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FBI Law Enforcement Bulletin

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Stalking the Stalker

A Profile of Offenders

By ROBERT A. WOOD, Ph.D., and NONA L. WOOD, M.S.

"Stalkers are like naughty third graders. They don't care what kind of attention they get, as long as it's attention."[1] Individuals unfamiliar with the phenomenon of stalkers and stalking often are surprised that stalkers may value negative attention just as much as they do positive attention. Why would anyone want to have a relationship with another person who does not want to be involved? The answer to this question can help law enforcement personnel understand stalking situations more clearly and aid them in facing the growing challenge of detecting and investigating such incidents.

Statistics

Stereotypically linked by much of the general public with the "rich and famous," until very recently, most information concerning stalking came from media accounts of incidents, individual case studies, or academic endeavors that focused on one narrow facet of the problem. In the early 1990s, the most often quoted figures showed that 5 percent of women in the United States were stalked at some point during their lifetimes and about 200,000 were victims each year. However, estimates based on the first national study on stalking presented in 1998 found that rates were substantially higher.[2] This survey of 8,000 women and 8,000 men concluded that, nationwide, 8.1 percent of women have been stalked at some time during their lives and 1,006,970 are stalked annually. These figures are 1.6 times and 5 times, respectively, higher than those expressed during the early 1990s. In addition, this study

revealed that 2.2 percent of men had experienced stalking during their lifetimes and that 370,990 become victims each year.

The first national study also shed some light on how common stalking is compared with other types of violence in the United States. In a 1-year period, the study estimated that women were two times as likely to be physically assaulted than stalked, but three times more likely to be stalked than sexually assaulted. Thus, in terms of frequency, stalking falls in between the other two crimes,[3] although stalking situations may include one or both of these behaviors. Overall, however, despite the increasing importance of stalking, it remains a comparatively unexamined source of criminal behavior. Therefore, the law enforcement community may gain some insight into stalking by reviewing the growing literature on the topic, with special emphasis on profiling characteristics of stalkers and the various typologies and psychological motivations of such offenders.

Definition

Many different definitions of stalking exist in the literature, with most defining the practice as including a pattern of harassing or menacing behaviors linked with a threat.[4] The first national study defined stalking as "...a course of conduct directed at a specific person that involves repeated visual or physical proximity; nonconsensual communication; verbal, written, or implied threats; or a combination thereof that would cause fear in a reasonable person (with repeated meaning on two or more occasions)."[5]

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Every state in America, as well as the District of Columbia, have passed antistalking legislation,[6] whereas Canada commonly refers to stalking as "criminal harassment."[7] Because antistalking laws vary from jurisdiction to jurisdiction, law enforcement officers should familiarize themselves with the elements of the law in their specific jurisdictions.[8]

In addition, federal laws, such as the 1994 Violence Against Women Act and the Interstate Stalking Punishment and Prevention Act of 1996, may affect stalking cases. In some instances, stalking behaviors may violate federal law when offenders cross state lines to stalk a person or when they enter or leave federal property or Indian country for the purpose of stalking someone. These relatively new pieces of legislation provide powerful tools to address these criminal behaviors.

Behaviors

For many reasons, stalking behaviors are quite diverse. Stalkers may ambush their targets, phone repeatedly, pursue or follow their targets, make obscene or threatening phone calls, display weapons, trespass, or vandalize property.[9] They may send numerous letters, deliver unwanted gifts, or restrain or confine the objects of their obsessions. As a means of controlling the behavior of their targets, stalkers may threaten to commit suicide or harm the victims, the victims' families, or even the victims' pets. Perpetrators may attempt to limit the amount of contact targets have with their families and friends and may insist

on knowing the whereabouts of targets and what they are doing at all times. What they all have in common, however, is a persistent pattern of unwanted behaviors that interfere with other persons' abilities to control their own lives.

A relatively new form of stalking, cyberstalking, uses computers to stalk individuals and may take the form of electronic mail, faxes, or harassment in Internet chat rooms. For example, in one recent incident, a woman in San Francisco received about 1,500 pages of e-mails and faxes over a 2-month period that threatened her life and those of her children. Governmental authorities find it difficult to estimate how many individuals are victims of cyber-stalking, although they also note that the number of complaints concerning this type of unwanted contact have increased in recent years. In addition, such cases prove hard to prosecute successfully.[10]

In stalking cases, a precipitating event occurs 80 percent of the time.[11] Such situations may include the breakup of a relationship, the loss of a job, the death of a parent, or the onset of a serious illness. Stalkers may blame their victims, and their actions may result from anger associated with the initial incident.

Stalking ceases for a variety of reasons. The first national stalking study found that the victims (19 percent) or the stalkers (7 percent) moved; the stalkers acquired new love interests (18 percent); the police warned them to stop (15 percent); the victims talked to their stalkers (10 percent); the authorities made arrests (9 percent); the stalkers received help (6 percent) or died (4 percent); the victims obtained new love interests (4 percent); the stalking just stopped (3 percent); or the perpetrators were convicted of a crime (1 percent). Four percent of the cases remained unclassified.[12] Another source suggested that a 2-year period with no stalking activity is a successful intervention;[13] however, if the stalker is incarcerated during that 2-year period, investigators should not make the assumption that the stalker will be released with no risk of renewed stalking efforts.

> ***"Many stalkers have a history of prior stalking offenses, assaults, or substance abuse."***

Offenders

Generally, existing research has focused on the psychological perspectives of stalkers and has ignored their socioeconomic characteristics. One notable exception occurred in a study of 187 female victims of intimate relationship stalking in Pennsylvania.[14] This study found that the stalkers ranged in age from 17 to 57 and described 57 percent as non-Hispanic whites, 37 percent as African-Americans, and 6.5 percent as other racial minorities. Of the 100 stalkers whose education the victims knew, 77 percent had at least attended high school and 45 percent had attended college; however, educational background ranged from some level of elementary school through graduation from a doctoral program. Interestingly, this research noted that stalkers with higher educational levels were less likely to be violent and also less inclined to make explicit threats.[15] As to occupations, 69 percent of the perpetrators were employed, with 62 percent of those described as holding blue-collar jobs compared with 37 percent in white-collar positions. In addition, 61.7 percent of stalkers had some form of a previous criminal record, and, of those individuals, 31 percent had a prior conviction for a violent offense. Also, according to their targets, 72 percent of the stalkers abused alcohol or other drugs. Sixty-five percent of the women reported physical abuse during their relationships, with two-thirds (66 percent) stating that alcohol or other drug use was the precipitating event for that violence. While this profile reveals some interesting information, it remains important to remember that it resulted from a study in a single state.

According to the findings of the first national stalking study, approximately 87 percent of stalkers were male.[16] Men were identified as stalkers in 94 percent of cases in which the complainants were women and 60 percent of cases in which the targets were men. In addition, approximately 77 percent of female complainants and 64 percent of males knew their stalkers. These researchers speculated that men

may know their stalkers less often because of other considerations, such as the involvement of gang rivalries. They also found that homosexual men may be more at risk for stalking. The greater risk may be due to unreturned sexual attraction or bias toward homosexuals.

Those persons who stalked men tended to be strangers or acquaintances, rather than intimates, such as former spouses, former boy or girlfriends, or former cohabiters. This finding is important in developing threat assessments because those persons who stalk strangers are more likely to be psychotic, while those who stalk sexual intimates are more inclined to abuse alcohol or other drugs and have a dependent personality disorder.[17]

Other research also has found that stalkers often are self-conscious and lack self-esteem. Many stalkers have menial jobs and tend to be unmarried and live alone. They frequently have a history of being unable to sustain relationships, and they tend to use alcohol more than nonstalkers. Many stalkers have a history of prior stalking offenses, assaults, or substance abuse.[18]

Stalkers also may have mental disorders that commonly include not only substance dependence but also mood disorders and schizophrenia.[19] Others may have personality disorders, such as narcissism, paranoia, antisocial personalities, borderline personality disorders, dependent disorders, or histrionic personality disorders. If stalkers have a treatable psychiatric disorder, some may benefit from medications or psychotherapy. Those truly antisocial or psychopathic, however, may not benefit from treatment. In these cases, the stalkers must be separated from their victims for the stalking behaviors to cease.

When examining the lives of stalkers, common themes have emerged from one researcher's work often cited by other writers.[20] These have included a fascination with assassins and assassinations (e.g., the shooting of former president Ronald Reagan), death, suicide, obsessive love, a special or common destiny, and weapons. In addition, some stalkers excessively adhere to religious beliefs or practices and may believe that they are "cosmically connected" with their targets. Obviously, no single potential stalker will exhibit all of these themes. When noted by law enforcement personnel in combination with other typical stalking behaviors, such themes should serve as potential warning signs. In particular, law enforcement personnel should look for signs of behavior that are sinister, disjointed, bizarre, or extremely unreasonable.[21]

"In particular, law enforcement personnel should look for signs of behavior that are sinister, disjointed, bizarre, or extremely unreasonable."

