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*February 1992*

# ***Law Enforcement Bulletin***



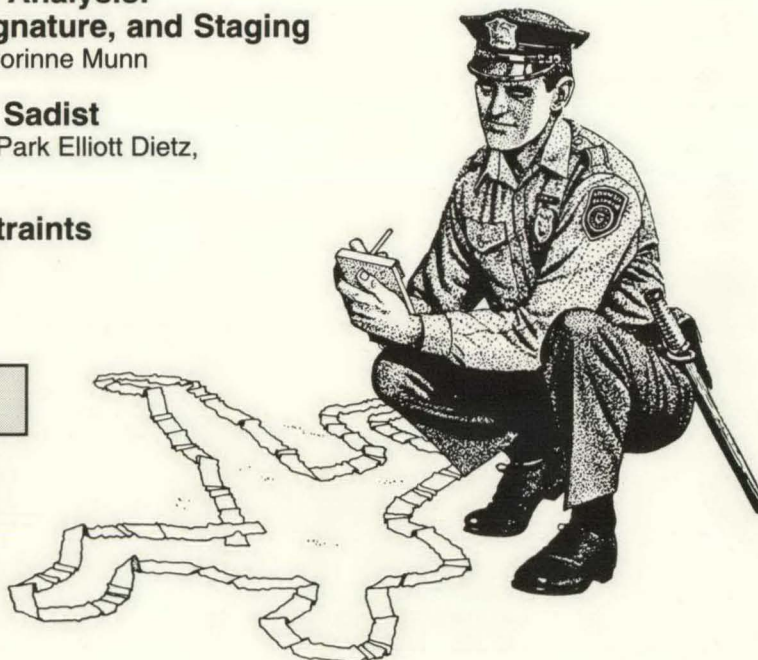
## ***Crimes of Violence***





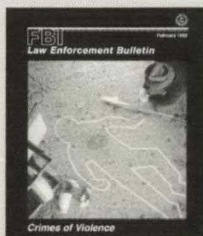
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**Cover:** By improving their ability to analyze violent crime scenes, investigators will be better equipped to apprehend the offender. See article p. 1. Front and back cover photographs copyright Frank Siteman Studios.

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William S. Sessions, Director

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# ***Violent Crime Scene Analysis***

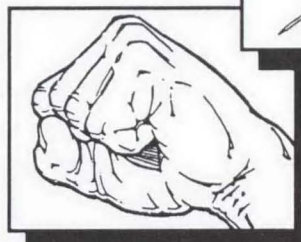
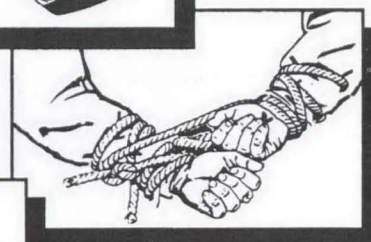
## ***Modus Operandi, Signature, and Staging***

By  
JOHN E. DOUGLAS, Ed.D.  
and  
CORINNE MUNN

**M**ost crime scenes tell a story. And like most stories, crime scenes have characters, a plot, a beginning, a middle, and hopefully, a conclusion. However, in contrast to authors who lead their readers to a predetermined ending, the final disposition of a crime scene depends on the investigators assigned to the case. The investigators' abilities to analyze the crime scene and to determine the who, what, how, and why govern how the crime scene story unfolds.

To ensure a satisfactory ending, that is, the apprehension and prosecution of the violent crime offender, investigators must realize that the outcome depends on their insight into the dynamics of human behavior. Speech patterns, writing styles, verbal and nonverbal gestures, and other traits and patterns give shape to human behavior. These individual characteristics work in concert to cause each person to act, react, function, or perform in a unique and specific way. This individualistic behavior usually remains consistent, regardless of the activity being performed.

Since the commission of a violent crime involves all the dynamics of "normal" human behavior, learning to recognize crime scene manifestations of behavioral pat-



terns enables investigators to discover much about the offender. It also provides a means by which investigators can distinguish between different offenders committing the same types of offense.

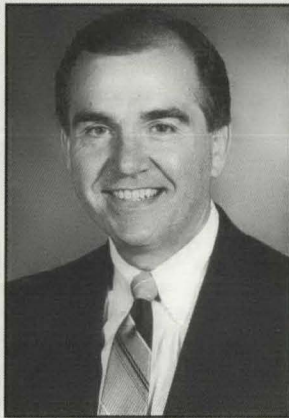
There are three possible manifestations of offender behavior at a crime scene—modus operandi, personation or signature, and staging.

This article addresses each of these manifestations in order to demonstrate the importance of analyzing a crime scene in terms of human behavior.

### **MODUS OPERANDI**

In 1989, Nathaniel Code, Jr., a Shreveport, Louisiana, man, was convicted of murder. The jury





*Special Agent Douglas*



*Ms. Munn*

*Special Agent Douglas is Chief of the Investigative Support Unit at the FBI Academy. Ms. Munn served as an Honors Intern at the FBI Academy.*

determined that on three separate occasions between 1984 and 1987, Code murdered a total of eight people. The jury returned a guilty verdict, even though several disparities existed among the three crime scenes.

For example, the offender gagged the first victim with a piece of material obtained at the crime scene, but brought duct tape to use on the seven victims in the other two incidents. Also, the killer stabbed and slashed the first victim, whereas the victims of the other two crimes were also shot and showed signs of ligature strangulation. The victims ranged in age from 8 years to 74 years and included both sexes; however, all were black. And, the offender took money from one crime scene, but not the other two.

Considering the evidence found at the three crime scenes, could one man be linked to all of the murders? Wouldn't such differences in modus operandi (M.O.), which is the offender's actions while commit-

ting the crime, and victimology (characteristics of the victims) eliminate the connection to one offender?

When attempting to link cases, the M.O. has great significance. A critical step in crime scene analysis is the resulting correlation that connects cases due to similarities in M.O. But, what causes an offender to use a certain M.O.? What circumstances shape the M.O.? Is the M.O. static or dynamic?

Unfortunately, investigators make a serious error by placing too much significance on the M.O. when linking crimes. For example, a novice burglar shatters a locked basement window to gain access to a house. Fearing that the sound of a window breaking will attract attention, he rushes in his search for valuables. Later, during subsequent crimes, he brings tools to force open locks, which will minimize the noise. This allows him more time to commit the crimes and to obtain a more profitable haul.

As shown, the burglar refined his breaking-and-entering techniques to lower the risk of apprehension and to increase profits. This demonstrates that the M.O. is a learned behavior that is dynamic and malleable. Developed over time, the M.O. continuously evolves as offenders gain experience and confidence.

Incarceration usually impacts on the future M.O.s of offenders, especially career criminals. Offenders refine their M.O.s as they learn from the mistakes that lead to their arrests.

The victim's response also significantly influences the evolution of the M.O. If a rapist has problems controlling a victim, he will modify the M.O. to accommodate resistance. He may use duct tape, other ligatures, or a weapon on the victim. Or, he may blitz the victim and immediately incapacitate her. If such measures are ineffective, he may resort to greater violence or he may kill the victim. Thus, offenders continually reshape their M.O. to meet the demands of the crime.

In the case of Nathaniel Code, M.O. and victimology alone would have failed to link him to each of the eight murders. But Code left more than gags, duct tape, and bodies with gunshot wounds and slashed throats at the crime scenes; he left his "calling card." Investigators found this "calling card" or signature aspect at every crime scene, and thus, were able to link Code to the offenses.

## THE SIGNATURE ASPECT

The violent, repetitive offender often exhibits another element of criminal behavior during the



crime—the signature aspect or “calling card.” This criminal conduct is a unique and integral part of the offender’s behavior and goes beyond the actions needed to commit the crime.

Fantasies of offenders often give birth to violent crime. As offenders brood and daydream, they develop a need to express these violent fantasies. When they are finally acted out, some aspect of each crime demonstrates a unique, personal expression or ritual based on these fantasies. However, committing the crime does not satisfy the needs of offenders, and this insufficiency compels them to go beyond the scope of the offense and perform a ritual. When offenders display rituals at the crime scene, they have left their individualized “calling card.”

How do crime scenes manifest this “calling card” or signature aspect? Basically, crime scenes reveal peculiar characteristics or unusual offender input that occur while the crime is being committed.

For example, a rapist demonstrates his signature by engaging in acts of domination, manipulation, or control during the verbal, physical, or sexual phase of the assault. The use of exceptionally vulgar or abusive language, or preparing a script for the victim to repeat, represents a verbal signature. When the rapist prepares a script for a victim, he dictates a particular verbal response from her, such as “Tell me how much you enjoy sex with me,” or “Tell me how good I am.”

The use of excessive physical force shows another aspect of a subject’s signature. One example of signature sexual behavior involves

the offender who repeatedly engages in a specific order of sexual activity with different victims.

The signature aspect remains a constant and enduring part of each offender. And, unlike the M.O., it never changes. However, signature aspects may evolve, such as in the case of a lust murderer who performs greater postmortem mutilation as he progresses from crime to crime. Elements of the original ritual become more fully developed. In addition, the signature does not always show up at every crime

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***...the M.O. is a learned behavior that...evolves as offenders gain experience and confidence.***

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scene because of unexpected contingencies, such as interruptions or an unexpected victim response.

The investigator may not always be able to identify signature aspects. Violent offenses often involve high-risk victims or decomposition of the body, which complicates recognizing the signature aspects of an offender.

#### **MODUS OPERANDI OR SIGNATURE ASPECT?**

The following scenarios are fictitious accounts. They are used to

show the difference between a M.O. and a signature aspect.

A rapist enters a residence and takes a woman and her husband captive. The offender orders the husband to lie face down on the floor and then places a cup and saucer on his back. He tells the husband, “If I hear the cup move or hit the floor, your wife dies.” The offender then takes the wife into the next room and rapes her.

In another situation, a rapist enters the house, orders the woman to phone her husband, and tells her to use some ploy to get him to come home. Once the husband arrives, the rapist ties him to a chair and forces him to watch the assault on his wife.

The rapist who used the cup and saucer developed an effective modus operandi to control the husband. However, the other rapist went beyond just committing the rape. He satisfied his fantasies fully by not only raping the wife but also by humiliating and dominating the husband. His personal needs compelled him to perform this signature aspect of the crime.

In Michigan, a bank robber makes the bank tellers undress during the robbery. In Texas, another bank robber also forces the tellers to undress, but he also makes them pose in sexually provocative positions as he takes photographs. Do both of these crimes demonstrate a signature aspect?

The Michigan robber used a very effective means to increase his escape time, i.e., causing the tellers to dress before they called the police. When interviewed, they offered vague, meager descriptions because their embarrassment pre-



vented them from having eye contact with the robber. This offender developed a very clever M.O.

However, the Texas robber went beyond the required action to commit his crime successfully. He felt compelled to enact the ritual of requiring the tellers to pose so that he could snap photographs. He left his signature on the crime. The act of robbing the bank itself did not gratify his psychosexual needs.

### LINKING CASES

When attempting to link cases, the M.O. plays an important role. However, as stated previously, the M.O. should not be the only criteria used to connect crimes, especially with repeat offenders who alter their M.O. through experience and learning. Usually, first offenses differ considerably from subsequent offenses. However, the signature aspect stays the same, whether it is the first offense or one committed 10 years later. The ritual may evolve, but the theme remains constant.

The signature aspect should receive greater consideration than victim similarities, although these should never be discounted when attempting to link cases to a serial offender. Physical similarities of victims are often not important, especially when linking crimes motivated by anger. The offender ex-

presses anger through rituals, not by attacking a victim who possesses a particular characteristic or trait.

### CASES LINKED BY OFFENDER SIGNATURE

#### Ronnie Shelton: Serial Rapist

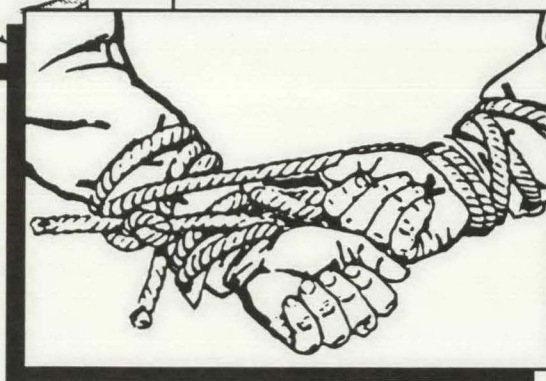
Ronnie Shelton committed as many as 50 rapes. When convicted of 28 of them, he received a prison sentence in excess of 1,000 years.<sup>1</sup> Both his verbal communication and sexual assaults manifested his signature.

Verbally, Shelton was exceptionally degrading and exceptionally vulgar. In addition, he would make such comments as

position in Shelton's ritual. He would rape his victims vaginally, then withdraw and ejaculate on their stomachs or breasts. Shelton would also frequently masturbate over the victims or between their breasts or force them to masturbate him manually. Then, he would use their clothing to wipe off the ejaculation. He also forced many of his victims to have oral sex with him and then insisted that they swallow the ejaculation. The combination of these acts displayed Shelton's signature.

