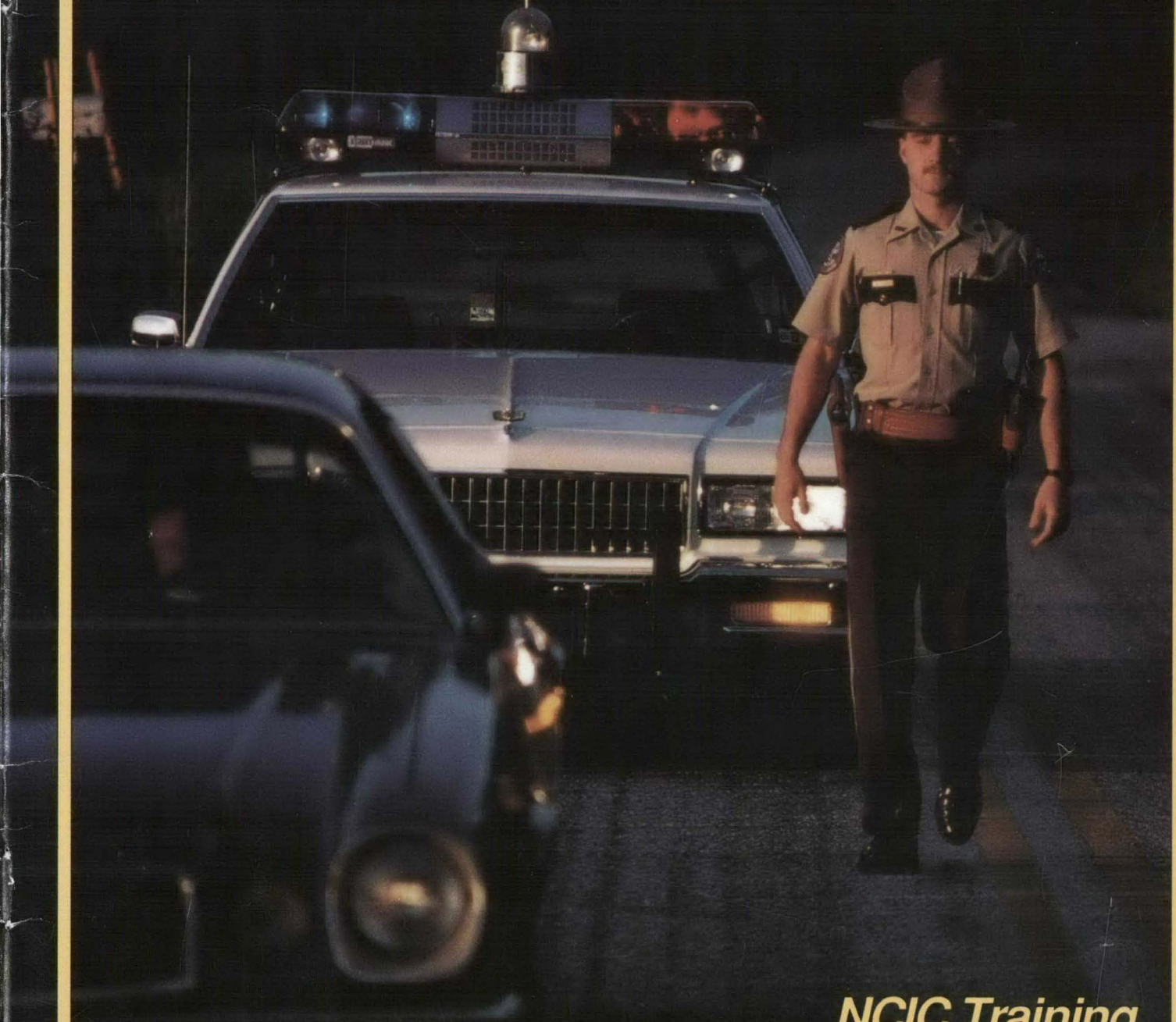




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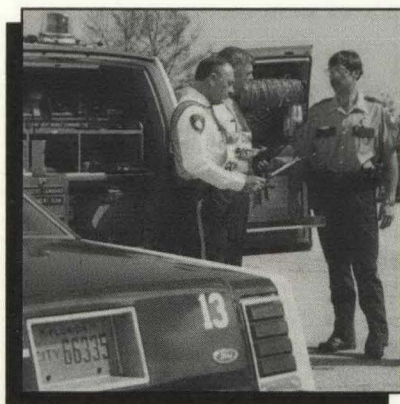
Law Enforcement Bulletin



NCIC Training



Features



Page 4

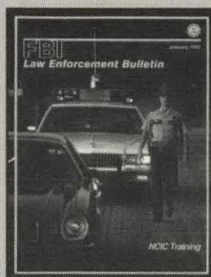


Page 6

- 1 NCIC Training**
By Don M. Johnson
- 6 Hostage/Barricade Incidents**
By G. Dwayne Fuselier, Clinton Van Zandt,
and Frederick J. Lanceley
- 14 Hate Violence in the United States**
By Floyd I. Clarke
- 20 The Rat Patrol Rides!**
By Paul C. Ricks
- 27 Domestic Violence**
By Daniel L. Schofield

Departments

- 4 Police Practices**
- 13 Book Review**
- 18 Focus**
- 23 The Bulletin Reports**
- 24 Point of View**



The Cover: Thorough NCIC training can be an important factor in the safe completion of routine vehicle stops. Cover photo of Officer Thomas Kauffman of the Upper Allen Township, Pennsylvania, Police Department is courtesy of Blair Seitz. See article p. 1.

United States Department of Justice
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Washington, DC 20535

William S. Sessions, Director

Contributors' opinions and statements should not be considered as an endorsement for any policy, program, or service by the FBI.

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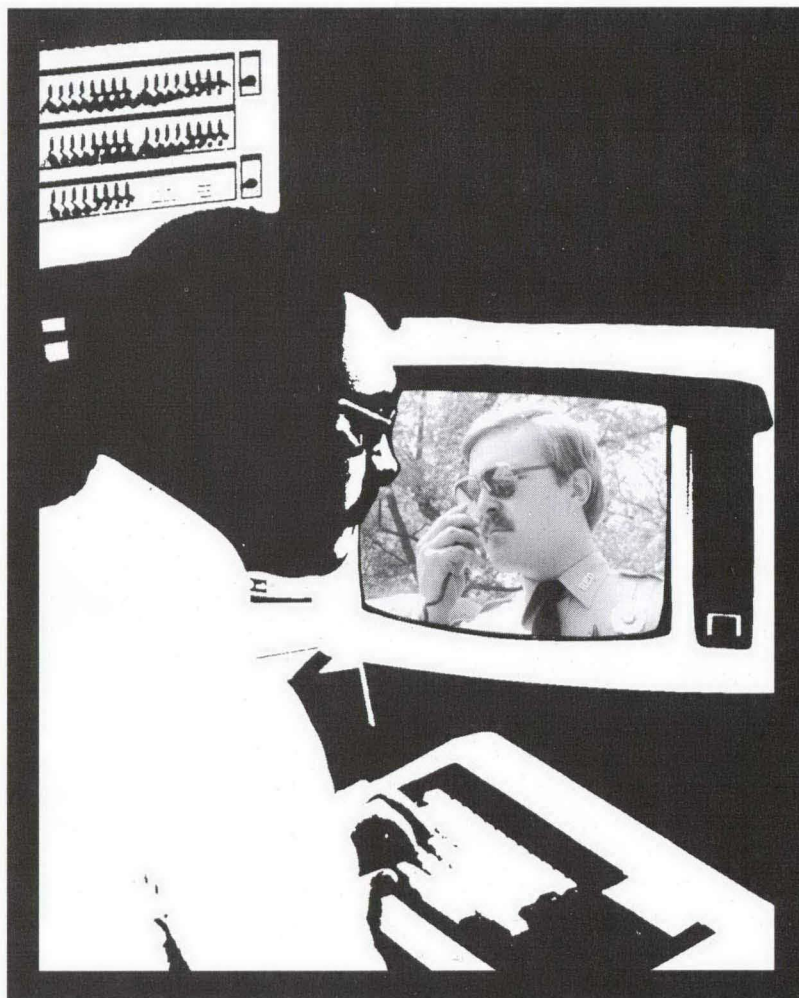
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Managing Editor—Kathryn E. Sulewski
Art Director—John E. Ott
Assistant Editors—Alice S. Cole
Karen F. McCarron
Production Manager—Andrew DiRosa
Staff Assistant—Carolyn F. Thompson

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NCIC Training

Hit or Miss

By
DON M. JOHNSON



Today, the National Crime Information Center (NCIC) continues to be the best example of law enforcement cooperation. Information on wanted persons, stolen guns, stolen articles and securities, unidentified bodies, and computerized criminal history information is available to virtually every police agency in the United States. However, without proper training on the use of NCIC and State computer systems, law enforcement agencies could lose their

tactical edge and may no longer be able to ensure that their employees perform their duties as efficiently and accurately as possible.

NCIC in Brief

Management of NCIC is shared between the FBI and the Advisory Policy Board (APB). The APB consists of 20 elected State representatives, 6 individuals appointed by the Director of the FBI, and 4 representatives of national law enforcement organizations, in-

cluding the International Association of Chiefs of Police, the National Sheriff's Association, the National District Attorneys Conference, and the National Probation and Parole Association. Together they set policy and procedure for NCIC's 59,000 users.

Law Enforcement and NCIC Training

Law enforcement training in the 1960s saw an explosion of minimum standards for police officers

nationwide. From then on, officers were required to be trained and certified prior to active duty. This training included such topics as legal issues, firearms, mechanics of arrest, report writing, first aid, and defensive driving. These minimum standards for police have greatly increased the quality of law enforcement in the United States today.

Prior to 1984, the responsibility for training NCIC and State terminal operators was left to the discretion of the various State criminal information system managers. These managers decided the amount and type of training given to terminal operators. As a result, the APB noted marked differences in the types and quality of NCIC/State system training that terminal operators were receiving.

The APB also recognized that many States limited their training to terminal operators, and as a result, the training was very technical in nature. However, by limiting train-

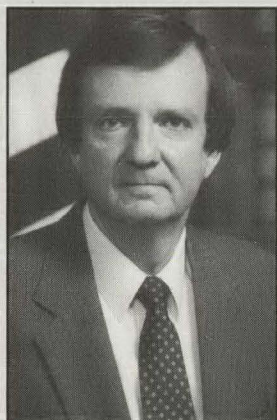
ing to terminal operators, many States neglected the training needs of officers, investigators, and administrators, especially in the areas of data quality and user compliance with policy issues. For these reasons, the APB mandated that by December 31, 1986, all 50 States were to have NCIC training programs in place for the following four separate personnel levels:¹

- Terminal Operators—Must be trained and tested within 6 months of employment or assignment. Their proficiency must also be retested biennially.
- Criminal Justice Practitioners—The daily users of the NCIC/State systems are required to receive entry level and inservice training. They must be taught what signifies a “hit,” the levels of probable cause needed

for arrest, the need for hit confirmation, the idiosyncrasies of soundexing, and the availability and searchability of various fields within a record.

