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**Robert S. Mueller III
Director**

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Features

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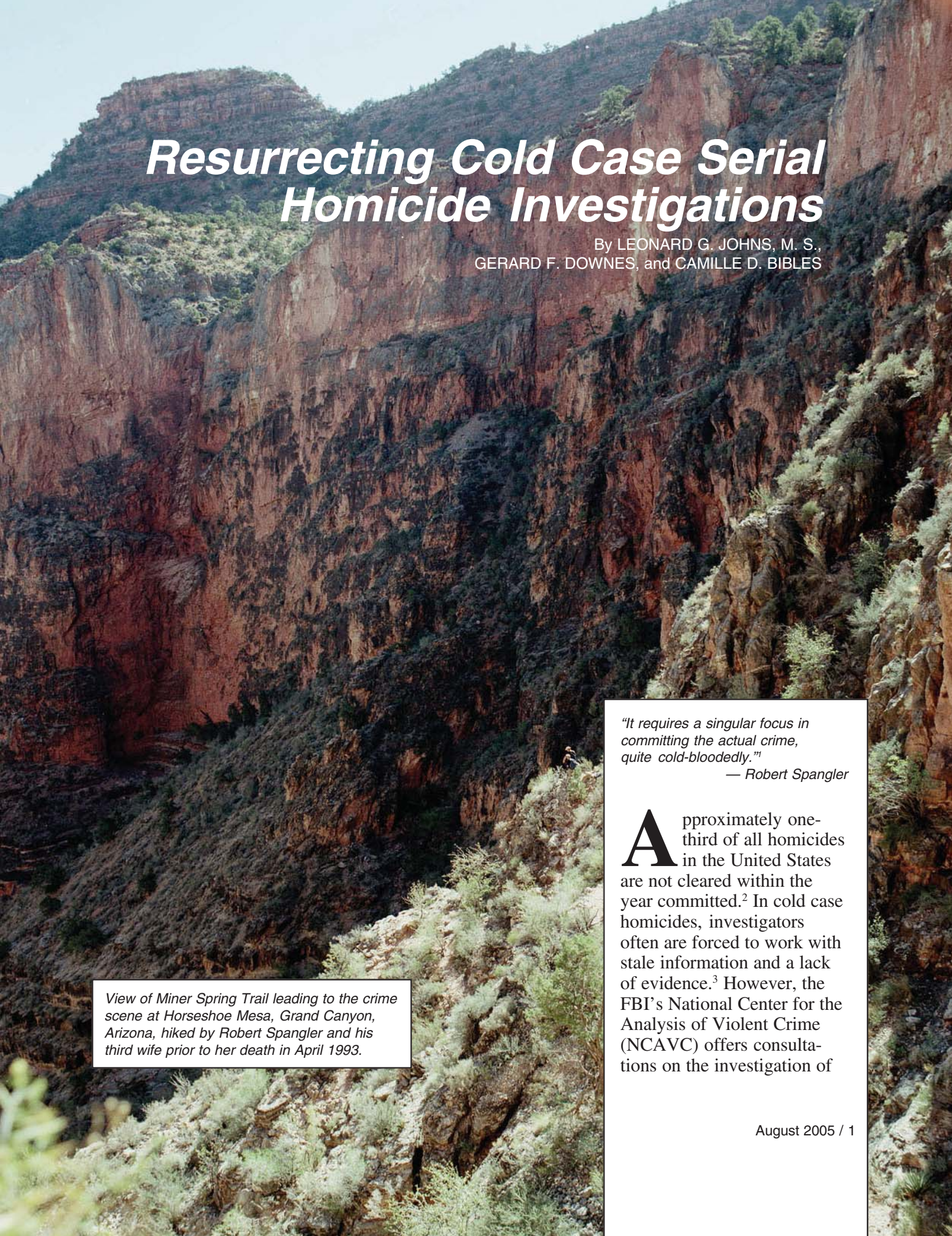
Resurrecting Cold Case Serial Homicide Investigations

By LEONARD G. JOHNS, M. S.,
GERARD F. DOWNES, and CAMILLE D. BIBLES



View of Miner Spring Trail leading to the crime scene at Horseshoe Mesa, Grand Canyon, Arizona, hiked by Robert Spangler and his third wife prior to her death in April 1993.

"It requires a singular focus in committing the actual crime, quite cold-bloodedly."[1]

— Robert Spangler

Approximately one-third of all homicides in the United States are not cleared within the year committed.[2] In cold case homicides, investigators often are forced to work with stale information and a lack of evidence.[3] However, the FBI's National Center for the Analysis of Violent Crime (NCAVC) offers consultations on the investigation of

cold case serial homicides, as well as several other types of cases. The NCAVC combines investigative and operational support functions, research, and training to provide assistance without charge to federal, state, local, and foreign law enforcement agencies investigating unusual or repetitive violent crimes.[4]

Furthermore, the NCAVC's Behavioral Analysis Units provide behavioral-based investigative support by applying case experience, research, and training to complex and time-sensitive crimes typically involving acts or threats of violence. This support includes crime, threat, and critical incident analysis; investigative suggestions; profiles of unknown offenders; interview, prosecutive, and trial strategies; major case management; search warrant assistance; and expert testimony. With the NCAVC's assistance, a 20-year-old cold case homicide investigation in the Southwest was solved in 2000.

Suspicious Deaths

On the morning of December 30, 1978, deputies from the Arapahoe County, Colorado, Sheriff's Office responded to the scene of a possible double homicide/suicide in a private residence in Littleton, Colorado. A neighbor had discovered the bodies of a 45-year-old woman, her 17-year-old son, and her 15-year-old daughter. All three had suffered gunshot wounds from a .38-caliber handgun. The daughter, found partially clothed in her bed, had a bullet wound in her back. The son, also in bed, had been shot once in his upper chest. The mother's body lay slumped over a typewriter in the basement with a bullet wound high on her forehead. A typewritten suicide note on the typewriter was signed with her initial.

As often is the case in intrafamilial homicide investigations, detectives interviewed the surviving spouse as a suspect.[5] The husband, Robert Spangler, age 45, told investigators that he was not home during the crime. Spangler admitted marital problems with his wife and that he planned to leave her. He described leaving his house early that morning and finding sheriff's deputies there when he returned. Spangler's original story changed significantly in a subsequent interview. Two separate, private polygraph examiners found his answers inconclusive to questions about his role in the deaths. The .38-caliber weapon used in all three shootings belonged to Spangler, and evidence of gunshot residue was found on his right palm. On January 3, 1979, the Arapahoe County coroner closed the case as a double homicide/suicide. The sheriff's office was unable

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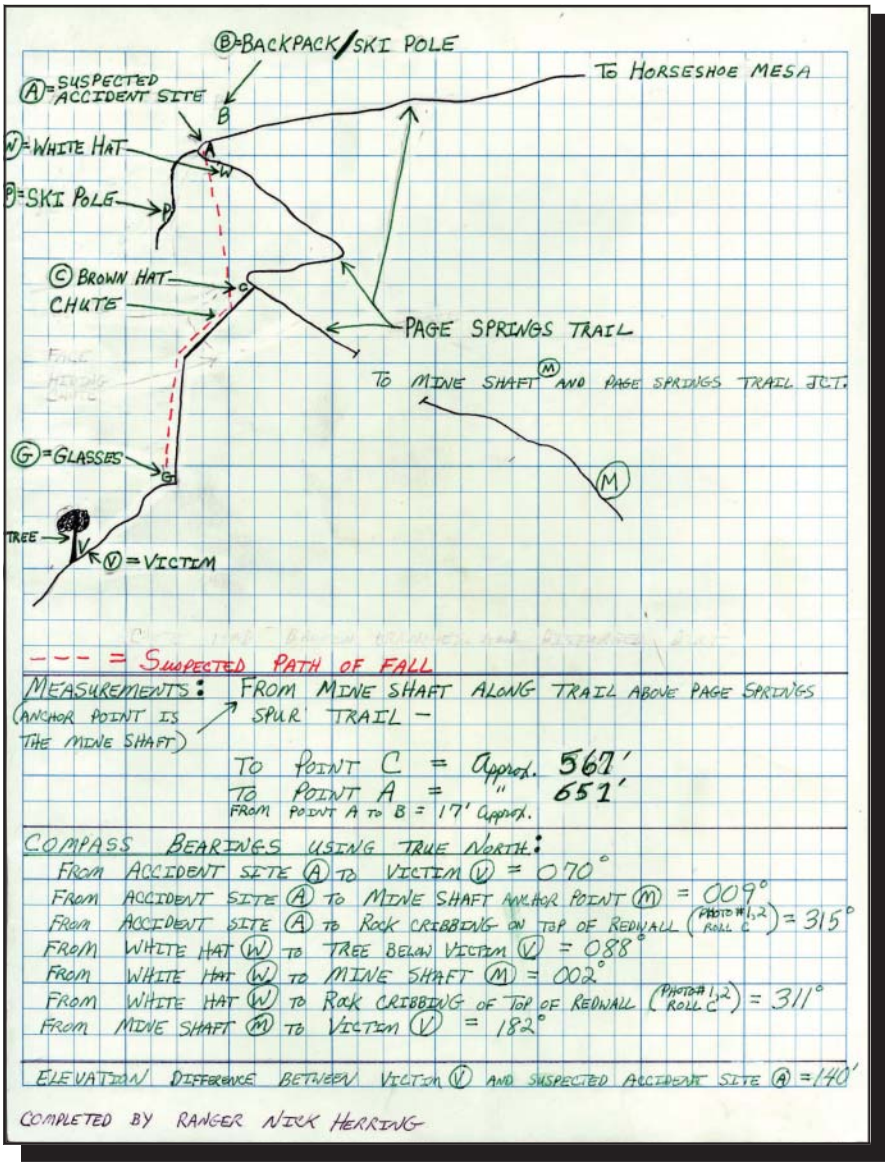
to overcome the coroner's findings, and they had exhausted all investigative leads; therefore, they were forced to close the case. Most of the evidence either was returned to Spangler or destroyed.

Seven months later, Spangler married again. He and his second wife shared a common interest—hiking in Grand Canyon, Arizona. She eventually wrote a book of her experiences hiking the Canyon.[6] Subsequently, the couple began to have marital problems, and they divorced in 1988.

In April 1993, Spangler and his third wife, age 58, backpacked in Grand Canyon, Arizona. This wife was an active aerobics instructor with five grown children and numerous grandchildren from a previous marriage. One morning in April 1993, Spangler appeared at a ranger station in the Grand Canyon and calmly told the ranger that his wife had fallen to her death. He explained that they had stopped to take a picture on the trail and, when he looked back, his wife was gone.

Rangers located the third wife's body approximately 160 feet below the trail. The autopsy report concluded that she sustained massive injuries, including abrasions, contusions, lacerations, and multiple fractures of the neck, chest, and lower extremities. Spangler



Sketch depicts path that Spangler's third wife fell after he pushed her.

never was directly implicated in this wife's death because it was ruled an accident. He drew national attention with interviews on several television shows.[7] As a grieving husband, Spangler discussed his wife's accidental death and the dangers of hiking in the Grand Canyon. Spangler continued to backpack the Canyon with a variety of partners several times a year.

After the death of his third wife, Spangler reestablished contact with his second wife, who moved back into his Colorado home and died of a drug overdose in 1994. This death was not investigated by law enforcement.

