an incident scene that is greater than that required to collect full, accurate, and balanced information on the actions of participants and the official response to them. Similarly, the essence of an appropriate approach to contemporaneous reporting of extraordinary violence lies in the principle of complete, noninflamatory coverage. The public is best served by reporting that omits no important detail and that attempts to place all details in context.[14]

News media organizations and representatives wishing to adopt the principle of minimum intrusiveness in their gathering of news related to incidents of extraordinary violence should

consider the following devices, among others:

1) Use of pool reporters to cover activities at incident scenes or within police lines;
2) Self-imposed limitations on the use of high-intensity television lighting, obtrusive camera equipment, and other special newsgathering techniques at incident scenes;
3) Limitations on media solicitation of interviews with barricaded or hostage-holding suspects and other incident participants;
4) Primary reliance on officially designated spokesmen as sources of information concerning law enforcement operations and plans; and
5) Avoidance of inquiries designed to yield tactical information that would prejudice law enforcement operations if subsequently disclosed.

Also, news media organizations and representatives wishing to follow the principle of complete, noninflamatory coverage in contemporaneous reporting of incidents of extraordinary violence should consider the following:

1) Delayed reporting of details believed to have a potential for inflamation or aggravation of an incident that significantly outweighs their interest to the general public;
2) Delayed disclosure of information relating to incident location, when that information is not likely to become public knowledge otherwise and when the potential for incident growth or spread is obviously high;
3) Delayed disclosure of information concerning official tactical planning that, if known to incident participants, would seriously compromise law enforcement efforts;
4) Balancing of reports incorporating self-serving statements by incident participants with contrasting information from official sources and with data reflecting the risks that the incident has created to noninvolved persons;
5) Systematic predisclosure verification of all information concerning incident-related injuries, deaths, and property destruction; and
6) Avoidance, to the extent possible, of coverage that tends to emphasize the spectacular qualities of an incident or the presence of spectators at an incident scene.[15]

The foregoing lists are really basic, commonsense, but more importantly, workable and palatable guidelines that the media and officials can use together on this issue.

It may well be unrealistic to expect competing elements of the news business to subscribe to detailed codes of responsibility or to adopt precisely formulated common guidelines for coverage. It is not unrealistic, however, to expect that a full exchange of views will demonstrate to the executive and staff of every news organization that their problems in the coverage of extraordinary violence are not unique ones and that solutions of general applicability do exist. From such a demonstration may grow the kind of informally cooperative scheme of self-regulation in which each news organization posits its own guidelines for coverage on the general expectation that their competitors are doing likewise.[16]

These are not new concepts to the press. The admonition to exercise self-restraint was heard throughout the Vietnam war and during Watergate. If the press had acquiesced to such appeals, the truth would have taken even longer to emerge, if at all. We do not want government intrusion into freedom of the press because that right is too important. At the same time, the right of a hostage to survive and the right of a society to self-preservation are also important rights, too important to be left to the media. That is the conflict that has brought the press, law enforcement, and the academic communities together in mutual distrust, admittedly, but in mutual concern that will help pave the road to reasonable accommodation, if not to resolution.[17] We in military and civilian law enforcement can harness this concern and apply the basic techniques of cooperating with the media, with the end result that our agencies and communities would be served well. **FBI**

Footnotes

[1] "Chances of Success Are Small, But No More Dying In Terrorist Attacks," *The Daytona Beach Sunday News Journal,* November 13, 1983, p. 5B

[2] Marvin E. Wolfgang, special ed., "International Terrorism," *The Annals of the American Academy of Political and Social Science* (Beverly Hills: SAGE Publications, Inc., 1982).

[3] Abraham H. Miller, *Terrorism, The Media And The Law* (Dobbs Ferry, NY: Transnational Publishers, Inc., 1982), p. 58.

[4] Ibid. p. 59.

[5] Ibid. p. 60.

[6] Ibid. p. 61.

[7] *Zemel* v. *Rusk,* 381 US 1, 16–17 (1965).

[8] "Terrorist-Media Concerns Grow" *Current News, Special Edition, Terrorism,* USAF, May 31, 1983, p. 32.

[9] Alexander Yonah and Seymour Maxwell Finger, *Terrorism: Interdisciplinary Perspectives* (New York: The John Jay Press, 1977), p. 154.

[10] Ibid. p. 154.

[11] Ibid. p. 159.

[12] "Media Cannot Yield To Terrorist Demands," *Current News, Special Edition, Terrorism,* USAF, December 28, 1982, p 7.

[13] Ibid. p. 7.

[14] National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Disorders and Terrorism* (Washington, DC: LEAA, 1976), p. 387.

[15] Ibid. p. 388.