- Criminal Justice Agency Records Personnel—Individuals who control the records management systems in every law enforcement agency are required to be completely familiar with all NCIC/State systems policy and procedure matters.
- Criminal Justice Administrators and Upper-level Managers—Must have a thorough knowledge of NCIC regulations, including training, audits, sanctions, and the related civil liability issues to guide them in protecting their agencies from law suits.

Since NCIC's beginning in 1967, one law enforcement agency in every State has assumed the responsibility for managing that State's computer system and its relationship with NCIC. This agency is known as the Control Terminal Agency (CTA). Each CTA has also designated one individual within that agency to assume the responsibility for complying with NCIC policy and procedure issues. This individual is known as the Control Terminal Officer (CTO). The CTO in each CTA has training programs available for all law enforcement agencies within that State.



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and administrators....**
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*Special Agent Johnson is currently assigned to
FBI Headquarters, Washington, DC.*

The NCIC training policy was made intentionally broad to allow the CTAs to employ a wide variety of methods. Under this policy, each CTA has the flexibility to create its own training program using available resources. Since the policy and procedures mandated by NCIC and the APB apply to all 50 States, as well as Federal users, each State has incorporated national policy issues into its training programs. As a result, the quality of the data in computerized systems and compliance with national and State policy issues has become a priority in State training programs.

Even though training in one State may be handled regionally, another State may centralize its training program. Yet, no matter how a State trains its personnel, all must teach nationwide policy and procedural issues mandated by the APB. This provides assurance to the criminal justice community that terminal operators, police officers, record managers, and administrators across the country receive adequate and uniform training on such important issues as hit confirmation, validation, and the necessity for entering information into NCIC and the State systems in a timely and accurate manner.

Importance of Adequate Training

Complete and proper use of NCIC/State computer systems can save the lives of police officers, fugitives, and innocent citizens. Tragically, in one recent case, a terminal operator failed to enter a stolen vehicle into NCIC in a timely

fashion. Instead, the operator waited for additional information before making the vehicle entry. A police officer on routine patrol stopped a car that fit the description of a stolen vehicle, queried NCIC, and received a negative response. When the officer approached the vehicle,

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the car thief killed the officer. This tragedy could have been prevented if the operator were trained as to the minimum criteria for entering stolen vehicle records into NCIC. Unfortunately, many similar examples exist as a result of improper use or inadequate training of NCIC and State computer systems.

Use of available NCIC and State systems will also generate investigative leads for law enforcement agencies. Through training, officers have become more aware of the Interstate Identification Index, State data bases, public domain data bases, and the National Law Enforcement Telecommunications System (NLETS). For example, when an officer obtains an arrest warrant, the Interstate Identification Index is queried. When positive identification is made, the Index will produce aliases, fingerprint

classifications, places of birth, Social Security numbers, and a multitude of other descriptive information that will aid the department in its search for the fugitive.

Conclusion

Just as terminal operators' adrenaline rises when an NCIC "hit" appears on the monitor, police administrators' adrenaline should also rise if they have not provided their employees with the best available training in NCIC and State computerized system use. But, by using the State NCIC training programs available through each State's Control Terminal Agency, police administrators can be assured that their employees enter accurate and complete information into NCIC, know how to interpret the information accurately in the system, validate active records, and promptly remove old records from the system.

While doctors can change a prescription and lawyers can cross-examine witnesses, the law enforcement employee must often make swift decisions based on the instantaneous results of NCIC and State system inquiries. All law enforcement agencies must, therefore, ensure that law enforcement employees are able to use the NCIC and State systems. For someone, there may not be a second chance.

LEB

Footnote

¹ U.S. Department of Justice, Federal Bureau of Investigation, "Minutes National Crime Information Center Advisory Policy Board," October 17-18, 1984, pp. 311-312.

Police Practices

Mobile Command Posts



As service providers, law enforcement agencies respond to a broad range of emergency situations—from street crimes to sexual assaults, from traffic accidents to domestic disturbances. As a rule, most emergencies are handled by one or more responding units, generally in their own patrol districts.

However, what happens when a law enforcement agency must respond to a major disaster, such as a plane crash or a building collapse, that requires hundreds of workers to handle both rescue efforts and crowd and traffic control? Unless the department serves a major metropolitan area where officials can muster multiple agencies in a short period of time, the

result is usually an uncontrolled, disorganized response. One way for smaller departments to avert this type of response is to modify a van into a mobile command post that can be used to organize under one command during full-scale incidents.

A case in point is when the Cocoa Beach, Florida, Fire Department responded to the collapse of a condominium that was under construction. Eleven people were killed and 23 persons were injured. The rescue operation, which lasted over 60 hours, required approximately 400 rescue workers and the assistance of 50 private, volunteer, and government agencies. Based on the information gathered from this incident, the Cocoa

Beach Fire Department set out to equip such a mobile command post to use at the scene of major operations. Since budget constraints prohibited the purchase of two vehicles, one for police use and one for fire use, the agencies worked together to modify the van to meet the needs of both departments.

The Vehicle

The departments purchased a van with a 6-cylinder engine, automatic transmission, heavy-duty suspension system, posi-traction rear end, and heavy-duty cooling and electrical systems. Adding heavy-duty air shocks was the only necessary modification. These were added to accommodate the additional weight caused by the command console and the large amount of equipment that is stored in the vehicle.

Command Console

The command console consists of a slide-out work desk, file drawers, storage spaces, communications station, and an equipment and manpower status board. A small generator plugs into the console, making it self-contained, and if necessary, the console can be removed from the vehicle.

Communications

In addition to three law enforcement radio frequencies, the 16-channel mobile radio communi-

cations unit includes the radio frequencies of local fire and emergency medical services. There is also a portable weather monitor, a Coast Guard marine radio, an 80-channel programmable scanner and a citizens band radio. The citizens band radio also serves as a base unit for a field communications system to allow for uninterrupted communications among management team members. Twenty walkie-talkies, each with three frequencies and a range of 1 mile, allow the incident commander to communicate with officers in the field when necessary.

Telephone communications include a portable cellular telephone that is connected to the vehicle's main electrical system. This cellular phone is backed up by two high-capacity portable batteries and a built-in charging unit. Two additional telephones with 1000 feet of hard line and two, 250-foot portable lines allow for communications to be set up from a structure nearest to the scene.

Management Team Dossiers and Resource Files

Large vinyl folders contain all of the information, materials, and supplies necessary for specific personnel assignments, such as public information officer, law enforcement liaison, medical officer, and communications officer.

The folders hold water-resistant fluorescent vests that identify each position, flashlights, pens, paper, and a laminated primary assignment sheet that outlines specific duties of each assignment.

"The mobile command post vehicle is an excellent example of how emergency services can work together to meet a common goal."



The resource files, which are updated yearly, provide a listing of manpower, equipment, and services available from adjoining counties. Also included are full-scale aerial photographs of the entire city and corresponding sketch maps of each photograph from which to work.

Miscellaneous Equipment

In addition to fire and disaster-related equipment, the van stores a victim identification kit, a radiological monitoring kit, electronic listening devices, and photographic and video equipment. It also holds emergency medical first-responder equipment, such as a trauma box, splints, and an oxygen supply.

For use by the police department, the van stows identification vests, police department grid

books, maps, procedures manuals, and police department magnetic signs that fit over fire department insignias. A green strobe light and additional command post signs are also available to law enforcement personnel.

Conclusion

The mobile command post vehicle is an excellent example of how emergency services can work together to meet a common goal. Should there be another disaster, the City of Cocoa Beach now has the capacity to respond in an efficient, organized manner.


LEB

Information for this column was submitted by Police Chief Frank T. Hutson and Fire Chief Robert B. Walker, City of Cocoa Beach, Florida.

Police Practices serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

Hostage/Barricade Incidents

High-Risk Factors and the Action Criteria



MASTIC, NY—On Tuesday, July 18, 1989, Jimmy Hyams argued with his 18-year-old daughter, Lisa, about her decision to live with a boyfriend, whom he did not like. His wife stood just outside the home with their 7-year-old daughter when she heard a gunshot and looked in to see Lisa bleeding from a back wound and lying face down on the floor. Hyams stood over her with a .32-caliber semi-automatic pistol in his hand. He told his wife to leave, closed the door, and initiated a 7-hour barricade incident that ended with a Suffolk County police officer suffering from a gunshot wound to the head, Lisa's death, and Hyam's suicide.

FORT WORTH, TX—On Tuesday, August 1, 1989, Manny Cabano walked into the Tarrant County Courthouse, pointed a .357-magnum revolver at Juanita Hermosillo, with whom he had been living for the past year, and ordered everyone else out of the building. He then walked Juanita into the judge's chambers, ordered the judge out, and began a 7-hour standoff that ended when he killed Juanita and turned the gun on himself.

STOCKTON, CA—On Wednesday, August 16, 1989, at about midnight, Dang Cha Xiong, violating a restraining order for the third time, entered his former residence with a revolver and threatened to shoot his wife and eight children. At approximately 8:00 p.m. on Friday, August 18, 1989, after a 34-hour siege, Dang killed his wife, then shot and killed himself.

By
G. DWAYNE FUSELIER,
CLINTON R. VAN ZANDT,
and FREDERICK J. LANCELEY

These three cases all occurred within a 1-month period, bringing them to the attention of the FBI Academy's Special Operations and Research Unit (SOARU). Our interest was further piqued because all of these cases involved a homicide that was followed by a suicide. After discussing each case with the respective police departments, we determined that these tragedies shared some common factors. Although the three cases were not identical, there was a sufficient number of common factors to lead us to suggest this simple hypothesis: The number of "high-risk" factors present in an incident is directly related to the increased risk of a homicide being followed by a suicide. We believe that the risk to victims in certain situations increases when the victims are not genuine hostages. They are, instead, intended homicides. Such targets have not been taken hostage as a means of satisfying demands—they are being held because the subjects intend to murder them and then take their own life.

This article reviews the high-risk factors often present in these types of incidents, distinguishes between pseudo-hostage incidents and intended homicides, and recommends three criteria to consider prior to taking action. Using the same three cases throughout, we have attempted to demonstrate how the high-risk factors are repeatedly found in cases of this type.

HIGH-RISK FACTORS

Police officers responding to hostage/barricade incidents should be familiar with a number of high-risk factors involving the background characteristics and be-

havioral patterns of the subject, so that appropriate action may be taken. Recognizing these factors and reacting correctly may make a difference in how the incident ends.