Shelton's M.O. consisted of entering the victim's dwelling through a window or patio entrance that faced a wooded area or bushes offering concealment. He wore a ski mask, stocking, or scarf. He convinced the victims that he was not there to rape but to rob them. However, when he had the victim under control, he would return to the rape mode. The victim would comply because she had seen his propensity for violence by his earlier actions, such as throwing her on the floor or holding a knife to her throat. In addition, Shelton would say to the victims, "Keep your eyes down," "Cover your eyes," or "Don't look at me and I won't kill you (hurt your kids)." Before he left, he would verbally

intimidate them with such warnings as "Don't call the police or I'll come back and kill you." These characteristics served as Shelton's M.O., whereas his former actions were his signature that linked him to 28 sexual assaults.



"I have seen you with your boyfriend," "I've seen you around," or "You know who I am." Thoughts of Shelton lurking around their neighborhoods terrorized the victims.

However, it was the sexual assault itself that occupied the central



### **Nathaniel Code: Serial Killer**

Nathaniel Code, Jr., killed eight times on three separate occasions. The first homicide, a 25-year-old black female, occurred on August 8, 1984. Code stabbed her nine times in the chest and slashed her throat.

Approximately a year later, on July 19, 1985, Code killed four people—a 15-year-old girl, her mother, and two of their male friends. Code nearly severed the girl's head from her body. He asphyxiated the mother and draped her body over the side of the bath tub. Code then shot one of the males in the head, leaving him in a middle bedroom; the other male, who was found in the front bedroom, was shot twice and had his throat slit.

The last killing took place on August 5, 1987. The victims were Code's grandfather and his 8-year-old and 12-year-old nephews. The boys died of ligature strangulation. Code stabbed his grandfather five times in the chest and seven times in the back.

The changes in Code's M.O., exhibited from case to case, show how the M.O. is refined. For example, in the first murder, Code gagged the victim with material found at the scene; the next time, he brought duct tape.

Code also kept his victims under surveillance to obtain information on them, especially with the second killings. In that case, he brought a gun to the scene to dispose of the males, who posed the greatest threat to him. Since the last victims, an elderly man and two children, posed little threat to him, Code did not use a gun on them.

All eight killings occurred in single family dwellings. In each dwelling, the air conditioners and/or televisions were on, which drowned out the noise as he entered through a door or window. Code quickly gained and maintained control of the victims by separating them in different rooms.

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The signature  
aspect remains a  
constant and  
enduring part of each  
offender...it never  
changes.  
”**

Nathaniel Code had a very distinctive “calling card,” one aspect of which were the injuries inflicted on the victims. Code employed a very bloody method of attack and overkill. He could have simply murdered each victim with a single gunshot wound—a clean kill involving very little “mess.” Instead, Code slaughtered his victims by slashing their throats with a sawing motion that resulted in deep wounds. Although brutal, the attack didn't satisfy his ritual; all victims sustained additional injuries, with the exception of the 15-year-old girl. One male victim suffered gunshot wounds to the chest, while another received multiple stab wounds to the chest. Code wounded nearly all the victims far beyond what was necessary to cause death (overkill).

The physical violence and bloody overkill satisfied Code's

need for domination, control, and manipulation. He positioned each victim face down, which supports this theory. Code even forced the mother to witness her daughter's death as part of this ritual of control, which was formed from his rage. In fact, forensic tests found the daughter's blood on the mother's dress. If the victim's response threatened his sense of domination, Code reacted with anger and the excessive violence that led to overkill.

The last signature aspect of Code's crimes probably best illustrates his unique “calling card”—the ligatures. Code used both an unusual configuration and material. In all three cases, he bound the victims with electrical appliance or telephone cords acquired at the scene. Code could have brought rope or used his duct tape, but the use of these cords satisfied some personal need. Using a handcuff-style configuration, he looped the cord around each wrist and then the ankles, connecting them to the wrists by a lead going through the legs.

The dissimilarities of these cases involves the M.O., not the signature aspect. The use of a gun with threatening males present reveals an adaptive offender. At the time of the grandfather's homicide, additional financial stressors affected Code, evidenced by the theft of money from his grandfather's residence. These financial stressors influenced Code's M.O., not his “calling card.”

Physical characteristics, age, and even sex do not enhance or diminish the ritual driven by rage.



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Code's ritual of anger required control and domination of his victims, so victimology was not as important. Code, like Ronnie Shelton, the serial rapist, selected victims he could control, manipulate, and on whom he could project his anger.

### IMPORTANCE OF OFFENDER SIGNATURE

Understanding and recognizing the signature aspects is vital in the apprehension and prosecution of an offender, especially a serial offender. No one appreciates the importance of recognizing an offender's "calling card" more than David Vasquez.

In 1984, Vasquez pled guilty to the murder of a 34-year-old Arlington, Virginia, woman. The woman had been sexually assaulted and died of ligature strangulation. The killer left her lying face down with her hands tied behind her back. He used unique knots and excessive binding with the ligatures, and a lead came from the wrists to the neck over the left shoulder. The body was openly displayed so that discovery offered significant shock value.

The offender spent considerable time at the crime scene. He made extensive preparations to bind the victim, allowing him to control her easily. His needs dictated that he move her around the house, exerting total domination over her. It appeared that he even took her into the bathroom and made her brush her teeth. None of this behavior was necessary to perpetrate the crime; the offender felt compelled to act out this ritual.

Vasquez had a borderline I.Q. Believing this would make it difficult to prove his innocence, his lawyers convinced him that he would probably receive the death sentence if the case went to trial. Instead, Vasquez opted for life imprisonment by pleading guilty.

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***The investigators' abilities to analyze the crime scene...depend on their insight into the dynamics of human behavior.***  
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Three years later, in 1987, police discovered a 44-year-old woman lying nude and face down on her bed. A rope bound her wrists behind her back, and a ligature strand tightly encircled her neck with a slip knot at the back. It continued over her left shoulder, down her back, and then was wrapped three times around each wrist. Forensics revealed that she died of ligature strangulation, and that she had been sexually assaulted. The offender left the body exposed and openly displayed. He appeared to have spent a considerable amount of time at the crime scene. This homicide occurred 4 blocks from the 1984 murder.

David Vasquez had been imprisoned 3 years when the 1987 murder occurred. At the request of the Arlington, Virginia, Police Department, the National Center for the Analysis of Violent Crime

(NCAVC) conducted an extensive analysis of these two murders, a series of sexual assaults, and several other killings that occurred between 1984 and 1987. Eventually, the NCAVC linked these offenses through analogous signature aspects of another local suspect. Physical evidence later corroborated this connection and determined that the "calling card" left at the 1984 homicide did not belong to David Vasquez. As a result of this finding, the Commonwealth of Virginia released Vasquez from prison and exonerated him of the crime.

### STAGING

When investigators approach a crime scene, they should look for behavioral "clues" left by the offender. This is when investigators attempt to find answers to several critical questions. How did the encounter between the offender and victim occur? Did the offender blitz (ambush) the victim, or did he use verbal means (the con) to capture her? Did the offender use ligatures to control the victim? What was the sequence of events? Was the victim sexually assaulted before or after death? When did the mutilation take place—before or after death? Did the offender place any item at the crime scene or remove something from the crime scene?

As investigators analyze crime scenes, facts may arise that baffle them. These details may contain peculiarities that serve no apparent purpose in the perpetration<sup>2</sup> of the crime and obscure the underlying motive of the crime. This confusion may be the result of a crime scene behavior called staging. Staging



occurs when someone purposely alters the crime scene prior to the arrival of the police.

### Reasons for Staging

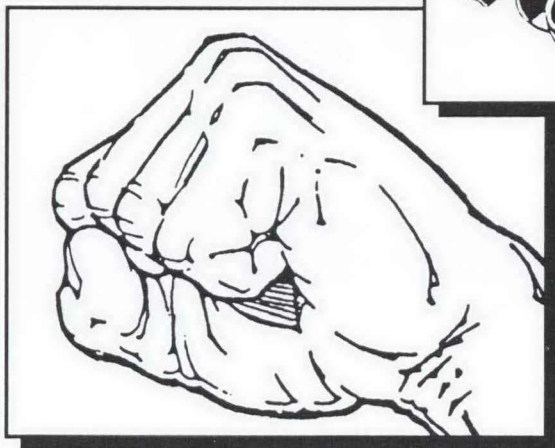
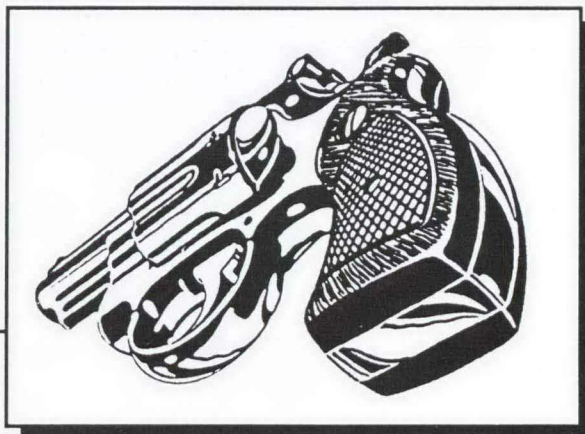
Principally, staging takes place for two reasons—to direct the investigation away from the most logical suspect or to protect the victim or victim's family. It is the offender who attempts to redirect the investigation. This offender does not just happen to come upon a victim, but is someone who almost always has some kind of association or relationship with the victim. This person, when in contact with law enforcement, will attempt to steer the investigation away from himself, usually by being overly cooperative or extremely distraught. Therefore, investigators should never eliminate a suspect who displays such distinctive behavior.

The second reason for staging, to protect the victim or the victim's family, occurs for the most part in rape-murder crimes or autoerotic fatalities. This type of staging is performed by the family member or person who finds the body. Since perpetrators of such crimes leave their victims in degrading positions, those who find the bodies attempt to restore some dignity to the victim. For example, a husband may re-dress or cover his wife's body, or in the case of an autoerotic fatality,<sup>3</sup> a wife may cut the noose or the device suspending the body of her husband.

Basically, these people are trying to prevent future shock that may be brought about by the position, dress, or condition of the victim. In addition, they will often stage an autoerotic fatality to look like a suicide, perhaps even writing a suicide note. They may even go so far as to make it appear to be a homicide.

For both types of crime scene investigations, rape-murders and autoerotic fatalities, investigators need to obtain an accurate description of the body's condition when found and to determine exactly what the person who found the body did to alter the crime scene. Scrutiny of forensic findings, crime scene

and haphazard. This determination not only helps to direct the analysis to the underlying motive but also helps to shape the offender profile. However, recognition of staging, especially with a shrewd offender, can be difficult. Investigators must examine all factors of the crime if they suspect it has been staged. This is when forensics, victimology, and minute crime scene details become critical to determine if staging occurred.



### "Red Flags"

Offenders who stage crime scenes usually make mistakes because they arrange the scene to resemble what they believe it should look like. In so doing, offenders experience a great deal of stress and do not have the time to fit all the pieces together logically. As a result, inconsistencies in forensic findings and in the overall "big picture" of the crime scene will begin to appear. These inconsistencies can serve as the "red flags" of staging, which serve to prevent investigations from becoming misguided.

dynamics, and victimology will probably reveal the true circumstances surrounding the deaths.

Finally, at some crime scenes, investigators must discern if the scene is truly disorganized or if the offender staged it to appear careless



To ensure this doesn't happen, investigators should scrutinize all crime scene indicators individually, then view them in context with the total picture. Crime scene indicators include all evidence of offender activity, e.g., method of entry, offender-victim interaction, and body disposition.

When exploring these issues, investigators should consider several factors. For example, if burglary appears to be the motive, did the offender take inappropriate items from the crime scene? In one case submitted to the National Center for the Analysis of Violent Crime (NCAVC), a man returning home from work interrupted a burglary in progress. The startled burglars killed him as he attempted to flee. But, an inventory of the crime scene determined that the offenders did not steal anything, although it did appear that they started to disassemble a large stereo and TV unit.

Further examination of the crime scene revealed that they left smaller, and easily transported, items of far greater value (jewelry, coin collection, etc.). The police subsequently determined that the victim's wife paid the burglars to stage the crime and kill her husband. She, in fact, was having an affair with one of the suspects.

Another factor to consider is the point of entry. Did the point of entry make sense? For example, did the offender enter the house through a second-story window, even though there was an easier, less conspicuous entrance that could have been used? Why did the offender increase his chance of being seen by

potential witnesses who might alert authorities?

Investigators should also consider whether the offender put himself at high risk by committing the crime during the daylight hours, in a populated area. If the crime scene is a place of residence, they should also evaluate any obvious signs of occupancy, such as lights on in the house, vehicles in the driveway, etc.

#### **Case Scenario**

The following case scenario brings to light some "red flags" that investigators should look for at a crime scene.

One Saturday morning, in a small Northeastern city, an unknown intruder attacked a man and his wife. By placing a ladder against

***“ Staging occurs when someone purposely alters the crime scene prior to the arrival of the police. ”***

the house, the suspect made it appear that he had climbed to a second-story window, removed the screen, and entered the residence. All this occurred in a residential area during a time when neighbors were doing their weekend chores and errands.

The husband claimed that he heard a noise downstairs, so he went with a gun to investigate. A struggle

with the intruder ensued, during which the husband was left unconscious by a blow to the head.

Presumably, the intruder then went upstairs and killed the wife by manual strangulation. He left the body with a nightgown pulled up around the victim's waist, implying that he sexually assaulted her. The couple's 5-year-old daughter remained unharmed, asleep in the next room.