[16] Ibid. p. 390.

[17] Abraham H. Miller, *Terrorism and Hostage Negotiations* (Boulder, CO: Westview Press, 1980), p. 93.

Defending Law Enforcement Officers Against Personal Liability in Constitutional Tort Litigation (Part I)

". . . not every injury is of a constitutional dimension, and when there is no constitutional violation, lawsuits under § 1983 are not actionable."

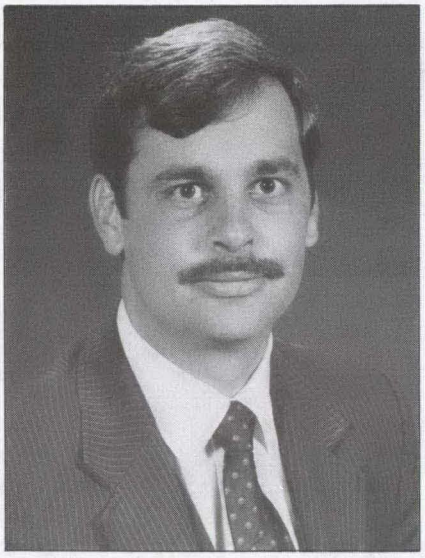
By
JEFFREY HIGGINBOTHAM
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, VA

NOTE: This article presents a general discussion and is not intended to constitute legal advice in any specific situation or case. Legal advice in specific cases should be sought from a practicing member of the bar.

Civil litigation arising from the activities of police officers has become commonplace. Suits alleging damages in the millions of dollars are all too frequently filed against law enforcement officers and officials claiming injury resulting from an arrest, search, or imprisonment. Such suits alleging a violation of the plaintiff's constitutional rights are brought against State law enforcement personnel pursuant to Title 42, United States Code, (U.S.C.) § 1983 and/or Federal law enforcement officers pursuant to the cause of action created in *Bivens* v. *Six Unknown Federal Narcotics Agents.*[1] During one 9-year period, a study conducted by Americans for Effective Law Enforcement, Inc., found that these and related lawsuits filed against law enforcement officers had increased by more than 600 percent.[2]

Even in instances in which the plaintiff who files a civil suit against a police officer loses, the defendant officer is still not the "winner." The very prospect of being sued for a million or more dollars is unnerving at the least, and the specter of being named as a defendant in a potentially long and drawn-out proceeding is certainly disturbing. Moreover, the filing of a civil suit against a police officer or official extracts significant costs from society as a whole, in addition to the burden placed upon the individual defendant. Those costs, as described by the Supreme Court, "include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will 'dampen the ardor of all but the most resolute, or the most irresponsible public officials, in the unflinching discharge of their duties.' " [3]

This article will describe the nature of these civil actions, identify various defenses that may be asserted to expeditiously resolve these actions without having to go to trial, and suggest other means of combating frivolous litigation. Part 1 of this article will focus on an indepth analysis of a recent Supreme Court decision which reworked the qualified immunity defense available to officers sued for alleged constitutional violations. Part 2 will conclude the analysis of the qualified immunity defense and also identify three potential means of redress available to a defendant officer.



Special Agent Higginbotham

THE CAUSE OF ACTION

Suits filed against State law enforcement officers alleging a constitutional violation are generally founded on 42 U.S.C. § 1983. That statute imposes civil liability on any person, acting under the color of State law, who deprives another person of his constitutional rights.[4] A parallel cause of action against Federal law enforcement officers was created by the U.S. Supreme Court in 1971 in their decision in *Bivens* v. *Six Unknown Federal Narcotics Agents.*[5] A plaintiff who alleges a violation of his constitutional rights by a State or Federal law enforcement officer names the individual officer as a defendant and alleges the specific facts constituting his cause of action.[6] The constitutional protection claimed to have been violated is frequently the fourth amendment, as the result of an alleged unlawful arrest or search; the fifth amendment, as the result of an alleged improperly obtained confession or deprivation of liberty or property without proper due process; the sixth amendment, for violations of the right to counsel; or the eighth amendment, as the result of the incarceration of a plaintiff claiming to have been subjected to cruel and unusual punishment. Once sued, the law enforcement officer must retain an attorney either privately or through his agency to defend the action.

DEFENSES IN GENERAL

The immediate objective in defending this type of civil action is to expeditiously resolve it in the defendant(s)' favor with minimum expenditure of resources. In this regard, immediate efforts should be made to assert all possible defenses to resolve the action successfully by dispositive motion without going to trial.