Background Characteristics

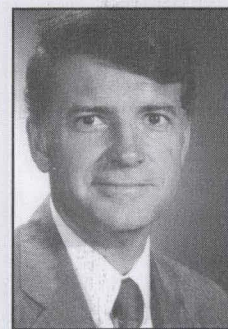
In studying these cases, we realized that the subjects shared certain background characteristics. When viewed within the total picture, this background information could alert the responding officers that they are dealing with a potentially volatile incident.

Subject experiences multiple stressors

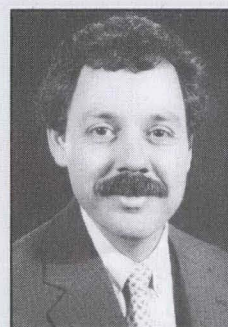
In each of these cases, the subject generally feels outside pressures, whether real or imagined. This pressure could come in different forms—financial, family, or social pressures.

In Hyams' case, there was an ongoing battle with his daughter about the young man with whom she was living. Hyams believed that his daughter lacked respect for his opinions. When he made disparaging remarks about the man, Lisa swore at him and began to walk away. Hyams picked up the gun and shot her.

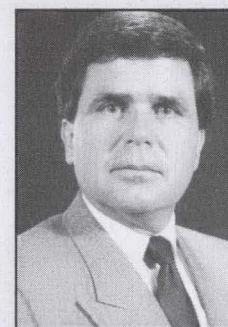
Manny Cabano's case is perhaps more typical. Cabano was employed as a bail bondsman who suffered a series of losses when clients skipped bail. This, combined with Cabano's desire to live beyond his means, led him to the verge of bankruptcy. At the time of the incident, he was being evicted from his home for failing to pay the mortgage, and he was dealing with the disintegration of his relationship with Juanita, who had filed charges against him for child sexual abuse.



Special Agent Fuselier



Special Agent Van Zandt



Special Agent Lanceley

Special Agent Fuselier is assigned to the Inspection Division at FBI Headquarters in Washington, D.C.; Special Agents Van Zandt and Lanceley are assigned to the Special Operations and Research Unit at the FBI Academy.

All of this overwhelmed Cabano, leading him to take drastic action.

In Dang's case, his personal life was extremely unstable. He had no job, routinely smoked opium, and gambled with the family's welfare money. During the year preceding this incident, he severely punished his children when they did not give him the respect he believed a father should receive. On one occasion, Dang beat his 8-year-old daughter with a telephone cord, and on another occasion, he ran a fishing line through his 10-year-old son's ears, pulling the line over a closet rod. This forced his son to stand on his tiptoes to prevent the line from cutting further through his ears. Dang's arrest and conviction for these incidents resulted in the issuance of the restraining order.

*Background stresses
male dominance*

When we spoke with the respective police departments about these cases, it was repeatedly stressed that both Cabano and Dang had backgrounds that encouraged male dominance. The responding officers believed that this factor contributed greatly to the subjects' refusal to surrender.

During conversations with police negotiators, Manny Cabano repeatedly stated that due to the allegations of sexual child abuse, he had "lost face," and he could never again "hold his head up in the community." He believed that even if he were found innocent, he would still be called "Chester, the molester." He also referred to his Hispanic heritage, stating that once a man loses his respect, he has nothing left.

Dang Cha Xiong was a Laotian refugee who immigrated to the United States after the Vietnam War. He was a member of an ethnic group called the Hmong, who were rural farmers living a very rustic life, typically in homes with no running water. In Laos, they had virtually no contact with governmental agencies, and any attempt by a government agency to become involved in family affairs was viewed as interference. Although Dang's actions are not viewed as being representative of those of the Hmong, they do seem to reflect a man caught between his cultural beliefs that a father, as head of the family, should be given respect and should maintain discipline and the expectations of American society.

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...it was repeatedly stressed that both Cabano and Dang had backgrounds that encouraged male dominance.

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*Similar incidents and
problems with victim*

Police officers should be especially wary of a "hostage" situation that involves a subject who has a history of similar incidents or who has had previous problems with his "hostage." Also key in the incident is whether the subject is holding either a person with whom there has been a romantic involvement or who is a family member, and

whether there have been previous restraining orders issued against the subject for either child or wife abuse.

In May 1960, Jimmy Hyams' first wife, pregnant with their second child, left him and was living with her mother. Hyams followed her there, and when she refused to let him in the house, he broke down the door and put a gun to the head of their 1-year-old son. When his wife pushed the gun away from the boy's head, Hyams beat her with his gun, kicked her, shot her three times, and kidnaped her. After a high-speed chase, he barricaded himself in a farmhouse. When police stormed the house 3 hours later, Hyams shot himself in the stomach. His wife and unborn child survived; Hyams served a 2 1/2-year prison term. He remarried in 1963, beginning a tumultuous relationship that included repeated assaults on his second wife and their children. When his wife attempted to hide from him by going to a motel, he found her, handcuffed her, beat her with a gun, and raped her in front of the children. He was arrested and served a 4-year prison term. He was released on parole under a court order to stay away from his wife's residence; however, in May 1974, he entered her residence and held her and the children hostage for 13 hours before surrendering. While serving another prison term, he was divorced. He married his third wife in 1981.

In 1988, Manny Cabano was living with Juanita Hermosillo and her five children by a previous marriage. The relationship was turbulent, and she eventually filed charges of child sexual abuse

against him. She later withdrew the charges, but a year later, the relationship again soured and Cabano moved out. Hermosillo again filed charges of child sexual abuse, resulting in an arrest warrant and a court order restraining Cabano from entering her (Hermosillo) residence. Within hours of being informed of the charges and the restraining order, he entered the Tarrant County Courthouse to confront Hermosillo.

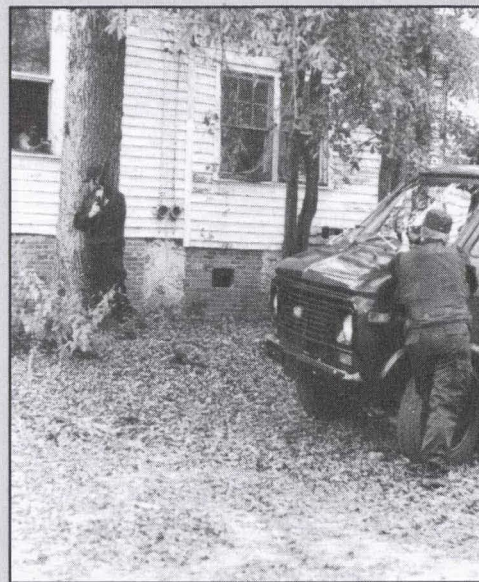
Approximately 1-year prior to this incident, Cabano had barricaded himself, Hermosillo, and one of her children in the bedroom, threatening to kill them and himself. A coworker of his ex-wife convinced him to end the siege before the police were notified.

In yet another incident, Dang held his wife and another woman against their will in a barricade incident that lasted approximately 3 hours. Dang was well-known to Child Protective Services in Stockton, California. He had been arrested three times and convicted once on child abuse charges. In July 1988, he was sentenced to 300 days in jail, ordered to take a parenting course, and was forbidden to enter the family home. He was released from jail after serving 7 months, but was again arrested in January 1989, for returning to the home. In July 1989, Dang was arrested for entering the home and threatening to kill his wife and children. He was released on bail on August 7, 1989, and he killed his wife 11 days later.

Lacks family or social support systems

Individuals who are involved in these types of incidents many

"Police officers should be especially wary of a 'hostage' situation that involves a subject who has a history of similar incidents...."



times lack family or social support systems, leaving them with no emotional outlets. This adds to their feeling of alienation and desperation.

During the incident in Mastic, Hyams received a phone call from one of his daughters, and after speaking with her, he told the negotiator, "That was my daughter. For the first time in the 9 years I'm out [of prison], she gives me a... call." A short time later, again talking to his daughter on the phone, Hyams said to her, "You never gave me a chance." To which she replied, "I gave you a chance and you ruined it twice. You shot [your first wife] and her daughter and now you're back in the same situation with this one. You shot another daughter—you didn't change."

Due to his convictions for child abuse and the restraining order, Dang was also alienated from his family, spending the last few weeks of his life sleeping and eating in a car outside of his uncle's house.

The fact that he spoke no English further isolated him.

Subject's Behavioral Patterns

Studying the subject's behavioral patterns may also give officers more insight into the type of incident with which they are dealing. Certain behavior from the subject could alert officers to the fact that they are responding to an incident that may not be resolved easily.

Forces confrontation with police

In these cases, the subject forced a confrontation with the police rather than merely shooting the victim and walking away. One theory is that the subjects hoped that they could initiate a "suicide by cop."

In all probability, Hyams shot his daughter as an impulsive act, but having done that, he ordered his wife out of the house, retained his gun, and waited for the police to

respond. When the responding officers arrived, he fired at them before they were able to make verbal contact with them. Hyams held the police off for over 7 hours while his daughter bled to death. All the while, Hyams reassured the officers that she was alive and that he was caring for her.

After ordering the judge from his chambers, Cabano simply sat waiting for the police to respond. He, like Hyams, wanted a confrontation with the police.

Subject threatens or injures victim

In each of these cases, the subject discussed minor demands with negotiators. However, the victims were not being used as a means to achieve another goal, such as obtaining money or to escape, but were, instead, the primary target of the subject's hostility.

After he shot his daughter, Hyams called the police officer who had convinced him to surrender in the 1974 incident. Hyams also spoke on the phone to his family, but

he neither presented conditions nor made any demands that could be met in exchange for his surrender or the release of his daughter.

After forcing Juanita at gunpoint into the judge's chambers, Manny Cabano demanded only two bottles of soft drinks and to make a statement to the media. He was unwilling to discuss releasing Juanita in return for these demands.

After threatening his wife and children, Dang's only demand was to be left alone with his family until the following Monday, when he was scheduled to appear in court to answer charges of violating the restraining order. This was only delaying what Dang knew was the inevitable.

Subject verbalizes intent to commit suicide

The subjects in this type of incident will generally verbalize their intent to commit suicide before actually following through on their threats. They may also attempt to put their affairs in order or give a "verbal will."

When Hyams failed to appear for work, his boss called him to ask whether he was ill. Hyams described to his boss what he had done, told him to replace him at work, and said that he was "...sorry for the way it's gotta end." He later told the police negotiator, "...but if I feel myself going down, I'm putting a bullet in my head, because they're not gonna recuperate me...if I feel like I'm gonna go, I got the gun in my hand, and I'm putting it to my head."

Hyams also asked the negotiator to tell his wife that "I loved her, only I had too many obstacles against me." Later he said, "I want you to tell [my wife] that I'm sorry. I loved her with all my heart and soul. I tried, and I tried hard."