The Investigation

In January 1999, perceptive investigators from the U.S. Department of Interior, National Park Service, and counties of Coconino, Arizona, and Arapahoe, Colorado, linked the cold case homicides in their respective jurisdictions. They met with agents from the FBI's Flagstaff, Arizona, resident agency and requested assistance. An assistant U.S. attorney (AUSA) from the District of Arizona with experience in capital murder cases, who had a personal knowledge of the Grand Canyon, joined the team. The AUSA united the cases under the umbrella of federal jurisdiction as an insurance fraud/murder, and an FBI agent in Flagstaff contacted the NCAVC.

First, NCAVC officials suggested that investigators complete a subject history on Spangler, stressing that investigators should familiarize themselves with all available information.[8] Further, they recommended using an NCAVC Behavioral Assessment Questionnaire when interviewing some of Spangler's associates. Early investigation revealed that Spangler was an educated, intelligent, and successful man. A charismatic individual, he worked in careers of human relations and public speaking. In addition, Spangler spent a significant amount of time living in different parts of Colorado and hiking the Grand Canyon. One lead set by the FBI agent resulted in an interview of a woman living in a small Colorado community who, subsequently, contacted authorities a few weeks after her interview. At that time, she gave them a copy of a letter she received from Spangler in which he advised her that he had terminal cancer.

During the course of investigation, Arapahoe County Sheriff's Investigator Paul Goodman (co-case agent) directed the construction of an anotomically correct trajectory model depicting the bullet path and muzzle distance from Spangler's first wife's fatal gunshot wound.

The investigative team, with concurrence from the NCAVC, immediately approached Spangler. A complete confession was critical for prosecution because of the lack of existing evidence. The investigative team traveled to Colorado to interview Spangler, and the AUSA met them there to provide on-site legal consultation.

Confession

In Colorado, local law enforcement and the local FBI office supported investigators. Because any prosecution depends on the admissibility of a confession, the investigative

team agreed to videotape the entire interview. Spangler's terminal cancer created special issues for the AUSA regarding mental competence and the voluntariness of a statement.[9] For this purpose, the NCAVC provided a telephonic interview strategy: a medical doctor retained by their unit analyzed Spangler's medical records, confirmed his terminal condition, and gave advice regarding competency issues.

Investigators approached Spangler at home and he agreed to an interview at the local sheriff's office. The FBI agent and the Arapahoe County detective initiated the actual interview with the AUSA monitoring it from another room. The agent from the National Park Service observed the initial interview and participated on the second day. The first day of interviewing lasted about 4 hours. Spangler believed investigators when they told him that FBI profilers wanted to study him because he was a unique killer. Like some other serial murderers, his compulsion to kill even fascinated him.[10] Investigators confronted Spangler with the 1978 murders of his wife and children, the drug overdose of his second wife, and the murder of his third wife in the Grand Canyon. At the end of the interview, Spangler told investigators, "Well, you're naming one too many, remember."[11] He left, agreeing to contact investigators in the morning if he wanted to continue the interview.

Yellow rope depicts the path that Spangler's third wife fell (160 feet) after he pushed her from an inner wall of the Grand Canyon.

Contrary to expectations of the investigation team, Spangler telephoned the FBI agent the next morning and made an appointment to continue the interview after breakfast. Rapport was the key communication link between Spangler and the investigators, allowing the interview to continue despite an overnight break.[12] During the second interview, Spangler told investigators how, while married to his first wife, he fell in love with another woman, then shot his wife and two teenage children to be with her. Further, Spangler

said he smothered his son with a pillow after shooting him because the bullet wound was not lethal. He strongly denied involvement in the overdose death of his second wife and refused to discuss the death in the Grand Canyon because he feared a civil lawsuit from his third wife's grown children.

Investigators encouraged Spangler to talk about the Grand Canyon murder by telling him that killing several people at one time did not make him a serial killer. This approach worked on Spangler; after a period of silence, he said, "You've got your serial."[13] Spangler then described how he masterminded the Grand Canyon murder and pushed his third wife over the edge while she faced him.

Analysis

The NCAVC officials provided a behavioral analysis and interview strategy directly applied by investigators in the Spangler case. Further, they accurately predicted several of Spangler's behaviors. Spangler was concerned about his public reputation. He had been a radio talk show celebrity and was well respected in the community. After confessing, Spangler sent the FBI agent a letter, pleading with him to minimize the publicity about the case. In this letter, Spangler argued that he was not like other serial killers who target people for race or sexual orientation, correctly assessing that some serial killers target groups they perceive as undesirable. Spangler's motivation to kill centered around the anticipated gain of eliminating his wives and children. During the interview, he told investigators that killing them was easier than divorce. The results of this investigation included Spangler's confession to four homicides—three were 22-year-old cases.

> ***"...NCAVC's Behavioral Analysis Units provide behavioral-based investigative support...."***

Spangler plead guilty in federal district court in Arizona to the first-degree murder of his third wife, and he admitted killing his first wife and two children. He was sentenced to life imprisonment without parole, dying of cancer while in federal prison.

Conclusion

Investigating cold case homicides constitutes one of the most frustrating duties of a law enforcement officer. However, the FBI's National Center for the Analysis of Violent Crime offers assistance to local, state, federal, and foreign agencies investigating unusual or repetitive crimes.

Departments should solicit the NCAVC's assistance through NCAVC coordinators in their local FBI field offices. Services are provided on-site, telephonically, and at the NCAVC's offices located near the FBI Academy. As demonstrated in this investigation, behavioral analysis assistance from the NCAVC may help law enforcement officers resolve cold case homicides, bringing closure to horrendous crimes. ✦

Endnotes

[1] Quote by Robert Spangler, printed in Robert Scott, *Married to Murder* (New York, NY: Kensington Publishing Corp., 2004), introduction.

[2] U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1999* (Washington, DC, 2000), 201; retrieved on April 6, 2004, from *http://www.fbi.gov/ucr/99cius.htm*.

[3] For the purpose of this article, the authors define a cold case homicide as one where all investigative leads have been exhausted.

[4] See the NCAVC's Web site at *http://www.fbi.gov/hq/isd/cirg/ncavc.htm*.

[5] Charles Patrick Ewing, *Fatal Families: The Dynamics of Intrafamilial Homicide* (Thousand Oaks, CA: Sage Publications, 1997), 8.

[6] Sharon Spangler, *On Foot in the Grand Canyon: Hiking the Trails of the South Rim,* 2nd ed. (Boulder, CO: Pruett Publishing, 1989).

[7] Gary Scheige, American Journal's *Death Valley* (1993); and National Public Radio's *Morning Edition* (Washington, DC, 1993), transcript number 1230-1235.

[8] Robert K. Ressler, et al, "Interviewing Techniques for Homicide Investigations," *FBI Law Enforcement Bulletin*, August 1985, 27.

[9] Confessions are presumed to be involuntary. The prosecution must prove that a confession is voluntary, even if there is no *Miranda* violation. See, *Mincey v. Arizona*, 437 U.S. 385 (1978).

[10] Robert M. Spangler, interview by FBI Special Agent Leonard G. Johns; Arapahoe County Detective Paul E. Goodman, Jr.; and U.S. National Park Service Special Agent Beverly L. Perry, September 14-15, 2000, videotape. For additional information, see Robert K. Ressler, et al, "The Split Reality of Murder," *FBI Law Enforcement Bulletin*, August 1985, 11.

[11] Ibid., (Spangler). (The authors believe that Spangler referred to the drug overdose death of his second wife when he made this comment.)

[12] Supra note 8.

[13] Supra note 10 (Spangler).

The views and opinions expressed by the authors do not necessarily reflect those of the U.S.Department of Justice.

Unusual Weapon

Ring Knife

This metal blade is attached to a ring. It commonly is used to cut string on packages and hay bales. Law enforcement should remain cognizant of subjects possibly using such unusual dangerous weapons.

Perspective

Excessive Force 101

By Dan Montgomery, M.S.

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Being assaulted or killed in the line of duty represents a reality faced by every law enforcement officer who pins on a badge, and it happens every day. For the 10-year period from 1993 through 2002, 706 officers were feloniously slain in the line of duty in the United States and its territories, including 70 who died on September 11. Every 5 days, an officer is murdered. In 2002, 58,066 were assaulted in the line of duty, an average of 160 every day.[1]

On a daily basis, officers also face the reality of the occasional allegation of excessive force levied while making arrests, detaining people, and neutralizing dangerous situations. The entertainment and media industries, which I refer to collectively as the "entermedia," often prefer to use the term *police brutality* when describing allegations of excessive force. After all, it is more entertaining and evokes more emotion. Plaintiffs' attorneys sometimes use this expression as well, even though it rarely is applicable and too often paints a distorted, premature, and inaccurate picture of competent officers simply doing their jobs. As a law enforcement officer for 42 years, I know that most people do not understand the dynamics that come into play when officers use force, and they know very little, if anything, about the subject. All they have is what the entermedia reports, and, unfortunately, the entermedia's knowledge of the dynamics often prove inadequate.

Research has indicated that less than one-half of 1 percent of all police encounters (.0361 percent) involve the use of physical force and, in the majority of cases where officers use force, it is reasonable, lawful, and appropriate.[2] In *Graham v. Connor*, the U.S. Supreme Court established one major test for determining whether an officer uses appropriate physical force—whether the force is *reasonable* in light of the facts and circumstances present.[3] The Court also ruled that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Most important, the Court ruled that the measure of reasonableness must consider allowances for the fact that officers often are forced to make split-second decisions in tense, uncertain, and rapidly evolving circumstances and that such factors are important in determining the amount of force necessary in a particular situation.

In *Smith v. Freland*, the Court even went on to say, "We must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes reasonable action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure."[4]

Levels of Force

When law enforcement officers find it necessary to use physical force, they typically employ or should employ what I like to call the use-of-force spectrum. This concept is simple to understand not only from a law enforcement training standpoint but from a lay perspective as well. It involves five graduated *alternative* levels of force used to compel compliance.

1. The goal of level one force is to simply *persuade* someone to do something. The means to achieve this is *verbal dialogue* (e.g., advice, warnings, requests, and orders). An officer who tells someone to stay in his vehicle, warns a person to take his hands out of his pockets, or orders an individual not to move is using level one force.[5] Purely verbal in nature, it does not involve any hands-on application.
2. The goal of level two force is to achieve *compliance* and involves actual *physical contact*, including physically escorting or carrying someone from point A to point B. An officer who takes someone by the arm, escorting him to a different location, or carries a demonstrator from one place to another is using level two force. For example, if an individual interferes with a crime scene and refuses an officer's orders to stay back, the officer would be justified in escalating the force to level two and physically escorting the person away from the scene.
3. The goals of level three force are *compliance* and *control* using *compression techniques* or *control devices*. Compression techniques include wrist locks, arm bars, physical control holds, and the use of pressure point control tactics. Control devices consist of such tools as handcuffs, restraints, pepper spray, canines, Tasers, and stun guns. For example, an individual escorted at the level two stage suddenly starts resisting efforts to take him away. At this point, the escorting officer now is justified in increasing the level of force used to level three to get the subject to *comply* and to bring him under *control*. Using any of the techniques or devices available in level three is acceptable.
4. The goal of level four force is *self-defense* and can include *personal* and *impact weapons.* Officers frequently are assaulted, so, to defend themselves and prevent or neutralize such attacks, they resort to personal weapons (e.g., hands, fists, and feet) to hit or kick. Or, they can use impact weapons, such as batons, flashlights, and kinetic energy projectiles (e.g., shotguns that fire beanbag rounds or rubber bullets). In the level two example, if the individual starts hitting and kicking the officer, the officer would be justified in using any of the tools listed in level four to defend himself.