Of course, the first defenses to be asserted, if available, are so-called technical defenses, including improper service and venue and lack of jurisdiction.[7] If those defenses are not applicable, two other principal avenues of defense may be followed for successful and expeditious resolution of these actions. The first argument to be made is that the plaintiff has failed to state a claim against the law enforcement officer upon which relief can be granted. The essence of this defense is that even assuming all of the plaintiff's allegations are true, the law does not entitle the plaintiff to any recovery. The second avenue is the qualified immunity defense, which shields the law enforcement officer from liability if he is found to have acted reasonably under the law existing at the time of the incident which resulted in the suit. These defenses will be discussed in turn.

FAILURE TO STATE A CLAIM—THE DEFENSE OF NO CONSTITUTIONAL VIOLATION

Whenever a police officer or official is sued, the natural reaction of that person is to deny any wrongdoing whatsoever. That natural instinct also forms the basis for the first, and complete, defense to an alleged constitutional violation. Before liability may attach, a constitutional violation must

". . . even if the plaintiff's allegations are true, plaintiff does not have an actionable claim against a defendant if defendant's alleged misconduct does not rise to the level of a constitutional violation."

have occurred. If no such constitutional injury has been suffered by the plaintiff, he has not stated a cause of action under 42 U.S.C. § 1983 or *Bivens,* and the lawsuit should be dismissed.

An example is found in *Baker* v. *McCollan.*[8] There, Linnie McCollan was arrested for running a red light. Despite his protests of mistaken identity, he was detained when the police learned that a warrant from another department charging a Linnie Carl McCollan was outstanding. The confusion resulted when his brother, Leonard McCollan, obtained a driver's license identical in every respect to Linnie's, except that Leonard's picture was on the license carrying Linnie's name and description. When Leonard (masquerading as Linnie) was arrested on a drug charge, he provided the bogus driver's license as identification. Leonard jumped bail and a warrant for his arrest, under his alias of Linnie Carl McCollan, was issued, and a description of Leonard, based on the driver's license, was released. Consequently, when the police who had arrested and detained Linnie on the traffic violation compared the information on his license with the information contained in the records of the department where the warrant charging Leonard, aka Linnie, was outstanding, the two obviously matched. The police department then understandably concluded it had the right man. The mistake was not discovered for several days until officials compared Linnie's appearance against a file photograph of the wanted man, Leonard. Recognizing the error, they released Linnie, who then filed suit under § 1983 claiming his imprisonment violated his constitutional protection against deprivation of liberty without due process of law. The issue before the Supreme Court was whether Linnie's mistaken incarceration violated his constitutional rights.

The Court recognized that § 1983 actions are predicated on constitutional violations and said, "The first inquiry in any § 1983 suit, therefore, is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws.' . . . We think that [McCollan] has failed to satisfy this threshold requirement. . . ."[9] Ultimately, finding the police conduct here entirely justified, the Court concluded, "[h]aving been deprived of no rights secured under the United States Constitution, [Linnie McCollan] had no claim cognizable under § 1983."[10]

The teaching of *Baker* v. *McCollan* is clear. It is a complete defense to a § 1983 action to show that even if the plaintiff's allegations are true, plaintiff does not have an actionable claim against a defendant if defendant's alleged misconduct does not rise to the level of a constitutional violation.

A variation of this defense to § 1983 lawsuits was explained by the Supreme Court in *Parratt* v. *Taylor.*[11] Taylor, a prison inmate in Nebraska, litigated his alleged deprivation of a hobby kit valued at $23.50. The hobby kit, paid for by Taylor, was received at the prison in the mail but it never reached Taylor, evidently being lost in the prison mail system. Taylor claimed to have been deprived of his property without due process of law. He filed suit under § 1983 and his $23.50 loss travelled to the Supreme Court. In deciding the case, the Supreme Court agreed that Taylor had been deprived of his property—the hobby kit—by someone negligently acting under color of State law. However, the Court found that standing alone, negligent handling of the prison mail was insufficient to warrant recovery.

The Court ruled that the negligence of the prison officials in the handling of Taylor's hobby kit could be adequately addressed by State proceedings. To allow a § 1983 action to proceed in this instance, or like instances, was simply not consonant with the purpose of § 1983. In essence, the Court held that not every deprivation of property was violative of the Constitution where the deprivation was caused by mere negligence and where there exists adequate State law to redress any injury suffered. Thus, *Parratt,* like *Baker* v. *McCollan,* instructs that not every injury is of a constitutional dimension, and when there is no constitutional violation, lawsuits under § 1983 are not actionable. They are subject to dismissal by properly documented dispositive motion on the basis that plaintiff has failed to state a claim upon which relief could be granted.