Typologies

Clearly, the phenomenon of stalking represents a unique nexus between psychiatry and psychology on the one hand and law enforcement on the other. "There is no single profile of a stalker.... Stalkers exhibit a broad range of behaviors, motivations, and psychological traits."[22] As a consequence, several typologies have emerged from the literature, each containing two to three categories, based typically on some form of personality disorder. For example, research has found that some stalkers have an "attachment disorder," stemming from abandonment in early childhood and resulting in the inability to maintain normal relationships as adults. In addition, many stalkers have a narcissistic personality in which individuals have an inflated sense of self-worth and a need for others to focus on them.[23]

One of the best known classifications comes from a review of 74 cases in which researchers described stalkers as having erotomania, love obsession, or simple obsession.[24] Erotomania is the strong, but mistaken, belief that the stalker's object is in love with the stalker. Although the exact label may vary, a number of other researchers also have discussed this phenomenon.[25] In many instances, the victim does not know the stalker and almost always occupies an elevated station in life, making any true relationship between the two very unlikely. Usually, the only

Stalking-Related Web Sites

Cyberangels .... *http://www.cyberangels.com*
National Center for the Victims of Crime .... *http://www.ncvc.org/src*
Working to Halt On-line Abuse (WHOA) .... *http://www.haltabuse.org*
Stalking Victims Sanctuary .... *http://www.stalkingvictims.com*
Survivors of Stalking .... *http://www.soshelp.org*

mental disorder affecting such stalkers is the delusion concerning the object of their attentions. Generally consisting of women who target males, this group represents the least dangerous of the three categories and included slightly under 10 percent of those studied.[26]

The second group, the love obsessional group, comprised approximately 43 percent of the sample. Ninety-seven percent of those were male stalkers, often between 30 and 40 years of age, with their victims usually between 20 and 30 years of age. Generally, these stalkers became aware of their targets through the media and did not know their victims directly. Twenty-five percent of these stalkers made threats to their objects, while only 3 percent carried out those threats.

Finally, the third group of stalkers, those having a simple obsession, included approximately 47.5 percent of those studied, 80 percent of whom were male. Generally, they were socially immature and unable to develop lasting relationships. The study found that such stalkers possibly exhibited traits that could include extreme jealousy, insecurity, paranoia, and feelings of helplessness and powerlessness. These stalkers frequently were in relationships with their objects when those associations deteriorated or terminated, generally had an emotional attachment to their victims, and were unable to let the relationship end. If they could not restore those ties, they may have sought retribution or attempted to ensure that no one replaced them in their objects' affections. Simple obsessional stalkers also were more likely to harm their victims or their victims' properties. They also were willing to do whatever was necessary to achieve their goals. Substance abuse also was common. Ninety-seven percent of this group made threats, while 30 percent actually carried them out. Such stalking instances may be more short-lived than those in the other two categories.

Threat Assessment

Because stalking may precede violent crimes against persons or property, early recognition of these phenomena may provide opportunities for early intervention to prevent subsequent violence. "Threat assessment is the term used to describe the set of investigative and operational techniques that can be used by law enforcement professionals to identify, assess, and manage the risks of target violence and its potential perpetrators."[27] Threats are not necessarily predictive in the sense that individuals being stalked always will become victims of violence; however, threats obviously may require further investigation.

For example, one researcher found that only about one-half of stalkers who threatened their victims actually acted on those threats.[28] In addition, even though 43 percent of men and 45 percent of women being stalked in that study received threats from their stalkers, interpersonal violence only occurred on average in 20 to 25 percent of the cases. Violence took the form of grabbing, punching, striking, or forcible fondling, but, reassuringly, homicide occurred in less than 2 percent of the stalking cases; however, this researcher also found that stalkers who had multiple stalking targets and who displayed serious antisocial behavior that was not related to their delusions may be at a very high risk for committing violence.

Researchers also have identified other risk enhancers. For example, one study of Hollywood celebrities found that victims

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were more at risk when stalkers corresponded with them for over 1 year; sought face-to-face contact; formed detailed, plausible plans; stated specific times, dates, and places that contact would occur; telephoned and wrote their victims; and sent them letters originating from more than one location.[29] In their correspondence with their targets, 36 percent of the stalkers referred to other celebrities. This has important consequences for those investigating such crimes. When one target is identified, careful investigation may identify others stalked by the same individual, either contemporaneously or in previous instances. Criminal record checks may help disclose whether the stalker has engaged in similar behaviors in the past.

Still, other characteristics of stalkers also may indicate a high risk for injury to their stalking targets. These include the possession/use of weapons, past instances of violence or hostage taking, a disregard for the consequences of violating protection orders, access to the victim or the victim's family, known depression or suicidal tendencies, and histories of stalking victimizations, mental illness, or drug use.[30] Other indicators of high-risk stalkers may include present or past threats to kill the victim or others and a high degree of obsession, possessiveness, or jealousy.[31]

In contrast, other researchers found certain factors that were not predictive, despite common beliefs.[32] Generally, they did not find stalkers who communicated anonymously more dangerous than those who signed their communications. Also, no link existed between stalkers who harassed their targets with or without accompanying threats. Finally, no predictive value necessarily existed in distinguishing between those stalkers who threatened their victims and those stalkers who approached their targets.

Recent research in Colorado suggested that law enforcement officers may not recognize the link between domestic violence and stalking and the extent to which stalking may precede such episodes of abuse. This research found that 1 in 6, or 16.5 percent, of domestic violence crime reports contained evidence that the suspect had stalked the victim prior to the present occurrence of domestic violence. Officers typically used charges of harassment or violations of restraining orders, even though evidence existed in the case files to support requesting stalking charges.[33]

This research suggested that criminal codes concerning stalking may offer one valuable, yet underused, avenue to address stalking behaviors in domestic violence cases. When victims present complaints of harassing and threatening behaviors, officers always should ask whether these behaviors have occurred previously, so as to develop the pattern of behaviors necessary to sustain stalking charges. If officers ask these questions in all cases involving potential charges of harassment, terroristic threats, and violations of restraining orders, it is possible that, in some situations, interventions could help prevent later domestic violence.

Conclusion

The phenomenon of stalking is a complex one. Throughout the United States and Canada, law enforcement officials and researchers are intensifying their examinations of the various forms of stalking and its related criminal behaviors. Recent studies have revealed that stalking is more widespread than previous research of the early 1990s indicated.

In response to a number of highly publicized incidents, authorities have placed more attention on the development and implementation of legislation at the state and national levels. Researchers also have intensified their efforts to understand stalking behaviors, as well as the socioeconomic and psychological backgrounds of those involved. This has led to the development of a number of typologies and efforts concerning the accurate assessment of threats made by perpetrators. Law enforcement and other governmental authorities need to closely monitor these events as they encounter stalking, assess the threat that it presents, and develop their responses. ✦

> ***...the phenomenon of stalking represents a unique nexus between psychiatry and psychology on the one hand and law enforcement on the other.***

Endnotes

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Police Practice

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An Officer's Guide for Investigations Involving Public Housing Authorities

By Keith Graves

For several years, officers with the Livermore, California, Police Department responded to complaints about a drug dealer in the mid-city section of town. Neighbors complained that drug dealing occurred at all hours of the day and night. The police responded, but, every time officers made an arrest, the suspect returned to the same location and continued to commit crimes.

The target of the neighbors' ire had lived at his dilapidated home for years and ran a small methamphetamine business from his living room. He had endured several police raids, drug thefts, and arrests, but he continued to sell methamphetamine from his home while neighbors lived in fear of criminals visiting his house.

One day, the subject was arrested for possession of drug paraphernalia. Subsequently, the investigating officer called a representative of the public housing authority (PHA) who advised that the subject received Section 8 funding assistance for his rent. The investigating officer confirmed the subject's arrest information and explained the subject's previous arrests to the PHA representative. The PHA terminated the subject's Section 8 funding, and the subject left within a month. Once he moved, the neighborhood experienced a dramatic decrease in crime. The Department of Housing and Urban Development has a zero-tolerance policy regarding violent criminal behavior and drugs; therefore, the suspect cannot obtain Section 8 or public housing assistance from another PHA.

PUBLIC HOUSING AUTHORITIES

PHAs are government entities who administer the Section 8 housing choice voucher program and public housing complexes. The U.S. Department of Housing and Urban Development (HUD) awards grants to local PHAs to help finance the development of housing to be used as public housing. Once developed, the local PHA owns and manages that housing. As part of its management duties, the PHA is responsible for all aspects of day-to-day operations of the housing, such as accepting and processing applications, executing and enforcing dwelling leases, maintaining and modernizing the buildings, managing finances, and keeping records.

A PHA must charge its residents a dwelling rent based on a percentage of the resident's income. This dwelling rental income usually is insufficient to cover the PHA's operating expenses. To cover this shortfall, HUD pays an operating subsidy to PHAs. In exchange for the financial assistance in developing

and operating public housing, PHAs agree to manage the housing according to certain minimum rules and regulations established by HUD. These rules do not cover every aspect of public housing management. Instead, they lay out basic standards and criteria for housing quality, resident eligibility, and financial management, as well as the basic rights and responsibilities of PHAs, HUD, and the residents.

HUD GUIDELINES

Applicant Screening

How PHAs choose their tenants proves important to a police department. When a PHA does not thoroughly screen applicants and abide by HUD rules and regulations or if it becomes lax in its duties, calls for service will inundate the local police department. For this reason, officers should familiarize themselves with how PHAs should screen applicants for public housing and the Section 8 program.

In 1996, the Housing Opportunity Program Extension Act allowed PHAs to obtain criminal history records of tenants and applicants (with their consent) strictly for public housing screening and lease enforcement. Under this act, PHAs can deny applicants occupancy under the Section 8 voucher program, as well as public housing, if they engage in drug-related criminal activity or alcohol abuse. This law also mandates PHAs to deny assistance to people who have been evicted from federally assisted housing for drug crimes. PHAs must adopt standards to prohibit admission to—

- persons currently involved in illegal drug activity;
- persons convicted of producing methamphetamine on federally assisted housing premises;
- sex offenders required to register for a lifetime with a state program;
- persons determined by a PHA who may pose a safety threat or interfere with the peaceful enjoyment of the premises by other residents because of illegal drug use or alcohol abuse; and
- persons evicted from federally assisted housing for drug-related criminal activity less than 3 years prior to applying for admission unless the tenant successfully completes a rehabilitation program approved by a PHA or the circumstances for the eviction no longer exist.