Chief Montgomery heads the Westminster, Colorado, Police Department.

5. Last, the goal of level five force is to *stop* someone. To accomplish this, officers can employ *deadly force*, which includes the use of a firearm, another deadly weapon, or a roadblock. All of these forms of force are potentially lethal. If the escorted individual in the level two stage grabs the officer's baton and starts striking him, or he moves toward the officer preparing to strike him, in this case, the officer would be justified in escalating to level five and using deadly force to stop the imminent threat. Or, if the demonstrator in level two manages to obtain a gun or knife and attacks or is about to attack the officer, the use of deadly force would be justified.

The Decision-Making Process

Officers constructively should weigh the circumstances of each case, respond accordingly, and use a level of force objectively reasonable and appropriate at the time. They may find themselves suddenly thrust into a dangerous situation where a high level of force immediately is justified, or, as a physical encounter escalates over a period of time, they may have to elevate the levels of force used to maintain control of the situation.

If officers lose these encounters, offenders may hurt either them or someone else or take an officer's firearm. If that happens, the result may be an armed offender, a wounded or dead officer, or an injured or dead citizen. No fair fight exists when it comes to a physical encounter between an officer and someone who needs to be controlled and subdued. The officer must prevail and use force reasonable and appropriate to compel compliance, even if it takes two or more officers to subdue and neutralize an out-of-control individual. People get hurt in one-on-one confrontations, especially when someone violently resists or fights.

Most law enforcement officers are honest, ethical, and hardworking individuals, and part of their jobs involve the use of force—it is inevitable. When officers use force or when bruises or other injuries are visible on individuals in such circumstances, more often than not, officers have appropriately employed the use-of-force spectrum. In these situations, concerned citizens should ask, "Was the force used reasonable given the totality of the circumstances?"

Unreasonable Force Issues

Statistically, approximately 10 percent of excessive force complaints by citizens are valid. From my experience, generally four reasons exist why the use of force by officers may be unreasonable and, therefore, excessive and inappropriate.

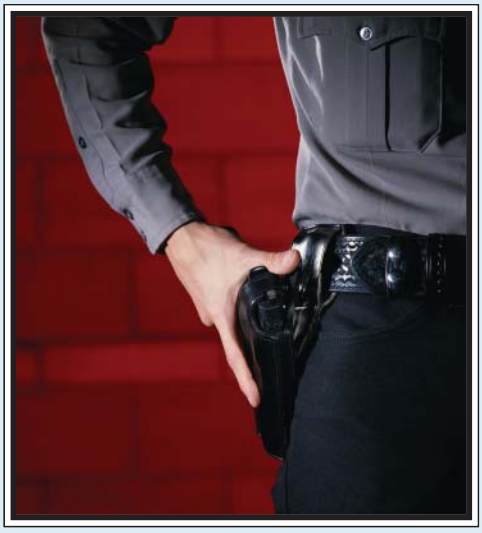
1. Inadequate training: Law enforcement officers expose themselves to dangerous situations if they do not continually receive in-service use-of-force training from their agencies or if they do not apply the use-of-force spectrum as a decision-making tool. For the employing agency, the civil risk is enormous as well. Continual use-of-force training is absolutely essential.

2. Accidental application: Occasionally, while involved in a physical altercation, an officer accidentally may apply force that, in most circumstances, would be considered unacceptable. For example, an officer who defends himself with a baton in a fully involved level four force application appropriately attempts to strike the suspect's forearm. The suspect suddenly moves, and the baton strikes his

> **"...generally four reasons exist why the use of force by officers may be unreasonable...."**

neck, causing injury. Normally, a neck strike with a baton would be inappropriate. But, in this situation, because of the sudden movement, the neck strike was an accident, which occasionally can happen in highly charged situations.

3. Adrenalin overload: Sometimes, officers may "lose it," and, because of the adrenalin overload, the heat of the moment, the anxiety, and the combat-like atmosphere, the officer may apply too much force given the circumstances. This occasionally happens in pursuit situations where, after a long, dangerous chase, adrenalin overload takes over when the pursuit comes to a conclusion, and the suspect is arrested. The civil risk here is enormous and, again, officers receive the training to understand the emotional and physical dynamics that occur in these highly-charged situations.



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4. Retribution: Sometimes, a situation occurs where an officer decides to "take care of business" and administer what I call "curbside justice." Although rare, these scenarios do happen. Such actions are not simple mistakes of the mind but of the heart. Agency heads should deal with these officers quickly and severely. It is never the job of officers to punish people, and those who do so need to be criminally prosecuted.

When deciding whether or not to file criminal charges against officers for excessive force (usually in the form of assault or official misconduct charges), prosecutors have a proof standard, and, to be successful in their prosecution, they must prove the case *beyond a reasonable doubt*. This can be a difficult standard to meet at times, and, consequently, prosecutors often decline to file criminal charges. Instead, they may defer to the employing law enforcement agency for the imposition of administrative sanctions (e.g., corrective actions, written reprimands, suspensions without pay, demotions, and employment terminations). In such circumstances, managers need to prove the administrative case by a *preponderance of the evidence* (at least a 51 percent or higher probability that the officer in question did violate policy and procedure and use force excessive in nature). And, managers must be convinced that if imposed, administrative sanctions will survive a personnel board hearing, civil service commission hearing, or judicial review. In cases where the officer's property rights are involved (e.g. suspension without pay, a demotion, or an employment termination), huge civil consequences can occur. Law enforcement officers have constitutional rights, too, and managers simply cannot impose disciplinary sanctions capriciously.

Understanding the standard of proof for a criminal prosecution and for the imposition of an administrative sanction is crucial. When prosecutors and administrators decline to take action because of standard-of-proof problems, public outcries often happen, which can prove painful for everyone.

Conclusion

Law enforcement officers face dangerous situations every day. Moreover, they often have only a

limited amount of time in any encounter to decide how much force to use. Most people do not thoroughly understand the legal and practical dynamics involved in use-of-force situations. Further, they may not know about the use-of-force spectrum that officers use in their decision-making process. An understanding of this concept may assist citizens analyzing use-of-force situations and questioning whether the force that the officer used was reasonable given the circumstances.

Unfortunately, sometimes officers use inappropriate and excessive force. But, by providing adequate training, helping circumvent accidents from happening, handling adrenalin overload, and renouncing retribution, agencies can help ensure that their officers are prepared for the dynamics of any highly charged situation. ✦

Endnotes

[1] U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted, 2002* (Washington, DC, 2003).

[2] International Association of Chiefs of Police, *Police Use of Force in America, 2001*.

[3] 490 U.S. 386 (1989).

[4] 954 F.2d 343 (6th Cir. 1992).

[5] For clarity purposes, the author employs masculine pronouns throughout the article.

Wanted: Book Reviews

The *Bulletin* invites criminal justice professionals to submit reviews of recently published nonfiction books they have read on topics relative to their field of expertise for possible inclusion in its Book Review department. The magazine publishes only positive reviews of between 350 and 500 words or 1½ to 2 pages double-spaced. As with article submissions, the *Bulletin* staff will edit book reviews for style, length, clarity, and format.

Book reviewers should include two or three compelling points that the author makes, along with the complete title of the work; the names of the authors or editors; and the publishing company, city and state, and publication date. As a guide, the staff suggests that reviewers examine book reviews in past issues of the *Bulletin* to acquaint themselves with the magazine's requirements. Reviewers should submit their book reviews typed and double-spaced on 8½- by 11-inch white paper with all pages numbered. Reviewers should include an electronic version of the review saved on computer disk. Send book reviews to:

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Reducing a Guilty Suspect's Resistance to Confessing

Applying Criminological Theory to Interrogation Theme Development

By BRIAN PARSI BOETIG, M.S.

Investigators can increase their success in the interrogation room by applying criminological theories of deviance, which attempt to explain the roots of criminal behavior. The theories attribute deviant behavior to a multitude of spiritual, biological, and social factors. Investigators conducting interrogations can apply these principles in an effort to reduce a suspect's resistance to being truthful by exploiting centuries of social science research. Possessing a basic understanding of the theories and how to practically apply them during an interrogation can improve investigators' abilities to facilitate a guilty suspect's transition from denial to admission.

THEME-BASED INTERROGATION

An interrogation is a critical component in nearly every criminal investigation. Obtaining a confession during an interrogation increases the likelihood of a conviction in court[1] and, in many cases, is the only means to successfully resolving an investigation in the absence of other evidence.[2] Investigators initially must control and direct the conversation during interrogations. In fact, interrogations are less of a conversation than a monologue by investigators in which they

> ***"The themes presented by investigators to suspects are as varied as the crimes and the people who commit them."***

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provide suspects with acceptable reasons to confess. These permit the suspect to maintain some dignity in light of his illicit behavior; they clear the suspect's conscience from experiencing overwhelming guilt or shame, except in those cases where little, if any, exist.[3] The interrogator acts more as an "understanding mediator, rather than an adversary."[4]

The investigator presents the acceptable reasons to confess, usually in one of three nonexclusive and nonexhaustive categories: rationalizations, projections of blame, and minimizations. Collectively, these categories often are referred to as themes, approaches, or arguments. Rationalizations offer suspects the opportunity to make their crimes appear socially acceptable, or within reason, based on the circumstances at the time of the incident.[5] Projections of blame distance suspects from appearing solely responsible for the crime by transferring partial blame to someone or something else, such as victims, peers, society, or intoxicants. Finally, investigators can try to reduce, or minimize, the heinous nature of the crime so it produces less guilt or shame for the suspect. The themes do not provide legal excuses for the crimes but, rather, moral and ethical justifications. Suspects will reduce their initial resistance to concealing the truth if they accept the justifications. Prior to employing the interrogation tactic using the theme-driven approach, investigators should familiarize themselves with departmental policy and laws applicable to the use of deceit in their respective jurisdictions. Also, theme-driven interrogations can be highly persuasive at times, and the investigator should review current literature concerning the psychological effects of confessions and false confessions.

The themes presented by investigators to suspects are as varied as the crimes and the people who commit them. Investigators develop these themes based on the theories and opinions they form as to why the suspect committed a crime gained through interviews with him, additional evidence collected throughout the case, experience, and training—formulating them without ever scrutinizing scholarly theories of deviance. However, most themes mirror a criminological theory or a combination of several. By studying the existing theories perfected by sociologists over the past couple of centuries, inexperienced investigators can pursue avenues for theme development while seasoned investigators can refine their existing interrogation skills. Although they must consider certain factors when determining which theme to use, investigators will find that the one which the suspect is most receptive to proves successful. Signs of receptivity vary immensely but include both nonverbal behaviors and gestures, such as becoming more attentive or nodding in agreement to the interviewer's theme, and verbal cues,

including agreeing with the interviewer and contributing to and validating the theme. Themes that work with some suspects will not always do so with others. Having a prolific interrogation theme repertoire will assist investigators in becoming successful more often.