THE QUALIFIED IMMUNITY DEFENSE

The Impact of the *Harlow* Decision

Even if a plaintiff has stated a cause of action against the defendant law enforcement officer and the defenses outlined above are not available, the officer may still be shielded from liability by the defense of qualified immunity. This defense is available if the officer can demonstrate the reasonableness of his actions under

the law existing at the time of the incident sued upon. It too will permit the speedy resolution of the lawsuit without the necessity of a trial.

Any lawsuit of this type, which states a cause of action, of course, contains competing interests. "In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees. . . . It is this recognition that has required the denial of absolute immunity to most public officers. At the same time, however, it cannot be disputed seriously that claims frequently run against the innocent as well as the guilty. . . ." [12] Realizing that a plaintiff who sues a public official may have a legitimate claim, but at the same time realizing that many civil suits are insubstantial, the Supreme Court in 1982 sought to reduce the risks of a trial, which it described as "distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service." [13] It did so by providing an alternative mechanism, where appropriate, for balancing these competing interests.

In *Harlow* v. *Fitzgerald,*[14] a former civilian Air Force employee filed suit against aides to former President Nixon alleging a conspiracy to violate his constitutional rights of free speech under the first amendment and his implied rights under two Federal "whistleblower" statutes. The Supreme Court balanced the need to promote the effective functioning of Government by shielding public officials from insubstantial lawsuits against the need to allow a legitimate plaintiff to seek redress for his injuries. The necessary balance takes the form of qualified immunity. It is a defense, created by the courts, which allows a legitimately injured plaintiff to seek compensation but protects public officials from liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." [15]

The qualified immunity defense was not newly established in *Harlow* v. *Fitzgerald.* Available to most public employees sued civilly, it is a defense that has been developed through a series of court decisions.[16] *Harlow* was important not because it created a new defense, but because it modified an already existing, and most significant, defense.

Prior to *Harlow,* the qualified immunity defense had both objective and subjective components, and the shield of qualified immunity was not available if a public official, such as a police officer, "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with malicious intention to cause a deprivation of constitutional rights or other injury. . . ." [17] The frequent result of the pre-*Harlow* application of the qualified immunity defense was to focus on a defendant's state of mind, the subjective component. If a defendant did not act with "permissible intentions," [18] the qualified immunity defense was unavailable.

Accordingly, attorneys for plaintiffs suing police officers and other public officials artfully pleaded that the officers or officials acted with malice. To substantiate that allegation, the plaintiff's attorney then sought to engage in discovery, attempting to determine the defendant officer's subjective beliefs at the time of the incident. The discovery phase of a civil suit is often long and expensive, and many times the defendant's state of mind is an issue that can be resolved only by a jury after a trial. Such expensive and protracted proceedings were the very evils the Supreme Court denounced as extracting costs too severe to both an individual defendant and society as a whole.

The Supreme Court's answer to this unnecessary and costly litigation was to rework the qualified immunity defense. The *Harlow* Court jettisoned the subjective component, leaving qualified immunity to be judged solely by an objective standard. The aim of the Supreme Court in adopting an objective standard was to "avoid excessive disruption of government and permit the resolution of many insubstantial claims" [19] at an early stage of the proceedings and without the need for expensive and time-consuming discovery and trials.

Harlow provided the framework for application of the qualified immunity defense. It instructed that:

> ". . . the judge appropriately may determine, not only the currently applicable law, but whether that law was clearly established at the time an action occurred. If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law

"Assuming that a plaintiff is able to establish a cognizable constitutional violation, no monetary damages may be imposed against an officer where it is established that he is entitled to qualified immunity."

> forbade conduct not previously identified as unlawful. Until this threshold immunity question is resolved, discovery should not be allowed. If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. Nevertheless, if the official pleading the defense claims extraordinary circumstance and can prove that he neither knew nor should have known of the relevant legal standard, the defense should be sustained. But again, the defense would turn primarily on objective factors." [20]

It is these components of the revised qualified immunity defense together with other litigation tactics available to a defendant that will be examined in the remainder of this article.

The Meaning of "Clearly Established"

Assuming that a plaintiff is able to establish a cognizable constitutional violation, no monetary damages may be imposed against an officer where it is established that he is entitled to qualified immunity. As previously stated, the qualified immunity shield now depends on whether the law governing the conduct complained of was clearly established. If the law was not clearly established, no liability should attach since a defendant should not be punished for conduct which, at the time, had not been pronounced unlawful. Conversely, if the constitutional right alleged to have been violated was clearly established at the time of the incident, liability normally will attach since police officers, like all public officials, are generally expected to know the laws governing their conduct.