Terminations

The Antidrug Abuse Act of 1988 authorized PHAs to terminate leases for illegal drug or criminal activities committed by public housing residents. Further, PHAs can hold household members accountable for the actions of their guests. Because of these strict policies, PHAs and owners of Section 8 properties can evict tenants for criminal activity, regardless of whether a household member or guest has been arrested or convicted of a crime. Federal law does not require conviction to warrant eviction or termination of tenancy for alleged criminal conduct. In so doing, PHAs must provide reasonable facts demonstrating that the person engaged in the alleged criminal offenses. However, a PHA is not required to satisfy the standard of proof for a criminal conviction (guilt beyond a reasonable doubt). PHAs must adopt the following lease provisions to evict a household:

- PHAs immediately must terminate tenancy if they determine that any household member has ever been convicted of manufacturing methamphetamine on the premises of federally assisted housing.
- PHAs may terminate tenancy for drug crimes committed on or off the premises. If an officer arrests a tenant for possession of methamphetamine away from the home, it may result in termination of tenancy.
- PHAs can proceed with eviction if the tenant is involved in criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA management staff.

- PHAs may terminate residency if the household member is engaged in alcohol abuse or a pattern of abuse that results in a safety threat and interferes with the peaceful enjoyment of the premises.
- PHAs may terminate residency if they determine that a household member furnishes false or misleading information regarding illegal drug use or alcohol abuse.

LAW ENFORCEMENT APPROACH

Law enforcement agencies should create a formal relationship with their local PHAs. They should identify the PHA's director and assign one officer who has knowledge of crime in public or Section 8 housing to contact the PHA. Both the department and the PHA should explain their policies and procedures and agree on a schedule for regular communication. To define both the PHA's and police department's responsibilities and limits, the department should request that the PHA have roll call briefings for its officers, and a police officer should meet with PHA staff members as well.

CONCLUSION

During police investigations, officers may find that perpetrators of the crime live in public housing or are part of the Section 8 program. Officers often deal with public housing/Section 8 tenants on a repeat basis.

Therefore, a strong relationship between the local public housing authority and the police department can benefit both agencies and prevent incidents from becoming a continuing problem. Through mutual support, agencies can work together at decreasing crime in public housing.✦

For additional information, contact Officer Graves at 925-371-4900 or Kgraves@ci.livermore.ca.us.

Officer Graves serves with the Livermore, California, Police Department and currently is a commissioner for the Livermore Housing Authority's Board of Directors.

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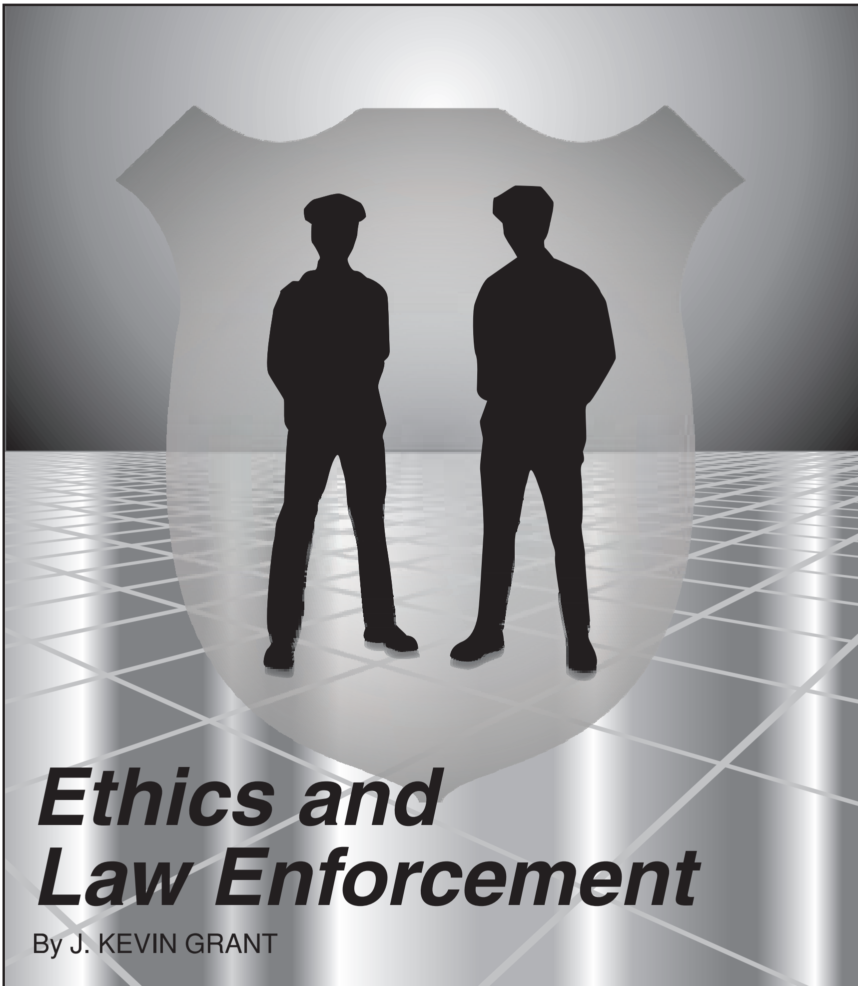

Ethics and Law Enforcement

By J. KEVIN GRANT

Many people consider the U.S. justice system, comprised of various organizations, such as the U.S. Marshals Service, the U.S. Immigration and Naturalization Service, and the FBI, as one of the best criminal justice systems in the world. Nevertheless, the system still has concerns that it deals with on a regular basis, such as ethics and ethical conduct.

The topic of ethics and ethical behavior has existed for centuries. Many people believe that Socrates was the first philosopher to delve into the issue of ethics, specifically the ethical treatment of problems in government.[1] Plato documented Socrates' discussions concerning ethics in *The Republic*.

Ethical Standards

As society has evolved, the questions and concerns that involve ethics and ethical behavior have grown more difficult to address. Ethical standards have become both more complex and scrutinized by the public than at any other time in history. Therefore, law enforcement personnel must carry out tasks assigned to them while the rules and laws constantly change and their freedom to perform the necessary tasks becomes obstructed. Citizens expect law enforcement officials to operate in an efficient and professional manner without expressing personal views and emotions. To accomplish this, law enforcement personnel must have a strict and unwavering adherence to a code of ethics and a code of conduct.

Law enforcement officers are professionals; they work in a skilled occupational group whose prime consideration constitutes providing a service that benefits the public. Because law enforcement is a profession, ethics and ethical conduct play an important role. Ethics and ethical standards involve doing the right thing at the right time in the right way[2] for the right reason.[3] With this in mind, the International Association of Chiefs of Police (IACP) established a code of ethics to govern the conduct of its members. This code of ethics, originally written in 1957, was revised at the IACP conference in Louisville, Kentucky, on October 17, 1989. The IACP membership reviewed and finalized these revisions. In October 1991, IACP members unanimously voted to adopt the new codes.[4]

U.S. citizens have a set of values and norms that they expect all law enforcement (local, state, and federal) to practice. To follow these norms and to gain respect, law enforcement personnel must remain ethical and conduct themselves accordingly at all times, both on and off duty. The law enforcement code of ethics and the police code of conduct represent the basis for ethical behavior in law enforcement. In addition, these codes encourage law enforcement's classification as a profession. However, these codes simply constitute words. For them

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to be effective, law enforcement officials and their leaders must consider them as the bible for law enforcement. Law enforcement personnel must not only believe in the codes but also follow them and display conduct that supports them. Thus, law enforcement officers must live the code.[5]

Any criminal justice system represents an apparatus society uses to enforce the standards of conduct necessary to protect individuals and communities.[6] The laws of this nation, designed to protect and defend the public, provide the framework for a democratic society. Law enforcement officials must perform their duties according to these laws. Law enforcement personnel must have guidelines to perform their duties to act in an ethical manner and to enforce specific standards of conduct. These guidelines exist in the form of the law enforcement code of ethics and the police code of conduct.

The law enforcement code of ethics is used as an oath of office during the graduation ceremony for many law enforcement personnel. Prospective law enforcement officers offer the oath to the state in exchange for the employment they receive.[7] This oath remains morally binding throughout the officer's entire length of service in law enforcement. The code of ethics states that the officer's fundamental duties are to serve the community; safeguard lives and property; protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and respect the constitutional rights of all to liberty, equality, and justice. The code of ethics also states that officers must keep their private lives unsullied and recognize the badge as a symbol of public faith and trust. The next to last paragraph states, "I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence."

The police code of conduct works in conjunction with the law enforcement code of ethics. The code of conduct consists of ethical mandates law enforcement officers use to perform their duties. These guidelines include acting impartially; exercising discretion; using only necessary force; and maintaining confidentiality, integrity, and a professional image at all times.