Just before entering the courthouse, Cabano gave away his car and a large amount of money. During the incident (unbeknownst to the negotiators), he called his ex-wife and told her to remove [some items] from his safe and destroy them because he would not need them anymore.

Approximately 12 hours into his barricade incident, Dang called an acquaintance to the scene so he could repay a \$50 debt. Just before he shot his wife and committed suicide, Dang showed his 10-year-old daughter where he had hidden \$500.

PSEUDO-HOSTAGE INCIDENTS AND INTENDED HOMICIDES

The term "hostage" has typically been defined as "a person held for the fulfillment of demands." To assist in distinguishing between true hostage and pseudo-hostage inci-



"...an objective appraisal of the likelihood of casualties to both victims and law enforcement officers must be made."

dents and intended homicides, we propose expanding this definition to read, "A person held and threatened by a subject to force the fulfillment of substantive demands on a third party." In these incidents, the victim is clearly being threatened by the subject, and the threats are used to influence a third party, usually the police. When there are clear threats or there is actual injury to the victim but the subject makes no substantive demands to a third party, the risk to the victims should be considered to be very high. Officers should be aware that this is not an incident that is likely to end in a peaceful resolution.

Hyams, Cabano, and Dang each threatened or actually injured their victims but made no substantive demands. Despite the efforts of the negotiators, these demands could not be tied to the release of the victims. The hostages were not being used as bargaining chips to obtain something else.

There are other times when an incident lacks threats directed toward the victim and no substantive demands are made. Although law enforcement officers may believe that they are dealing with a hostage situation, what they actually have is a pseudo-hostage incident. For example, a husband threatens his wife with a handgun, and she runs to a neighbor's house to call the police. When officers arrive, she advises them that their 1-year-old son is in the house with her husband. When they contact the husband, he informs them that he is angry with his wife, this is not their concern, and they should go away and leave him alone. He makes no demands, and he does not threaten the safety

of his son. In this case, the absence of both substantive demands and threats toward the child, coupled with the absence of other high-risk factors, should be an indication to the responding officers that the risk to the son is probably relatively low.

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Individuals who are involved in these types of incidents many times lack family or social support systems....
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ACTION CRITERIA IN DECISIONMAKING

A key question when managing hostage/barricade incidents is when to authorize a tactical intervention to rescue the hostage. While it is impossible to determine the exact likelihood of surrender, it is reasonable to conclude that as the number of high-risk factors increases, the chance of a negotiated resolution decreases. There is, however, an important difference between a decreased chance for surrender and no chance for surrender. We are not suggesting that a negotiated surrender is impossible or that the on-scene commander should immediately authorize an assault—there have been cases that have been successfully negotiated even though some of the high-risk factors were present.

For example, in February 1990, in Montgomery County, Kentucky, John Delay became distraught when he lost a custody dis-

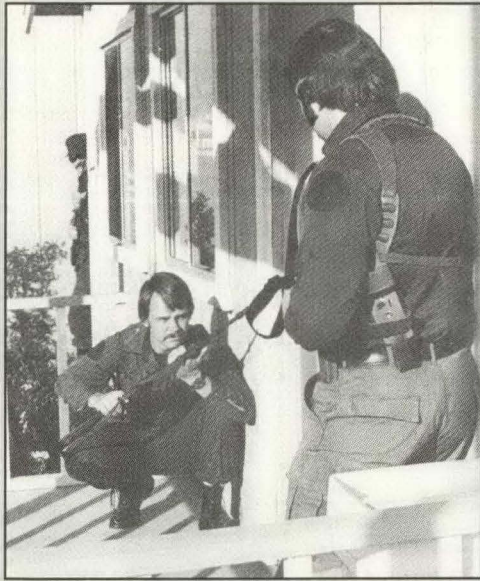
pute. He pulled a gun during a meeting with his wife and son and a social worker, threatened to kill them and then himself, and demanded that police put down their weapons and come into the room to speak with him. Police negotiated with him from outside the room, and after about 3 hours, he released the hostages and surrendered.

Even when a substantial number of high-risk factors are present, the risk to hostages and law enforcement officers might be judged to be even greater if the rescue attempt involves an assault. On the other hand, if there is only one subject and a "risk effective"¹ tactical option (the positives outweigh the negatives) is available, that option might be considered earlier than it would be in a situation without these factors.

The personnel of the Special Operations and Research Unit developed the concept of "action criteria" to assist in making any command decisions. An affirmative answer should be made to three key questions prior to any critical decisions being made.

Is the Action Necessary?

Why is a particular action being contemplated? Is the on-scene commander responding to either internal or external pressure to "do something"? If it is still early in the incident, might this action be more successful at a later time? Why is the action being contemplated at this time? If it was rejected 12 hours ago, is it being reconsidered now because the on-scene commander is feeling pressure to resolve the incident, even though there has been no change in circumstances?



"A key question when managing hostage/barricade incidents is when to authorize a tactical intervention to rescue the hostage."

Is the Action "Risk Effective"?

Although any hostage rescue involves some risk, an objective appraisal of the likelihood of casualties to both victims and law enforcement officers must be made. Suppose, for example, one victim is being held by a subject who is armed with an automatic weapon in a location with only one entry point available. The tactical team leader estimates that it will take 10 to 20 seconds to enter the stronghold. No external diversion is possible, and should he decide to do so, the subject would have time to shoot the victim and still confront the tactical team. The negotiation team leader believes, based on the subject's past history, that if assaulted, the subject will open fire rather than surrender. In this situation, surely a dynamic entry would not reduce the risk to the hostage; instead, it would substantially increase the risk to both the hostage and the officers entering the stronghold.

Is the Action Professionally Acceptable?

Is the action being taken both legally acceptable and professionally ethical? Usually, the legal aspect is the easiest to resolve, while the ethical and moral considerations may be much more difficult. For example, in August 1988, an 8-month-old boy swallowed a balloon, cutting off his air supply. The child, who had severe brain damage, was in an irreversible coma and had been on life support systems for over 8 months. According to doctors, he had little chance of ever regaining consciousness. In April 1989, the boy's father, armed with a handgun, entered the hospital room, ordered the medical personnel out of the room, disconnected the life support equipment, and held his son in his arms, crying, until his son died.

In this case, one option might have been to shoot the father in order to prevent the son from dying. That action may have been legal, but

the ethical considerations in such an action make the decision much more difficult.

CONCLUSION

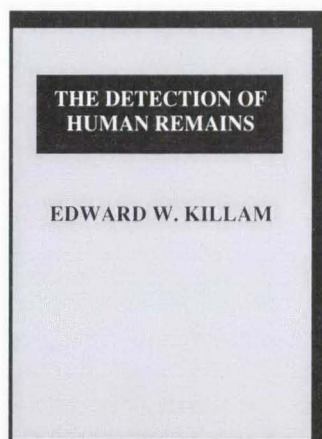
The risk to victims in a hostage/barricade incident can vary considerably, depending on either the presence or absence of many factors, including those discussed in this article. That perceived risk, as well as the risk involved in a particular tactical option, should be the primary considerations in an on-scene commander's decision to authorize a tactical action. Before any decisions are made, the on-scene commander should evaluate the presence of high-risk factors, consider all other intelligence available, and combine this information with the assessments made by both the negotiation and tactical teams. This combined information will assist the commander in differentiating between a genuine hostage situation, a pseudo-hostage situation, and an intended homicide incident. Any contemplated action should be reviewed in the context of the action criteria prior to a final decision being made.

Reviewing the high-risk factors in a hostage situation is a new approach to reacting to these types of situations. Armed with this information, on-scene commanders will be better equipped to evaluate the incident and make the most appropriate decision in these high-risk situations.

LEB

Footnote

¹ Donald Bassett, "Confrontation Management," Special Operations and Research Unit, FBI Academy, 1988, (unpublished manuscript).



The Detection of Human Remains, by Edward W. Killam, Charles C. Thomas, Publisher, Springfield, Illinois, 1990, (217) 789-8980.

This book is informative, keenly relevant, and of practical value to a diverse audience, including students, criminalists, medical examiners, police investigators, physical anthropologists, archaeologists, and other medicolegal authorities. The author, experienced in both police work and physical anthropology, provides the reader with an introductory, but sufficient, knowledge of where and how to search for human remains.

The Detection of Human Remains begins with an explanation of the role and importance of an integrated, methodological approach in searching for human

remains. Methods used to locate deceased individuals range from simple but effective metal probes to sophisticated techniques, such as ground-penetrating radar and infrared scanner imagery. Each method is described and critiqued for accuracy, ease of use, and accessibility.

Modes of search are divided into two categories—non-intrusive, non-destructive foot (ground) search methods and intrusive, variably destructive ground searches. Foot search methods include conducting an archaeological (pedestrian) surface survey of a crime scene, inspecting soil and vegetation changes visible above a recent burial, using air-scent dogs, or searching for evidence of animal scavengers, which feed off organic, human remains.

The more technologically sophisticated intrusive ground search methods, such as combustible gas vapor detectors, coring and drilling, and ultraviolet fluorescence, are covered in more detail, due to their varied and complicated nature. Techniques requiring expertise are so noted. Also discussed are remote sensing techniques, which give searchers the advantage of a “bird’s-eye-view” when scanning large, remote areas. Other topics include variables affecting the rate of bodily decomposition, how to plan a search, preparing lost person

checklists, and a list of recommended films.

Through descriptions, drawings, and photographs, the author does a thorough job of presenting the advantages and disadvantages of nearly every conceivable method for locating a decedent. Various factors, including terrain and time of year, are considered when evaluating the different modes of search. The text presents accurate and detailed information based on first hand accounts and scholarly works. The bibliography is current and extensive.

The Detection of Human Remains reflects the author’s experience in crime scene investigation, forensic anthropology, and the techniques proven to be effective in locating human remains. By becoming familiar with the methods and techniques described in the book, medicolegal authorities will be better prepared to search for, locate, document, and recover buried human remains. Still, as the author notes, these insights and techniques will serve only to improve the chances of recovering buried remains. For confirmation of the grave, “in the end one must simply dig.”

Reviewed by
Robert W. Mann, M.A.
Forensic Anthropologist
Smithsonian Institution
Washington, D.C.



Hate Violence in the United States

By
FLOYD I. CLARKE

On October 8, 1988, members of the Confederate Hammerskins (CHS) vandalized a Jewish community center, the Temple Shalom Synagogue, and an Islamic mosque in Dallas, Texas. These Skinheads broke windows, shot into walls, and spray painted racist graffiti on the buildings. Crime scene evidence, collected by the Dallas Police Department, established Daniel Wood as a suspect. After being arrested and convicted

in State court, Wood asked to speak with Federal authorities concerning CHS activities. A joint FBI/Dallas Police Department investigation was initiated in an attempt to corroborate Wood's information.