While recognizing the importance of the phrase "clearly established" is easy, providing a definition has not been. Though the Supreme Court in *Harlow* v. *Fitzgerald* [21] announced the need to determine if the applicable law is clearly established, it declined to define it. The Court said, "[W]e need not define here the circumstances under which 'the state of the law' should be 'evaluated by reference to the opinions of this Court, of the Court of Appeals, or of the local District Court.' " [22]

The lower courts have had similar difficulty explaining the meaning of clearly established law. In *Hobson* v. *Wilson,* [23] the Circuit Court of Appeals for the District of Columbia explained the problem:

> "At the extremes, the answers are clear. Supreme Court precedent 'establishes' the law; to the extent the Court's opinions give guidance we obviously do not doubt that the law is well established. It is equally clear that the right at issue can be defined neither so broadly as to parrot the language in the Bill of Rights, nor so narrowly as to require that there be *no* distinguishing facts between the instant case and existing precedent. The former reading of *Harlow* would, of course, undermine the premise of qualified immunity that the Government actors reasonably should know that *their* conduct is problematic. The latter reading, on the other hand, would unquestionably turn qualified into absolute immunity by requiring immunity in any new fact situation." [24]

Even after outlining the problem however, the circuit court of appeals avoided defining "clearly established" by finding that FBI Agents violated first amendment rights of the plaintiffs that were "well-established by any reasonable definition of the phrase." [25]

Courts which have addressed the "clearly established" issue have failed to settle on a single or uniform definition. The courts do, however, seem to use as a starting point the decisions of other courts which address the substantive constitutional violation alleged.[26] They look first to the Supreme Court,[27] and in the absence of an applicable Supreme Court ruling, to the decisions of the appropriate circuit court of appeals and then to the decisions of the district court.[28] However, even if a previous decision dealing with the constitutional violation alleged is found, it may still not create "clearly established" law if the previous opinion was a plurality opinion—one in which the justices or judges voting for the prevailing party could not agree on the rationale for doing so,[29] or if there are real and substantial distinctions, apart from mere trivial factual distinctions, between the present case and the previous decisions.[30]

Other factors making it difficult to declare the law "clearly established" include a conflict between Federal law developed by the courts and a State statute. For example, in *O'Hagan* v. *Soto,* [31] a police detective, Soto, was sued under § 1983 for allegedly violating O'Hagan's sixth amendment right to counsel. Following a trial in which O'Hagan was awarded only $1.00, Detective Soto refused to pay and in-

stead sought an appeal of the award claiming the law was not clearly established, and therefore, qualified immunity shielded him from even $1.00 in damages. The appellate court agreed with Soto, ruling that even though a suspect has a sixth amendment right to counsel upon commencement of formal criminal proceedings, the issue of whether that stage had been reached was clouded by a New York statute and cases interpreting that statute. Thus, there was no "clearly established" law and Soto was protected by qualified immunity. O'Hagan was not even entitled to $1.00.

Several courts have also dealt with the argument advanced by plaintiffs that although there might be no case which makes the law "clearly established" beyond question, there are cases which have pointed to the conclusion or foreshadowed the result which the plaintiff now seeks to establish. However, that argument has not been accepted.

Though the Supreme Court, as mentioned earlier, has failed to define "clearly established," it has indicated that before liability could be found, the constitutional right allegedly violated must have been "authoritatively declared" at the time of the incident.[32] If the right has not been so established, it doesn't matter that other cases may have foreshadowed the newly declared right.

This issue was squarely raised in *Zweibon* v. *Mitchell.*[33] In *Zweibon,* the plaintiffs alleged their constitutional rights had been violated by former Attorney General John Mitchell and others for approving and maintaining an electronic surveillance of them without prior court approval under the guise of a national security claim. The plaintiffs argued that although the prior case law had not definitively required such electronic surveillances to be approved by a court, there was sufficient precedent foreshadowing the requirement to put them on notice that they should have received judicial approval before implementing the electronic surveillance. In explicitly rejecting the plaintiff's argument, the circuit court found that the Supreme Court's "clearly established" test of *Harlow* was meant to refer to "indisputable law" and "unquestioned rights," a test that "cannot be reconciled with the 'clearly foreshadowed' test." [34] Thus, the constitutional right alleged to have been violated must be one that has been specifically recognized prior to the time of the incident about which the plaintiff complains.

The lack of a definition of the phrase "clearly established" can be used to the benefit of the law enforcement officer or official who finds himself the defendant in a lawsuit charging a constitutional violation. The defendant officer and his attorney may argue, in motions and proceedings well before trial, that no court has decided the constitutional issue at the heart of the plaintiff's suit. In the alternative, they should argue that the courts which have addressed the issue are in conflict with one another, that there is a conflict between case law and statutes, or that the constitutional right sued on is at best emerging, and though foreshadowed, has not been authoritatively declared.