These codes are only pieces of paper with words printed on them. Society judges ethical behavior by actions, not words. These documents provide the guidelines for law enforcement personnel to conduct ethical investigations, use only the force necessary to apprehend an individual, and avoid conflicts of interest and corruption. These ethical statements, along with appropriate training and strong leadership, encourage law enforcement officers to become members of an ethical profession.[8]

Corruption

Corruption represents one ethical issue facing law enforcement officers. Police corruption is the lack of police integrity.[9] It also constitutes one of the most significant obstacles to positive police-public relations in today's society. Police corruption includes acts of brutality, excessive force, inefficiency, and, among others, the use of public office for private gain. Eight corruption issues face law enforcement personnel daily. These issues are the—

1) acceptance of gratuities;

2) association with known criminals without a supervisor's knowledge or consent;

3) disclosure or furnishing of confidential information, files,

reports, computer information, or the identity of confidential sources to unauthorized persons;

4) disclosure of any information concerning ongoing or planned investigations to any officer, person, agency, office, bureau, department, news medium, or group not directly involved in the investigation, without the express consent of the commanding officer;

5) falsification of affidavits, warrants, or other official reports;

6) harassment of, taking action against, or failing to take proper action against any person due to race, sex, creed, religion, national origin, or sexual orientation;

7) sexual or ethnic harassment of citizens, coworkers, or subordinates; and

8) failure to protect the rights of citizens and to follow laws, policy, and court decisions regarding those rights with reference to probable cause, arrest, evidence, interrogation, collection/protection and report preparation/submission.[10]

Several studies have classified corrupt situations into three different groups.[11] Individual corruption exists when a few corrupt individual officers work in a department that actively discourages corruption. Organizational corruption represents illegal and unprofessional acts common in a department in which both officers and administrators are involved together in a widespread and organized practice of corruption, contrary to written policies, regulations, and procedures. Finally, environmental corruption exists where politically significant groups or the collective population generally tolerates and, perhaps, actively supports corrupt practices by law enforcement personnel, other agencies, businesses, and average citizens.[12]

> ***All law enforcement personnel must set the ethical example....***

Corruption exists at all levels of law enforcement, and it must be controlled. One expert lists four methods for controlling corruption in law enforcement agencies.[13]

1) Strong leadership: The department's leadership must lead by example and avoid any questionable conduct.

2) Changes in the selection and socialization of new officers: Departments must complete extensive background investigations to retain qualified candidates and ensure that they receive complete training, which should include a field training officer spending time with the new officer.

3) Changes in departmental organization and operational procedures: The department's leadership should establish an investigative unit within the organization to investigate all charges of inappropriate conduct by all personnel.

4) Changes in the environment in which the department works: This will create a departmental code of conduct, with the help of city council or appropriate governmental organizations, that clearly defines appropriate officer behavior.[14]

Law enforcement officers cannot allow themselves to incur favors or become indebted to anyone. As public servants, they owe their services to society. To eliminate corruption, society must change officers' beliefs and, more important, their actions. However, administrators can take significant steps by ensuring that quality leadership exists, screening applicants completely, training personnel (newly hired officers should go through stages of training, such as an initial training program, field training, and, finally, in-service training[15]), giving them guidelines, providing them with honorable work, and encouraging them to be team players. By taking these steps, law enforcement organizations can eliminate the conditions that lead to corruption within their agencies.

Conclusion

To flourish as a democratic society, the United States must continue to have one of the best criminal justice systems in the world. Philosophers, educators, citizens, and law enforcement personnel have discussed, and will continue to address, the topic of ethics and ethical conduct. The world

continuously changes, which brings different and more complex ethical questions. To adapt to these changes, law enforcement officials must continue to emphasize the importance of ethical standards. Only through sound hiring practices, proper training, ethical leadership, and a written code of ethics will the U.S. criminal justice system prosper.

"The mark of a civilization is how well its policemen have breathed and absorbed the spirit of liberty…. Police are the guardians of our civil liberties…. They have an unequal opportunity to show the downtrodden and the momentarily despairing how to cope in a free country."[16] They are teachers who must help set the example for society. Ethics do not come from a piece of paper, but from within. All law enforcement personnel must set the ethical example; therefore, not only will law enforcement become a more ethical profession but, perhaps, society will become more ethical as well. ✦

Endnotes

[1] Peter Madsen and Jay M. Shafritz, *Essentials of Government Ethics* (New York, NY: Penguin, 1991).

[2] David A. Hansen, *Police Ethics* (Chicago, IL: Charles C. Thomas, 1973).

[3] This infers that people will take the correct action for altruistic reasons, not just because they are forced or because someone is watching them.

[4] International Association of Chiefs of Police, "The Evolution of the Law Enforcement Code of Ethics," *Police Chief*, January 1992, 14-17.

[5] Supra note 2.

[6] President's Commission on Law Enforcement and Administrative Justice, *The Challenge of Crime in a Free Society* (Washington, DC: U.S. Government Printing Office, 1967).

[7] William C. Heffernan and Timothy Stroup, *Police Ethics*: *Hard Choices in Law Enforcement* (New York, NY: John Jay Press, 1985).

[8] For additional information on police leadership, see Paul Hansen, "Developing Police Leadership," *FBI Law Enforcement Bulletin*, October 1991, 4-8.

[9] Hubert Williams, "Maintaining Police Integrity: Municipal Police of the United States," *Police Studies*, Spring 1986, 27-33.

[10] Paul Myron, "Crooks or Cops: We Can't Be Both," *Police Chief*, January 1992, 23-28.

[11] Supra note 9.

[12] Supra note 9.

[13] Supra note 9.

[14] Supra note 9, 32.

[15] Susan Braunstein and Mitchell Tyre, "Building a More Ethical Police Department," *Police Chief*, January 1992, 30-34.

[16] Supra note 7.

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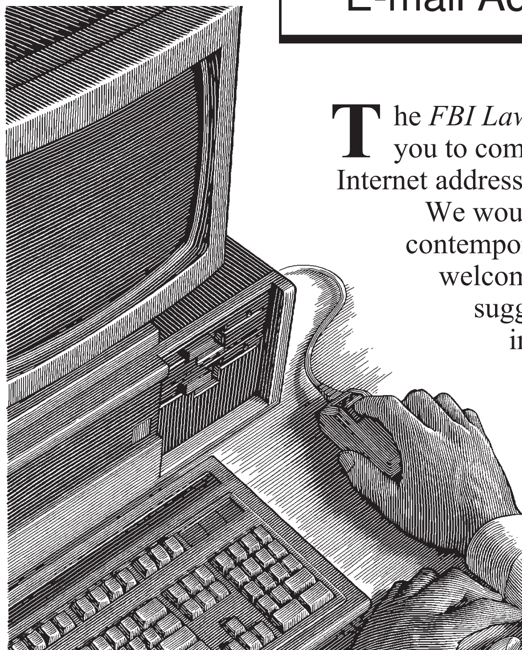

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Corrections

Capital Punishment 2000 presents statistics on a number of topics related to capital punishment, such as the number of prisoners under the death sentence as of December 31, 2000, and the number of persons executed in 2000. Tables in this annual Bureau of Justice Statistics (BJS) bulletin depict data on capital offenses by state and federal death penalty laws, methods of execution, offender demographics (e.g., sex, race, education, marital status), and time between imposition of death sentence and execution. Additionally, the bulletin summarizes the movement of prisoners into and out of death sentence status during 2000, provides preliminary data on executions in 2001, and presents historical tables on executions since 1930 and death sentencing since 1973. This 16-page BJS bulletin (NCJ 190598) is available electronically at *http://www.ojp.usdoj.gov/bjs/abstract/cp00.htm* or contact the National Criminal Justice Reference Service at 800-851-3420.

Drugs and Crime

MDMA (Ecstasy) summarizes current information on the effects, prevalence, trafficking, and production of the designer drug MDMA (3,4-methylenedioxymethamphetamine). MDMA, also known as "ecstasy," is used predominantly at all-night dance parties known as "raves," but its use is moving to such other settings as private homes, high schools, college dorms, and shopping malls. This Office of National Drug Control Policy (ONDCP) fact sheet also discusses current legislation and law enforcement efforts designed to curb the use of MDMA. According to a 2001 study from the University of Michigan, 11.7 percent of high school seniors had tried MDMA at least once. This fact sheet (NCJ 188745) is available electronically at *http://www.whitehousedrugpolicy.gov/publications/pdf/ncj188745.pdf* or contact the National Criminal Justice Reference Service at 800-851-3420.

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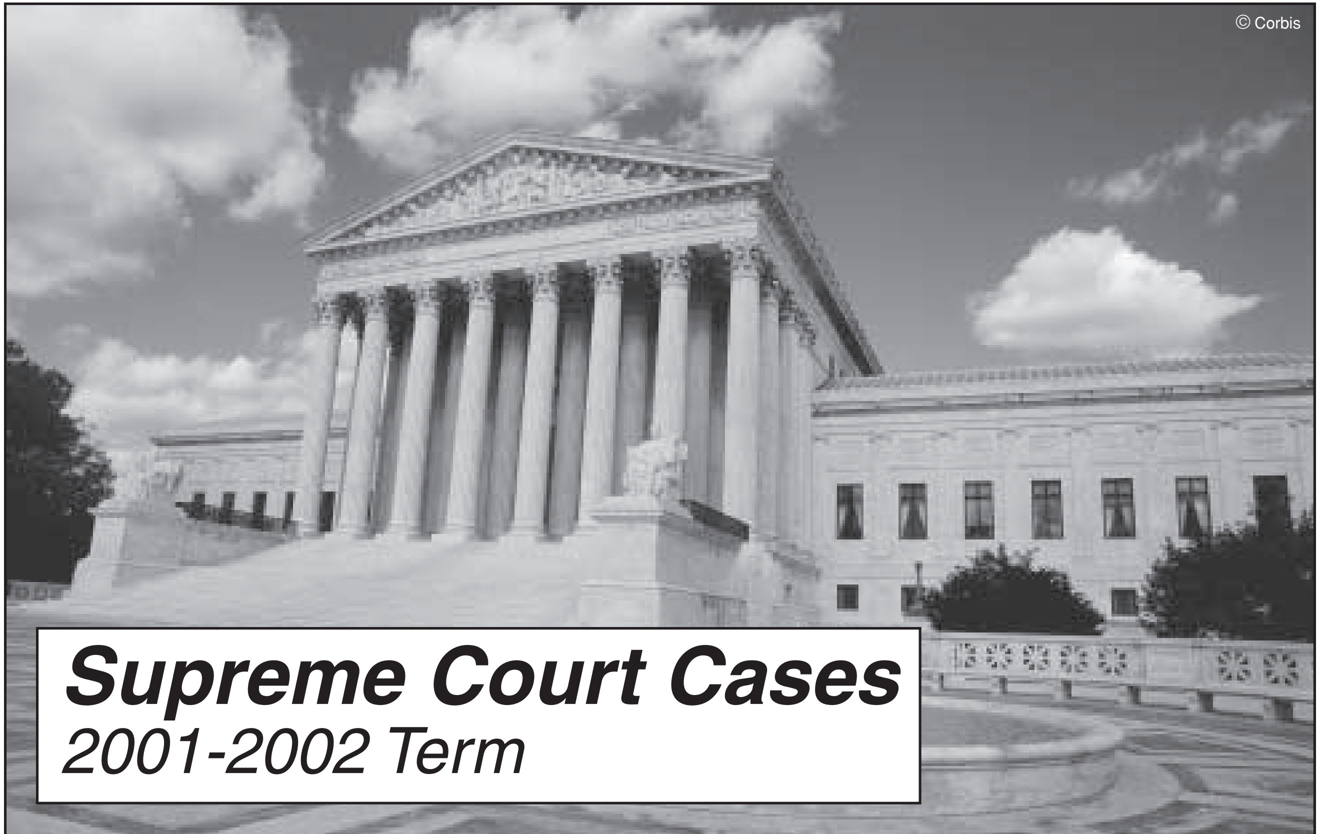