While processing the crime scene, detectives noted that the ladder made no impression in the moist soil near the house, although it did when they tried to climb the ladder. Also, the intruder positioned the ladder with the rungs facing away from the house, and many of the rungs on the wooden ladder had rotted, making it impossible for it to support anyone weighing over 50 pounds.

In addition, the crime scene raised questions that could not be answered logically. Why didn't the offender choose to enter the residence through a first-story window to decrease the possibility of detection by both the occupants and neighbors? Why did the offender want to burglarize the residence on a Saturday morning when there was a good chance that he would be seen by neighbors? Why did the intruder choose a residence that was obviously occupied (several vehicles were in the driveway)?

Inside the residence, other inconsistencies became apparent. For example, if the intent was murder, the intruder did not seek his victim(s) immediately, but went downstairs first. He also did not come equipped to kill because, ac-



cording to the one witness, the husband, he never displayed a weapon. Also, the person posing the most threat, the husband, received only minor injuries.

By analyzing the crime scene, which revealed excessive offender activity, it became apparent that there was no clear motive for the crime. Therefore, based on the numerous inconsistencies found at the crime scene, NCAVC criminal investigative analysts concluded that the husband staged the homicide to make it appear to be the work of an intruder. He was eventually convicted of his wife's murder.

### Forensic "Red Flags"

Forensic results that don't fit the crime should also cause investigators to consider staging. Personal assaults should raise suspicion, especially if material gain appears to be the initial motive. These assaults could include the use of a weapon of opportunity, manual or ligature strangulation, facial beating (depersonalization), and excessive trauma beyond that necessary to cause death (overkill). In other words, do the injuries fit the crime?

Sexual and domestic homicides usually demonstrate forensic findings of a close-range, personal assault. The victim, not money or property, is the primary focus of the offender. However, this type of offender will often attempt to stage a sexual or domestic homicide that appears to be motivated by personal gain. This does not imply that personal assaults never happen while a property crime is being committed,

but usually these offenders prefer quick, clean kills that reduce the time spent at the scene.

Forensic red flags are also raised when there are discrepancies between witness/survivor accounts and forensics results. For example,

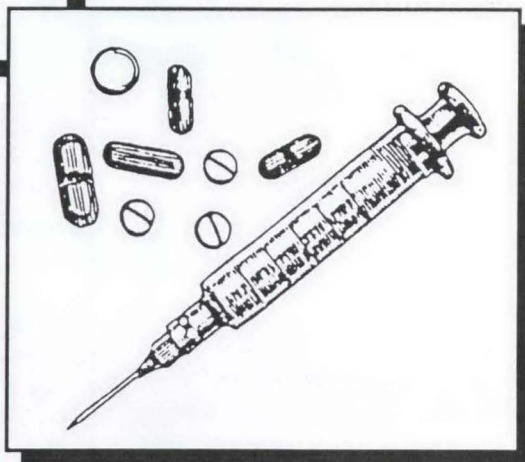


in one case, an estranged wife found her husband in the tub with the water running. Initially, it appeared as if he slipped and struck his head on a bathroom fixture, which resulted in his death by drowning. However, toxicological reports from the autopsy showed a high level of valium in the victim's blood. Also, the autopsy revealed several concentrated areas of injury or impact points on the head, as if the victim struck his head more than once.

Subsequently, investigators learned that the wife had been with the victim on the evening of his death. She later confessed that she laced his dinner salad with valium, and when he passed out, she let three men into the house. These men had

been hired by the wife to kill the victim and to make it look like an accident.

Often, investigators will find forensic discrepancies when an offender stages a rape-murder, that is, positioning the body to infer sexual assault. And if the offender has a close relationship with the victim, he will only partially remove the victim's clothing, never leaving her completely nude. However, despite the position of the body and the removal of some of the victim's clothes, an autopsy can confirm or deny whether any form of sexual assault took place, thereby determining if the crime scene was staged.



If investigators suspect a crime has been staged, they should look for signs of association between the offender and the victim. Or, as is frequently the case with domestic violence, the involvement of a third party, who is usually the one who discovers the victim. For example, in the case involving the husband who staged his wife's murder to make it look like the crime was



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committed by an intruder, the husband did not immediately check on his wife and daughter once he regained consciousness. Instead, he remained downstairs and called his brother, who went upstairs and discovered the victim. Offenders will often manipulate the discovery of victims by a neighbor or family member, or conveniently be elsewhere when the victim is discovered.

### CONCLUSION

Violent crime scenes require investigators to be "diagnosticians." They must be able to analyze crime scenes for the messages they emit and understand the dynamics of human behavior displayed at crime scenes. Investigators must also be able to recognize the different manifestations of behavior, so they can ask the right questions to get valid answers.

By approaching each crime scene with an awareness of these factors, investigators can steadily improve their ability to read the true story of each violent crime scene. By doing so, they will be more knowledgeable and better equipped to apprehend the violent crime offender.

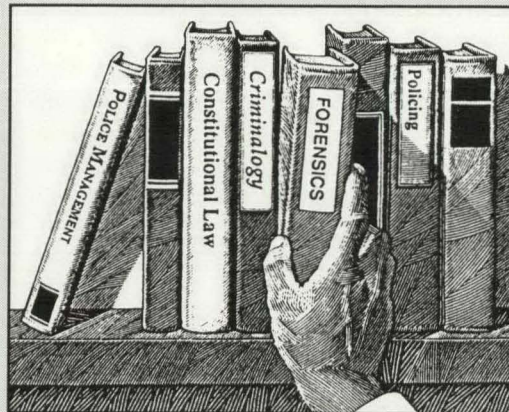
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### Footnotes

<sup>1</sup> SA Douglas has qualified as an expert in criminal investigative analysis and has provided testimony in the area of signature crime analysis during the following court proceedings: *State of Ohio v. Ronnie Shelton*, *State of Louisiana v. Nathaniel Code*, and *State of Delaware v. Steven B. Pennell*.

<sup>2</sup> P.E. Dietz, M.D. and R.R. Hazelwood, "Atypical Autoerotic Fatalities," *Medicine and Law*, 1, 1982, 301-319.

<sup>3</sup> Ibid.



**Entomology and Death: A Procedural Guide**, eds. E. Paul Catts and Neal H. Haskell, *Forensic Entomology Associates*, Clemson, South Carolina, 1990, (803) 654-1120.

Entomology—the science of insects—is becoming an increasingly important aspect of death scene investigations. *Entomology and Death* is a practical handbook that provides an introduction to forensic entomology, as well as a brief study of the structure and biology of organisms most commonly found at crime scenes where dead remains are present. Composed of articles from several leading researchers in the field of forensic entomology, the book is a valuable and long overdue resource for crime scene investigators.

The authors examine the standard death scene investigative procedures, collection, analysis, and proper field and laboratory processing techniques for entomological evidence. The book also discusses the handling procedures that should be followed in preparing collected documentation for courtroom testimony.

The book is intended for both experienced death scene investigators and forensic entomologists interested in the procedures employed in police investigations. The authors have over 100 years of collective experience in the study of insects and crime scene investigations.

The composition of the book makes it easy to use at crime scenes. There are also helpful line illustrations throughout the text to assist in the identification of insects and the collection, preservation, and packaging of these specimens for laboratory examination.

*Entomology and Death: A Procedural Guide* is a practical and welcome resource for crime scene investigators. Insects are overlooked (and sometimes invisible) clues in many violent deaths. This guide will help investigators use these organisms to solve crimes.

Reviewed by  
SA Arthur E. Westveer, MLA  
Violent Crimes Specialist  
Behavioral Science Services Unit  
FBI Academy  
Quantico, Virginia

**LEB**



## Assaults on Police Officers

**T**he Uniform Crime Reporting Section of the FBI recently analyzed line-of-duty assaults on law enforcement officers. Using 1990 data, the analysis focused on the probability of officers being assaulted and injured over the course of their careers and on the frequency of sustained injury in terms of the duration of service.

### Length of Service

The study determined that the probability of a law enforcement officer being assaulted with injury increases cumulatively with length of service. Nationally, a law enforcement officer with 1 year of service is projected to have a 6-percent chance of injury. However, after 5, 10, 15, and 20 years of continued service, the chances of sustaining injury rise to 27 percent, 47 percent, 61 percent, and 72 percent, respectively.

### Jurisdiction Size

The size of the jurisdiction in which the officer serves also correlates significantly with the probability of injury for all lengths of service. For example, in a city with 250,000+ people, the likelihood of an assault with injury rises from 9 percent after 1 year of service to 86 percent after 20 years on

the force. In an agency serving a city with fewer than 10,000 people, however, the probability of an officer being assaulted increased from 4 percent with 1 year of service to 54 percent after 2 decades. Officers in unincorporated areas (counties) experience the least risk of being assaulted while on duty.

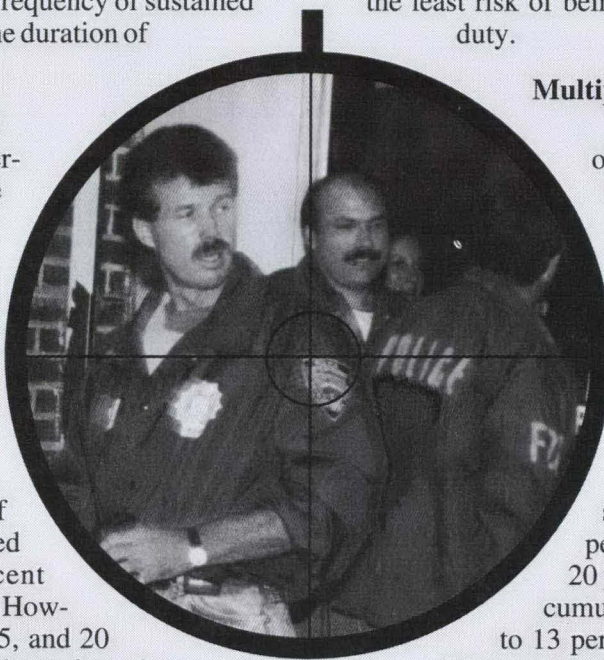
### Multiple Assaults

The probability of an officer becoming the victim of multiple assaults with injury also increases with length of service. For example, for officers with 4 years' service, the probability of becoming the victim of two or more assaults with injury is 4 percent. After 10, 15, 20 years on the force, the cumulative risk increases to 13 percent, 24 percent, and 36 percent, respectively.

### Conclusion

The men and women who comprise the Nation's police forces continually place themselves at risk to bodily harm. Police instructors should use officer assault statistics during training exercises to promote awareness of the risks inherent in the profession. They should also stress the need for all officers to exercise increased care while protecting the lives and property of American citizens.

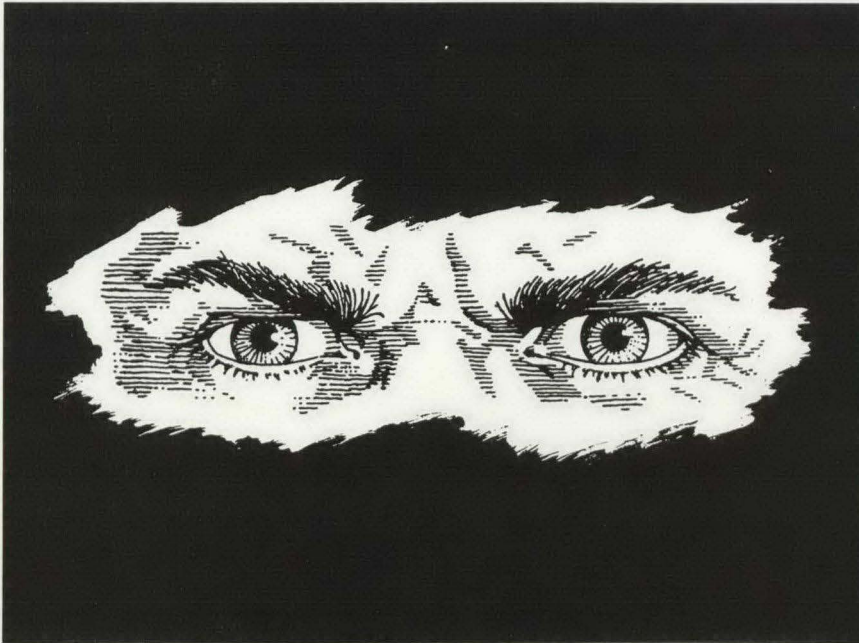
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# ***The Criminal Sexual Sadist***



By  
ROBERT R.  
HAZELWOOD, M.S.  
PARK ELLIOTT DIETZ, M.D.  
and  
JANET WARREN, D.S.W.

**A**ny investigator who has taken a statement from a tortured victim or who has worked the crime scene of a sexually sadistic homicide will never forget the experience. Human cruelty reveals itself in many kinds of offenses, but seldom more starkly than in the crimes of sexual sadists.

This article describes the more commonly encountered actions of sexual sadists and differentiates sexual sadism from other cruel acts. It also describes the common characteristics of sexually sadistic crimes and offers investigators suggestions that they should follow

when confronted with the crimes of the sexually sadistic offender.

## **WHAT IS SEXUAL SADISM?**

Sexual sadism is a persistent pattern of becoming sexually excited in response to another's suffering. Granted, sexual excitement can occur at odd times even in normal people. But to the sexually sadistic offender, it is the suffering of the victim that is sexually arousing.