CRIMINOLOGICAL THEORIES

Criminological theories, the product of centuries of thought that often fuse formal research with common beliefs, offer scientific explanations for the existence of deviant behavior. Some theories conceptualize certain aspects of deviance while selectively ignoring others.[6] For this reason, the study of criminological theory will present theories with overlapping and even contradicting perspectives. This does not affect investigators using them to develop interrogation themes because any theory that presents the illicit behavior as reasonably acceptable to the suspect constitutes a useful tool.

Classical Perspective

The classical perspective alleges that criminal behavior involves a rational, calculated choice to achieve the maximum amount of pleasure with the minimum amount of pain. Everyone seeks these hedonistic desires, so, to prevent total chaos within a society, laws are enacted to define acceptable behavior. The laws, serving as a social contract between the government and its citizens, provide reasonable punishments for breaches of the social contract that, in effect, will deter deviant behavior. When sanctions are inadequate, suspects can rationalize criminal activity because the benefits simply outweigh the punishment if captured.[7]

> ***"In the interrogation room, investigators quite easily can exploit the social condition theories."***

Developing themes based on the classical perspective focus on the suspect's perceived value of the social contract. Investigators may rationalize a crime merely by explaining to the suspect that the deviant act was logical behavior that anyone in his position would have done because the reward outweighed the possibility of capture and prosecution. For example, investigators can rationalize driving away without paying for gas by telling the suspect that this commonly occurs when gas prices rise. Thousands of other people make this decision every day because of the high cost of gas and the low likelihood of capture and prosecution. In this theme scenario, investigators present the classical perspective as simple economics.

Projections of blame should focus on the criminal justice system not taking the suspect's crimes seriously enough. In this instance, the investigator should advance the projection with the belief that the suspect would not even have considered stealing the gas if a harsher punishment existed.

Further, minimizations address nearly the same issue as projections. In this case, the investigator can minimize the importance for the police and courts to apprehend and prosecute violent offenses, rather than insignificant property crimes.

Rational Choice Theory

People choose to do what is in their best self-interest—the foundation of the rational choice perspective. Although similar to the classical perspective, three distinct components comprise this theory. First, the criminal must rationalize that the illicit behavior is in his best interest. Although more acceptable or legal means exist to achieve the same goal, such as working hard, the criminal

concludes the deviant method as the most appropriate. In furtherance of obtaining the goal, the offender must determine the specific focus (or modus operandi) of the illicit behavior. Criminals have to choose whether to commit a residential burglary to satisfy financial needs or an act of vandalism to revenge a scorned lover. Their reasoning, motivations, and methods differ based on the self-interest fulfilled. If someone wanted to satisfy a financial need, committing an act of vandalism or sexual assault would not satisfy self-interest. Finally, once an individual selects to attain his goal through deviant means and chooses the specific crime, he then needs to analyze the criminal involvement, which includes deciding to commit criminal acts and either remaining involved or stopping the criminal behavior, all rational choices he has to make.

As the title of the theory suggests, the most prominent interrogation tactic for this theory is rationalization. A woman can rationalize vandalizing her ex-boyfriend's car as acceptable behavior based on the circumstances at the time, such as his failure to return phone calls or too quickly becoming romantically involved with another woman. Because the focus of the rational choice theory is centered on self-interest, projecting the blame on anything else is appropriate to reduce the suspect's feelings of guilt. The investigator might blame the boyfriend for not giving the offender a chance to reconcile the relationship or for treating her poorly during the separation. Finally, the investigator can minimize the woman's shame by acknowledging her righteousness in deciding to stop committing criminal acts before the situation became out of control.

The investigator should suggest that her choice to refrain from further acts of vandalism or even violence makes the incident rather mundane and insignificant.

Biological and Psychological Explanations

The biological and psychological explanations surmise that deviance is associated with a physical or mental abnormality or sickness.[8] Despite scientific evidence countering most of the early biological perspective's validity and methodology, this angle still can prove a useful basis for theme development. Around the turn of the 20th century, Cesare Lombroso theorized that certain people were born criminals and possessed such distinguishing characteristics as enormous jaws, prominent canines, and hooked noses, along with other abnormal intercranial features. These characteristics were thought prevalent in criminals. Shortly after Lombroso, Earnest Hooten concluded that criminals were "organically inferior" and these weaknesses caused an inability to interact with surrounding environment standards; therefore, they were forced to submit to a life of deviant behavior.[9] Even later, some researchers thought that deviance was hereditary or based on the possession of additional X or Y chromosomes.[10] Contemporary developments in the biological explanation explore the fields of genetics, biochemistry, endocrinology, neuroscience, immunology, and psychophysiology for understanding deviant behavior.[11]

A suspect might feel comforted by an explanation of his genetic predispositions to deviance because of a preexisting condition, reducing his feelings of guilt because he might believe that he had little

control over his inferior biological makeup. To that end, criminals can blame uncontrollable biological factors or corrupted family bloodlines, rather than rationalized, premeditated thoughts or other self-fulfilling reasons. To make the crime more acceptable, the investigator can minimize the suspect's deviant actions by explaining how he has seemingly overcome overwhelming natural circumstances and, despite having the uncontrollable propensity to commit more crimes, he has show considerable restraint.

Social Condition Explanations

Social condition explanations differ from the biological and psychological ones by correlating individual criminal behavior to social conditions, including poverty, disparate educational opportunities, unemployment, and class structure.[12] Further, crime exists as a result of imperfections in social conditions, and, because many of these afflictions strike lower-income areas, it tends to fester itself in these environments.

The anomie perspective explains that the presence of deviance is the result of weakening social structures during the transitions of societies; the natural, cohesive forces that maintain order are destroyed as societies change. People's aspirations and desires outweigh that which society can return to them, resulting in a state of normlessness. The Great Depression, an example of a society in transition, had abundant chaos and crime because of the disruption in the normalcy of society.

Even while not in transition, each society has goals that citizens desire to achieve. Power, wealth, and prestige based on hard work all represent part of the American dream; however, some people never attain these goals no matter how hard they work. And, even worse, society rewards successful achievement of the goals despite the manner in which people obtain them. Therefore, if deprived of these goals, it can lead to a disregard of the rules to increase a person's own success.

> ***"Two distinct routes of demonization can occur—temptation and possession."***

In the interrogation room, investigators quite easily can exploit the social condition theories. To rationalize a corporate embezzlement, they can present evidence of obtaining the American dream as so embedded in the culture that nobody could be faulted for taking whatever means necessary. They easily could project the blame on the high expectations and demands placed on the suspect by his family despite an assiduous work ethic. Further, they could hold the company responsible for underpaying the suspect. Regarding minimizations, the investigators could suggest that engaging in property crimes to obtain the American dream offers a much more acceptable route than committing violent crimes.

Social Process Theories

Interactions among families, peer groups, and other social institutions drive the social process theories. Perhaps, the learning theories prove the most successful concepts for projecting blame because they examine the interactions among people that occur in everyday life. Despite this common thread, sociologists have explored the interactions from three different perspectives: social learning, social control, and labeling.

Social learning theories suggest that people are inherently good and learn all of their values and behaviors, either positive or negative, depending on their social interactions that not only teach the behaviors but also reinforce them.[13] For example, parents often guide

children to stay away from the "wrong crowd," evidence of the almost universal acceptance of this theory's perspective.

Social control theorists believe that all people have an innate desire to break the law but social forces overcome them. Sociologist Travis Hirschi[14] suggested that three social forces prevent people from committing crimes. First, their attachment to others causes them to respect their opinions (e.g., not doing something deviant in fear of disappointing a spouse, parents, or a boss). Second, a commitment to order keeps people on a righteous path. If an individual plans on becoming a police officer in the future, his avoidance of deviant behavior becomes a driving force. Third, engaging in legal activities reduces the time available for illegal activities, possibly the foundation for the phrase "idle hands are the devil's workshop."[15]

Finally, the labeling theory, also called the societal reaction perspective, suggests that the criminal justice system itself produces criminal behavior. Once "labeled" a criminal, whether formally or informally, a person begins to act like one. The focus of this theory is not solely on the criminal but, rather, the behavior and attitudes of the police, law makers, and other societal institutions.

Unique to the learning perspectives within the milieu of structured interrogations, rationalizations for the crimes are part of the criminal's learning process.[16] Rationalizations protect a suspect from the "moral claims of the conventional world."[17] Investigators should develop interrogation themes based on the suspect's own techniques used to neutralize his deviant behavior. Offenders learn to deny injuring anyone, which permits them to admit their choice to engage in deviant behavior yet minimize its magnitude. Criminals will project the blame on victims by either claiming they deserved the act or that they actually were not victims at all (e.g., the subject of a tax evasion case believing that the government had been "stealing from him for all these years"). Appealing to higher authorities are attempts by the suspect to rationalize the behavior as done on behalf of others, rather than narcissistically motivated. The murder of a sister's spouse would be justified as "done for the family," rather than based on an intense dislike for the person or other selfish motivations. In these instances, offenders offer investigators learning theories for projections of blame on the people that taught them to be criminals, such as siblings, peers, parents, and fellow inmates.[18]

Demonic Perspective

The demonic perspective posits that demons or Satan cause people to commit deviant acts, and it employs the notion of supernatural forces of good

and evil battling against one another. These explanations manifested out of early society's "need to explain away aberrant behavior."[19] Two distinct routes of demonization can occur—temptation and possession.

Temptation involves the attraction into criminal behavior through the seductive enticements of evil. Although the afflicted person still has the ability to choose between good and evil, the temptations by the evil forces prove too powerful to suppress. Despite the fact that the demonic perspective represents the oldest known explanation for deviant behavior, it still can have a powerful impact in theme development. Investigators can apply the demonic temptation perspective by drawing a parallel between the biblically based story of Adam and Eve's temptation by the evil serpent and the suspect's crime. For example, the investigator could suggest to a theft suspect that his actions were consistent with the natural tendencies of human beings. The temptations of evil, no matter how big or small, often are too great to resist. This approach attempts to rationalize the behavior as natural and commonplace. The investigator can project blame on the existence of original sin or the actions of Adam and Eve for initiating the deviant act. To minimize the crime, the investigator can convince the suspect that his actions were minor offenses in comparison with the egregious acts committed by others directed at defying God (e.g., explaining that the suspect's theft from his employer pales in comparison with other cases the investigator worked where subjects stole from churches and schools).

> ***…any theory that presents the illicit behavior as reasonably acceptable to the suspect constitutes a useful tool.***

Demonic possession, the belief that evil has pervaded the body, offers the investigator opportunities to develop themes of complicity between the evil forces and the suspect; however, demonic possession may create grounds for an insanity defense for the suspect. The offender's ability to distinguish between right and wrong is a critical element during legal proceedings and, therefore, investigators should discuss the demonic possession perspective with prosecutors prior to using it in the interrogation room. It proves an important perspective to understand because suspects can allude to it during interviews.

CONCLUSION

Investigators can use criminological theories of deviance during the structured interrogation process to develop themes to present to the suspect that will reduce moral and ethical consequences of admitting involvement in a particular criminal behavior. The author has not presented every theory of deviance, but merely provided a snapshot of a few theories, many of which investigators subscribe to in their own personal beliefs despite never having specifically attributed them to an established criminological theory.