Supreme Court Cases
2001-2002 Term

In its most recent term, the Supreme Court of the United States decided several cases of significance to law enforcement. The cases included several decisions regarding Fourth Amendment issues; one concerning Eighth Amendment cruel and unusual punishment; and several important decisions regarding the Americans with Disabilities Act. This article includes a synopsis of these cases. Local and state agencies must ensure that their own state laws and constitutions do not provide greater protections than the U.S. constitutional and statutory standards discussed in this article.

SEARCH AND SEIZURES ISSUES

United States v. Arvizu 534 U.S. 266 (2002)

In *United States v. Arvizu*, the U.S. Supreme Court rejected an attempt by the Court of Appeals for the Ninth Circuit to "describe and delimit" factors that can be used to determine "reasonable suspicion." The Supreme Court reaffirmed its earlier decisions requiring a determination of "reasonable suspicion" be based on a totality of circumstances.

Arvizu was observed by a border patrol agent traveling in a remote area of Arizona on an unpaved road frequently used by smugglers. He was traveling in a minivan with a woman and three children. The position of the children in the back seat suggested to the agent that their legs were resting on some cargo on the floor. When Arvizu observed the agent, he immediately slowed the vehicle and avoided eye contact. When the agent began following his vehicle, the children in the back seat began waving in an "abnormal pattern" as if they were following instructions.

A registration check indicated that Arvizu's vehicle was registered to an address in an area that was

notorious for alien and drug smuggling. The border patrol agent decided to stop the vehicle after noting that the route taken by Arvizu was designed to avoid area checkpoints and that he was traveling at a time when border patrol agents were changing shifts. Following the stop, Arvizu consented to a search of his vehicle that resulted in the seizure of more that 128 pounds of marijuana.

Arvizu was charged with possession with intent to distribute a controlled substance. He moved to suppress the marijuana on the grounds that there was no reasonable suspicion to stop his vehicle as required by the Fourth Amendment. After a hearing on the matter, the district court concluded that the agent's observations and inferences drawn from those observations did amount to reasonable suspicion to stop the vehicle and denied Arvizu's motion. On appeal, however, the Court of Appeals for the Ninth Circuit reviewed each factor used to justify the stop in isolation from the others and concluded that a majority of them were susceptible to innocent explanation and, therefore, carried "little or no weight in the reasonable-suspicion calculus." Moreover, the court of appeals concluded that the few remaining factors were not sufficient to justify the stop.

On review, the Supreme Court repudiated the approach taken by the court of appeals and reaffirmed earlier case law requiring courts to use a "totality of circumstances" approach when determining the existence of "reasonable suspicion." Even though when viewed alone some factors may lend themselves to an innocent explanation, they still may be considered along with other more probative factors when reaching a determination of "reasonable suspicion." Applying the "totality of circumstances" approach to the facts presented in *Arvizu*, the Court concluded that the stop was lawful.

United States v. Drayton
122 S. Ct. 2105 (2002)

Passengers on a Greyhound bus disembarked at a scheduled stop in Tallahassee, Florida, while the bus was refueled and cleaned. Shortly after the passengers reboarded the bus, three plainclothes police officers boarded as part of a drug and weapons interdiction program. One officer knelt on the driver's seat facing the passengers, a second stood at the back of the bus, while the third walked down the aisle speaking with individual passengers, asking about their travel plans and trying to match them with luggage in the overhead bins. To avoid blocking the aisle, the officer stood next to, or behind, each passenger with whom he spoke. No general announcement was made regarding why the officers were on the bus, and the passengers were never told that they could refuse to consent to any search of their luggage.

An officer approached Drayton and his traveling companion, introduced himself, and told them he was looking for drugs and weapons. The officer asked if the pair had any luggage. They responded that they shared a single bag located in the overhead bin. They gave the officer permission to search the bag, but no contraband was found. The officer then asked permission to frisk Drayton's traveling companion. He consented to the frisk, and drug packages were found strapped to his inner thighs. He was arrested and escorted off the bus. Drayton was then asked to consent to a pat-down search. Drayton also consented and similar packages were found in his possession. Drayton and his companion were charged with conspiracy to distribute cocaine and possession with intent to distribute cocaine. They moved to suppress the cocaine, arguing that the consent to the pat-down searches was invalid.

The U.S. District Court for the Northern District of Florida denied their motion to suppress, and they appealed. The Court of Appeals for the Eleventh Circuit reversed and remanded. The circuit court held that bus passengers do not feel free to disregard police officers' requests to search unless they are told that consent can be refused. The U.S. Supreme Court reversed.

The Court ruled that the officers did not seize the respondents when they entered the bus and began questioning passengers. The officers gave passengers no reason to

believe that they were required to answer their questions. In addition, there was no application of force, no overwhelming show of force, and no brandishing of weapons or intimidating movements. The aisle was left free so that passengers could exit, and passengers were addressed one by one, in a polite, quiet voice. No commands were given. Nothing was said to suggest to reasonable individuals that they were barred from leaving the bus or otherwise terminating the encounter. The fact that the encounter occurred on a bus did not transform standard police questioning of citizens into an illegal seizure. Under these circumstances, reasonable people would believe that they were free to leave or to end the encounter. Consequently, no seizure occurred.

The Court again rejected the suggestion that police officers must inform citizens of their right to refuse when seeking permission to conduct a warrantless consent search. The Court found that the Fourth Amendment allows police officers to approach bus passengers at random, to ask questions, and to request their consent to searches for drugs and weapons, without advising them of their right to refuse to cooperate or to give consent.

United States v. Knights
534 U.S. 112 (2001)

Knights was convicted of a state drug offense and sentenced by a California court to probation. The terms of his probation included the condition that Knights submit to a search by police at anytime, with or without a search or arrest warrant, and with or without probable cause or reasonable suspicion. Shortly after Knights was placed on probation, an arson fire occurred in equipment owned by the Pacific Gas & Electric Company (PG) and Pacific Bell. Suspicion centered on Knights because PG previously had filed a theft of services complaint against Knights and terminated his electric service. After some investigation, detectives, who were aware of the consent to search condition in Knights' probation agreement, decided to search Knights' apartment. The parties agreed that at the time of the search, detectives had reasonable suspicion to believe that Knights had committed the arson. They sought no warrant authorizing the search, relying instead on the probation condition. A search of Knights' apartment revealed evidence of arson.

Knights was indicted for several federal crimes. He moved to suppress the evidence. The federal district court granted the motion. The Court of Appeals for the Ninth Circuit affirmed the lower court's decision. The circuit court held that the search condition in Knights' probation order must be read as limited to searches for probationary purposes and must stop short of criminal investigation searches.

The U.S. Supreme Court reversed. The Court never reached the issue of whether or not Knights had waived his Fourth Amendment rights (i.e., consented to the search) by agreeing to the search condition as part of his probation. Instead, the Court concluded that the search of this probationer's apartment, based

upon a reasonable suspicion that he was engaged in criminal activity and authorized by a condition of probation, was reasonable under the Fourth Amendment, even without a search warrant.

Ordinarily, for a search to be reasonable, officers must have a warrant, grounded upon probable cause, authorizing the search or be able to justify the warrantless search through one of the exceptions to the warrant requirement. However, the Court has recognized special circumstances when police may search on less than probable cause and without a warrant. The Court decided that this case presented one of those special circumstances.

The Court said that the government has a strong interest in regulating the actions of probationers because their recidivism rate is so high and they have great incentive to conceal their criminal activity and destroy incriminating evidence. On the other hand, probationers have greatly reduced expectations of privacy because of the terms of their probations, especially where, as here, the probationer agrees to a search provision. Under these circumstances, the Court ruled that searches of probationers' apartments are reasonable and, therefore, constitutional when authorized by a condition of probation and officers have a reasonable suspicion to believe that they will find evidence of criminal activity. Under these conditions, no search warrant is required, and the search does not have to be limited to probationary purposes. It is important that officers strictly comply with the terms of the probation agreement. It is possible that the language of the probation order may limit the actions of officers to searching only for probationary purposes.

EIGHTH AMENDMENT CRUEL AND UNUSUAL PUNISHMENT

Hope v. Pelzer
122 S. Ct. 2508

The Supreme Court held that an inmate was subjected to cruel and unusual punishment in violation of the Eighth Amendment when prison guards handcuffed him to a hitching post to punish him for disruptive behavior. The Court also held that the respondent guards were not entitled to qualified immunity because they were on notice that their conduct violated established law in light of binding precedent, department regulation, and a U.S. Department of Justice report informing the department of potential constitutional issues regarding such a use of the hitching post.