As a result of his information, more than 25 former CHS members and 15 active CHS members were identified and interviewed, and over 75 subpoenas were served. On September 28, 1989, a Federal grand jury indicted Daniel Wood, Sean

Tarrant, Michael Lawrence, Jon Jordan, and Christopher Greer on two counts of violating Title 18 of the U.S. Code, Section 241, Conspiracy to Violate Civil Rights. Twelve other former and active CHS members pleaded guilty to misdemeanor charges involving civil rights violations and agreed to testify as Government witnesses.

The trial began on February 20, 1990, and by March 1, 1990, Wood, Tarrant, Lawrence, Jordan,

and Greer were found guilty. In addition, 12 other CHS members were convicted of various acts of racial violence.

RISE IN HATE VIOLENCE

Unfortunately, this case is not an isolated incident. With the renewed increase in hate violence activities by white supremacist groups, racial tensions have escalated across the country. Such groups use the latest in today's technology, such as cable television and computer bulletin boards, to spread their message of hate to anyone who will listen. And, just as these organized terrorist groups practice hate violence daily, individuals or small groups have also contributed to the increase in these types of crimes. Even so, hate crimes have been largely ignored, and oftentimes, repressed by those who would rather not open their eyes to the danger that these crimes present.

Hate violence should be recognized as a nationwide problem that must be confronted. According to Attorney General Dick Thornburgh, "Violent interference with freedoms guaranteed by the Constitution will continue to be a Federal law enforcement priority. Acts of racial and religious hate...are simply intolerable in a free society. Let the word go out that the federal government intends to bring to bear the full force of the law on every such act that comes to its attention."¹

Even though hate violence crimes often fall under Federal jurisdiction, their successful prosecution is becoming increasingly dependent on close cooperation

with State and local law enforcement. Therefore, law enforcement agencies nationwide must renew their commitment to eradicate both domestic terrorist groups and malicious individuals who violate the civil rights of others. This article focuses on the FBI's activities and responsibilities with regard to the investigation of hate violence crimes.

COMBATING HATE VIOLENCE

Currently, the FBI is the lead Federal agency responsible for investigating incidents of racial and/or ethnic violence. Reported cases of racially motivated violence receive top priority attention in the FBI's Civil Rights Program. This has been true since the 1960s, when the FBI actively investigated the Ku Klux Klan. Today, with the recent prosecutions of white supremacist organizations, such as the Aryan Nations, the White Patriots Party, and the Skinheads, as well as in-

dividuals involved in civil rights violations, the FBI continues its tradition of stopping hate violence.

By law, the FBI is mandated to combat hate violence, to prevent such incidents (if and when possible), and to react swiftly when an incident does occur. In this regard, the FBI confronts hate violence in two distinct criminal investigative programs—domestic counterterrorism and civil rights. Domestic counterterrorism cases focus on investigations of organized groups that employ hate violence. Civil rights investigations of hate violence, on the other hand, focus on individuals or small, unorganized groups.

Domestic Counterterrorism Investigations

Hate violence investigations under the Domestic Counterterrorism Program concentrate on the unlawful use of force or violence by terrorist groups for political or social ends. These groups include such

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”

*Mr. Clarke is the Deputy Director of the
Federal Bureau of Investigation.*



organizations as The Order, Aryan Nations, the White Patriots Party, and the racist Skinheads, to name a few. Most notably, these white supremacist groups target blacks, Orientals, Mexicans, Jews, and various other ethnic and racial groups. Once reliable information has been gathered that gives evidence to their criminal activities, the FBI can legally investigate violent groups such as these to determine their structure, scope, and membership. This intelligence information, in many cases, helps to prevent a tragedy before it occurs.

In order to anticipate terrorist attacks by these groups, the FBI makes full use of its undercover Agents and informants and uses court-authorized electronic surveillance. These tactics have proven successful on several occasions, most notably during an incident at the U.S. Penitentiary at Leavenworth, Kansas.

Case Study

In December 1988, U.S. Bureau of Prisons (BOP) officials at the U.S. Penitentiary in Leavenworth received information indicating that three inmates were planning an escape for early January 1989. All three were members of the white supremacist/terrorist organization, The Order, a violent splinter group of the white supremacist organization, Aryan Nations, and all were in prison on charges stemming from their relationship with the white supremacist movement. According to the plan, weapons were going to be smuggled in through a contact in

the prison laundry room and hidden there until the escape took place. The three inmates, Bruce Carroll Pierce, Richard Scutari, and Randall Evans, were then planning to shoot their way out at a time when the prison yard would be crowded with inmates.

“
Law enforcement must also work more closely with the public to discourage racial hatred and bigotry wherever it is found.
”

Fortunately, their escape plan was discovered by a former FBI source who was an inmate at the prison. FBI Agents in Kansas City discussed the planned escape with BOP officials at Leavenworth, and the three inmates were transferred to the U.S. prison at Marion, Illinois, thus avoiding a possibly violent domestic terrorist situation.

Rise of the Skinheads

However, despite efforts to counter the threat from groups such as The Order, right-wing terrorism has increased since the mid-1980s, especially in the recruitment of racist Skinheads.

Originally, the Skinheads arose in England during the 1970s to protest poverty and unemployment.

However, out of this relatively benign group developed a separate group consisting of both white supremacist and nonracist Skinheads, who began to appear in the United States in the early 1980s. The Skinheads movement has evolved into such a persistent threat that the Department of Justice's Civil Rights Division has formed a special task force to confront the problem.

Currently, there are more than 3,000 violence-prone Skinheads in the United States. This figure represents a three-fold increase in the number of Skinheads since 1987.² These Skinheads are known for attacking minorities, homosexuals, and anyone who opposes them by using such items as steel-toed boots, knives, and baseball bats. In fact, one Skinhead described his gang as “a subculture army....Instead of verbally assaulting people, we physically assault them....We've all had our part in bashing people. We'll assault anybody.”³ In addition, these Skinheads are being openly recruited by other white supremacist organizations, such as the Aryan Nations and the White Aryan Resistance.

Investigating these violent, white supremacist groups can be very arduous. These terrorists organize themselves into tightly knit brotherhoods that are extremely difficult to penetrate. As a result, information can be difficult to obtain. Despite these difficulties, great progress has been made in dissolving white supremacist groups. The Department of Justice and the FBI are constantly working with local

and State law enforcement organizations to collect evidence and to prosecute these groups. Many groups, however, still rally, recruit, and spread their messages of racial hatred.

The Civil Rights Program

Unlike the Domestic Counterterrorism Program, which focuses on organized groups, the FBI investigates hate violence committed by individuals or small, unorganized groups under its Civil Rights Program. Examples include racially and/or ethnically motivated acts of violence resulting in violations of such Federal laws as the Civil Rights Act of 1964, the Discrimination in Housing Act, the Equal Credit Opportunity Act, the Federal Revenue Sharing Act, and the Civil Rights of the Institutionalized Persons Act. The FBI's ultimate goal is to reduce civil rights violations and to ensure that the rights of U.S. citizens and inhabitants are protected.

This task is accomplished by responding to the thousands of criminal civil rights complaints received each year. Each legitimate complaint is then thoroughly investigated by the FBI and a report is forwarded to the Civil Rights Division (CRD) at the Department of Justice. It is the CRD that has prosecutive authority for all Federal civil rights statutes because of the sensitive nature of the constitutional issues involved and the need for uniform application of Federal law in this area.

Case Study

When a black couple moved into a predominantly white, working class neighborhood of Baltimore, Maryland, they were subjected to a series of acts of vandalism directed against their residence. Rocks, bricks, and bottles

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were thrown at the windows, causing extensive damage. The couple was also subject to racial taunting, slurs and threats. When the Baltimore Police Department received information that a plan had been made by several conspirators to firebomb the couple's home, the police department requested assistance from the FBI in its investigation.

Using information obtained from consensually monitored conversations between a cooperating witness and several of the conspirators, the FBI and the police department built a case against two individuals responsible for these hate crimes. Gary Merryman and Joseph Chilcote were charged with Conspiracy to Violate Civil Rights (Title 18, U.S. Code, Section 241)

and Interference with Housing Rights (Title 42, U.S. Code, Section 3631). The two individuals were convicted and sent to prison for their crimes in March 1989.

CONCLUSION

Racism, bias, bigotry, and violence are on the upswing. In view of the ever-increasing threat of hate violence perpetrated by both white supremacist groups and racist individuals, law enforcement agencies across the country must work together to combat these crimes. In the words of Dr. Benjamin Hooks, Executive Director of the NAACP, "Now is the time to turn to one another, not to turn on one another."

All in law enforcement—including Federal, State and local authorities—must combine their efforts to remove the blight of racial violence and discrimination. Law enforcement must also work more closely with the public to discourage racial hatred and bigotry wherever it is found. It is the duty and responsibility of everyone in law enforcement to ensure that all Americans, regardless of race or ethnic origin, can live in freedom, with dignity.

LEB

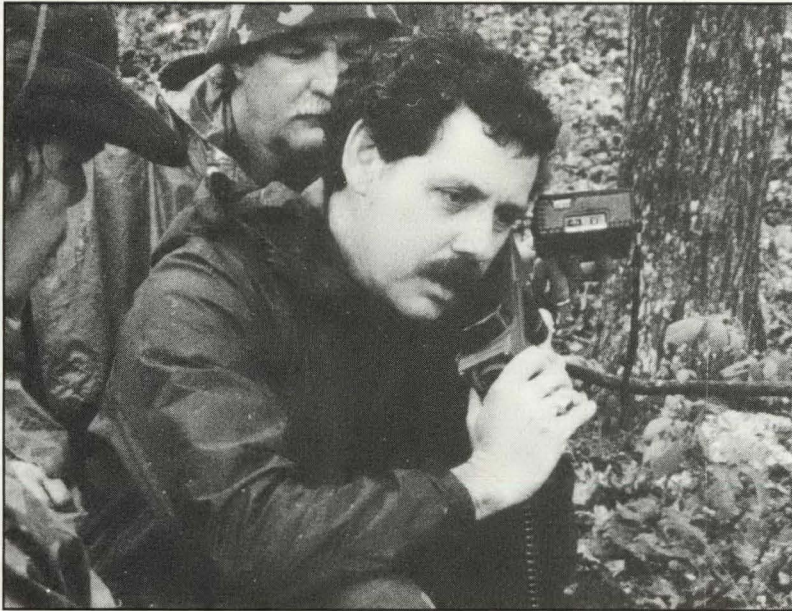
Footnotes

¹ See Department of Justice Press Release dated March 1, 1990, regarding the convictions of the five CHS members involved in the Dallas, Texas, case.

² "Hate Violence and White Supremacy," The Klanwatch Project of the Southern Poverty Law Center, December 1989, p. 17.

³ Ibid, p. 1.