The writings of two sexual sadists graphically convey their desires. One writes:

"...the most important radical aim is to make her suffer since there is no greater power over

another person than that of inflicting pain on her to force her to undergo suffering without her being able to defend herself. The pleasure in the complete domination over another person is the very essence of the sadistic drive."

Of his sexually sadistic activities with a victim he killed, another offender writes:

"...she was writhing [sic] in pain and I loved it. I was now combining my sexual high of rape and my power high of fear to make a total sum that is now beyond explaining...I was alive for the sole purpose of



causing pain and receiving sexual gratification...I was relishing the pain just as much as the sex...."

Each offender's account confirms that it is the suffering of the victim, not the infliction of physical or psychological pain, that is sexually arousing. In fact, one of these men resuscitated his victim from unconsciousness so that he could continue to savor her suffering. Inflicting pain is a means to create suffering and to elicit the desired responses of obedience, submission, humiliation, fear, and terror.

## PHYSICAL AND PSYCHOLOGICAL SUFFERING

Specific findings uncovered during an investigation determine if the crime committed involves sexual sadism. The critical issues are whether the victim suffered, whether the suffering was intentionally elicited, and whether the suffering sexually aroused the offender. This is why neither sexual nor cruel acts committed on an unconscious or dead victim is necessarily evidence of sexual sadism; such a victim cannot experience suffering. For this reason, postmortem injuries alone do not indicate sexual sadism.

Rapists cause their victims to suffer, but only sexual sadists intentionally inflict that suffering, whether physical or psychological, to enhance their own arousal. Neither the severity of an offender's cruelty nor the extent of a victim's suffering is evidence of sexual sadism. Acts of extreme cruelty or those that cause great suffering are

often performed for nonsexual purposes, even during sexual assaults.

## SEXUALLY SADISTIC BEHAVIOR

The behavior of sexual sadists, like that of other sexual deviants, extends along a wide spectrum. Sexual sadists can be law-abiding citizens who fantasize but do not act or who fulfill these fantasies with freely consenting partners. Only when sexual sadists commit crimes do their fantasies become relevant to law enforcement.

### Sadistic Fantasy

All sexual acts and sexual crimes begin with fantasy. However, in contrast with normal sexual fantasies, those of the sexual sadist center on domination, control, humiliation, pain, injury, and violence, or a combination of these themes, as a means to elicit suffering. As the fantasies of the sexual sadist vary, so does the degree of violence.

The fantasies discerned from the personal records of offenders are complex, elaborate, and involve detailed scenarios that include specific methods of capture and control, location, scripts to be followed by the victim, sequence of sexual acts, and desired victim responses. Sexual sadists dwell frequently on these fantasies, which often involve multiple victims and sometimes include partners.

*Case:* One offender, who is believed to have kidnapped, tortured, and murdered more than 20 women and young girls, wrote extensively about

his sexually sadistic fantasies involving women. These writings included descriptions of his victims' capture, torment, and death by hanging. At the time of his arrest, photographs were found depicting the subject in female attire and participating in autoerotic asphyxia. The offender apparently acted out his fantasies on both himself and others.

### Sadism Toward Symbols

Some individuals act out their sadistic desires against inanimate



*Special Agent Hazelwood*

*Special Agent Hazelwood is assigned to the National Center for the Analysis of Violent Crime at the FBI Academy in Quantico, Virginia. Dr. Dietz is a forensic psychiatrist in Newport Beach, California, and a clinical professor of psychiatry and biobehavioral sciences at UCLA. Dr. Warren is an assistant professor at the University of Virginia's Institute of Law, Psychiatry and Public Policy in Charlottesville, Virginia.*



objects, most often dolls, pictures, and clothing, but sometimes corpses. As in the case of fantasy, the suffering in such activity is imagined.

*Case:* A female doll was found hanging outside an emergency room of a hospital. Around its neck was a hangman's noose, and its hands were bound behind its back. Needles penetrated one eye and one ear. Burn marks were present on the doll, and cotton protruded from its mouth. Drawn on the chest of the doll were what appeared to be sutures. An incision had been made between the legs, creating an orifice to which hair had been glued and into which a pencil had been inserted. Nothing indicated that a crime occurred.

Although it is commonly believed that sexual sadists are cruel toward animals, it has not been determined that such cruelty is related to sexual sadism. Violent men were often cruel to animals during childhood, but without sexual excitement. Cruel acts toward animals may reflect nonsexual aggressive and sadistic motives or may be sacrifices demanded by religious rituals or delusional beliefs. Someone who is sexually excited by an animal's suffering is probably both a sexual sadist and a zoophile (one attracted to animals).

### Consenting or Paid Partners

Sexual sadism may also be acted out with freely consenting or paid partners, e.g., prostitutes who specialize in roleplaying the "sub-

missive" for sexually sadistic clients. The nature of the acts varies from simulations of discomfort to actions that result in severe injury. A consenting partner turns into a victim when her withdrawal of consent goes unheeded or when an act results in unexpected injury or death. This is when such acts come to the attention of law enforcement.

“  
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### Compliant Victims

Some sexual sadists cultivate compliant victims, i.e., those who enter into a voluntary relationship but are manipulated into sado-masochistic activities for an extended time. These victims are wives or girlfriends who underwent extreme emotional, physical, and sexual abuse over months or years of a relationship that began as an ordinary courtship. In these instances, the offenders shaped the behavior of the women into gradual acceptance of progressively deviant sexual acts, and then, through social isolation and repeated abuse, battered their self-images until the women believed they deserved the punishments meted out by their "lovers."

*Case:* One woman in her thirties advised authorities that she had been coerced into an emotionally, physically, and sexually abusive relationship

over an 18-month period. At first, she considered her offender to be the most loving and caring man she had ever known, and she fell deeply in love. Having occasionally used cocaine in the past, she was receptive to his suggestion that they use cocaine to enhance their sexual relations. Eventually, she became addicted. After 6 months together, he began to abuse her sexually. This abuse included forced anal sex, whipping, painful sexual bondage, anal rape by other males, and the insertion of large objects into her rectum. This abusive behavior continued for a full year before she made her initial complaint to the police.

These cases pose special problems to investigators and prosecutors because it appears as though the complainant "consented" to the abuse. However, the transformation of the vulnerable partner into a compliant victim resembles the process by which other abusive men intimidate and control battered women into remaining with their abusers.

### BEHAVIOR PATTERNS CONFUSED WITH SEXUAL SADISM

Many crimes involve the intentional infliction of physical and psychological suffering. Sexual sadism is only one of the several motives for such crimes. To avoid misinterpretation, investigators should be aware of those behavior patterns that appear to be sexually sadistic, but which, in fact, arise from different motives and contexts.



### Sadistic Personality Disorder

Persons with this condition usually exhibit cruel, demeaning, and aggressive behavior in both social and work situations, most often toward subordinates. They tend to establish dominance in interpersonal relationships and convey a lack of respect or empathy for others. Such individuals are often fascinated by violence, take pleasure in demeaning, humiliating, and frightening others, and may enjoy inflicting physical or psychological abuse. In this condition, the purpose of these behaviors is not that of becoming aroused.

*Case:* A woman left her husband because of his verbal abuse, control over her relations with family members, intimidating behavior, and violent outbursts when drinking. Vengeful that she left him, he lured her back to the apartment under the pretext of dividing their possessions. He then attempted to tie her to the bed, beside which he had arranged a variety of torture instruments. In the ensuing struggle, he told her of his plans to kill her as he stabbed her repeatedly. She eventually persuaded him that she wanted to reconcile and convinced him to summon medical assistance, whereupon he was arrested.

The husband did not have a history of sexual offenses or deviations, nor did he give evidence of sexual sadism during the psychiatric examination. He denied any sexual arousal in response to the suffering

or any sexually sadistic fantasies. Although it is possible that the husband was a sexual sadist who only showed this tendency when he attacked his wife, the absence of evidence showing a persistent pattern of sexual arousal in response to suffering precluded this diagnosis.

### Cruelty During Crime

While many crimes contain elements of cruelty, the acts are not

necessarily sexually sadistic in nature.

*Case:* Two men, recently escaped from a State prison, captured a young couple and took them to an isolated area. After repeatedly raping the woman, they severely beat the couple and locked them in the trunk of their car. They then set the car on fire and left the couple to burn to death.

### Investigating Crimes of the Sexual Sadist



**T**he law enforcement community's concern rests with the criminal sexual sadist, who can be a noteworthy adversary. The sexual sadist is cunning and accomplished at deception. He rationalizes his actions, feels no remorse or guilt, and is not moved by compassion. He considers himself superior to society in general and law enforcement in particular. And, while he envies the power and authority associated with the police, he does not respect it.

### Sources

Invaluable sources of information about suspects in sexual offenses are their former spouses or girlfriends. As noted previously, sexual sadists sometimes force partners to become compliant victims. However, because of the embarrassing nature of the sexual acts involved, these individuals are often reluctant to divulge information.

### Search Warrants

Because offenders retain incriminating evidence and crime paraphernalia, these items should be listed in search warrant applications. This would include records and mementos, as well as photographic equipment, tape recorders, reverse telephone directories, and weapons or other instruments used to elicit suffering. Pornography, detective and mercenary magazines, bondage paraphernalia, women's undergarments, and sexual devices are other materials commonly collected by sexual sadists.



Although these men intentionally inflicted physical and psychological suffering on their victims, there was no indication they did so for sexual excitement. They beat the couple after the rape and left as the victims were screaming and begging for mercy. Sexual sadists would have been sexually stimulated by the victims' torment and would have remained at the scene until the suffering ended.

### **Pathological Group Behavior**

Cruelty often arises in offenses committed as a group, even where the individuals have no history of cruelty.

*Case:* A group of adolescents attacked a mother of six as she walked through her neighborhood. They dragged her into a shed where they beat her and repeatedly inserted a long steel rod into her rectum, causing her death. Some of her attackers were friends of her children.

Most likely, the participants in this attack tried to prove themselves to the others by intensifying the acts of cruelty.

### **Sanctioned Cruelty**

History is replete with reigns of terror during which powerful institutions sanctioned atrocious behaviors. Consider the rape and plunder of defeated populations during the Crusades of the Middle Ages, or the execution of women during the

Salem witch hunts in colonial America. One of the most notorious times of cruelty occurred in the 20th century, when millions of people fell victim to the Nazis.



*Case:* Commandant Koch, who headed the concentration camp at Buchenwald, punished a man who tried to escape by confining him in a wooden box so small he could only crouch. He then ordered that small nails be driven through its walls so that he could not move without being pierced. This man was kept on public display without food for two days and three nights until his screams ceased to sound human.<sup>1</sup>

In all likelihood, sexual sadists volunteered to perform such deeds, but the widespread deployment of such tactics was politically and racially motivated.

### **Revenge-motivated Cruelty**

Cruelty is often evident during acts that are inspired by an obsessional desire for revenge over either real or imagined wrongs.

*Case:* A physician married a show girl and came to believe that she was being unfaithful, even though there was no evidence to substantiate this. Eventually, his obsession overcame his logic, and he decided to ensure that no man would ever take her away from him. After lashing her to a table, he poured sulfuric acid over her body and face. She survived 84 days in agony before succumbing to her injuries.

The offender in this case wanted to punish his wife and make sure that she would not be desirable to any man. His act was not designed to gratify himself sexually.

### **Interrogative Cruelty**

Torture during interrogation may involve sexual areas of the body, which is sometimes misinterpreted as being sexually sadistic in nature.

*Case:* A government agent was captured in another country. During his months in captivity, he was continually subjected to physical torture, including beatings with clubs and electrical shocks to all parts of his body, even his genitals.

The victim was tortured in this manner to obtain information concerning his government's activities in that country, not to enhance sexual arousal.



## Postmortem Mutilation

The intentional mutilation of a victim after death is often mistakenly attributed to sexual sadism. However, in a majority of these cases, the offender kills the victim quickly and does not try to prolong suffering, which is in total contrast to the actions of the sexual sadist.

*Case:* A father bludgeoned his adult daughter to death. After her death, he attempted to dispose of the body. On the day of his arrest, he bought a food processor. Investigators found portions of her remains in the bathtub, the kitchen sink, in pots boiling on the stove, and in the refrigerator.

The man killed his daughter either in self-defense or because of his frustration over her disruptive and hostile behavior caused by her chronic mental illness. His actions were not intended to provide sexual satisfaction in seeing his daughter suffer.

## STUDY CONDUCTED

We studied 30 male sexually sadistic criminals, 22 of whom were responsible for at least 187 murders.<sup>2</sup> Most of these cases had been submitted to the FBI's National Center for the Analysis of Violent Crime (NCAVC). Sources of information for the study included police reports, crime scene photographs, victim statements, statements by family members, confessions, psychiatric reports, trial transcripts, pre-sentence reports, and prison records. We also reviewed evidence created by the offenders themselves, i.e., diaries, photographs, sketches,

audio tapes, videos, calendars, and letters. These materials, which recorded their fantasies and represented memorabilia of their crimes, provided windows into the minds of sexually sadistic offenders.

In addition, we interviewed 5 of the 30 offenders. When interviewed, these men revealed less about their sexual desires than they had in their writings and recordings of the offenses. This is consistent with our experience when interviewing subjects during ongoing investigations, that is, offenders speak much more readily about their violent acts than about their sexual acts or fantasies.