In 1995, Hope, then an Alabama prison inmate, was twice handcuffed to a hitching post for disruptive conduct. During a 2-hour period, he was offered drinking water and a bathroom break every 15 minutes. He was handcuffed above shoulder height, which caused the handcuffs to cut into his wrists when he moved, causing pain and discomfort. After a subsequent altercation with a guard, Hope was subdued, handcuffed, placed in leg irons, and transported back to the prison, where he was ordered to take off his shirt, thus exposing himself to the sun, and spent 7 hours at the hitching post. While there, he was given one or two water breaks but no bathroom breaks, and a guard taunted him about his thirst.

Hope filed a civil rights suit against three guards. The district court entered summary judgment for the guards. The Court of Appeals for the Eleventh Circuit affirmed, finding that while using the hitching post in that manner for punitive purposes violated the Eighth Amendment, the guards still were entitled to qualified immunity because the unconstitutional conduct was not clearly established. The Supreme Court reversed, finding that the conduct was both unconstitutionally excessive and clearly established as being unconstitutional.

The Court previously held that cruel and unusual punishment is unnecessary and wanton pain that is totally without penological justification. In the prison context, the question is whether an official acted with deliberate indifference to the inmate's health or safety.

In this case, the Court found an obvious Eighth Amendment violation because there was clearly no threat from Hope. He was handcuffed to the hitching post, already

subdued, handcuffed, placed in leg irons, and transported back to prison. Despite the clear lack of a threat from Hope, the guards knowingly subjected him to a substantial risk of physical harm, unnecessary pain, exposure to the sun, prolonged thirst and taunting, and no access to a bathroom—all unnecessary discomfort and humiliation.

The Court decided that the officers were not entitled to qualified immunity. The Court found that these violations of the Eighth Amendment were clearly established because a reasonable officer would have known that using a hitching post as Hope alleged was unlawful. The Court noted that the obvious cruelty inherent in their conduct should have given the guards notice that their treatment of Hope was unconstitutional. The Court also identified previous binding circuit precedent, relevant Alabama Department of Corrections regulation, and prior U.S. Department of Justice admonitions that should have alerted the officers to the unlawfulness of these practices.

THE AMERICANS WITH DISABILITIES ACT

Barnes, et al. v. Gorman
122 S. Ct. 2097 (2002)

Barnes v. Gorman presented the Supreme Court with the issue of whether punitive damages can be awarded in a private suit brought under the Americans with Disabilities Act (ADA) and the Rehabilitation Act.

In May 1992, Kansas City police arrested Jeffrey Gorman. Gorman is confined to a wheelchair and lacks voluntary control over his lower torso. His condition forces him to wear a catheter attached to a urine bag around his waist. The police put him in a van that was not equipped for a wheelchair. The officers removed him from the wheelchair and strapped him to a narrow bench in the rear of the van. During the ride, Gorman fell to the floor, rupturing his urine bag and injuring his shoulder and back. He subsequently suffered from serious medical problems, including a bladder infection, serious lower back pain, and uncontrollable spasms in his paralyzed areas.

Gorman brought a civil suit against, among others, the chief of police and the officer who drove the van. He alleged that he had been discriminated against on the basis of his disability. The trial jury found the defendants liable to Gorman and awarded him $1 million in compensatory damages and $1.2 million in punitive damages. The Supreme Court ruled that the punitive damages awarded to Gorman were inappropriate because the statutes relied on for his suit did not make them available. However, the Supreme Court did not disturb the $1 million award meant to compensate Gorman for his actual losses.

Law enforcement agencies should realize that they may be liable to disabled individuals when those agencies are not adequately prepared to handle disabled individuals. The ADA prohibits discrimination against the disabled by public entities, and the Rehabilitation Act prohibits discrimination against the disabled by recipients of federal funding. While punitive damages are not recoverable, the failure of a police agency to properly prepare to deal with the disabled can be very costly.

U.S. Airways, Inc. v. Barnett
122 S. Ct. 1516 (2002)

In this case, the Supreme Court addressed the issue of the impact of the reasonable accommodation requirement of the Americans with Disabilities Act (ADA) on a seniority system. Barnett was a luggage handler with U.S. Airways who injured his back and was no longer able to lift luggage. He was

temporarily reassigned to a mail room position. However, the mail room position was subject to the company's seniority system, meaning that Barnett would have to bid on the job to hold it permanently. Barnett learned that more senior employees intended to bid on the job, so he notified his employer that he desired to remain in the mail room as a reasonable accommodation under the ADA. U.S. Airways refused the request, and Barnett lost his job. He sued.

The U.S. District Court in California directed a verdict for the employer, holding that the requested reasonable accommodation interfered with the company's established seniority system and, therefore, resulted in an undue hardship to the company and its nondisabled employees. The Court of Appeals for the Ninth Circuit reversed, holding that whether or not the requested reasonable accommodation is an undue hardship must be decided on the facts of the particular case. The employer appealed to the Supreme Court.

The majority of the Supreme Court ruled, as a matter of law, that, in most cases, an employer does not have to give a preference to a disabled worker asking for a position as a reasonable accommodation over a nondisabled worker entitled to the position under the company's neutral seniority rules. However, the employee requesting the reasonable accommodation may present evidence of special circumstances that makes an exception to the seniority system reasonable in a particular case. The Court's majority recognized that there may be times that the seniority system should be altered to reasonably accommodate a disabled employee. For example, at times, employers retain a right to alter seniority systems unilaterally and, in fact, do so on occasion. In such cases, disabled employees may be able to show that employers must reasonably accommodate them by acting outside the seniority system as a reasonable accommodation. However, disabled employees have the burden of proving that, on the facts of the case, the accommodation is reasonable despite the seniority systems.

Toyota Motor Manufacturing, Kentucky, Inc. v. Williams
534 U.S. 184 (2002)

This case demonstrates that courts continue to struggle with the meaning of the substantial limitation requirement of the Americans with Disabilities Act (ADA). Ella Williams began working for the Toyota Motor Manufacturing company in Georgetown, Kentucky, in 1990. Her work included the use of pneumatic tools, eventually causing her pain in her hands, wrists, and arms. She sought medical treatment and was diagnosed with bilateral carpal tunnel syndrome and bilateral tendinitis. Her doctor placed her on permanent work restrictions. She was not to lift more that 20 pounds, frequently lift or carry more than 10 pounds, engage in constant repetitive flexion or extension of her wrists and elbows, and use vibratory or pneumatic tools. She returned to work and was assigned various modified duty positions for the next 2 years.

Toyota then changed her duties to include a task that required her to hold her hands and arms at shoulder height for several hours a day. Her pain returned and she was diagnosed with several additional medical problems that restricted her physical movement. She requested that Toyota accommodate her medical conditions by returning her to jobs in quality control. Ms. Williams claimed that Toyota refused her request for accommodation; Toyota said she began missing work on a regular basis. On her last day of work for Toyota, she was placed under a no-work-of-any-kind order by her doctor. Toyota then fired her, citing her poor attendance record.

Ms. Williams filed a law suit against Toyota, alleging, among other things, violations of the ADA for failure to accommodate her disability and firing her because of her disability. The U.S. District Court for the Eastern District of Kentucky granted summary judgment for Toyota. The court reasoned that Ms. Williams was not disabled for purposes of the ADA when the company allegedly refused to accommodate her because, while she

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suffered from a physical impairment, it did not substantially limit any major life activity. The district court also denied her wrongful termination claim. Because she was under doctors' orders not to work at all when she was fired, she was not a "qualified person" under the ADA because she could not perform the essential functions of the job. Ms. Williams appealed.

The Court of Appeals for the Sixth Circuit reversed. It held that Ms. Williams was disabled at the time of her request for accommodation because her physical impairment prevented her from doing a class of manual activities affecting her ability to perform tasks at work. The Sixth Circuit ignored evidence that Ms. Williams could tend to her personal hygiene and do personal and household chores, saying it was not relevant to its determination that she was substantially limited in her ability to perform the range of manual tasks associated with an assembly line job. The circuit court agreed, however, that she was not wrongfully terminated for the reason set out by the district court.

The U.S. Supreme Court reversed the Sixth Circuit and concluded that Ms. Williams was not disabled as defined by the ADA. The Supreme Court agreed with both lower courts that Ms. Williams suffered from a physical impairment. However, as the Court noted, to qualify for ADA protection, her impairment must limit a major life activity and that limitation must be substantial. The Court agreed that performing manual tasks is a major life activity. The Court disagreed that Ms. Williams' impairment *substantially* limited her in the major life activity of performing manual tasks.

The Court held that to be substantially limited in the major life activity of performing manual tasks, an individual must have an impairment that "prevents or severely restricts the individual from doing activities that are of central importance to most peoples' daily lives." In addition, the Court emphasized that a mere medical diagnosis of an impairment is not sufficient to claim ADA protection. Claimants must offer evidence that the impairment impacts them personally in a substantial way, meaning each claim must be decided on a case-by-case basis because the impact of impairments varies from person to person.

This case is limited to analysis of only one major life activity—performing manual tasks. However, it is important for several reasons. The Court spoke with a single voice; it was a unanimous opinion. The Court's opinion clearly demonstrated its intention and interpreted the language of the ADA in a way to ensure that its protections extend only to those whose impairments truly substantially limit a major life activity. The ADA means what it says. Limitations upon life activities must be "substantial," meaning that they must relate to or proceed from "the essence of a thing." Life activities impacted must be "major," meaning that they must be "of central importance to daily life."