Focus on Negotiations



Hostage Situations

Separating Negotiation and Command Duties

Negotiators do not command; commanders do not negotiate. This statement expresses the FBI's philosophy regarding hostage negotiations. A hostage negotiator attempts to establish a relationship as a "significant other" with the hostage taker. This role, coupled with intelligence-gathering responsibilities and liaison with the tactical team, consumes most of the negotiator's time and resources.

During negotiations, the hostage negotiator must also establish a role with the hostage taker as a spokesperson for the authorities

and a conduit of information. If the subject views the negotiator as a decisionmaker, the concept of stalling for time becomes frustrating. The subject may believe that a negotiator identified as someone of high rank can resolve issues quickly. Therefore, the negotiator must always convey the impression that the negotiation team is acting in the subject's best interest, but that "things take time."

On the other hand, the negotiator should also avoid using phrases such as, "I'll have to ask the commander about that." At no time should the negotiator convey

the impression that one person on the scene has the decisionmaking authority, even though it may be true. If this impression is created, experience has shown that the hostage taker will quickly demand to speak only to that person. It is better to indicate that a decision-making group, not necessarily at the scene, is considering all requests from the subject.

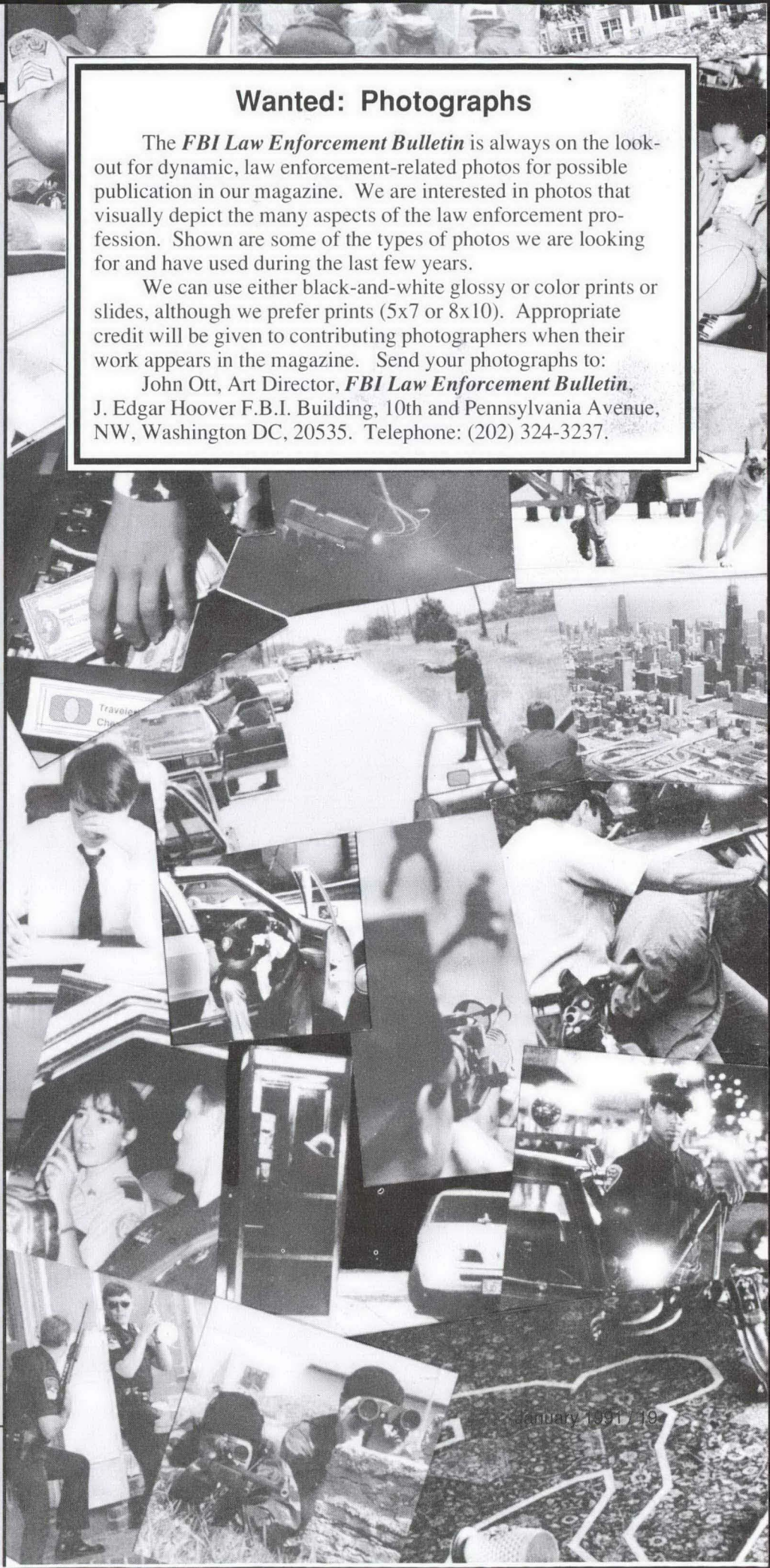
This does not negate the value of a trained, experienced negotiator who has been promoted into the command ranks. Such an individual may be the best negotiator within an agency. However, this individual simply cannot have the dual responsibilities of negotiator and command level officer during a crisis. Both duties require an individual's full concentration and resources. It would be overly taxing and potentially disastrous to expect an individual to act as negotiator, possibly over many tense hours or days, while simultaneously performing command duties, that require instant knowledge of all aspects of the crisis. Further, the negotiator should not be making command decisions based upon personal dealings with the subject because of the risk of losing objectivity.

An on-scene commander must maintain a holistic view of the crisis situation. Decisions must be based on objective assessments and must incorporate the full range of available assets, to include negotiations, tactical, investigative and others. In approximately 85 percent of the cases involving the

Law enforcement agencies represent a specialized society with talents and abilities that are enhanced by professional training. A crisis situation requires agencies to deploy their best resources and delegate responsibility according to the demands of the crisis and the assets available to the agency. By maintaining discipline distinctions between the members of a crisis management team, chances for addressing and eventually resolving all aspects of the crisis are greatly increased, and the possibility of role conflicts among those attempting to resolve the crisis is reduced.

Information for this column was submitted by Clinton R. Van Zandt, a Special Agent in the Special Operations and Research Unit at the FBI Academy in Quantico, Virginia.

John Ott, Art Director, **FBI Law Enforcement Bulletin**,
J. Edgar Hoover F.B.I. Building, 10th and Pennsylvania Avenue,
NW, Washington DC, 20535. Telephone: (202) 324-3237.



The Rat Patrol Rides!

By
PAUL C. RICKS



In the fall of 1988, the rate of automobile thefts increased dramatically all across the Nation; the City of Colorado Springs, Colorado, was no exception. Although the department continued to emphasize traditional anti-crime measures, such as information bulletins at roll call, and alerting the auto theft unit—the rate continued to increase. In fact, within 1 year, the number of automobile thefts occurring within the city jumped an astonishing 77.9 percent.¹ It became

obvious to the department that only through a well-organized, permanent response could the department solve existing auto theft cases and prevent future thefts. After considering the various options available, department administrators decided to form a special auto theft detail.

Emergence of the RAT Patrol

The newly created detail, christened the RAT Patrol (Reduce Auto Theft), consisted of two of-

ficers from the Tactical Enforcement Unit, two officers from each patrol shift, and a sergeant. The patrol shift officers were assigned to the detail and were trained for a period of approximately 90 days. They were then rotated back to their shifts and were replaced by different officers. This insured a constant infusion of training and tactical information to the patrol shifts.

The team worked in plain-clothes and used unmarked vehicles borrowed from the Investigative

Bureau. However, in order to provide enough vehicles for the RAT officers, local insurance companies were approached for help. One company responded by supplying two vehicles—a recovered stolen vehicle and a corporate vehicle.

Selected RAT Patrol officers received special training in locating hidden vehicle identification numbers, restoring obliterated vehicle identification numbers, recognizing stolen vehicles, conducting investigations involving auto thefts, and interviewing/interrogating suspects. These officers then prepared a 4-hour block of inservice training for all Patrol Bureau personnel. Several sessions were needed to train the 355 persons assigned to the Patrol Bureau, and these sessions were scheduled around the clock to accommodate shift scheduling and to avoid overtime expenditures.

Attacking the Problem

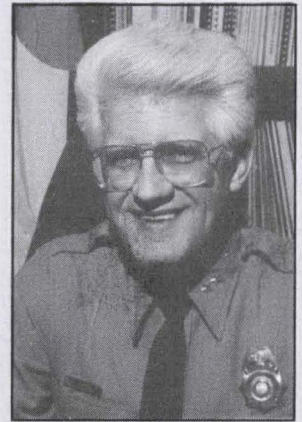
The mission of the RAT Patrol was to enable the department to deal with the rising auto theft rate in a more effective manner. Therefore, in order for RAT officers to have a better understanding of the problems that faced them, the Crime Analysis Unit (CAU) conducted a detailed analysis of the crime, which revealed the following information about the auto thefts occurring within the city:

- The suspects were usually juveniles or young adults
- The same suspects or their close associates were suspects in a high percentage of cases cleared

In addition to the suspect information contained in the profile, the RAT officers also learned that high-performance cars were the most popular target and that most thefts occurred in the eastern part of the city during the evening hours. The most popular methods of theft included taking cars with keys left in the ignition, breaking the steering column, or hot wiring the car.

“**Through innovative thinking and...a cooperative spirit...[the RAT Patrol] successfully attacked a major problem in the community.**”

Mr. Ricks is the Deputy Chief of Police, Investigative Bureau, Colorado Springs, Colorado, Police Department.



Investigative Techniques

Information contained in the crime analysis served as an important tool in the development of new investigative techniques. One investigative technique developed by RAT officers to use in stolen auto cases was working pattern cases “backwards.” To do this, they began with known auto thieves and identified the cases that fit an individual’s (or group’s) pattern. They also did “link analysis” charts on known auto thieves and their associates, as well as gangs of thieves.

RAT officers also focused special attention on cases that involved the most popular target vehicles because these cases were generally found to involve repeat offenders. To increase the probability of cooperation, they devised a system to allow off-duty RAT officers to interrogate suspects immediately after their arrests. This “call-out” system ensured that experienced officers were available to

process recovered stolen vehicles thoroughly for items of evidence. RAT officers also varied their work hours to coordinate their schedules with the times most vehicles were stolen.

A final investigative technique used by RAT officers was to monitor closely potential outlets for stolen vehicles and parts and accessories. Popular stolen accessories included CD players, tape decks, radios, and cellular phones.

Cooperation With Judicial Systems

The Analysis Unit profile shed light on yet another problem the department faced in its efforts against auto thefts—ensuring that offenders were incarcerated. If persons in the judicial system could be convinced of the necessity of incarceration, it would remove repeat offenders from the streets, and perhaps, serve as a deterrent to those who may be considering auto theft.