What Constitutes "Law"

When the Supreme Court in *Harlow* v. *Fitzgerald* reformulated the qualified immunity standard, it designed the new objective test to hinge on a violation of a clearly established law. The Court further described the nature of qualified immunity as a public official's shield "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[35] What did the Court mean by that? What constitutes a clearly established constitutional or statutory right for purposes of qualified immunity?

The most frequent basis for civil suits against police officers is an allegation of a constitutional violation. Persons arrested or searched often claim a violation of the fourth amendment's prohibition against unreasonable searches and seizures. A person who is interrogated will allege a violation of the fifth amendment privilege against self incrimination or the sixth amendment guarantee of the effective assistance of counsel during criminal proceedings. Prisoners frequently litigate issues of due process or cruel and unusual punishment. Are such broad constitutional claims actionable under 1983? Do they meet the definition of a clearly established constitutional right? The answer appears to be no.

In *Jensen* v. *Conrad,*[36] several State officials were sued for allegedly depriving a child of the right to life by failing to protect the child from physical abuse by the child's parents. The administratrix of the child's estate claimed the defendant's actions resulted in a violation of the 14th amendment's proscription against deprivation of life without due process of law. The court denied the plaintiff

". . . the defense of qualified immunity . . . is available if the officer can demonstrate the reasonableness of his actions under the law existing at the time of the incident sued upon."

any recovery, however, and found that such general and broad allegations of constitutional violations were not sufficient to defeat the State officials' claims of qualified immunity. "The defense of qualified immunity depends instead on an analysis of whether the courts have decided that a *particular right* is included in the protection of a general constitutional provision." [37]

Further definition of what may constitute a clearly established constitutional right for purposes of the qualified immunity test can be found in pre-*Harlow* cases. Since the import of *Harlow* v. *Fitzgerald* was to remove the subjective prong of the qualified immunity test (and thus remove a major obstacle from the trial court's ability to quickly resolve insubstantial lawsuits), cases which focus on the objective standard, unchanged by *Harlow,* are still instructive. For example, the Supreme Court in *Baker* v. *McCollan,* the suit discussed earlier involving brothers Linnie and Leonard, admonished that §1983 lawsuits must be founded on an "authoritatively declared" [38] constitutional right. Similarly, in *Wood* v. *Strickland,*[39] the Supreme Court spoke of the objective standard of qualified immunity in terms of a public official's presumed knowledge of constitutional provisions which govern his conduct. However, the Supreme Court also made it clear that when a plaintiff alleged a constitutional violation, a public official would be liable for damages only if the constitutional right sued upon was "settled, indisputable law," [40] since a public official is charged only with the "knowledge of the basic, unquestioned constitutional rights" [41] of the plaintiff.

Accordingly, unless a law enforcement officer or official is alleged to have violated a specific constitutional right which has been declared beyond dispute to fall within the more general protection of the constitutional provision sued upon, qualified immunity should be raised to shield the officer or official from any liability for the alleged constitutional violation.

The more troublesome issue in defining "law" for purposes of qualified immunity stems from the language of *Harlow* which made reference to a "clearly established statutory right. . . ." [42] Is qualified immunity available as a defense to a lawsuit alleging a statutory violation? Perhaps a more important question is whether a plaintiff may sue under §1983 or under *Bivens* when the allegation is a violation of a statutory standard? The answer to that question was apparently provided by the Supreme Court in the recent case of *Davis* v. *Scherer.*[43]

In *Davis* v. *Scherer,* a radio-teletype operator for the Florida Highway Patrol asked for permission to accept a second, part-time job as a reserve deputy sheriff. Permission was initially granted but conditioned on the understanding that if the employment as a reserve deputy sheriff interfered with his duties at the Florida Highway Patrol, Scherer would be required to terminate his part-time employment. Approximately 1 month later, Scherer was informed that permission to engage in the part-time employment had been revoked because officials of the Florida Highway Patrol determined the two jobs might conflict. Scherer refused to quit his reserve deputy sheriff job despite being ordered to do so and was fired. Scherer filed an appeal with the Florida Career Service Commission, but before his hearing, was reinstated by the patrol. However, friction between Scherer and his employers continued, ultimately resulting in Scherer's temporary suspension.

In the face of the suspension, Scherer resigned and filed suit under §1983 alleging that his initial discharge, before reinstatement, had violated the due process clause of the 14th amendment for failure to provide a formal pretermination or a prompt posttermination hearing. At the heart of that due process violation, Scherer argued, was the Florida Highway Patrol's failure to abide by its own personnel regulation which required "a complete investigation of the charge [for which dismissal was imposed] and an opportunity [for the employee] to respond in writing." [44] The trial court and the court of appeals found in favor of Scherer and an appeal was taken to the Supreme Court.