The examples of themes derived from these theories only offer a starting point for investigators cultivating themes. Learning and understanding the theories generated through sociological research will enhance the skills of all investigators in developing and presenting convincing themes to subjects in the interrogation room. Furthermore, any tactic or approach used by an investigator must pass constitutional muster, and confessions derived from the approach must be voluntary and not the product of government overreaching to have value in the criminal prosecution. ✦

Endnotes

[1] R.A. Leo, "Inside the Interrogation Room," *Journal of Criminal Law and Criminology* 86, no. 2 (1996): 266-304.

[2] F.E. Inbau, "Police Interrogation: A Practical Necessity," *Journal of Criminal Law and Criminology* 89, no. 4 (1999): 1403-1412.

[3] For illustrative purposes and to maintain clarity, the author employs masculine pronouns for subjects in most instances.

[4] D.E. Zulawski and D.E. Wicklander, *Practical Aspects of Interview and Interrogation,* 2nd ed. (New York, NY: CRC Press, 2002).

[5] Ibid.

[6] S. Pfohl, *Images of Deviance and Social Control: A Sociological History* (New York, NY: McGraw-Hill, 1994).

[7] H.W. Mannle and J.D. Hirschel, *Fundamentals of Criminology*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1998).

[8] Ibid.

[9] J.E. Jacoby, *Classics of Criminology*, 2nd ed. (Prospect Heights, IL: Waveland Press, 1994).

[10] J. Samaha, *Criminal Justice,* 6th ed. (Belmont, CA: Wadsworth, 2003).

[11] D. H. Fishbein, "Biological Perspectives in Criminology," retrieved on January 16, 2005, from *http://www.criminology.fsu.edu/crimtheory/fishbein.ht*.

[12] Supra note 10.

[13] R.L. Akers, *Deviant Behavior: A Social Learning Approach,* 3rd ed. (Belmont, CA: Wadsworth, 1985).

[14] T. Hirschi, *Causes of Delinquency* (Berkley, CA: University of California Press, 1969).

[15] Supra note 10.

[16] M.S. Gresham and D. Matza, "Techniques of Neutralization: A Theory of Delinquency," *American Sociological Review* 22, (1957): 664-670.

[17] Supra note 6.

[18] Supra note 16.

[19] T. Szasz, *Insanity: The Idea and Its Consequences* (New York, NY: Wiley, 1987).

Wanted: Notable Speeches

The *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by criminal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 ½- by 11-inch white paper with all pages numbered. When possible, an electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

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Truck Driver Serial Killings

Vickie Helen Anderson

The Gray County Sheriff's Office welcomes any information regarding the identity of the truck driver shown in this video clip.

In the beginning of 2004, law enforcement officers (LEOs) across the United States identified a pattern of homicides involving the killing of prostitutes who worked in and around truck stops. These killings have taken place over a number of years and initially involved the states of Oklahoma, Texas, Arkansas, Mississippi, Pennsylvania, and Indiana.

Over the last year, the FBI, local, and state law enforcement agencies have met for joint case consultations, resulting in the identification of several potential suspects. Time lines have been compiled on 10 suspects so far, with several more in progress. These time lines, which cover nearly the entire United States, are available to LEOs who have homicide victims meeting the following description: prostitutes working from truck stops, hitchhikers, transients, unidentified dead bodies, and any other victims at risk where the suspect is likely to be a long-haul truck driver.

Victim Vickie Helen Anderson

On October 16, 2003, the body of Vickie Helen Anderson was recovered along the shoulder of the westbound entrance ramp of Interstate 40 in Gray County, Texas (near McLean). The victim, who remained unidentified until late 2004, was last seen at the Flying J truck stop in Sayre, Oklahoma. The victim is believed to have been carrying a black and tan backpack and an Igloo brand soft-sided cooler bag, bright blue in color. She was last seen wearing a plaid shirt, pants, and either a green sweater or sweatshirt.

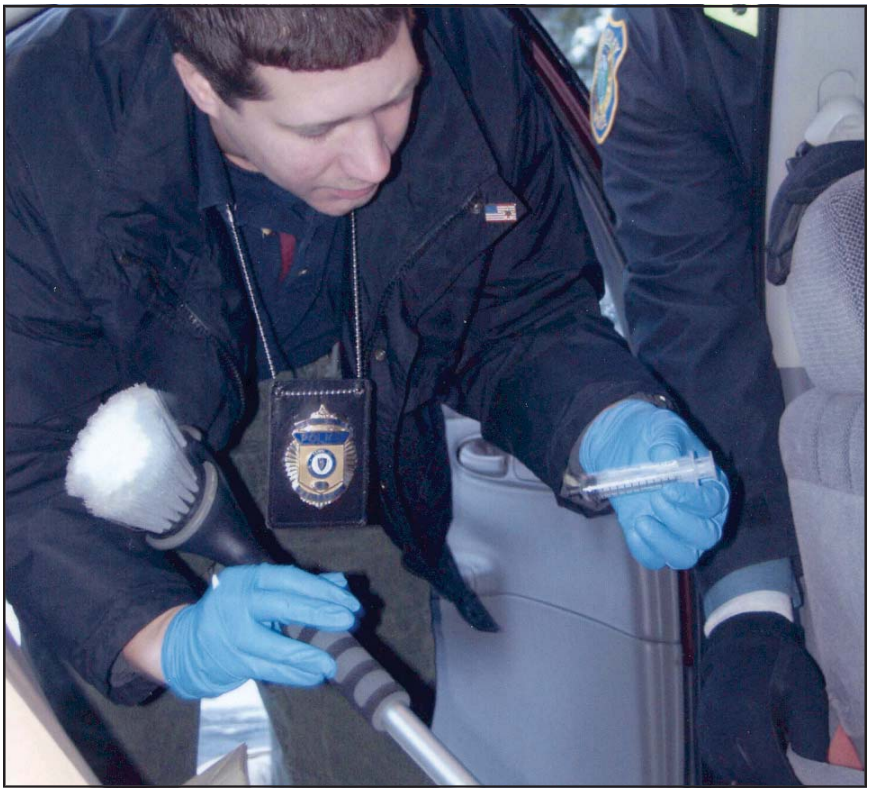
The Flying J's video shows the victim talking with an unidentified truck driver between 2 and 2:30 a.m. The victim's nude body was recovered later that day around 8:15 a.m, 80 miles from the Flying J truck stop.

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all crime analysis units, officers investigating crimes against persons, and missing persons units. Any agency with information on the Vickie Helen Anderson case may contact the Gray County Sheriff's Office at 806-669-8022 or Sergeant Bart Bivens of the Texas Rangers at 806-665-7168. Any agency with victim or suspect information for the truck driver serial killings ongoing investigation may contact Crime Analyst Jayne M. Stairs of the Violent Criminal Apprehension Program (ViCAP) at 703-632-4168 or *jstairs@leo.gov*. ✦

The Motor Vehicle Exception

By EDWARD HENDRIE, J.D.



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There is a presumption that a search conducted under the authority of a search warrant is reasonable.[1] Conversely, a search conducted without a search warrant is presumed unreasonable.[2] The presumption of unreasonableness can be rebutted through an applicable exception to the search warrant requirement. One of those exceptions is known as the motor vehicle exception. The U.S. Supreme Court has ruled that if an officer has probable cause to believe that evidence or contraband is located in a motor vehicle, he may search the area of the vehicle he reasonably believes contains that evidence without a search warrant to the same degree as if he had a warrant.[3] The scope of the search is limited only by what the officer has probable cause to search for and may encompass the entire vehicle, including the trunk. The motor vehicle exception is based upon the reduced expectation of privacy that citizens have in their motor vehicles because of the pervasive regulation to which they are subjected and the fact that the mobility of vehicles present an inherent exigency.[4]

In addition to the motor vehicle exception, there are other exceptions to the search warrant requirement that allow an officer to search all or part of a motor vehicle. Those exceptions allow officers to 1) search the passenger compartment (but not the trunk) of a suspect's vehicle incident to his arrest;[5] 2) frisk the passenger compartment (but not the trunk) of an automobile for weapons upon reasonable suspicion that a weapon may be there;[6] 3) inventory an impounded vehicle, including items in the trunk, pursuant to standardized agency regulations;[7] or 4) search a motor vehicle upon the consent of the person who has the actual or apparent authority and control over that vehicle.[8] While these listed exceptions can be applied to motor vehicles, they are not limited in their application to motor vehicles, as is the motor vehicle exception.

Probable Cause

To search under the motor vehicle exception, an officer must have probable cause. The Supreme Court has stated that "probable cause is a fluid

concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules."[9] Probable cause is not a "one size fits all" standard. In fact, probable cause is a range that occupies a zone[10] that is assessed under the totality of the circumstances.[11]

The seminal motor vehicle exception case is *Carroll v. United States*.[12] The *Carroll* decision illustrates just how low the probable cause standard is when conducting a warrantless search under the motor vehicle exception. In *Carroll*, federal prohibition agents acting undercover had negotiated for the purchase of illegal whiskey in Grand Rapids from the two defendants, Kiro and Carroll. The sale was never consummated. Approximately 1 week later, the agents saw Kiro and Carroll traveling toward Detroit in the same car they used to drive to the undercover negotiations. More than 2 months later, the agents once again saw the defendants driving in the same automobile from the Detroit area toward Grand Rapids. The agents knew that at the time, the Detroit area was an active center for bringing illegal liquor into the United States. Believing that Kiro and Carroll were smuggling a load of illegal liquor from Detroit to Grand Rapids, the agents stopped the vehicle. The agents conducted a warrantless search of the vehicle and found illegal liquor hidden beneath the upholstery of the seats. The U.S. Supreme Court approved of the warrantless motor vehicle search in *Carroll* because the agents had probable cause.

One of the often-overlooked but rather significant findings by the U.S. Supreme Court in *Carroll* was that the probable cause in that case was clear. The U.S. Supreme Court stated:

> [I]t is clear the officers here had justification for the search and seizure. This is to say that the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched.[13]

In *Chambers v. Maroney*,[14] a service station was robbed by two armed men. At about the time of the robbery, two teenagers noticed a blue station wagon circling the block in the vicinity of the gas station and later speed away with four people inside, one of whom was wearing a green sweater. The station attendant recounted that one of the robbers was wearing a green sweater and the other was wearing a trench coat. A description of the car and robbers was broadcast over the police radio. Within an hour, a light blue compact station wagon carrying four men was stopped by the police approximately 2 miles from the gas station. One of the passengers was wearing a green sweater, and there was

"To search under the motor vehicle exception, an officer must have probable cause."

Special Agent Hendrie, DEA Legal Section, is a legal instructor at the DEA Training Academy.

a trench coat in the car. The occupants of the car were arrested. The money, guns, and other incriminating evidence from the robbery were found inside the car during a later warrantless vehicle search conducted at the station. The U.S. Supreme Court found that there was probable cause to arrest the suspects and probable cause to search the vehicle. The Court approved of the later vehicle search under the motor vehicle exception.