RAT officers believed that “vertical prosecution” for all auto theft cases was the key to ensuring that auto theft offenders would be incarcerated. They gained the cooperation of the District Attorney’s office, and an agreement was reached to have one prosecuting attorney assigned to conduct all phases of any auto theft cases brought to them for filing. This prevented an offender who had cases pending simultaneously in several different divisions of the district court from receiving “first offender” treatment in multiple cases. In return, the department agreed to have an auto theft investigator present at every stage of all

court proceedings that involved either the theft or attempted theft of a motor vehicle. The investigator was prepared to testify not only to the facts of the specific case under consideration, but also to the general scope of the auto theft problem within the area and the impact it had on the community.

“
A comparison of the January 1990, figures to the January 1989, figures show a 45-percent decrease in the auto theft rate.
”

To further strengthen their position with the courts, the RAT officers asked the CAU to prepare “community impact statements.” These statements outlined the number of thefts and the dollar amount of the losses caused by top auto theft offenders as a result of the current prosecutorial and judicial treatment of youthful auto theft defendants. In an effort to educate the courts concerning the problems the RAT patrol faced, these statements were presented in meetings and discussion sessions held with the District Attorney’s personnel, judges, and juvenile court referees. The statements were also used to encourage stiffer sentences for both juvenile and adult offenders. As offenders were incarcerated more rapidly and for longer periods of time, the auto theft rate began to decline.

Success of the RAT Patrol

In 1989, the stolen vehicle rate dropped approximately 2 percent compared to the 1988 rate. The recovery rate in 1989 saw an even more dramatic change, increasing almost 10 percent to 91 percent. First month statistics for 1990 show that the decline experienced in the last half of 1989 continues. A comparison of the January 1990, figures to the January 1989, figures show a 45-percent decrease in the auto theft rate.

Intra-agency Efforts

While the RAT patrol has contributed greatly to the reduction in auto thefts, intra-agency cooperation has also played an important role. The auto theft detectives continued to follow up on all reported auto thefts, while RAT officers conducted surveillance of high-incidence locations and known auto theft suspects. In addition, the Auto Theft Unit handled followup investigations, isolated auto theft cases, multiple related cases, identifiable pattern cases, and “chop shop” operations. The detectives tracked every reported auto theft case to ensure that it received proper attention and that followup reports were submitted promptly. They also presented auto theft cases to the District Attorney’s office to guarantee precise case coordination, and they inspected salvage yards to ensure that operators did not store vehicles, which may have been stolen, along the roadside in violation of city zoning laws.

The Total Resources Against Career Criminals (TRACC) Unit of the Investigative Bureau con-

The Bulletin Reports

centrated its anti-theft efforts on the apprehension of career criminals active in the stolen car field, and several of these felons were incarcerated as habitual offenders. During the analysis phase of the RAT plan, the department determined that many repeat auto thieves were juveniles, and for this reason, the TRACC Unit did followups on these cases. This resulted in quicker adjudications and longer sentences for these juveniles.

Another successful project has been the Top Auto Theft Offender project, which involves determining a point system for individuals who are either arrested or convicted for offenses involving the theft or attempted theft of a motor vehicle. A list of offenders was distributed to all officers, and offenders' names were entered into both the Colorado Criminal Information Center and the department's computerized criminal history files. Any officer checking an individual for wants/warrants would be notified if that person were on the list.

Conclusion

The dedication and total commitment of RAT Patrol officers contributes to the success of this program. Through innovative thinking and a strong desire to create a cooperative spirit, both inside and outside the department, they have successfully attacked a major problem in the community.

LEB

Footnote

¹ There were 169 vehicles stolen in January 1989, compared to 95 vehicles stolen in 1988.

DNA Profiling

The Technology Assistance Program (TAP) of the National Institute of Justice issued a bulletin entitled **DNA Profiling: For Positive Identification**. DNA profiling is a revolutionary scientific technique that is particularly valuable to law enforcement in the investigation and prosecution of violent crimes.

This bulletin gives an in-depth layman's description of DNA and covers the history/background of DNA analysis. It also addresses the collection, preservation, and testing of DNA samples and court cases that considered the admissibility of DNA evidence. The bulletin also provides a list of selected readings on DNA analysis and profiling.

Copies of the bulletin can be obtained by writing or calling the TAP Information Center, Box 6000, Rockville, MD 20850, 1-800-248-2742 or 1-301-251-5060.

Search Warrant Guidelines

A new publication by the American Bar Association's (ABA) Criminal Justice Section provides comprehensive guidelines for the issuance of search warrants. The publication, entitled **Guidelines for the Issuance of Search Warrants**, explores such complex issues as probable cause, specificity requirements, and the imposition of appropriate restrictions on the execution of search warrants. Direction is given in areas where warrants are most frequently sought, as well as in such newly emerging areas as controlled substance warrants, obscene materials, bodily intrusions, and business records.

The book provides examples and is supplemented with useful checklists. It should be noted, however, that the views contained in this publication represent only the views of the authors and should not be construed as official policy of the American Bar Association or the State Justice Institute, which provided a grant for the project.

A copy of the book can be obtained from ABA Order Fulfillment, 750 N. Lake Shore Drive, Chicago, IL 60611, 1-312-988-5555. The order number is 5090046.

The Bulletin Reports, a collection of criminal justice studies, reports, and project findings, is written by Kathy Sulewski. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 7262, J. Edgar Hoover Building, 10th & Penn. Ave., NW, Washington, DC 20535.

(NOTE: The material presented in this section is intended to be strictly an information source and should not be considered as an endorsement by the FBI for any product or service.)

Rededicating Ourselves To Leadership And Ethics In Law Enforcement

By
VANE R. KING

*"Our problem is not to find better values
but to be faithful to those we profess."
—John Gardner*

Corruption, drug abuse, conduct unbecoming an officer—these are just a few of the dangerous and troubling situations that could challenge law enforcement professionals as they strive to meet their responsibilities in today's rapidly changing and highly intricate social environment. Unfortunately, just as the criminal activity law enforcement officers are sworn to combat grows more violent and sophisticated, clear ethical codes of conduct are not always stressed by today's police leadership. To be sure, many departments emphasize ethics and even offer special training in this area, but the modern temptations facing today's officers require a rededication to basic ethical behavior by both street officers and police managers.

Ethical issues and values are most certainly not a new concern in law enforcement. However, they have never before been so publicized nor have the stakes involved been so high. As Patrick V. Murphy, former New York City Police Commissioner, notes, "Corruption, brutality, racial discrimination, improper political in-

terference, unequal enforcement, bribery, and gratuities can appear to be commonplace. The cost of unethical conduct by police is high—an excess of preventable crime, a low level of respect for the police, and a loss of citizen cooperation on which police effectiveness depends."¹

Because aberrant police behavior results in shattered lives and an erosion of public confidence and support, ethical concerns in policing remain great. Officers and managers alike are expected to perform their duties in a wide variety of interpersonal situations where values and ethics are of tantamount importance. Functioning with minimal supervision and little time for reflection, they are required to make complex and crucial decisions, many of which are irrevocable,² during highly emotional, fast-moving, stressful situations. In time, values and ethics may denigrate, and the prolonged effects of this can be harmful and far-reaching. And because police officers continue to face ethical questions, administrators must positively impact on their ability to deal with these ethical entanglements.



*Lieutenant King serves in the
charter township of Flint,
Michigan, Police Department.*

HISTORICAL PERSPECTIVE

In 1956, the National Conference of Police Associations, representing approximately 200,000 police officers, and the International Association of Chiefs of Police adopted the Law Enforcement Code of Ethics. Leaders in law enforcement, as well as rank-and-file officers throughout the Nation, offered their suggestions and participated in its formulation. This code of ethics offered solutions to many of the police officer's everyday problems.

But times have changed, and according to various media sources, so have police officers, not so much with regard to their collective values, but to their faithfulness to those values. Many outside law enforcement view the police as having "doughnut shop ethics." As Bruce Benson and Gil Skinner wrote, "Police think nothing of accepting 'harmless' gratuities—the free coffee, the half-price meals, 'badging' their way into a movie."³ Unfortunately, tomorrow (or is it today?)

these same officers may think little of payoffs, ripoffs, and assaults. By starting off small, they can lose control and allow themselves to go too far. The local headlines tell the story. The question then becomes, "What can be done to positively influence an officer's ability to deal with ethical entanglements?"

LEADERSHIP ROLE

To begin, law enforcement managers must provide an atmosphere conducive to proper value judgments by their officers, especially during those situations where the outcome is based on discretion. To accomplish this goal, they must nurture a more highly developed sense of ethical responsibility and an inner code of ethics.

Police leaders set the moral tone of the department; therefore, they are obligated to set an ethical example for others to follow. Whether they want to accept it or not, top management serves as a key reference point for all subordinates. If the truth be known, "...ethical standards drop rapidly when employees see their supervisors engage in questionable managerial practices. What is needed more than anything else is leadership."⁴

While police leaders control the working environment and serve as role models, they must also educate personnel in sound decisionmaking practices. Police officers may misdefine their roles. Therefore, it is up to managers to evaluate what the public expects and to communicate clearly and inculcate values to their staffs—fairness, honesty, reliability, and accountability.⁵

Motivation

Managers must begin with self-motivation. The key is the dedication and sacrifice that are required and demanded from the professional police officer. Professional law enforcement is no place for the officer whose philosophy in life is "What's in it for me?" Satisfaction in law enforcement

"...modern temptations facing today's officers require a rededication to basic ethical behavior by both street officers and police managers."

must come from doing the job to the best of one's individual abilities and not be solely dependent upon the final outcome.

As the Law Enforcement Code of Ethics points out, the mission and duty of law enforcement is to protect and serve. The code addresses many issues, including human and constitutional rights, prejudice, conduct unbecoming an officer, physical assault, compliance with laws and regulations, protection of confidential information, attitude, appearance, values, fairness, unnecessary force, public trust, public faith, and being true to the ethics of police service.

Unfortunately, there is no practical way to measure the effect that ethics codes have on personnel,⁶ even though codes "serve as a living document of organizational standards and provide direction in decisionmaking."⁷ But without individual beliefs, values, and com-

mitment, these codes are only words, ideas, goals, and philosophies—ideas that are easy to vocalize but hard to implement. However, "codes can play a useful role in reminding those tempted by misconduct of the shared goals of the profession."⁸

Law enforcement administrators can use codes to clarify what is meant by ethical conduct. Then, by using these codes, they motivate employees to be "faithful" to themselves and their profession.

Integrity

The quality most admired at every level of an organization is integrity, followed closely by competence. These are essential characteristics of effective leadership that influence attitude, as well as behavior. Therefore, police managers must be firmly committed to personal integrity.