In deciding *Davis* v. *Scherer,* the Supreme Court addressed the issue of whether an official sued for a constitutional violation loses the protection of qualified immunity merely because his conduct violates a statutory or administrative provision. The Court answered in the negative. The Court stated that it is not always fair or sound policy to hinge qualified immunity on compliance with statutes or regulations. It reasoned that:

> "Such officials as police officers or prison wardens, to say nothing of higher-level executive levels who enjoy only qualified immunity, routinely make close decisions in the exercise of broad authority that necessarily is delegated to them.

These officials are subject to a plethora of rules, 'often so voluminous, ambiguous, and contradictory, and in such flux that officials can comply with them only selectively.' (citations omitted) In these circumstances, officials should not err always on the side of caution. 'Officials with a broad range of duties and authority must often act swiftly and firmly at the risk that action deferred will be futile or constitute virtual abdication of office.' *Scheuer* v. *Rhodes,* 416 U.S., at 246." [45]

Accordingly, the Supreme Court ruled that:

"[O]fficials sued for violations of rights conferred by statute or regulation, like officials sued for violation of constitutional rights, do not forfeit their immunity by violating some *other* statute or regulation. Rather, these officials become liable for damages only to the extent that there is a clear violation of the statutory rights that give rise to the cause of action for damages. And if a statute or regulation does give rise to a cause of action for damages, clear violation of the statute or regulation forfeits immunity only with respect to damages caused by that violation . . . . Neither federal nor state officials lose their immunity by violating the clear command of a statute or regulation—of federal or of state law—unless that statute or regulation provides the basis for the cause of action sued upon."[46]

The Court concluded that neither the personnel regulation relied upon by Scherer nor the law under which the regulation was promulgated created a cause of action or provided the foundation for a § 1983 lawsuit.

Thus, the Supreme Court limited lawsuits claiming violations of statutes to those where the statute also gives rise to a constitutional violation actionable either under § 1983 or as a constitutional tort against Federal officials. Unless the statute or regulation has a constitutional foundation, the suit should be dismissed. **FBI**

(Continued next month)

Footnotes

[1] 403 U.S. 388 (1971).

[2] Lawsuits increased from 2,170 in 1967 to 13,410 in 1976. Quoted in the *Los Angeles Times,* March 1, 1984.

[3] *Harlow* v. *Fitzgerald,* 102 S.Ct. 2727, 2736 (1982).

[4] 42 U.S.C. § 1983 reads: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured on an action at law, suit in equity, or other proper proceeding for redress."

[5] *Supra* note 1.

[6] A municipality may also be named as a defendant in an action under 42 U.S.C. § 1983 charging a constitutional violation only where the individual law enforcement officer's conduct was the result of a custom, policy, or practice of the municipality. *See, Monnell* v. *Dept. of Social Services,* 436 U.S. 658 (1978). Such suits are not within the scope of this article. For a discussion of municipal liability arising from constitutional tort litigation, *see,* "Law Enforcement and Government Liability: An Analysis of Recent Section 1983 Litigation," Daniel L. Schofield, *FBI Law Enforcement Bulletin,* vol. 50, No. 1, pp. 26–31.

[7] *See,* for example, Federal Rule of Civil Procedure 12(b). The defenses should be asserted by the officer's attorney whenever appropriate. It should be noted, however, that a statute of limitations defense turns on the applicable State period of limitations. Inasmuch as their applicability depends largely on the facts of each case, no extended discussion of their use will be attempted in this article.

[8] 443 U.S. 137 (1979).

[9] *Id.* at 140.

[10] *Id.* at 146.

[11] 101 S.Ct. 1908 (1981).

[12] *Supra* note 3.

[13] *Id.* at 2738.

[14] *Supra* note 3.

[15] *Supra* note 3, at 2738.

[16] *See, Bivens* v. *Six Unknown Federal Narcotics Agents,* 456 F.2d 1339 (2d Cir. 1972); *Pierson* v. *Ray,* 386 U.S. 547 (1967); *Wood* v. *Strickland,* 420 U.S. 308 (1975); *Procunier* v. *Navarette,* 434 U.S. 555 (1978).

[17] *Wood* v. *Strickland,* 420 U.S. 308, 321–22 (1975).

[18] *Id.* at 320.

[19] *Harlow* v. *Fitzgerald, supra* note 3, at 2739 (1982). *Harlow* may also be cited as authority to support a motion to stay discovery or to seek a protective order under Rule 26, Federal Rules of Civil Procedure, pending resolution of the qualified immunity issue.

[20] *Id.*

[21] *Supra* note 3.