Each of the 30 sexual sadists studied intentionally tortured their victims. Their methods of physical torture included the use of such instruments as hammers, pliers, and

***“As the fantasies of the sexual sadist vary, so does the degree of violence.”***

electric cattle prods, and such actions as biting, whipping, burning, insertion of foreign objects into the rectum or vagina, bondage, amputation, asphyxiation to the point of unconsciousness, and insertion of glass rods in the male urethra, to name a few.

Some offenders used a particular means of torture repeatedly. Such actions could constitute an

offender's signature, which shows that this is the work of a single offender. However, the absence of a common feature among crimes does not eliminate the possibility of a single serial offender, for he may be experimenting with various techniques in search of the perfect scenario or may be attempting to mislead investigators.

The 30 sexual sadists studied also inflicted psychological suffering on their victims. Binding, blindfolding, gagging, and holding a victim captive all produce psychological suffering, even if not physically painful. Other psychological tactics used included threats or other forms of verbal abuse, forcing the victim to beg, plead, or describe sexual acts, telling the victim in precise detail what was intended, having the victim choose between slavery or death, and offering the victim a choice of means by which to die.

## Offender Characteristics

All 30 of the sexual sadists in the study were men, and only one was non-white. Fewer than one-half were educated beyond high school. One-half used alcohol or other drugs, and one-third served in the Armed Forces. Forty-three percent were married at the time of the offense.

Sexual deviations are often associated with other sexual abnormalities, and our study confirmed this for sexual sadism. Forty-three percent of the men participated in homosexual activity as adults, 20 percent engaged in cross-dressing, and 20 percent committed other



## Interviewing the Sexual Sadist



**S**exual sadists are masters of manipulation. Therefore, the investigator must be well-prepared before conducting the interview. The investigator must know the suspect intimately and be aware of his strengths and weaknesses. Premature interviews of primary suspects often fail.

Despite their seeming sophistication, sexual sadists are likely to consent to be interviewed, even after being advised of their rights. These offenders often have an exaggerated self-image and consider themselves intellectually superior to the police. They believe they are in no danger of divulging detrimental information about themselves. More importantly, they expect to learn more information from the officer than they provide during the interview. From the questions asked, they hope to determine how much the investigator knows and the current status of the investigation.

The interviewer should be of detective status or above, prefer-

ably older than the suspect, and superior to him in physical stature, personality, and intelligence. The interviewer must appear confident, relaxed, and at least as calm as the suspect. Any personal feelings about the crime or the suspect must be suppressed. The interviewer should not attempt to become "friends" with the suspect, as this will cause him to lose respect for the interviewer and provide him with an opportunity to manipulate the conversation. Instead, the interview should be conducted in a formal and professional manner.

Because these offenders enjoy attention, the interviewer should be prepared for an exhausting and lengthy interview. Questions should be thought out in advance and be structured in such a way that the offender cannot evade a line of questioning with a simple "no" answer.

For example, rather than asking the suspect if he likes to torture women, it is preferable to ask him his favorite instruments for torturing women. Posing questions in this manner reflects the interviewer's knowledge, does not provide additional information to the suspect, and may facilitate incriminating disclosures by the subject.

Above all, the suspect must not be allowed to provoke anger. In all likelihood, he will probably attempt to shock or antagonize the interviewer, and if the interviewer yields to human emotion, the suspect will score a significant victory.

sexual offenses, such as peeping, obscene phone calls, and indecent exposure.

*Case:* As a teenager, one sexual sadist "peeped" throughout his neighborhood, masturbating as he watched women undress or have sex. At home, he masturbated repeatedly to fantasies in which he incorporated what he had seen while peeping. As a young adult, he made obscene telephone calls, which lead to his first arrest when he agreed to meet a victim who informed the police. He later exposed himself to a series of victims, which he eventually explained was for the purpose of eliciting their "shock and fear." He followed women home from shopping malls, determined how much cover was available for peeping and entering the residence, and eventually raped a series of women. In his early rapes, he depended on weapons of opportunity, but later, carried with him a rape kit, which consisted of adhesive tape, handcuffs, pre-cut lengths of rope, and a .45-caliber pistol. He became progressively violent in his sexual assaults, torturing his victims by beating, burning, and pulling their breasts. His violence escalated to the point that he so severely pummeled one victim that she lost both breasts. He forcibly raped more than 50 women and was contemplating murder when he was finally apprehended.



Investigators should not be misled by the fact that the sexual sadist may have been involved in what are commonly referred to as "nuisance" sexual offenses. A history of such activity is common, but not universal, among sex offenders of all types. It is a myth that individuals who engage in "nuisance" offenses do not have a propensity for violence.<sup>3</sup>

### **Crime Characteristics**

Careful planning epitomizes the crimes of the sexual sadist, who devotes considerable time and effort to the offense. Many demonstrate cunning and methodical planning. The capture of the victim, the selection and preparation of equipment, and the methodical elicitation of suffering often reflect meticulous attention to detail.

The overwhelming majority of offenders we studied used a pretext or ruse to first make contact with the victims. The sexual sadist would offer or request assistance, pretend to be a police officer, respond to a classified advertisement, meet a realtor at an isolated property, or otherwise gain the confidence of the victim.

Almost invariably, the victims were taken to a location selected in advance that offered solitude and safety for the sadist and little opportunity of escape or rescue for the victim. Such locations included the offender's residence, isolated forests, and even elaborately constructed facilities designed for captivity.

*Case:* A white male entered a respected modeling agency

and advised that he was filming a documentary on drug abuse among preadolescents. He made arrangements to hire two young girls from the agency, and two elderly matrons accompanied them as chaperons. He drove them to his trailer, and at gunpoint, bound the women and placed the girls in a plywood cell he constructed in the trailer. The cell contained beds and additional mattresses for sound-proofing. He murdered both women, placing their bodies in garbage bags. He terrorized the girls for more than 2 days before they were rescued.

Twenty-three (77 percent) of the offenders used sexual bondage on their victims, often tying them

Sixty percent of the offenders beat their victims. Twenty-two of the men murdered a total of 187 victims; 17 of them killed three or more people. The manner in which they killed varied.

*Case:* Two men, who offended as a team, used a variety of methods to kill a series of victims. One victim was strangled during sex. Another was injected in the neck with a caustic substance, electrocuted, and gassed in an oven. A third victim was shot.

Twenty-nine of the 30 men selected white victims only. Eighty-three percent of the victims were strangers to the offender. While the majority of the men selected female victims, one-fourth attacked males exclusively. Sixteen percent of the

“ ***Sexually sadistic offenders  
commit well-planned and carefully  
concealed crimes.***

”

with elaborate and excessive materials, using neat and symmetrical bindings, and restraining them in a variety of positions. Eighteen (60 percent) held their victims in captivity for more than 24 hours.

The most common sexual activity was anal rape (22 offenders), followed in frequency by forced fellatio, vaginal rape, and foreign object penetration. Two-thirds of the men subjected their victims to at least three of these four acts.

men assaulted child victims only, and 26 percent attacked both children and adults.

### **Evidence of Crime**

These offenders retained a wealth of incriminating evidence. More than one-half of the offenders in our study kept records of their offenses, including calendars, maps, diaries, drawings, letters, manuscripts, photographs, audio tapes, video tapes, and media



## VICAP Alert

accounts of their crimes. For the most part, these secret and prized possessions were hidden in either their homes, offices, or vehicles, kept in rental storage space, or buried in containers.

Forty percent of the men took and kept personal items belonging to their victims. These items, which included drivers' licenses, jewelry, clothing, and photographs, served as mementos of the offense, and some of the offenders referred to them as "trophies" of their conquests. However, none of the offenders retained parts of their victims' bodies, though some kept the entire corpse temporarily or permanently.

### CONCLUSION

Sexually sadistic offenders commit well-planned and carefully concealed crimes. Their crimes are repetitive, serious, and shocking, and they take special steps to prevent detection. The harm that these men wreak is so devastating and their techniques so sophisticated that those who attempt to apprehend and convict them must be armed with uncommon insight, extensive knowledge, and sophisticated investigative resources.

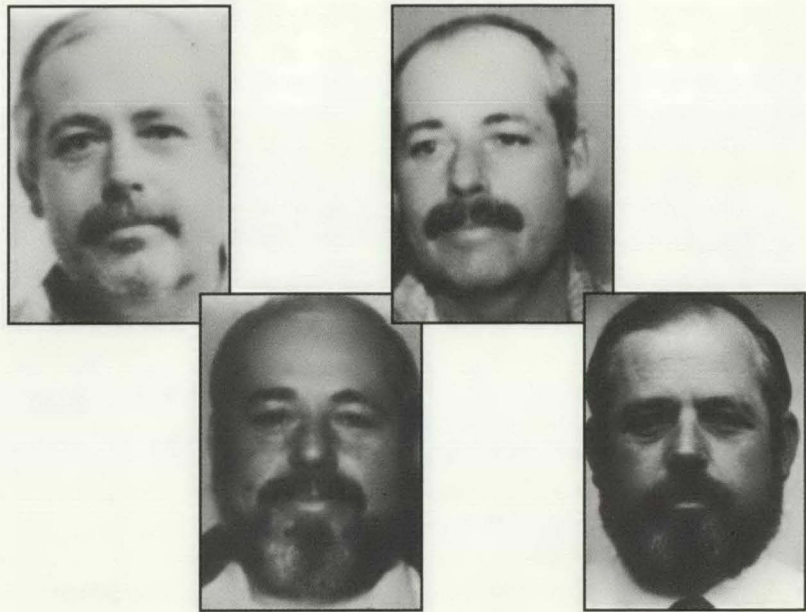
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### Footnotes

<sup>1</sup> R. Manvell and H. Fraenkel, *The Incomparable Crime: Mass Extermination in the Twentieth Century—the Legacy of Guilt* (New York: Putnam's, 1967).

<sup>2</sup> P.E. Dietz, R.R. Hazelwood, and J. Warren, "The Sexually Sadistic Criminal and His Offenses," *Bulletin of the American Academy of Psychiatry and the Law*, 1990, 163-178.

<sup>3</sup> R.R. Hazelwood and J. Warren, "The Serial Rapist: His Characteristics and Victims," *FBI Law Enforcement Bulletin*, February 1989, 18-25.



*Charles Thurman Sinclair*

### Crime:

Charles Thurman Sinclair, known since 1985 as J.C. Weir, was responsible for murders around the country of at least 14 dealers of coins and precious metals. Murders in Canada are likely, with a possibility of other international murders. The first murder associated with Sinclair occurred in 1980, and he apparently continued to kill regularly until his arrest on August 13, 1990, in Alaska. Although Sinclair died of an apparent heart attack on October 30, 1990, while in custody, he may have committed other unsolved crimes.

### Modus Operandi:

Sinclair owned many different weapons, including shotguns,

rifles, and several pistols. He may have carried a .44-, .357-, .38-, or .22-caliber handgun. He used the .22-caliber weapon in most of his murders. Sinclair was well-versed in the trading of coins and precious metals. He would travel for days, weeks, or months, supposedly buying and selling coins. During these trips, he would often take a few days to case a coin dealer's shop, developing a rapport with the owner by negotiating precious metal purchases and discussing numismatics. Sinclair also shared personal information, often telling victims he was a farmer and an army captain during the Vietnam war and talking about his real family. Once close to the victim, Sinclair would await a profitable time, such as store closing, when



the stock was being transferred to the safe. He would approach the victim and fire one or two shots, almost always to the head, execution style. He would then steal coins and precious metal, cash, and sometimes items of value from the victim's body, such as rings or

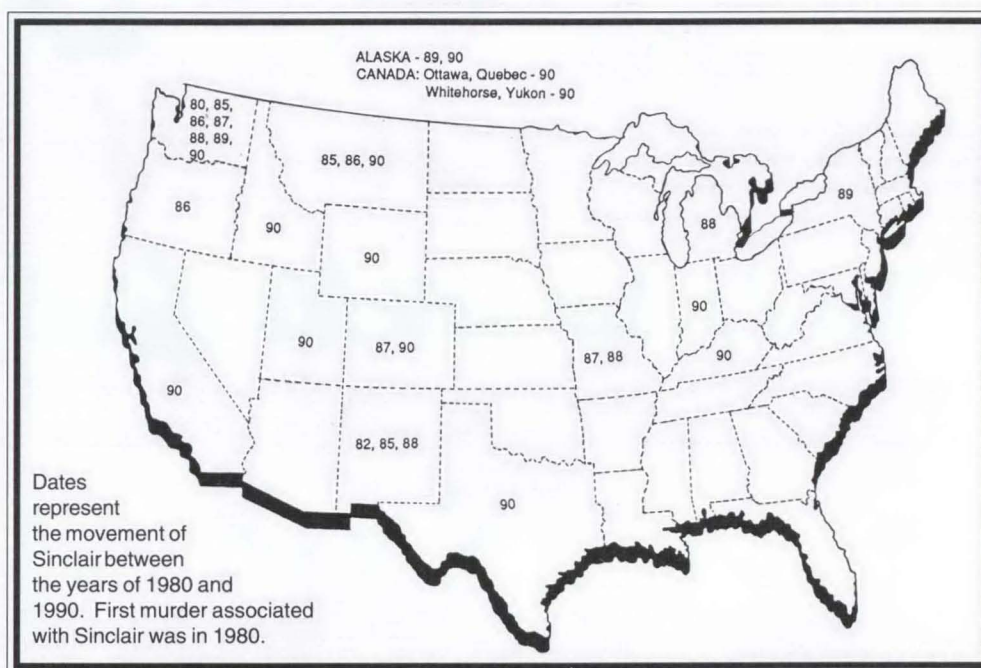
watches. He usually acquired between \$50,000 and \$100,000 per robbery.