Scope of the Search

The scope of a search under the motor vehicle exception is limited to the areas in the vehicle where the evidence or contraband could reasonably be located. For instance, suppose an officer has probable cause to believe that a suspect is carrying a suitcase full of illegal drugs, and the officer sees the suspect hail a cab and put the suitcase in the trunk of the cab. If the suspect is detained by the officer before he gets in the cab, the officer would have probable cause to believe that the drugs are in the suitcase put in the trunk but not anywhere else in the cab. Under the motor vehicle exception, therefore, the officer would only have authority to search the trunk because he would lack probable cause to believe that any contraband or evidence would be found elsewhere in the taxicab.[15]

In the more usual case, an officer would be in a situation where he has found contraband or other evidence of a crime in the passenger compartment of a vehicle. In such a case, it would be reasonable for the officer to believe that other contraband or evidence could also be in the trunk of the vehicle.[16] For example, in *Commonwealth v. Moses,*[17] the Supreme Court of Massachusetts ruled that drugs and a gun found in the passenger compartment of a vehicle during a frisk for weapons gave an officer probable cause to believe that more drugs or weapons could be in the trunk. Ordinarily, an officer would not be permitted to search the trunk while frisking the automobile for weapons. However, once the drugs were found in the passenger compartment of the vehicle during the initial frisk, the search of the trunk was permitted under the motor vehicle exception based upon the probable cause arising from the presence of the drugs in the passenger compartment. The same inference can be drawn from finding a gun in the passenger compartment of the vehicle. A gun found in the passenger compartment of a motor vehicle would support an inference that other weapons, ammunition, or contraband could be in the trunk of that vehicle.[18]

> ***The Court approved of the later vehicle search under the motor vehicle exception.***

Personal-Use Amount of Drugs

It should be noted that some courts are of the view that the presence of a personal-use amount of drugs in the passenger compartment of a motor vehicle would only give the officer probable cause to search the passenger compartment but not the trunk. For example, in *Wimberly v. Superior Court of San Bernardino County*[19] officers stopped a motorist for driving erratically. The officers approached the stopped vehicle and saw a smoking pipe next to12 round seeds on the floor of the vehicle. The officers smelled the odor of burnt marijuana emanating from inside the car, and upon examining the pipe, they found burnt marijuana residue in the pipe bowl. The officers searched the interior of the car and found a plastic bag containing a small quantity of marijuana in the pocket of a coat. The officers used the car keys to open the trunk of the car where they

found several pounds of marijuana and hashish in a suitcase in the trunk. The California Supreme Court ruled that the officers had probable cause to search the passenger compartment of the vehicle upon observing the marijuana seeds in close proximity to the smoking pipe on the floor of the vehicle. The court, however, also ruled that the erratic driving, the observation of the marijuana seeds adjacent to the smoking pipe, the odor of burnt marijuana, the burnt residue in the pipe, and the small quantity of marijuana secreted in the jacket indicated only that the defendants were casual users of marijuana. The court determined that it was not reasonable for the officer to infer that casual drug users would have additional contraband hidden in the trunk. Because the court found that the officers did not have probable cause to search the trunk, the court suppressed the evidence found in the trunk.

The *Wimberly* decision represents a minority of courts. In most courts, if there is physical evidence of drugs found in the passenger compartment of the vehicle, even if it is only a personal-use amount, that will be sufficient to establish probable cause that more drugs could be found in the trunk of that vehicle.[20] For example, in *United States v. Turner*,[21] a U.S. Park Police officer stopped a motorist for failing to display a front license on his vehicle. When the defendant rolled down the window of the vehicle, the officer noticed a strong odor of burnt marijuana. The driver produced a temporary registration but could not produce a driver's license. The officer saw torn pieces of cigar tobacco in the defendant's lap and on the floor at his feet. The officer knew that marijuana users often hollow out cigars

and use them as a receptacle for smoking marijuana. The officer also observed on the floor directly behind the driver's seat a clear plastic bag of green weed-like material, which he believed to be marijuana. The officer asked for the keys to the car, which he used to open the trunk. The officer searched the trunk where he found $825 in small bills and a 62-gram chunk of cocaine base. The defendant argued that the officer only had information that he was a marijuana user and that there was not sufficient evidence to establish probable cause that there would be more drugs in the trunk of the vehicle. The U.S. Court of Appeals for the District of Columbia Circuit disagreed with the defendant's argument and ruled that there was probable cause to believe that the defendant would have additional drugs in his trunk.

Odor of Marijuana

In *Turner,* the officer noticed the smell of burnt marijuana, but there was also other evidence of marijuana use by the driver that gave the officer probable cause to search the trunk. The smell of burnt marijuana emanating from the passenger compartment of a vehicle in and of itself is usually sufficient to establish probable cause to search the passenger compartment for the source of the odor.[22] However, the odor of burnt marijuana alone is generally not viewed by the courts as sufficient to establish probable cause to search the trunk of a vehicle.[23]

For example, in *United States v. Nielsen*,[24] an officer pulled over the defendant for speeding and subsequently smelled the odor of burnt marijuana coming from the open window of the defendant's vehicle. The officer obtained consent to search the passenger

compartment of the vehicle but found nothing there that could have been the source of the marijuana odor. A criminal record check revealed that the driver had been arrested for a misdemeanor marijuana offense approximately 15 years earlier. The officer then removed the keys from the ignition and opened the trunk of the vehicle. Inside the trunk, the officer found approximately 2 kilograms of cocaine. The U.S. Court of Appeals for the Tenth Circuit ruled that the odor of the marijuana alone was not sufficient to establish probable cause to search the trunk of the motor vehicle.

The *Nielsen* court was concerned with the credibility of the uncorroborated detection by an officer of the mere odor of burnt marijuana in a motor vehicle. The *Nielsen* court stated, and most courts agree, that if there is evidence that corroborates the odor of burnt marijuana, the corroborated odor would be sufficient to establish probable cause to search the vehicle's trunk. The corroboration could be as simple as finding a marijuana cigarette in the car or in the possession of the driver.[25] The *Nielsen* court distinguished between the detection of the smell of marijuana by an officer and the detection of drugs by a trained drug-sniffing dog. The court stated that a drug dog with a good track record for reliability would not require corroboration to establish probable cause to search the trunk of a vehicle.[26]

The corroboration of the marijuana odor does not have to be in the form of physical evidence. In *State v. Ireland*,[27] officers pulled over the defendant because he was driving with his headlights off. The officers ultimately determined that the driver was driving on a suspended license. The officers arrested the driver and searched the vehicle incident to his arrest.

> ***The corroboration of the marijuana odor does not have to be in the form of physical evidence.***

As they searched the vehicle, they detected a burnt marijuana smell under the driver's seat. There was a passenger in the car who indicated that she owned the car. One of the officers asked the owner if there was anything in the trunk. She responded that there was nothing in the trunk and that she had no key available to open the trunk. The officers in due time found the trunk key inside the passenger compartment. Upon opening the trunk they found an unspecified number of marijuana plants.

The driver was found guilty of drug trafficking under state law, and he appealed his conviction. The defendant argued that because the detection of the marijuana odor in the passenger compartment was not supported by any corroborating evidence of the presence of marijuana, there was not probable cause to search the trunk of the vehicle. The Supreme Court of Maine ruled that the odor of marijuana was corroborated by the furtive behavior of the owner of the vehicle in denying that she had a key to the trunk when, in fact, there was a key readily available in the passenger compartment of the vehicle. Her false statement suggested that more marijuana would be found in the trunk of the vehicle.

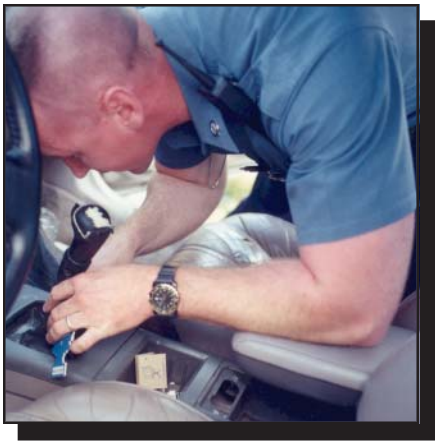
The above cases deal with the issue of the odor of burnt marijuana. When, however, the odor detected by the officer is the odor of fresh, unburned marijuana, courts have not required additional evidence to corroborate the presence of the marijuana before an officer may search the trunk of the vehicle.[28]

Motor Vehicle

The term *motor vehicle* for purposes of the motor vehicle exception is a term of art, which has not been limited to ordinary automobiles. In *California v. Carney*,[29] the U.S. Supreme

Court applied the motor vehicle exception to a motor home. In *Carney*, a DEA agent received uncorroborated information that a motor home was being used by someone to exchange marijuana for sex. Several DEA agents set up surveillance in the area of the motor home in downtown San Diego and watched as the defendant approached a youth. The youth accompanied the defendant to his motor home parked in a nearby parking lot. The agents observed the defendant and the youth close the window shades on the motor home. The agents kept the motor home under surveillance for 1 hour and 15 minutes until the youth exited the motor home. The agents stopped the youth and talked with him, at which time, the youth admitted that he had received marijuana in return for sex. The youth agreed to return with the agents to the motor home and knock on its door. When the defendant stepped out of the motor home, the agents identified themselves as law enforcement officers. One of the agents entered the motor home and observed marijuana, plastic bags, and a scale of the kind used to weigh drugs. The defendant was arrested, and the agents impounded the motor home. A subsequent search of the motor home at the police station revealed additional marijuana in the cupboards and refrigerator.

The defendant pleaded *nolo contendere* to the drug charges, and he was placed on probation. He appealed the order placing him on probation. The California Supreme Court reversed his conviction, holding that the expectation of privacy in a motor home was more like a dwelling and, therefore, the search without a search warrant did not fall within the motor vehicle exception.



The U.S. Supreme Court reversed the judgment of the California Supreme Court and ruled that the search of the motor home was reasonable under the Fourth Amendment because the motor home was a readily movable motor vehicle and the expectation of privacy in a motor vehicle is significantly less than in a home or office. The reduced expectation of privacy in the motor home was due, in part, to the fact that, like all automobiles that are capable of traveling on the public highways, motor homes are subject to pervasive regulation. The Court stated that simply because the vehicle in this case was a motor home did not mean that it was not subject to a warrantless search under the motor vehicle exception.[30] The Court stated:

> To distinguish between respondent's motor home and an ordinary sedan for purposes of the vehicle exception would require that we apply the exception depending upon the size of the vehicle and quality of its appointments.... We declined today to distinguish between "worthy" and "unworthy" vehicles which are either on the public roads and highways, or situated such that it is reasonable to conclude that the vehicle is not being used as a residence.[31]

The Court, however, made a distinction between a readily mobile motor home parked in a public parking lot and a motor home that is being used as a residence at a campsite.[32]

> We need not pass on the application of the vehicle exception to a motor home that is situated in a way or place that objectively indicates that it is being used as a residence. Among the factors that might be relevant in determining whether a warrant would be required in such a

> circumstance is its location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road.[33]

In addition to automobiles and motor homes, courts have applied the motor vehicle exception to trucks,[34] trailers[35] pulled by trucks, boats,[36] house boats,[37] airplanes,[38] and even the sleeping compartments of trains.[39]

Emergency

The ready mobility of a vehicle is viewed by the U.S. Supreme Court as an inherent exigency that is always present when conducting a motor vehicle search.[40] The federal rule is that it is not required that there be an additional separate emergency for the application of the motor vehicle exception. In *Pennsylvania v. Labron,*[41] the U.S. Supreme Court explained, "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more."[42]

States, however, are free to be more restrictive of police conduct as a matter of state law. In some states, police conduct that is permitted under the U.S. Constitution may not be allowed under their state constitutions. In that regard, some state courts have limited the application of the motor vehicle exception under their state constitutions to circumstances when there is a separate emergency.[43] Those state courts require some showing by the state that the exigencies of the circumstances made it impracticable for the police to obtain a search warrant before they searched the car. Most state courts, however, follow the federal rule and do not require an emergency when applying the motor vehicle exception.[44]

"Most state courts, however, follow the federal rule and do not require an emergency when applying the motor vehicle exception."