[22] 102 S.Ct. at 2739, n. 32, quoting *Procunier* v. *Navarette,* 434 U.S. 555, 565 (1978).

[23] 737 F.2d 1 (D.C. Cir. 1984).

[24] *Id.* at 26.

[25] *Id.*

[26] *Rheaume* v. *Texas Dept. of Public Safety,* 666 F.2d 925 (5th Cir.), *cert. denied,* 458 U.S. 1106 (1982).

[27] *Jensen* v. *Conrad,* 570 F.Supp. 91 (D. So. Car. 1983), *aff'd* 747 F.2d 185 (4th Cir. 1984).

[28] *Matje* v. *Leis,* 571 F.Supp. 918 (S.D. Ohio 1983).

[29] *Affiliated Capital Corp.* v. *City of Houston,* 735 F.2d 1555 (5th Cir. 1984).

[30] *Zweibon* v. *Mitchell,* 720 F.2d 162 (D.C. Cir. 1983), *cert. denied,* 105 S.Ct. 244 (1984).

[31] 725 F.2d 878 (2d Cir. 1984).

[32] *Baker* v. *McCollan, supra* note 8, at 139.

[33] *Supra* note 30. *See also, Calloway* v. *Fauver,* 544 F.Supp. 584 (D. New Jersey 1982).

[34] 720 F.2d 162, 173 (D.C. Cir. 1983), *cert. denied,* 105 S.Ct. 244 (1984).

[35] 102 S.Ct. at 2738.

[36] *Supra* note 27.

[37] *Id.* at 102. *See also, Hobson* v. *Wilson, supra* note 23, at 26.

[38] 443 U.S. 137, 139 (1979).

[39] 420 U.S. 308 (1975).

[40] *Id.* at 321.

[41] *Id.* at 322.

[42] 102 S.Ct. at 2738 (1982).

[43] 104 S.Ct. 3012 (1984).

[44] *Id.* at 3017.

[45] *Id.* at 3021.

[46] *Id.* at 3020, n. 12. *See also, Jensen* v. *Conrad,* 747 F.2d 185, n. 12 (4th Cir. 1984).

WANTED BY THE FBI

Photograph taken 1975 *Photograph taken 1980* *Photograph taken 1983*

John Alexander Riccardi

John Alexander Riccardi, also known as Dean Riccardi, Dean A. Riccardi, Jackie Riccardi, John Riccardi, John A. Riccardi, Rick Riccardo, George Sammartino, and Emanuel Shaprro

Wanted For:

Interstate Flight—Murder

The Crime

John Alexander Riccardi is being sought by the FBI in connection with the shooting death of two women in Los Angeles, CA, on March 4, 1983.

A Federal warrant was issued on May 2, 1983, at Los Angeles.

Description

Age	49, born October 1, 1935, Yonkers, NY.
Height	5'11 to 6'.
Weight	180 pounds.
Build	Large.
Hair	Brown.
Eyes	Hazel.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Bar owner, businessman, food manager, owner/hairstylist.
Scars and Marks	Mole on right cheek.
Remarks	Avid weight lifter, health food addict, may wear glasses and dye his hair black.
Social Security Numbers Used	051-28-8672; 051-28-8072.
FBI No.	152 655 C.

Classification Data:

NCIC Classification:
2510131306221016130 9

Fingerprint Classification:
25 L 1 U OOI 6 Ref: 1
L 1 U OOI 3

I. O. 4960

Caution

Riccardi is being sought in connection with the shooting murder of two female victims. He reportedly has suicidal tendencies and vows not to be taken alive. Riccardi may be armed with a .38 revolver or a .357 magnum revolver. He is considered armed and dangerous.

Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, DC 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

Because of the time factor involved in printing the FBI Law Enforcement Bulletin, there is the possibility that this fugitive has already been apprehended. The nearest office of the FBI will have current information on this fugitive's status.

Left index fingerprint

Change of Address

Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, DC 20535

Name

Title

Address

City State Zip

Interesting Pattern

This pattern should present no problems as to classification. The ridge formation in front of the delta is most unusual and interesting and is classified as a loop with 15 ridge counts.

U.S. Department of Justice
Federal Bureau of Investigation

Second Class Mail
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Washington, DC 20535

Official Business
Penalty for Private Use $300
Address Correction Requested

The Bulletin Notes

On December 11, 1983, Deputy Dennis Habedank of the Grand Traverse County Sheriff's Department, Traverse City, Michigan, rescued two children from a burning house. While off duty, Deputy Habedank spotted flames coming through the roof of a neighbor's house, called fire fighters, and went into the burning house to rescue a 14-year-old boy and his four-year-old sister. The Bulletin joins Deputy Habedank's superiors in recognizing his life saving action.

Deputy Habedank