#### Alert to Chiefs and Sheriffs:

Please bring this information to the attention of all homicide investigators. If unsolved cases in

your jurisdiction resemble Sinclair's M.O., please contact Mr. Winston Norman, National Center for the Analysis of Violent Crime, VICAP, FBI Academy, Quantico, Virginia 22135, telephone 800-634-4097 or 703-640-1207.

**LEB**



#### Charles Thurman Sinclair

aka: J.C. Weir, Jimmy Charles Weir, Jim Weir, Jim Stockton, Carl Lynch, Charles R. Williams, Robert Jarvis, "John"

#### Other Descriptors:

Sinclair had a southern accent, a gap between his upper two front teeth, a mustache or occasionally a beard, and a potbelly build. He often wore a bandage on his right hand/wrist or placed his left arm in a sling.

**RACE:** Causasian

**DOB:** 7/27/46 (6/26/46 as J.C. Weir)

**POB:** New Mexico (Texas as J.C. Weir)

**HEIGHT:** 6'3"

**WEIGHT:** 210 (260 lbs. maximum weight)

**HAIR:** Brown, balding

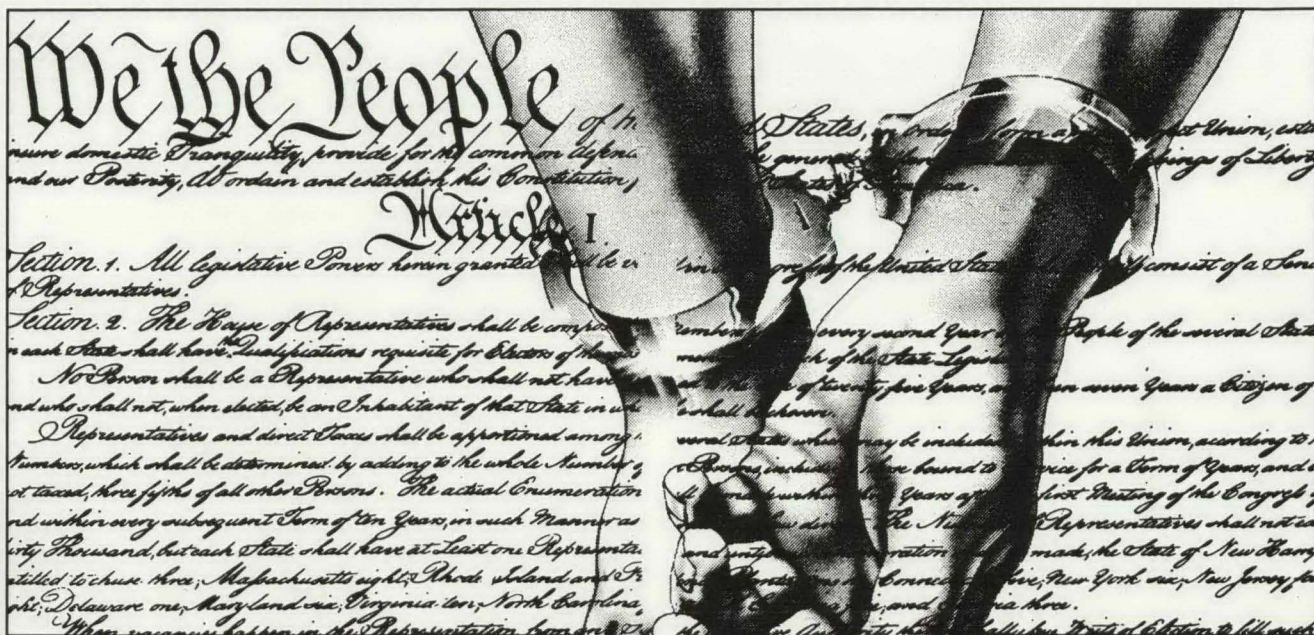
**EYES:** Hazel

**SSAN:** 585-10-0948 (585-10-1234 as J.C. Weir)

**FBI#:** 156605EA4



# Constitutional Constraints on the Use of Force



By  
JOHN C. HALL, J.D.

**T**he most tangible expression of governmental authority is the power to deprive an individual of "life, liberty, or property." Law enforcement officers and agencies are the visible expression of that power. Therefore, in the bicentennial year of the Federal Bill of Rights, it is appropriate to remind ourselves that those provisions were added to the Constitution in 1791 for the express purpose of constraining governmental power. Originally intended to restrict only Federal power, many of the same restraints have since been applied to the States through the Due Process Clause of the 14th amendment.

Shortly after the adoption of the 14th amendment in 1868, Congress enacted Title 42, U.S. Code, Section 1983. Today, Section 1983 provides a means by which an individual can seek a civil remedy in either State or Federal court against any law enforcement officer who deprives that person of a constitutionally protected right while acting under color of law. If the alleged violation results from a policy, practice, or custom of a governmental entity, this entity may also be sued.

Excessive force claims account for many of the lawsuits brought

against law enforcement officers and agencies each year under Section 1983. These claims arise within three major contexts: 1) Arrests or other seizures of criminal suspects, 2) post-arrest/pre-trial detention, and 3) post-conviction confinement.

The Supreme Court has rejected the notion that a "single generic" standard governs all uses of force by law enforcement officers. Accordingly, in any case alleging excessive force by law enforcement officials, it is first necessary to identify "...the specific constitutional right allegedly infringed by the challenged application of force," and then to



assess the claim "...by reference to the specific constitutional standard which governs that right...."<sup>1</sup>

This article identifies the different Federal constitutional provisions that govern the use of force. It briefly describes the standards applicable to each and then examines cases that describe or illustrate how the different standards apply. Before doing so, however, it is important to note one requirement that appears to be common to all of them.

### THE "SIGNIFICANT INJURY" REQUIREMENT

Many courts, as a means of screening excessive force claims, have imposed the requirement that plaintiffs allege and prove that some "significant injury" resulted from the alleged constitutional violation. Following the premise that "[N]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers..."<sup>2</sup> violates the Constitution, these courts emphasize the need to ensure that constitutional claims are not trivialized. Accordingly, claims of excessive force are generally dealt with summarily by the courts when the plaintiffs allege only negligible physical injury or psychological distress.

For example, in *Wisniewski v. Kennard*,<sup>3</sup> the plaintiff alleged that the arresting officer placed a gun barrel in his mouth and threatened to blow his head off. He claimed that he was frightened and suffered bad dreams as a result. The court rejected the claim as not alleging a significant injury. Similarly, in *Mouille v. City of Live Oak*,<sup>4</sup> the court held that "...transient dis-

stress' caused by an arresting officer's actions cannot constitute a significant injury...."

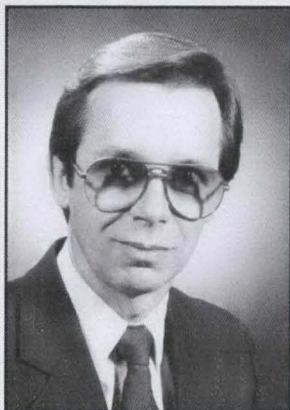
### THE USE OF FORCE IN ARRESTS OR OTHER SEIZURES OF SUSPECTS

The text of the fourth amendment explicitly encompasses "seizures" of persons. Thus, when a seizure occurs, the fourth amendment provides the appropriate standard for measuring its lawfulness.

However, when does a seizure occur? In *Tennessee v. Garner*, the Supreme Court wrote that "[W]hen an officer restrains the freedom of a person to walk away, he has seized that person."<sup>5</sup> More recently, and more specifically, in *Brower v. County of Inyo*, the Court held that a seizure occurs "...only when there is a governmental termination of freedom of movement through means intentionally applied."<sup>6</sup>

Not only must there be an actual termination of freedom of movement, but such termination must be

**"...in overcoming resistance, it is necessary to tailor the use of force to the degree of resistance encountered...."**



Special Agent Hall is a legal instructor at the FBI Academy.

the result of intentional government action with respect to both the result and the means by which it is accomplished. In *Garner*, a seizure occurred when a police officer shot and killed a fleeing burglary suspect; in *Brower*, the seizure occurred when a fleeing suspect crashed the car he was driving into a police roadblock.

In *Garner*, the Supreme Court relied solely upon the fourth amendment to assess a police officer's use of deadly force to prevent the escape of a felony suspect, specifically declining to look to any other constitutional standard. Four years later, in *Graham v. Connor*,<sup>7</sup> the Court held that since the fourth amendment specifically encompasses police seizures of persons, it is impermissible to look elsewhere when a seizure occurs:

"Today we make explicit what was implicit in *Garner's* analysis, and hold that all claims that law enforcement officers have used excessive force—deadly or



not—in the course of an arrest, investigatory stop or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment.”<sup>8</sup>

### **The Fourth Amendment Standard—Objective Reasonableness**

Once the determination has been made that all of the elements are present to constitute a fourth amendment seizure, the appropriateness of the force used to accomplish that seizure must be assessed in the context of the “reasonableness” standard. Such a determination “...requires a careful balancing of the ‘nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”<sup>9</sup>

The objective nature of the standard was clearly set forth in *Graham*, where the Court emphatically rejected the consideration of such subjective factors as the officer’s state of mind in assessing the propriety of a use of force. The Court emphasized that the inquiry is “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstance confronting them, without regard to their underlying intent or motivation.”<sup>10</sup>

Any assessment of the use of force in the context of a fourth amendment seizure must begin with the recognition that a seizure is, by definition, a forcible governmental action, involving either a person’s compliance with a show of authority or with the actual imposition of force by law enforcement officers.

The Supreme Court has written that “[O]ur Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”<sup>11</sup>

### **Viewed From The Officer’s Perspective**

One of the most meaningful elements in assessing the reasonableness of an officer’s use of force in effecting a seizure is the Court’s admonition that an officer’s decision to use force be viewed “...from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight....”<sup>12</sup> The

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**...the appropriateness of the force used to accomplish [a] seizure must be assessed in the context of the ‘reasonableness’ standard.**  
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Court also recognized that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”<sup>13</sup>

The significance of this point is illustrated in *Sherrod v. Berry*,<sup>14</sup> where an officer shot and killed a robbery suspect who made a quick movement with his hand into his coat, apparently disregarding the officer’s repeated commands to put

his hands up. Subsequently, it was determined that the suspect was not armed. In reversing a jury verdict against the officer, the appellate court held that the trial court erred in permitting the introduction of evidence concerning the fact that the suspect was unarmed:

“When a jury measures the objective reasonableness of an officer’s action, it must stand in *his* shoes and judge the reasonableness of his actions based upon the information he possessed and the judgment he exercised in responding to that situation.”<sup>15</sup>

The Court remanded the case with instructions that the officer’s actions be assessed without reference to information that could not have been known to him at the time he fired the shot.

### **The Spectrum of Force Options**

In effecting a seizure, law enforcement officers draw from a reservoir of options, ranging from simple displays of authority, to the application of various levels of nondeadly force, to the use of deadly force itself. The appropriate choice in each case is dictated by the facts, and those facts—as well as an officer’s choice of an option—are subject to close scrutiny.

### **Relevant Factors in Assessing Reasonableness**

In evaluating an officer’s use of force under the fourth amendment standard, the Supreme Court has instructed that the following specific factors be considered:

- 1) The severity of the crime at issue;



2) Whether the suspect poses an immediate threat to the safety of the officers or others, and

3) Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.<sup>16</sup>

These factors encompass the three general circumstances in which officers must make judgments regarding the use of force in the context of fourth amendment seizures: 1) To defend themselves and others, 2) to overcome resistance or enforce compliance, and 3) to prevent escape. Law enforcement officers should note that the severity of the crime is a factor that can affect each of these circumstances.

#### *The defense of others*

There is no constitutional provision, statute, or case decision that questions the use of force by law enforcement officers when such force is necessary to protect themselves or others from present threats to their lives and safety. As noted above, one of the factors listed by the Supreme Court to determine the appropriateness of force is whether the suspect poses an immediate threat.

Nevertheless, challenges may still be made to the officers' perceptions that a threat existed, or to their judgment as to the appropriate type and level of force to counter it. While the evidence that such a threat exists must rise to the level of probable cause, it is not higher.<sup>17</sup> Moreover, as the Court noted in *Graham*, the facts must be viewed from the perspective of the officer on the



scene and not from facts or perspectives that develop later.

It is in the nature of law enforcement that most decisions to use physical force are reactive; in other words, the initiative rests with the suspect who decides whether and when to commence a threat against an officer. For that reason, the probable cause standard is critically important.

Perceiving the probability of a threat and formulating a response to it takes time and automatically places the officer at a disadvantage. In some cases, an officer may be in a position to offset this disadvantage through the use of distance, cover, or diversionary techniques. If an officer was required by law to delay a response until the threat became a certainty, the risks would be dramatically greater. For that reason, the reasonableness formula does not impose a higher standard than "probable cause" to believe that a person poses a threat and that a particular response is justified.

#### *Overcoming resistance*

Resistance to the lawful authority of law enforcement officers to effect a seizure may be active or passive. Active resistance occurs when the suspect is using or threatening the use of some force to thwart the officer's efforts; passive resistance occurs when the suspect simply refuses to comply with the officer's commands.