Equal Employment Opportunity Commission v. Waffle House, Inc.
534 U.S. 279 (2002)

In 1947, Congress passed the Federal Arbitration Act (FAA). Generally, the FAA states that binding arbitration agreements in contracts, including employment contracts, are valid, irrevocable, and enforceable. The act expresses a preference for arbitration agreements. It provides for stays of federal proceedings when they involve questions referable to arbitration and for orders compelling arbitration when one party violates the arbitration agreement.

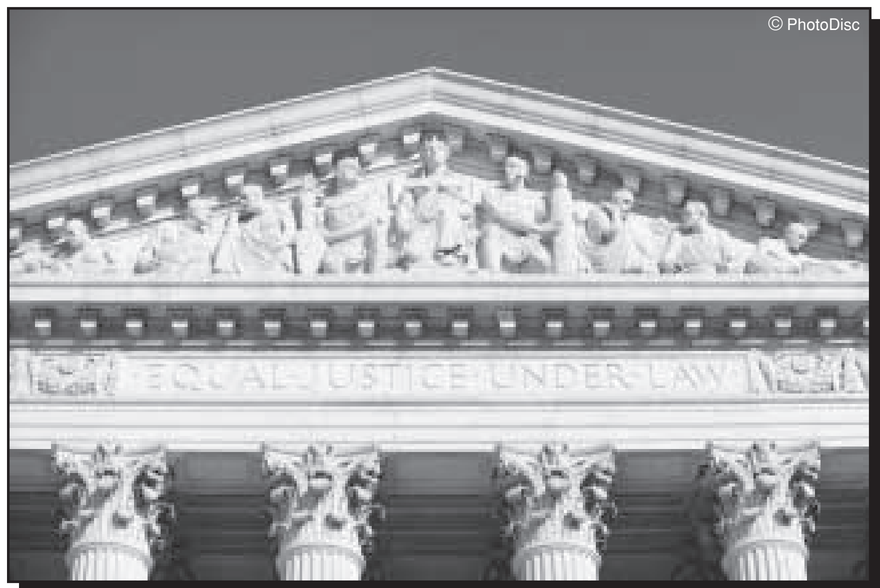
In this case, the Supreme Court faced the question of whether a binding arbitration agreement in an employment contract limits remedies that the Equal Employment Opportunity Commission (EEOC) may pursue in an enforcement action against an employer for alleged violations of the ADA. The Court decided it does not.

Eric Baker applied for a job as a grill operator in a Waffle House restaurant. He, like all prospective Waffle House employees, was required to sign an arbitration agreement requiring that any employment disputes be settled by binding arbitration. A short time after being hired, he suffered a seizure at the grill. He was fired soon after that. He never sought to arbitrate the termination, but he did file a charge of discrimination with the EEOC, alleging that his termination violated the ADA.

The EEOC investigated and unsuccessfully tried to conciliate the matter with Waffle House. The EEOC then filed an enforcement action against Waffle House, alleging that Baker's firing was a violation of the ADA, intentional, and done with malice or a reckless disregard for Baker's federally protected rights. The complaint sought injunctive relief to end Waffle House's allegedly unlawful employment practices. It also sought back pay, reinstatement, compensatory damages for Baker, and an award of punitive damages. Baker himself was not a party to the EEOC enforcement action. Waffle House responded with a request under the FAA that the district court stay the EEOC suit and order Baker to arbitrate the matter as required by the contract or dismiss the action altogether.

The district court declined Waffle House's request, finding that the arbitration agreement was not a part of the employment contract. The case was appealed to the Court of Appeals for the Fourth Circuit. The court of appeals found that Baker's employment contract did include a valid, enforceable arbitration agreement. The court decided that the arbitration agreement did not bar the EEOC's enforcement action because the commission was not a party to the contract and has independent statutory to bring an enforcement action. However, the Fourth Circuit ruled that the arbitration agreement did prevent the EEOC from seeking victim-specific relief (back pay, reinstatement, and compensatory and punitive damages) because the FAA's expressed goal is to favor arbitration agreements and required the court to credit the agreement in this case. Consequently, the court ruled that because Baker ignored the arbitration agreement, the EEOC's only remedy was injunctive relief.

The Supreme Court reversed the Fourth Circuit's ruling, holding that the presence of the arbitration agreement in the employment contract, and Baker's choice to ignore it, in no way limited the range of relief the EEOC could seek. The



Court noted that the EEOC was not a party to any arbitration agreement. The EEOC has statutory authority to pursue these various remedies, and nothing in the FAA restricts this public agency's authority.

Chevron, U.S.A. Inc. v. Echazabal
122 S. Ct. 2045 (2002)

The Americans with Disabilities Act (ADA) defines many employment practices that are discriminatory and, therefore, violations of the act. Among those discriminatory acts is the use of qualification standards that tend to screen out those with disabilities. However, the act provides an affirmative defense for employers who use such qualifications. It permits employers to use standards that screen out those with disabilities if they are shown to be job related and consistent with business necessity. The same section provides that qualification standards may include a requirement that individuals not pose a direct threat to the health or safety of others in the workplace if the individual cannot perform the job safely with reasonable accommodation. Consequently, it is lawful for employers to refuse to hire people with disabilities if their disabilities cannot be accommodated and they pose a direct threat to other workers.

The legislation says nothing about employers' refusals to hire persons with disabilities because their performance of the jobs would pose a danger to their own health and safety. However, the EEOC promulgated a regulation that permitted employers to refuse to hire for just that reason. This case challenged that EEOC regulation.

Mario Echazabal worked for an independent contractor at a Chevron Oil refinery. Twice he applied for jobs with Chevron, and twice Chevron offered him a job conditioned upon the results of medical tests. Both medical tests showed liver abnormality or damage caused by Hepatitis C. Both of Chevron's conditional employment offers were withdrawn because company doctors said that his condition would be aggravated by exposure to toxic chemicals at the refinery. After the second exam, Chevron asked Echazabal's employer to reassign him away from harmful chemicals at the plant or to remove him from the refinery altogether. The contractor laid him off. Echazabal sued Chevron, claiming that Chevron violated the ADA by refusing to hire him or let him continue working at the plant because of his liver disorder, a disability.

In federal district court, Chevron defended itself by arguing that hiring Echazabal would pose a direct threat to his own health, citing the EEOC regulation. The district court granted summary judgment for Chevron, saying it acted reasonably by relying on its doctors' medical advice. The case was appealed to the Court of Appeals for the Ninth Circuit.

The circuit court decided that the EEOC regulation, recognizing the threat-to-self defense, was beyond the EEOC's rule-making power under the ADA and reversed the district court's decision in favor of Chevron. The Supreme Court agreed to hear the case.

A unanimous Supreme Court disagreed with the Ninth Circuit and upheld the EEOC regulation. The Court reviewed the language and history of the ADA and decided that Congress had not definitively spoken on the issue of threats to workers' own health, making it reasonable for the EEOC to do so. The Court noted that the regulation is reasonable because employers reasonably must fear running afoul of Occupational Safety and Health Administration (OSHA) standards and lawsuits if they hire persons who may be put at risk by performing their jobs. In addition, the Court disagreed with Echazabal's argument that the regulation perpetuates the workplace paternalism that the ADA was meant to eliminate. By demanding particularized proof of the dangers that disabled employees would likely face in the workplace, the regulation eliminates the possibility that employers will make decisions based upon stereotypes. ✦

Instructors in the Legal Instruction Unit at the FBI Academy prepared this article.

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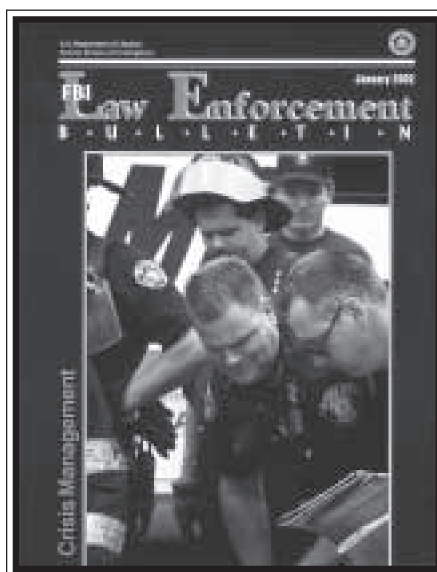

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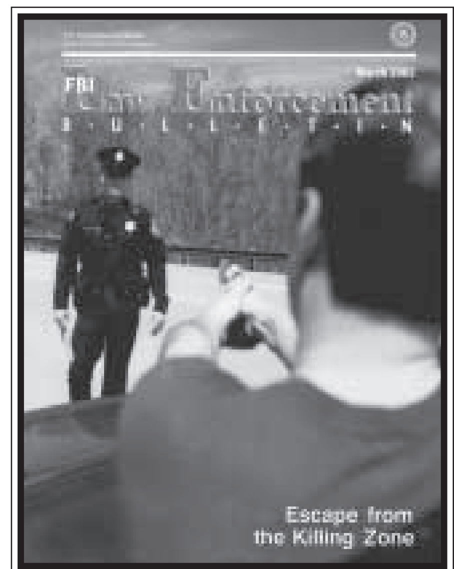

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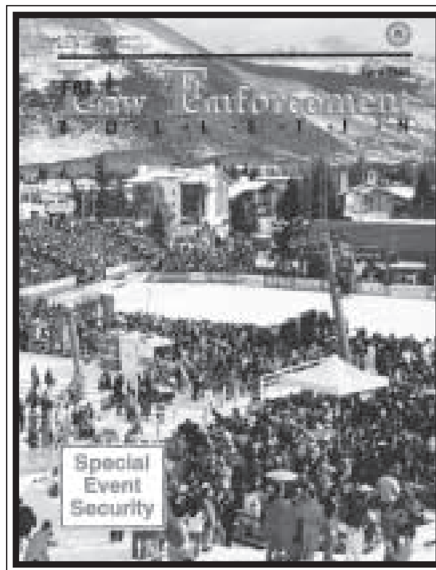