The nonemergency application of the motor vehicle exception is best illustrated by the U.S. Supreme Court case of *Maryland v. Dyson.*[45] In *Dyson*, Maryland police officers had probable cause and 13 hours advance notice that the defendant would be driving a vehicle containing crack cocaine north on an interstate highway to Maryland. The officers waited the 13 hours for the defendant to drive past them on the highway before stopping his vehicle and conducting a warrantless search of the vehicle for the drugs. Upon searching the vehicle, the officers found the bag of crack cocaine for which they were looking. There was no exigency in the case. The officers had ample time to obtain a search warrant during the 13-hour wait. The U.S. Supreme Court, nevertheless, determined that the stop and search of the vehicle was valid under the motor vehicle exception because the motor vehicle exception does not require a separate exigency to justify a vehicle search.

Dyson was a case where the officers had plenty of time before seizing the car to get a warrant. What if officers lawfully seize a car and have ample opportunity to obtain a warrant after the seizure? In the previously discussed case of *Chambers v. Maroney*,[46] the police had the vehicle secured and clearly had an opportunity to obtain a search warrant. The U.S. Supreme Court ruled that it was lawful for the police to search the motor vehicle at the station house after the vehicle was seized. With the vehicle in police custody, there was no risk that the vehicle or its contents would disappear. The

U.S. Supreme Court, nonetheless, ruled that it was not necessary to obtain a search warrant to search the vehicle.[47]

In *Texas v. White*,[48] officers arrested a suspect who had attempted to pass a fraudulent check at a bank. An officer was called and, upon his arrival at the scene, directed the defendant to park his vehicle. At that point, the officer and one of the bank employees saw the suspect stuffing something between the seats of his car. Ultimately, the police arrested the suspect, seized his car, and drove him and his car to the station house. After bringing the suspect to the station house, the officers requested consent to search his automobile, but the defendant refused. The officers then searched the automobile anyway and discovered four wrinkled fraudulent checks that corresponded to the checks that he had attempted to pass earlier at a bank. The defendant was convicted for attempting to pass a forged instrument, but his conviction was overturned by the Texas Court of Criminal Appeals. The Texas court ruled that the search that turned up the checks was unlawful because the police failed to obtain a search warrant as required by the Fourth Amendment.

The U.S. Supreme Court overturned the Texas court's decision. The Supreme Court ruled that the officers were not required to obtain a search warrant to search a vehicle under the motor vehicle exception, even when the vehicle is impounded and they have time to get a search warrant.

What if a vehicle is in police custody and has already been subjected to an inventory search pursuant to standardized police regulations? Can the police return to that vehicle later and search it again without a warrant for evidence or contraband?

In *Florida v. Myers*,[49] the defendant was arrested and his automobile was inventoried, seized, and secured in a locked impound lot. Approximately 8 hours later, a police officer who had probable cause that the vehicle contained evidence or contraband went to the impound lot and searched the car a second time without a warrant. The U.S. Supreme Court ruled that the second search by the officer was a valid search under the motor vehicle exception, even though the vehicle had already been subjected to an inventory search and was impounded.[50]

Containers in Vehicles

The motor vehicle exception permits officers to search not only the vehicle and trunk but also any containers in the vehicle that could contain the evidence or contraband that is the object of the search.[51] Furthermore, the scope of a warrantless search of an automobile is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe it may be found.

If officers have probable cause to search a lawfully stopped vehicle, they are justified under the motor vehicle exception in searching any part of the vehicle in which the object of the search may be located, including containers inside the vehicle. It does not matter who owns the item that is to be searched. In *Wyoming v. Houghton*,[52] the U.S. Supreme Court approved of an officer searching a purse found in the passenger compartment of an automobile. The vehicle search was based on evidence that the driver had drug paraphernalia on his person and admitted he

was a drug user. The officer was told that the purse belonged to a female passenger and not the driver before he searched it. When the officer searched the purse, he found drugs and drug paraphernalia inside it. The U.S. Supreme Court upheld the search, ruling that the ownership of an object found and searched in the vehicle is irrelevant to the legitimacy of the motor vehicle search.

Because the general rule is that the motor vehicle exception does not require that there be an emergency, the search of the motor vehicle could be hours and even days after the vehicle is seized. If packages are taken from a motor vehicle, those packages would also be subject to a warrantless search under the motor vehicle exception long after they have been taken from the vehicle. For example, in *United States v. Johns*,[53] the U.S. Supreme Court ruled that DEA agents acted lawfully when they conducted warrantless searches of packages 3 days after they took the packages from a motor vehicle. The later warrantless searches were lawful, even though the packages were securely in DEA custody and the agents had ample opportunity to obtain a search warrant.[54] The Court ruled that the later package searches were reasonable because the agents had probable cause to search the packages when they were seized from the motor vehicle and could have searched them at that time. The Court reasoned "Inasmuch as the government was entitled to seize the packages and could have searched them immediately without a warrant, we conclude that the warrantless search 3 days after the packages were placed in the DEA warehouse was reasonable and consistent with our precedent involving searches of impounded vehicles."[55] The *Johns* court held out the possibility that in a given case, a delay in searching a package taken from a motor vehicle could perhaps be unreasonable, but the defendants in the case before the Court did not present any facts that established that the delay adversely affected their Fourth Amendment rights.[56]

> ***"Probable cause depends on the totality of the circumstances."***

Conclusion

Searches conducted under the authority of a search warrant are presumed to be reasonable. On the contrary, searches conducted without a search warrant are presumed unreasonable. Officers should always consider the benefits of the presumption of reasonableness that accompanies a search under the authority of a search warrant. There are, however, well-recognized exceptions to the search warrant requirement that can rebut the presumption of unreasonableness; one is the motor vehicle exception. If an officer has probable cause to believe that evidence or contraband is located in a motor vehicle, the officer may search the vehicle without a warrant to the same degree as if he had a search warrant. Probable cause depends on the totality of the circumstances. If an officer has sufficient evidence to establish probable cause for a search warrant, then he would have sufficient facts to search a motor vehicle without a search warrant.

Courts have applied the motor vehicle exception to automobiles, trucks, trailers pulled by trucks, motor homes, boats, house boats, airplanes, and even the sleeping compartments of trains. The federal rule followed by most states is that if an officer has probable cause that there is evidence or contraband in a motor vehicle, it is not required that the officer be faced with an emergency for him to conduct a warrantless search of the vehicle. ✦

Endnotes

[1] *See generally United States v. Leon*, 468 U.S. 897, 922 (1984); *Franks v. Delaware*, 438 U.S. 154 (1978).

[2] *Mincey v. Arizona*, 437 U.S. 385 (1978).

[3] *Carroll v. United States,* 267 U.S. 132 (1925). In *Carroll*, the searching agent started to open up the back cushion to the rumble seat on a roadster where illegal liquor was hidden and in the process "did tear the cushion some." 267 U.S. at 172 (McReynolds, J., dissenting). *See also California v. Acevedo,* 500 U.S. 565 (1991).

[4] *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (per curiam); *California v. Carney*, 471 U.S. 386, 391-92 (1985).

[5] *New York v. Belton*, 453 U.S. 454 (1981).

[6] *Michigan v. Long*, 463 U.S. 1032 (1983).

[7] *Florida v. Wells*, 495 U.S. 1 (1990).

[8] *Florida v. Jimeno,* 500 U.S. 248, 252 (1991) (In dicta the Court disapproved of prying open a locked briefcase pursuant to a consent search of a car trunk. In the holding, however, the Court approved of the police opening a paper bag found in a car trunk during a consent search.). *See generally United States v. Drayton*, 536 U.S. 194 (2002); *Illinois. v. Rodriguez*, 497 U.S. 177 (1990); *United States v. Matlock*, 415 U.S. 164 (1974); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Bumper v. North Carolina*, 391 U.S. 543 (1968).

[9] *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

[10] *Llaguno v. Mingey,* 763 F.2d 1560 (7th Cir. 1985) (en banc) (plurality opinion), *abrogated in part on other grounds by County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

[11] *Illinois v. Gates,* 462 U.S. 213 (1983).

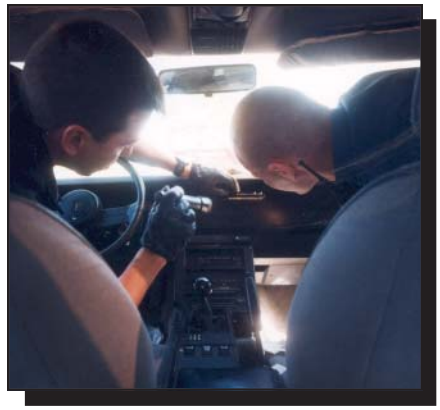
[12] 267 U.S. 132 (1925).

[13] 267 U.S. at 162.

[14] 399 U.S. 42 (1970).

[15] *See California v. Acevedo*, 500 U.S. 565, 579-80 (1991) (quoting *United States v. Ross*, 456 U.S. 798, 824 (1982)). The mere fact that an unknown suspect has put drugs in the trunk of a car, without more, may not be sufficient to establish probable cause that drugs would be elsewhere in the car. *Acevedo*, *supra*. On the other hand, additional facts known to an officer may change the result. For instance, if the suspect gets in his vehicle after putting the drugs in his trunk and an officer has information the vehicle is regularly used by the suspect to traffic in illegal drugs, arguably, an officer could reasonably believe that the passenger compartment may contain more illegal drugs or drug records. This is the reverse of the typical scenario. Usually, the issue is whether there is sufficient cause to search the trunk after having found drugs in the passenger compartment. In a case where drugs are found in the trunk, an officer would have probable cause to arrest the driver and then be able to search the passenger compartment of the vehicle incident to arrest under *New York v. Belton*, 453 U.S. 454 (1981).

[16] *See United States v. Brown*, 374 F.3d 1326 (D.C. Cir. 2004) (false identification and stolen credit card found in passenger compartment gave officer probable cause to search trunk); *Whiting v. State*, 725 A.2d 623 (Md. App. 1998) (officer had probable cause to search trunk after gun and crack cocaine smoking pipe were found in passenger compartment of car); *United States v. Watson*, 697 A.2d 36 (D.C. App. 1997) (marijuana cigarette and white powder in six plastic bags banded together found in passenger compartment gave probable cause to search vehicle trunk).



[17] 557 N.E.2d 14, 19 (Mass. 1990). "Once the officers discovered the cocaine and the handgun pursuant to the protective search, they had probable cause to search the entire automobile, including the passenger compartment and the trunk, for contraband and weapons." *Id.*

[18] *See, e.g., United States v. Brown*, 334 F.3d 1161, 1171 (D.C. Cir. 2003) (gun found in car next to suspect, who was "tickling the handle," after multiple gunshots were fired in the vicinity gave probable cause to search the trunk for more weapons or amunition).

[19] 547 P.2d 417 (Cal. 1976). *See also Burkett v. State*, 607 S.W.2d 399 (Ark. 1980) (roach clip and marijuana cigarette butt in the ashtray do not establish probable cause to search the trunk).