Active resistance poses a serious concern because it confronts an officer with more than the relatively simple challenge of compelling compliance with authority. A person actively resisting a police officer engages in physical acts and movements that constantly place the officer at risk. Even if the suspect is not believed to be armed at the moment, the officer's weapon is potentially accessible. Accordingly, an unarmed suspect may be moments away from becoming an armed one, and the number of officers killed and wounded each year with their own firearms attests to the danger of exposure to an actively resisting suspect.

As a general rule, in overcoming resistance, it is necessary to tailor the use of force to the degree of resistance encountered, or in other words, to escalate the level of force as the suspect's actions dictate. However, there are circumstances where to do so would dramatically increase the risks to the officers and others. If a suspect's background and reputation forwarn officers of the likelihood of violent resistance, preemptive use of force to gain control may be necessary, and therefore, reasonable.



The case of *Dean v. City of Worcester*<sup>18</sup> provides an example. Officers had a warrant to arrest a man known to them to be violent, and to have threatened violent resistance to any attempts to take him into custody. Going to the place where they had reason to believe the suspect was located, the police observed a man matching the general description. They immediately approached the suspect, seized him, threw him to the ground, and handcuffed him. It was later determined that he was not the suspect after all.

In a subsequent lawsuit against the officers and the city, the plaintiff alleged, among other things, that the force used against him was excessive in view of the fact that he offered no resistance. The Federal appellate court disagreed, noting first that "[A]s the officers reasonably believed that Dean was the escaped felon Burbo, they were 'entitled to do what the law would have allowed them to do if [Dean] had in fact been [Burbo]...[and that] in the circumstances known to the officers, particularly Burbo's threat to shoot any police officer who attempted to apprehend him, it was entirely reasonable to anticipate that Burbo, given the opportunity, would resist arrest with deadly force.'"<sup>19</sup>

Passive resistance to a seizure presents an entirely different set of problems to law enforcement officers. Whereas active resistance provides a reasonably clear reference point for assessing the need to use force, passive resistance generally produces ambiguity and frustration. It is important to recall that the fourth amendment does not preclude the use of force to effect a



seizure, only the "unreasonable" use of force, and that the authority to seize a person carries with it the right to use some degree of physical coercion or threat thereof to effect it. Thus, coercive techniques, including those which inflict pain or discomfort, are appropriate, when necessary, to compel compliance.

#### *Preventing escape*

Inherent in any seizure is the notion that the suspect will not be allowed to escape custody. The law enforcement officer's obligation is to ensure that only acceptable levels of force are used to preclude that event.

When an officer's actions serve the dual purpose of protection and prevention of escape, questions relating to the appropriate level of force are strongly influenced by the issue of the officer's safety. However, the legal issues are different when the sole purpose for the use of force is to prevent escape of a suspect, and there is no immediate threat to the safety of the officer or

others. Most challenges to a police officer's use of force to prevent escape involve the use of deadly force.

#### **What is Deadly Force?**

Courts do not view every use of force that results in death as deadly force. This can be important in defending officers whose actions resulted in the death of a suspect under circumstances that would not have constitutionally justified the use of deadly force to prevent escape.

For example, in *Robinette v. Barnes*,<sup>20</sup> officers used a trained dog to locate a burglary suspect in a darkened building at night. Unfortunately, the suspect, while attempting to hide under a vehicle, left his head and neck exposed. The dog located the suspect and held onto him (by the throat) until the officers arrived. The suspect died. The appellate court found that the use of the dog to locate the suspect was reasonable and rejected the assertion that the police had used deadly force under circumstances where deadly force was not appropriate.

On the other hand, law enforcement actions that create a high probability of death are inherently viewed as the use of deadly force. For example, discharging a loaded firearm at a suspect is generally considered a use of deadly force, even if there is no intent to kill, because of the relatively high risk of death created by the infliction of a gunshot wound on the body. Likewise, firing a weapon under circumstances which create a high risk that someone will be struck may be viewed as a use of deadly force.

In *Kellen v. Frink*,<sup>21</sup> a game warden fired a shotgun at an escap-



ing van because he believed that a deer had been illegally killed and placed inside. The officer explained that he fired the shot, not for the purpose of hitting anyone, but to "mark" the van for later identification. Unfortunately, the rifled slug entered the van and fatally wounded one of the passengers. The court held that "...firing a loaded shotgun at a vehicle known to be occupied constitutes deadly force as a matter of law...[and that because there was no probable cause to believe that the deceased] was a significant threat of serious injury to others, deadly force would never be appropriate...."<sup>22</sup>

### The Garner Standard

The justification for using deadly force to prevent the escape of a suspect was defined by the Supreme Court in *Tennessee v. Garner*.<sup>23</sup> The Court held that it is not permissible to use deadly force to prevent the escape of a felony suspect under all circumstances.

On the other hand, the Court explained that if an officer "...has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force."<sup>24</sup> In other words, the police must have probable cause to believe that the suspect is dangerous.

The Court offered two general criteria for assessing whether such probability exists: 1) "...if the suspect threatens the officer with a weapon..."; or 2) "...there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of

serious physical harm...."<sup>25</sup> When either of these justifications exists, then deadly force is reasonable, *if necessary*, to prevent escape.

Deadly force was deemed justified to prevent the escape of a suspect in *Newcomb v. City of Troy*,<sup>26</sup> where an officer shot and seriously wounded a robbery suspect who was trying to escape from the scene of his robbery attempt. The court observed that "...the suspect was armed with a knife, and had convincingly demonstrated his willingness to wield that knife against the store clerks."<sup>27</sup>

Even though the suspect was armed only with a knife while the officers had firearms, this fact did

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not alter the court's conclusion that the suspect was dangerous. Moreover, the court rejected the contention that the suspect was unarmed merely because he had placed the weapon in his pants pocket at the time he was shot.<sup>28</sup>

The type and level of force must be tailored to its necessity. Once a particular level of force is no longer required, it must be discontinued, despite the fact that an officer's normal passions of anger, fear, or frustration may be aroused through a suspect's efforts to thwart or evade a seizure.

A case in point is *Pastre v. Weber*,<sup>29</sup> in which two officers pursued a vehicle for a traffic violation. The chase, which sometimes exceeded 100 miles per hour, was only brought to a halt when the suspect driver lost control of the vehicle and ran off the road. The occupants rolled up the windows and locked the doors, prompting the officers to break the windows with their batons. When Officer Weber physically removed Pastre from the vehicle, Pastre attempted to kick him. Officer Weber then proceeded to physically reprimand Pastre for his transgressions. As the court described these events, the officers came "face to face with plaintiff and his companions, and realized that their lives had been endangered by the horseplay of a couple of adolescent drunks; their accumulating anger...exploded."<sup>30</sup>

While expressing sympathy with the officer's feelings in this highly charged situation in which he might justifiably believe that his life and the lives of other innocent persons had been endangered, the court nevertheless held that the officer used excessive force:

"The plain fact of the matter is that, under extreme provocation, Weber lost his temper and failed to use any judgment at all in applying force which, objectively, was neither necessary nor reasonable."<sup>31</sup>

Giving vent to normal impulses in such cases shifts the focus from the "professional" to the "personal" and runs counter to the discipline and training required of a law enforcement officer.



## THE USE OF FORCE DURING POST-ARREST/PRE-TRIAL DETENTION

The Due Process Clause, found in both the 5th and 14th amendments, establishes limitations on the power of government to deprive any person of "life, liberty or property." Undefined in the Constitution, but held to embody both procedural and substantive rights, due process has provided a flexible instrument in the hands of creative judges confronted with various allegations of government misconduct. Consequently, it has been cited frequently as a constitutional basis for alleging excessive use of force in a wide range of law enforcement activities.

Since the Supreme Court has now rejected the use of a "generalized" due process standard when a more specific constitutional provision is available, the due process standard is clearly not the appropriate standard for assessing the use of force during governmental seizures of persons. Likewise, as will be discussed below, due process is not the appropriate standard for assessing the use of force in cases dealing with convicted prisoners, because of the specificity of the eighth amendment. However, courts continue to consider due process the appropriate standard in cases in which excessive force allegations arise during pre-trial detentions, i.e., following the completion of a seizure but before conviction and imprisonment.<sup>32</sup>

### Distinguishing Seizures From Pre-trial Detentions

There is some confusion as to when, following an arrest, the fourth amendment protections end and

those under due process begin. For example, in *Henson v. Thezan*,<sup>33</sup> the plaintiff alleged that after he was arrested for home invasion, rape, child molestation, and attempted murder, he was pushed down a flight of stairs, beaten in the police car on the way to the station, threatened with death, and then beaten at the station until he admitted to his

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crimes. In assessing the constitutionality of the force used, the court applied the fourth amendment because the arrestee had not yet appeared before a judicial officer.

Similarly, a Federal court of appeals court concluded that the fourth amendment standard "...probably should be applied at least to the period prior to the time when the person arrested is arraigned or formally charged, and remains in the custody (sole or joint) of the arresting officer."<sup>34</sup> However, a Federal district court assumed that "plaintiff's confinement to the detention cell at the police station changed his status from an arrestee to that of a pre-trial detainee."<sup>35</sup> The issue is not merely academic because, as will be seen, a court's decision to apply either the fourth

amendment or due process standard to assess a particular use of force can lead to significantly different results.

### The "Due Process" Standard

In the context of use of force, the most frequently quoted description of the due process standard is that of Justice Frankfurter in the 1952 case of *Rochin v. California*,<sup>36</sup> in which he stated that due process prohibits governmental actions that "shock the conscience." Under that formulation, the due process standard has generally been construed to incorporate subjective factors, such as the intent or motivation of the government actor. In use of force cases, the question usually turns on whether the type and degree of force used was designed to "punish" an individual rather than to accomplish some legitimate law enforcement goal, such as maintaining or restoring control.

Undoubtedly, the most influential case since *Rochin* regarding the due process clause as a standard for assessing use of force claims is *Johnson v. Glick*,<sup>37</sup> decided by the U.S. Court of Appeals for the Second Circuit in 1973. The case involved a claim by a pre-trial detainee that he had been subjected to excessive force during his detention. The *Glick* decision was based upon the premise that "...constitutional protection against police brutality is not limited to conduct violating the specific command of the Eighth Amendment, or...of the Fourth."<sup>38</sup>

Using Justice Frankfurter's "shock the conscience" test as a basis, the court devised the following



formula for assessing use of force claims under the Due Process Clause:

"[1] the need for the application of force, [2] the relationship between the need and the amount of force that was used, [3] the extent of injury inflicted; and [4] whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."<sup>39</sup>

A Federal court of appeals explained that a use of force would violate due process if the force was "...1) imposed with an expressed intent to punish or 2) not related to a legitimate non-punitive governmental objective, in which case an intent to punish may be inferred."<sup>40</sup>

The assessment of use of force claims under due process necessarily focuses on the state of mind or motivation of the officer and is fundamentally different from the "objective reasonableness" standard of the fourth amendment. The ultimate effect of the distinction between the "objective" and "subjective" standards remains to be seen. Obviously, in some cases, the same conclusion may be supported by either analysis.

For example, in *Smith v. Holzappel*,<sup>41</sup> the court applied both the fourth amendment and due process standards to a case involving the use of force to prevent the escape of pre-trial detainees. The court observed that the detainees had rendered one jailer unconscious and engaged in hand-to-hand combat with other officers attempting to prevent their escape.



Balancing the intrusion upon the rights of the detainees against the governmental interest of preventing escape, the court held the force used by the defendants was not unreasonable. The court then applied the due process standard and found that the force used "...was reasonably related to the legitimate goal of preventing escape...was not arbitrary, and was no more than was necessary to accomplish the goal."<sup>42</sup>

This case demonstrates that the application of different standards will not necessarily call for a different result. However, it is possible that a winning defense of "no malice" under due process could be a loser under the "objectively reasonable" standard of the fourth amendment where the officer's good intentions are not relevant.

Since many seizures lead to pre-trial detention, both the fourth amendment and due process standards may be applied to different aspects of the same case. For instance, in *Brooks v. Pembroke City Jail*,<sup>43</sup> Brooks was stopped by police officers

at about 4:00 a.m., following witness reports and police observations of Brooks swerving back and forth across the road on his bicycle. When it became apparent to the officers that Brooks was intoxicated, they announced their intention to see him home. He refused to go and physically resisted efforts of the officers to get him into the police car. One officer was knocked down during the scuffle. Brooks was handcuffed and transported to the police station where he was searched and locked up in a cell. Shortly thereafter, Brooks set fire to the mattress in his cell and physically resisted the efforts of the officers to put out the fire and retrieve the matches they had permitted him to retain.

Brooks filed suit against the officers and the municipality, alleging that excessive force was used against him when he was arrested, and later at the police station. He produced medical evidence to establish that he had received a black eye at some point, either during the initial encounter with the police or during the subsequent scuffle in the cell.

The trial court assessed the use of force by applying the fourth amendment standard to the encounter on the street and found that the officers' use of force to subdue Brooks was objectively reasonable. There was no factual dispute that Brooks shoved one of the officers to the pavement, and that only then was physical force used to control him. The court reasoned that if the black eye resulted from a deliberate blow struck at this stage, it would not have evidenced an excessive use of force by the police



to overcome an actively resisting person.