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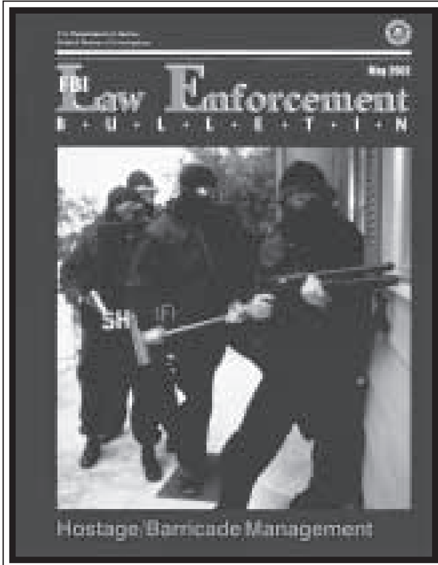

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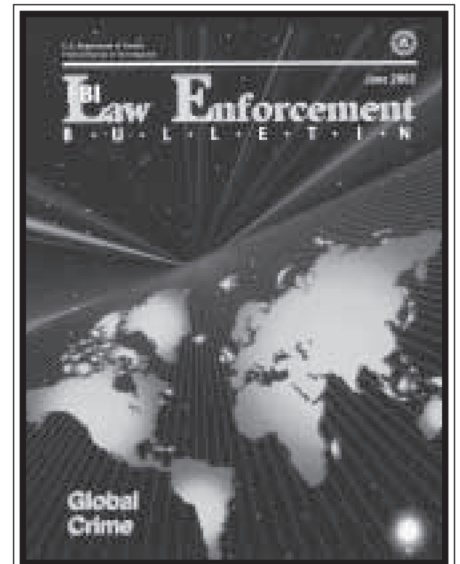

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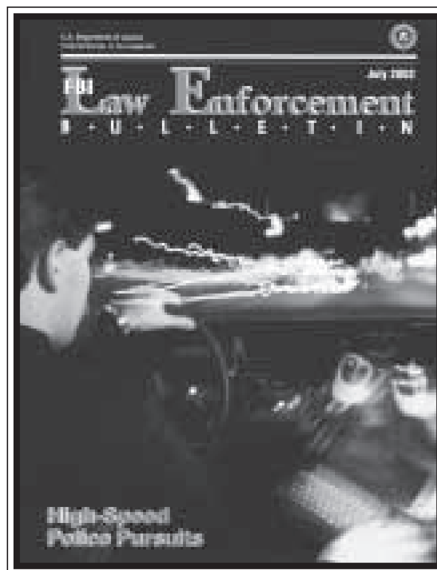

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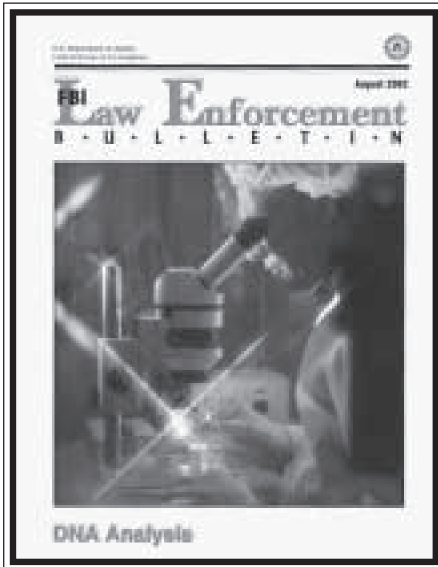

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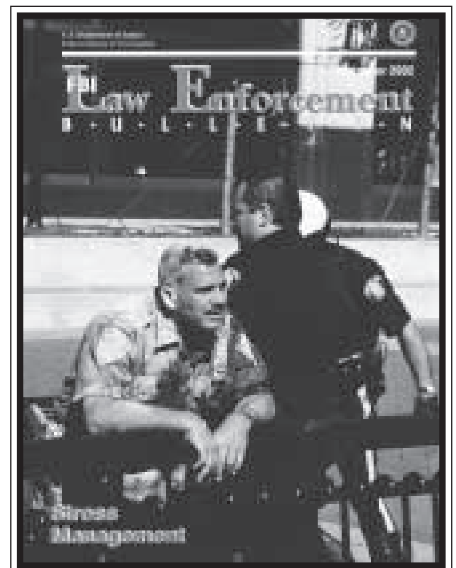

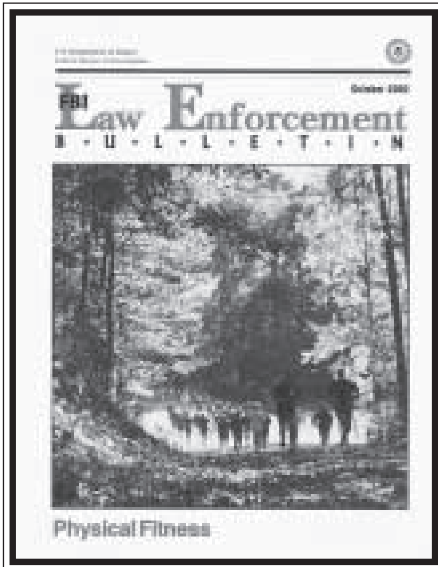

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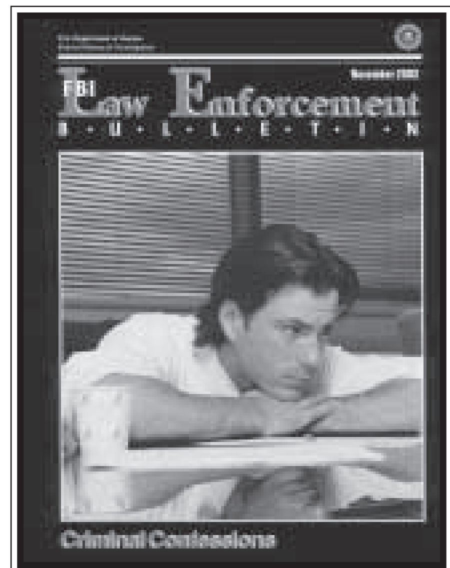

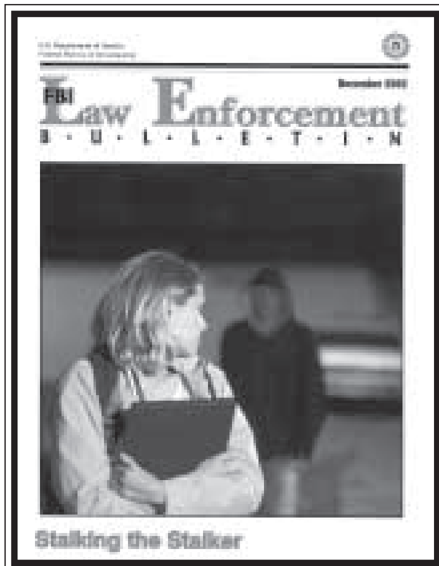

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The Bulletin Notes

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

Deputy Meuchel

Deputy Al Meuchel of the Lewis County, Washington, Sheriff's Office learned that a car was stalled across the railroad tracks. Upon his arrival, Deputy Meuchel found an elderly male in the vehicle with another elderly male in a truck attempting to tow the vehicle from the railroad tracks. Deputy Meuchel observed a train approaching the crossing. He was able to remove the occupant from the vehicle, unhook the tow line, and help both individuals to safety. In less than 2 minutes after Deputy Meuchel's arrival, a freight train crossed the tracks, destroyed the stalled vehicle, and dragged it more than 300 feet. Deputy Meuchel's quick thinking and decisive actions safely solved a dangerous situation without injury or loss of life.

Deputy Reaves

While off duty one evening, Deputy Warren Reaves of the Harris County, Texas, Sheriff's Department, observed a car that had struck a pole. Seeing that the car was on fire, Deputy Reaves ran toward the scene. When he reached the burning vehicle, he found an unconscious woman in the driver's seat, but both doors on the driver's side of the car were jammed and would not open. Deputy Reaves entered the vehicle through the passenger side, removed the woman from the car, and took her to a safe location. Deputy Reaves' courage and quick thinking in a life-threatening emergency saved the woman's life.

Sergeant Marsh

Officers of the Bedford County, Tennessee, Sheriff's Office were responding to areas struck by a severe storm and a tornado when Sergeant George Marsh observed a victim in the road who had been thrown from an overturned vehicle. When Sergeant Marsh attempted to help the victim, the vacuum of the tornado picked up Sergeant Marsh and threw him approximately 55 feet over a fence. Despite his own injuries, Sergeant Marsh still was able to help the victim to safety. Unfortunately, another male occupant of the same vehicle was killed when the overturned vehicle came to rest on top of him. The selfless and brave actions of Sergeant Marsh demonstrated the highest degree of law enforcement professionalism.

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Patch Call

The patch of the Kissimmee, Florida, Police Department symbolizes the agency's community-oriented policing philosophy and encompasses its logo of "The Positive Difference." It displays an officer kneeling to address a young child, who represents future leadership. The colors behind the officer and child symbolize sunrise and sunset, which reflect hope and optimism and peace and tranquility, respectively. The background colors of red, white, and blue depict those of the American flag.

The Kansas Bureau of Investigation (KBI) was created in 1939, as depicted on its patch. Dedication, service, and integrity describe the KBI's mission and motivating force behind its employees. The yellow and gold background colors signify Kansas wheat and reflect the state's agricultural heritage. The patch's endless blue circle and scales represent justice, the red symbolizes valor, and the white stands for truth. The large six-pointed star in the foreground denotes the authority of the Kansas sheriff, which was originally granted to KBI special agents and the six smaller stars represent the state's motto "To the stars through difficulties."