[20] *E.g., United States v. Burnett*, 791 F.2d 64, 65 (6th Cir. 1986).

[21] 119 F.3d 18 (D.C. Cir. 1997).

[22] *United States v. Staula*, 80 F.3d 596, 602 (1st Cir. 1996) (odor of burnt marijuana gave officer probable cause to search passenger compartment of truck).

[23] *See, e.g., State v. Schmeakeka*, 38 P.2d 633, 637-38 (Idaho App. 2001). *Contra, People v. Kazmierczak*, 605 N.W.2d 667 (Mich. 2000). "[T]he smell of burned, burning, and unburned marijuana, when immediately apparent, are equally incriminating." *Id.* at 675 n.13.

[24] 9 F.3d 1487 (10th Cir. 1993).

[25] *See United States v. Parker*, 72 F.3d 1444 (10th Cir. 1995) (a rolled-up dollar bill with a white powder residue and a marijuana cigarette found on the driver were sufficient to corroborate the odor of marijuana and give probable cause to search the trunk); *State v. Betz*, 815 So.2d 627 (Fla. 2002) (officer had probable cause to search trunk where he detected odor of marijuana emanating from the car; the driver was found to be in possession of marijuana; and the driver was nervous and jittery).

[26] *See also United States v. Ludwig*, 10 F.3d 1523, 1527-28 (10th Cir. 1993) (dog alert established probable cause to search trunk). *Cf. United States v. Williams,* 69 F.3d 27, 28 (5th Cir. 1995).

[27] 706 A.2d 597 (Me. 1998).

[28] *State v. Wright*, 977 P.2d 505, 507-08 (Utah App. 1999); *United States v. Downs*, 151 F.3d 1301 (10th Cir. 1998). *Cf. People v. Kazmierczak*, 605 N.W.2d 667 (Mich. 2000) (The odor of unburnt marijuana alone was sufficient to establish probable cause to search the trunk. Although the officer smelled the odor of unburnt marijuana, the court ruled that whether the odor is of burnt or unburnt marijuana makes no difference in establishing probable cause to search the trunk.). In *State v. Guerra*, 459 A.2d 1159 (N.J. 1983), an officer detected the odor of fresh marijuana during a traffic stop on the New Jersey Turnpike. Ultimately, the officer searched the trunk and found 176.5 pounds of marijuana. The Supreme Court of New Jersey ruled that the odor of fresh marijuana alone was sufficient to give the officer probable cause to search the trunk.

[29] 471 U.S. 386 (1985).

[30] If, however, a camper trailer is unhitched and not readily mobile, then it would not be considered a motor vehicle for purposes of the motor vehicle exception. *State v. Durbin*, 489 N.W.2d 655 (Wis. App. 1992). *See also State v. Kypreos*, 61 P.3d 352, 357 (Wash. App. 2002).

[31] 471 U.S. at 393-94.

[32] *See United States v. Adams*, 845 F. Supp. 1531, 1536-37 (M.D.Fla. 1994), wherein the court held that the motor vehicle exception did not apply to a motor home that was being used as a temporary residence. The motor home contained food, clothing, and other personal effects; was hooked to an electric generator; and was located in a rural area on a private wooded lot owned by the defendants, from which there was no convenient or easy access to a public road. In addition, the defendants used other vehicles located on the property for transportation. *See also Unites States v. Matteucci*, 842 F. Supp. 442, 449 (D. Or. 1994), wherein the court did not allow a search of a motor home under the motor vehicle exception because it was being used in a state park as a residence. The motor home was snowed in at the park, and in order for the defendants to get to a public road, they would have to drive the motor home down a steep hill and travel several miles in the park. Furthermore, one of the defendants told the officer prior to his search of the motor home that the motor home was used as their home because they had been "kicked out" of their apartment several weeks earlier. In *United States v. Levesque*, 625 F. Supp. 428, 450-51 (D.N.H. 1985), the court ruled that the motor vehicle exception did not apply to a trailer that was situated on a lot in a trailer park, under circumstances indicating that it was being used as a residence. The truck which towed the trailer was only a few feet from the trailer, but the trailer was not readily mobile because one end of the trailer was elevated on blocks and the trailer was connected to utilities at the campground. It would have taken the defendants three quarters of an hour to connect the trailer and truck before they could tow it from the trailer park. *But see United States v. Hamilton*, 792 F.2d 837 (9th Cir. 1986), *disapproved on other grounds*, *United States v. Kim*, 105 F.3d 1579 (9th Cir. 1997) (motor vehicle exception applied to a motor home parked in driveway and plugged to electrical utilities by an extension cord).

[33] 471 U.S. at 394 n.3.

[34] *United States v. Johns*, 469 U.S. 478 (1985).

[35] *United States v. Forrest,* 620 F.2d 446 (5th Cir. 1980).

[36] *United States v. Lee,* 274 U.S. 559 (1927).

[37] *United States v. Hill*, 855 F.2d 664 (10th Cir. 1988).

[38] *United States v. Nigro,* 727 F.2d 100, 106-07 (6th Cir. 1984); *United States v. Montgomery,* 620 F.2d 753 (10th Cir. 1980).

[39] *United States v. Tartiglia,* 864 F.2d 837, 841-43 (D.C. Cir. 1989); *United States v. Whitehead*, 849 F.2d 849, 854 (4th Cir. 1988).

[40] *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam).

[41] 518 U.S. 938 (1996) (per curiam).

[42] *Id*. at 940.

[43] *State v. Elison*, 14 P.3d 456 (Mont. 2000) ("We have consistently reaffirmed the requirement that, in order to justify a warrantless search of an automobile, the State must show exigent circumstances under which it was not practicable to obtain a warrant."); *State v. Gomez*, 932 P.2d 1 (N.M. 1997) ("a warrantless search of an automobile and its contents requires a particularized showing of exigent circumstances"); *State v. Cooke*, 751 A.2d 92 (N.J. 2000) ("The automobile exception applies only in cases in which probable cause and exigent circumstances are evident, making it impracticable for the police to obtain a warrant."); *State v. Harnisch*, 954 P.2d 1180 (Nev. 1998) ("[T]he Nevada Constitution requires both probable cause and exigent circumstances in order to justify a warrantless search of a parked, immobile, unoccupied vehicle.").

[44] *State v. Werner*, 615 A.2d 1010 (R.I. 1992) ("exigency is no longer a requirement of the automobile exception"); *State v. Marquardt*, 635 N.W.2d 188 (Wis. App. 2001) ("Issues concerning whether the police could have obtained a warrant prior to searching [the motor vehicle] are not relevant to the analysis."); *State v. Redfearn*, 441 So.2d 200, 202 (La. 1983) ("Given that a warrantless search on the scene would have been constitutional, the later search at the police pound is also constitutional."); *Commonwealth v. Moses*, 557 N.E.2d 14 (Mass. 1990) ("A reasonable delay in a warrantless automobile search does not violate the Fourth Amendment or art. 14 [of the Mass. Const.]"); *State v. Gallant*, 574 A.2d 385, 391 (N.H. 1990) ("For constitutional purposes we see no difference between a warrantless search conducted at the location where the vehicle is first stopped and a subsequent warrantless search that takes place at another location, so long as the subsequent search is conducted as soon as practicable and is motivated by either safety or law enforcement concerns....The State, however, bears the burden, as with other circumstances justifying a warrantless search, of proving by a preponderance of the evidence the presence of public safety or law enforcement factors requiring removal from the location where probable cause and exigency would have allowed a warrantless search."); *People v. Blasich*, 541 N.E.2d 40 (N.Y. 1989) ("The justifications for a warrantless search conducted upon probable cause pursuant to the automobile exception do not dissipate merely because the vehicle has been placed in the control of the police...and the exception is equally applicable whether the search is conducted at the time and place where the automobile was stopped or whether, instead, the vehicle is impounded and searched after removal to the police station.").

[45] 527 U.S. 465 (1999).

[46] 399 U.S. 42 (1970).

[47] 399 U.S. at 52.

[48] 423 U.S. 67 (1975) (per curiam).

[49] 466 U.S. 380 (1984) (per curiam).

[50] *See also Michigan v. Thomas*, 458 U.S. 259 (1982) (per curiam).

[51] *United States v. Ross*, 456 U.S. 798 (1982).

[52] 526 U.S. 295 (1999).

[53] 469 U.S. 478 (1985).

[54] *See also United States v. Albers*, 136 F.3d 670 (9th Cir. 1997), wherein the U.S. Court of Appeals for the Ninth Circuit ruled that it was reasonable for a National Park Service ranger to conduct a warrantless viewing of videotapes seized from the defendant's car 7 to 10 days earlier.

[55] *Johns*, 469 U.S. at 487.

[56] The *Johns* Court stated: "We do not suggest that police officers may indefinitely retain possession of a vehicle and its contents before they complete a vehicle search. *Cf. Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (White, J., dissenting). Nor do we foreclose the possibility that the owner of a vehicle or its contents might attempt to prove that delay in the completion of a vehicle search was unreasonable because it adversely affected a privacy or possessory interest. *Cf. United States v. Place*, 462 U.S. 696 (1983).... Respondents do not challenge the legitimacy of the seizure of the trucks or the packages, and they never sought return of the property. Thus, respondents have not even alleged, much less proved, that the delay in the search of packages adversely affected legitimate interests protected by the Fourth Amendment." 469 U.S. at 487.

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

The Bulletin Notes

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

Officer Bohnstadt

Early one morning, Officer Robert Bohnstadt of the North Tonawanda, New York, Police Department responded to a fire at a small apartment building. Shortly after arrival, he was met by two firefighters; the three entered the residence and escorted one individual to safety. Once outside, Officer Bohnstadt was advised that there could be other victims. With the fire personnel busy retrieving equipment, he entered the building alone, despite the steadily growing fire and smoke. Officer Bohnstadt located an apartment with an elderly man inside, advised him of the fire and to get ready for evacuation, and checked on the other unit, at which he got no response. Upon returning to assist the elderly victim, Officer Bohnstadt found the door locked. Further, because of the noise and smoke, he could not hear or speak to use his radio to call for help for himself and the victims, now trapped upstairs by the intense heat, smoke, and flames. Officer Bohnstadt kicked in the door and entered. He then placed his patrol jacket at the bottom of the front door to slow the entrance of the smoke and used the individual's phone to call dispatch to advise them of his and the elderly victim's location and that there possibly was a tenant in the other apartment. He then waited with the elderly man until fire personnel arrived. All parties in both units were brought out to safety and subsequently received medical attention. The brave, selfless actions of Officer Bohnstadt helped save these individuals' lives.

Officer Lacina

While on patrol, Officer Christopher Lacina of the Northbrook, Illinois, Police Department observed smoke billowing from the front door of a residence and immediately requested dispatch to notify the fire department. Knowing that it would take several minutes for assistance to arrive, Officer Lacina quickly responded to the scene and yelled to anyone inside. After hearing a call coming from the house, he disregarded his own safety and entered. Officer Lacina located a man lying in the bedroom and helped him outside. The victim then explained that his wife was still in the residence. Officer Lacina immediately reentered and found the woman and her dog in the kitchen. He then brought them outside to safety. Later, both the man and Officer Lacina received medical attention for their injuries. Because of Officer Lacina's quick thinking and bravery, these individuals' lives were saved and a tragic event was minimized.

Nominations for the ***Bulletin Notes*** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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