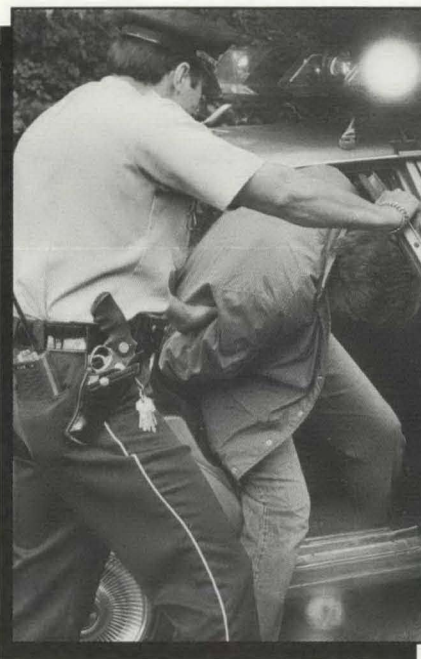
Assuming that when Brooks was locked up in a cell at the station he ceased being an arrestee and became a pre-trial detainee, the court concluded that the force used to enter the cell, overcome Brooks' resistance, and put out the fire was done for the legitimate governmental purpose of re-establishing control, and not for the purpose of inflicting punishment. Observing that "this is not the stuff of which constitutional claims are made," the court added that even if the blow which caused the black eye was struck during the jail cell struggle and "...even if it were done so intentionally to restore or maintain order and discipline, constitutional limits were not exceeded."<sup>44</sup>

### THE USE OF FORCE DURING POST-CONVICTION CONFINEMENT

The explicit language of the eighth amendment prohibits the imposition of "cruel and unusual punishments." This explicit language, according to the Supreme Court, was designed to protect those convicted of crimes. In *Ingraham v. Wright*, the Court noted that the clause applies "...only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions."<sup>45</sup> Thus, the cases to which the eighth amendment standard apply are easily identified.

### The Eighth Amendment Standard

In *Whitley v. Albers*,<sup>46</sup> the Supreme Court described the eighth



amendment standard for assessing the use of force in the prison context as "...whether the measure taken inflicted unnecessary and wanton pain and suffering."<sup>47</sup> Like the due process standard, the eighth amendment standard focuses to some degree on the subjective element of motivation. However, the standards are distinct. Due process does not permit the use of force to punish, whereas the eighth amendment prohibits only punishment which is "cruel and unusual."

In *Whitley*, the Supreme Court illustrated the manner in which the eighth amendment protection against "cruel and unusual punishments" is to be applied when assessing allegations that excessive force was used against convicted prisoners. Prison officials were confronted with a disturbance by the inmates in which one officer was assaulted and another taken hostage. During negotiations, one of the inmates claimed that an inmate had already been killed and that other deaths would

follow. A threat was also made against the life of the hostage officer should the prison officials attempt to use force.

A decision was ultimately made to use force to free the hostage and protect the nonrioting inmates. During the ensuing assault, Albers, an inmate, was shot and wounded in the left leg. He filed a lawsuit alleging a deprivation of his constitutional rights.

### Applying the Eighth Amendment Standard

The Supreme Court observed that after incarceration, only "unnecessary and wanton infliction of pain" constitutes cruel and unusual punishment forbidden by the eighth amendment. Moreover, the Court observed that this general requirement should be applied with due regard for differences in the kind of conduct against which an eighth amendment objection is lodged.

When officials were confronted with the need to make and carry out decisions involving the use of force to restore order in the face of a prison disturbance, the proper question to ask was "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."<sup>48</sup> Other relevant factors considered by the Court were: 1) The need for the application of force, 2) the relationship between the need and the amount of force used, 3) the extent of injury inflicted, 4) the extent of the threat to the safety of staff and inmates, and 5) any efforts to temper the severity of a forceful response.<sup>49</sup>



Applying this formulation of the standard to the facts of the case, the Court held that the prison officials' use of force did not violate the eighth amendment, and they were, therefore, entitled to a directed verdict. The Court rejected the implication that "ordinary errors of judgment" could make out an eighth amendment claim and concluded that even if errors in judgment occurred, they did not rise to the level of "wantonness" required by the eighth amendment standard.

## CONCLUSION

As the foregoing discussion discloses, the applicable constitutional standard for assessing excessive force claims depends upon the context in which the claim arises. Any claim of excessive force must first identify the specific constitutional right allegedly infringed in order to determine the appropriate standard by which the issue is to be resolved.

Use of force is inherent in law enforcement, and it is no surprise that challenges are common. The law enforcement community's response to the challenges is critically important.

The existence of frivolous claims may tempt some to treat the issue as frivolous. Or, the negative impact that surrounds excessive force claims may tempt some to take an excessively cautious approach to the detriment of the officers on the street and the community. Either of these extremes is unwise and unnecessary.

In order for our constitutional system to work effectively, there must be a balance. Clearly established and legally based policies,

coupled with substantive and ongoing training programs, can go a long way to avoid the use of excessive force by law enforcement officers, and in doing so, to minimize the risk of successful claims against law enforcement officials and agencies.

**LEB**

## Footnotes

<sup>1</sup>Graham v. Connor, 490 U.S. 386, at 394 (1989).

<sup>2</sup>Johnson v. Glick, 481 F.2d 1028, at 1033 (2d Cir. 1973), cert. denied, 414 U.S. 1033 (1973).

<sup>3</sup>901 F.2d 1276 (5th Cir. 1990).

<sup>4</sup>918 F.2d 548 (5th Cir. 1990).

<sup>5</sup>471 U.S. 1, at 7 (1985).

<sup>6</sup>486 U.S. 593, at 597 (1989).

**“...the applicable constitutional standard for assessing excessive force claims depends upon the context in which the claim arises.”**

<sup>7</sup>490 U.S. at 386.

<sup>8</sup>Id. at 395. For a thorough discussion of fourth amendment seizures, see, DiPietro, "When Do Police Encounters Become Fourth Amendment Seizures?" *FBI Law Enforcement Bulletin*, 61, January 1992, 25-32.

<sup>9</sup>Id. at 396.

<sup>10</sup>Id. at 397.

<sup>11</sup>Id. at 396.

<sup>12</sup>Id.

<sup>13</sup>Id.

<sup>14</sup>856 F.2d 802 (7th Cir. 1988).

<sup>15</sup>Id. at 804-805. See also, Reese v. Anderson, 926 F.2d 494 (5th Cir. 1991).

<sup>16</sup>490 U.S. at 396.

<sup>17</sup>471 U.S. at 10.

<sup>18</sup>924 F.2d 364 (1st Cir. 1991).

<sup>19</sup>Id. at 368. See also, Eberle v. City of Anaheim, 901 F.2d 814 (9th Cir. 1990).

<sup>20</sup>854 F.2d 909, at 912 (6th Cir. 1988). See also, Chew v. Gates, 744 F.Supp. 952 (C.D.Cal. 1990).

<sup>21</sup>745 F.Supp. 1428 (S.D.Ill. 1990). See also, Moody v. Ferguson, 732 F.Supp. 627 (D.S.C. 1989). Other police activities not generally considered to be deadly force include vehicle pursuits, Roach v. City of Fredericktown, Mo., 882 F.2d 294 (8th Cir. 1989); and the use of tasers, Matta-Ballesteros v. Henman, 896 F.2d 255 (7th Cir. 1990); Michenfelder v. Sumner, 860 F.2d 328 (9th Cir. 1988).

<sup>22</sup>Kellen, 745 F.Supp. at 1432.

<sup>23</sup>471 U.S. at 1.

<sup>24</sup>Id. at 11.

<sup>25</sup>Id.

<sup>26</sup>719 F.Supp. 1408 (E.D.Mich. 1989).

<sup>27</sup>Id. at 1426.

<sup>28</sup>Id.

<sup>29</sup>717 F.Supp. 992 (S.D.N.Y. 1989).

<sup>30</sup>Id. at 995.

<sup>31</sup>Id.

<sup>32</sup>See, Bell v. Wolfish, 441 U.S. 520 (1979).

<sup>33</sup>717 F.Supp. 1330 (N.D.Ill. 1989).

<sup>34</sup>Powell v. Gardner, 891 F.2d 1039, at 1044 (2d Cir. 1989).

<sup>35</sup>Brooks v. Pembroke City Jail, 722 F.Supp. 1294, at 1299 (E.D.N.C. 1989). See also, Wilkins v. May, 872 F.2d 190 (7th Cir. 1989).

<sup>36</sup>342 U.S. 165 (1952).

<sup>37</sup>481 F.2d at 1028.

<sup>38</sup>Id. at 1032.

<sup>39</sup>Id. at 1033.

<sup>40</sup>Martin v. Gentile, 849 F.2d 863, at 870 (4th Cir. 1988).

<sup>41</sup>739 F.Supp. 1089 (E.D.Tex. 1990).

<sup>42</sup>Id. at 1094.

<sup>43</sup>722 F.Supp. 1294 (E.D.N.C. 1989).

<sup>44</sup>Id. at 1301.

<sup>45</sup>430 U.S. 651, at 671 (1977).

<sup>46</sup>475 U.S. 312 (1986).

<sup>47</sup>Id. at 318.

<sup>48</sup>Id. at 320.

<sup>49</sup>Id. at 322.

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



# 1991 Book Review Index

The following is a list of books reviewed in the *Bulletin* during 1991.

## January

*The Detection of Human Remains* by Edward W. Killam, Charles C. Thomas Publishers, Springfield, Illinois, 1990. (217) 789-8980. Reviewed by Robert W. Mann.

## February

*Missing Children: The Law Enforcement Response* edited by Martin L. Forst, Charles C. Thomas Publishers, Springfield, Illinois, 1990. (217) 789-8980. Reviewed by John B. Rabun, Jr.

## March

*Problem-Oriented Policing* by Herman Goldstein, McGraw-Hill, New York, 1990. (609) 426-5254. Reviewed by SA Joseph Harpold.

## April

*The Madison Bombings* by Michael Morris, Research House, London, 1988. Reviewed by SA Richard Redman.

## May

*Practical Homicide Investigations: Tactics, Procedures, and Forensic Techniques*, 2d ed. by Vernon J. Geberth, Elsevier Publishing, New York, 1990. (212) 989-5800. Reviewed by SA Arthur Westveer.

## June

*Community Policing: A Contemporary Perspective* by Robert Trojanowicz and Bonnie Bucqueroux, Anderson Publishing, Cincinnati, 1990. (513) 421-4142. Reviewed by SA Joseph Harpold.

## July

*Police Executive Leadership* by Donald G. Hanna, Stipes Publishing,

Champaign, Illinois, 1990. (217) 356-8391. Reviewed by Chief Larry Joiner (ret).

## August

*Criminology: Explaining Crime and its Context* by Stephen E. Brown, Finn-Age Ebbesen, and Gilbert Geis, Anderson Publishing, Cincinnati, 1991. (513) 421-4142. Reviewed by Dr. Jeffrey Senese.

## September

*The Supervision of Police Personnel: A Performance Based Approach* by William F. Walsh and Edwin J. Donovan, Kendall/Hunt Publishing, Dubuque, Iowa, 1990. (319) 588-1451. Reviewed by Dr. James J. Fyfe.

*The Ten Commandments for Public Speakers* by Stephen D. Gladis, Human Resources Press, Amherst, Massachusetts, 1990. 1-800-822-2801. Reviewed by Tom Shaw.

*Inner City Crime Control: Can Community Institutions Contribute?* by Anne Thomas Sulton, PERF, Washington, D.C., 1989. (202) 466-7820. Reviewed by Chief Philip Arreola.

## November

*Detecting and Deciphering Erased Pencil Writing* by Ordway Hilton, Charles C. Thomas Publishers, Springfield, Illinois, 1991. (217) 789-8980. Reviewed by SA Steven M. Grantham.

*Trafficking: The Boom and Bust of the Air America Cocaine Ring* by Berkeley Rice, Macmillan Publishing, New York, 1989. (212) 702-2000. Reviewed by SA Thomas T. Kubic.



## 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 their exemplary service to the law enforcement profession.



Officer Murray

Officer James Murray of the Plantation, Florida, Police Department responded to the report of a child who was choking. Upon arriving at the victim's home, Officer Murray immediately initiated life-saving procedures, dislodging a bottle cap that was stuck in the child's throat. After Officer Murray's efforts, the 15-month-old boy began to breathe normally again.



Sergeant Hamilton

Sgt. Richard J. Hamilton, a criminal investigator with the Provost Marshal's Office, Military Police Company, Camp Lejeune, North Carolina, responded to the report of gunfire in a base housing area. Sergeant Hamilton was taking information from a witness when a man carrying two firearms approached them. The gunman fired two rounds, narrowly missing Sergeant Hamilton and shattering the windshield of his patrol vehicle. When Sergeant Hamilton identified himself and ordered the man to drop his weapons, the man fired upon him again. Sergeant Hamilton refrained from returning fire until a clear shot was available, then shot at the assailant's legs to immobilize him. The gunman was then taken into custody.



Officer Perry



Sergeant Edmonds

When Officer Frederick Perry and Sgt. Michael Edmonds of the Northborough, Massachusetts, Police Department responded to the report of a traffic accident, they found two men pinned inside a badly damaged and burning vehicle. One of the victims was deceased; the other suffered serious injury. The officers made repeated attempts to extinguish the fire from the surviving victim's clothing and to shield him from the intense flames until fire department personnel arrived. The victim was then extricated from the wreckage and transported to an area hospital.



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