At times, sticking to this commitment is difficult. However, doing so is likely to be more than its own reward. People will follow more readily one whose values are clear, consistent, principled, and fair.⁹

Top administrators not only set the environment for the department through example but also through compliance. To be effective, they must be willing and able to discipline violators of ethical standards. Inaction by the administration constitutes approval of the individual's behavior, hurts employee morale, and weakens public confidence.¹⁰

Education and Training

Police leaders should also use education and training to set

the proper ethics and value mode into perpetual motion. By defining jobs, telling people what is expected of them, and giving feedback, managers minimize uncertainties, avoid repeating traditional unethical practices, and ensure that assignments, evaluations, promotions, and hirings are meted out in a systematic fashion.

If officers are given the proper education and training, they have received the tools to do their jobs. But, they need more than theory. They need up-to-date practical application, experience, and knowledge.

With proper research and application, answers to the majority of unethical situations faced by police officers can be developed and incorporated into training programs. "In order to challenge the contemporary officer's thinking about moral values and ethical conduct, the police profession needs to incorporate law enforcement ethics directly into the training provided all personnel. Such instruction should begin during recruit training and continue through short-term seminars to management programs and courses."¹¹ As leaders provide position reinforcement for theory to become reality, ethics will be kept at the forefront of training and left open for discussion at all levels. When wrestling with real-world moral dilemmas, group discussions and the advice and counsel from others can heighten moral reasoning.¹²

CONCLUSION

Today, there is perhaps more sensitivity about ethics and personal conduct in the law enforce-

ment field than ever before. The profession has matured, but much is left to be done. Law enforcement must be prepared to combat a new level of temptation, where the rewards for "selling out" can be great and general social codes have become more relaxed.

"Today, law enforcement does not need to find better values, but we do need to rededicate ourselves to leadership and ethics and the basic values of our profession."

Police leaders must develop an ethical environment that eliminates public suspicion and lessens employee temptation—one that creates faith and confidence in a justice system that is fair and just for all. More importantly, they must set the moral standards and tone of their individual departments, lead by example, and initiate and promote ethics training and education.

Police leaders must challenge and develop law enforcement thinking in terms of moral values and ethical conduct by communicating and supporting realistic approaches to ethical dilemmas. As Patrick Murphy noted, "With strong leadership from top police

executives and a firm commitment to making policing a full-fledged profession, we can go a long way toward providing police officers with the sensitivity and insight they need to meet the ethical demands of the important positions of public trust they hold."¹³ Today, law enforcement does not need to find better values, but we do need to rededicate ourselves to leadership and ethics and the basic values of our profession. **LEB**

Footnotes

¹ Patrick V. Murphy, "Ethical Issues on Policing," *Criminal Justice Ethics*, vol. 4, No. 2, Summer/Fall 1985.

² Interpersonal Communications Training Program, Lansing, Michigan, Community College, November 1975.

³ Bruce L. Benson and Gilbert H. Skinner, "Doughnut Shop Ethics: There are Answers," *The Police Chief*, December 1988, pp. 32-33.

⁴ James Bowman, ed., *Essentials of Management: Ethical Values, Attitudes and Actions* (Port Washington, N. Y.: Associated Faculty Press, 1983).

⁵ Supra note 1, p. 95.

⁶ Donald R. Cressey and Charles A. Moore, "Managerial Values and Corporate Codes of Ethics," *California Management Review*, vol. 25, No. 4, Summer 1983.

⁷ Harold W. Metz, "An Ethical Model For Law Enforcement Administrators," *Justice Profession*, vol. 1, No. 2, Fall 1986, p. 74.

⁸ William Heffernan, "Two Approaches to Police Ethics," *Criminal Justice Review*, p. 32.

⁹ Barry Posner and Warren Schmidt, "Values and the American Manager: An Update," *California Management Review*, vol. XXVI, No. 3, Spring 1984, p. 215.

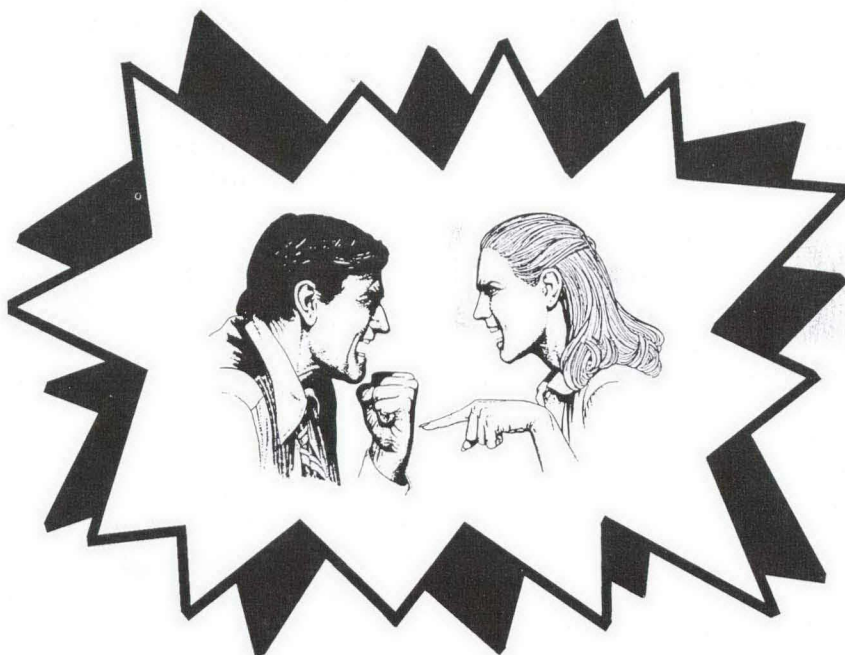
¹⁰ Supra note 7, p. 75.

¹¹ Supra note 7, p. 76.

¹² Supra note 1, p. 95.

¹³ Ibid. p. 96.

Point of View is a forum for law enforcement professionals to suggest recommendations to improve police work. Submissions for this feature should be no more than 750 words, typed, double-spaced, and forwarded to Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.



Domestic Violence

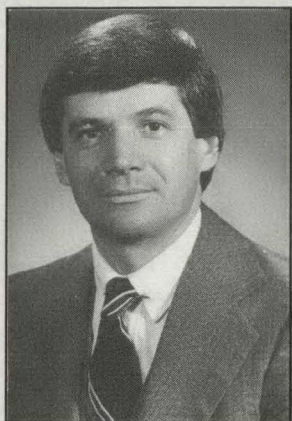
When Do Police Have a Constitutional Duty to Protect?

By
DANIEL L. SCHOFIELD, S.J.D.

Domestic violence is a serious crime problem that presents law enforcement officers with difficult and dangerous challenges. Victims of domestic violence sometimes file lawsuits claiming that the failure of police to make an arrest violated their right to police protection. Officers responding to a domestic assault call must decide whether an arrest is legally justified and whether an arrest is the most effective police action to prevent further domestic violence. Some police

departments allow for officer discretion to diffuse domestic disturbances and preserve the family unit by not making an arrest. Other departments may limit officer discretion with a policy that mandates arrest if there is probable cause to believe a crime has been committed during a domestic disturbance. The debate over how to use limited police resources to best protect citizens against domestic violence often includes a discussion of whether police have a legal duty to offer a certain level of protection.

This article discusses the extent to which police have a Federal constitutional duty to protect citizens against domestic violence and the circumstances under which police can be held liable under 42 U.S.C. §1983 (hereinafter Section 1983) for a breach of that duty. Specifically, the article discusses Section 1983 claims against the police based on an alleged violation of: (1) Substantive due process, (2) equal protection of the law, and (3) procedural due process. The potential for liability based on these three



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**...as a general rule,
 police do not have a
 constitutionally imposed
 duty to protect citizens
 against domestic
 violence.**
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*Special Agent Schofield is the Chief of the
 Legal Instruction Unit at the FBI Academy.*

Federal constitutional claims is discussed in the context of recent court decisions involving suits against the police. It should be noted that this article does not address whether police have a legal duty to protect under State law, which depends on the various laws of each State.¹

Substantive Due Process Claims

The 14th amendment's Due Process Clause provides that "[n]o state shall...deprive any person of life, liberty, or property, without due process of law."² Claims against the police for a violation of substantive due process have historically alleged that a "special relationship" between police and a victim of domestic violence created a constitutional duty to protect that person from physical harm. However, the Supreme Court recently narrowed the circumstances giving rise to such "special relationships" and concluded that the Due Process Clause does not legally obligate law enforcement to protect an individual absent a custodial relationship.

General Rule—No Constitutional Duty to Protect

In *DeShaney v. Winnebago County Department of Social Services*,³ a boy, who was beaten and permanently injured by his father, claimed a due process violation because local officials knew he was being abused but did not act to remove him from his father's custody. The Supreme Court concluded that the State had no constitutional duty to protect the boy because the Due Process Clause is a limitation on the State's power to act, not a guarantee of certain minimal levels of safety and security. Further, according to the Court, the Due Process Clause confers no affirmative right to governmental aid, even where such aid may be necessary to protect an individual against private violence.⁴ In doing so, the Court rejected the argument that a duty to protect arose because of a "special relationship" that existed, because the State knew the boy faced a special danger of abuse and specifically proclaimed by word

and deed its intention to protect him against that danger.⁵

The Court concluded that the Constitution imposes affirmative duties of care and protection only to particular individuals, such as incarcerated prisoners and involuntarily committed mental patients who are restrained against their will and rendered unable to care for themselves.⁶ "The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf."⁷ The Court also noted that while the State may have been aware of the dangers the boy faced, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. And, even though the State once took custody of the boy and then returned him to his father's custody, it placed him in no worse position than he would have been in had the State not acted at all.⁸

Courts interpreting *DeShaney* have rejected claims that police have a substantive due process duty to protect individuals against domestic violence. For example, in *Balistreri v. Pacifica Police Department*,⁹ the U. S. Court of Appeals for the Ninth Circuit rejected a claim by a woman who was allegedly beaten and harassed by her estranged husband. Despite allegations that the police knew of her plight and affirmatively committed to protect her when it issued her a restraining order, the court concluded that *DeShaney* limited the circumstances giving rise to a "spe-

cial relationship" to instances of custody, and that no such relationship existed in this case imposing a due process duty on the police to protect the victim from her husband.¹⁰

Where Police Action Increases Danger

While *DeShaney* establishes the general rule that police have no Federal due process duty to protect citizens from private domestic violence, a constitutional duty to protect can arise where law enforcement action actually increases an individual's danger of, or vulnerability to, domestic violence beyond the level it would have been absent the police action.¹¹ For example, in *Freeman v. Ferguson*,¹² the U. S. Court of Appeals for the Eighth Circuit concluded that *DeShaney* establishes the possibility that police could be held liable for failure to protect an individual against private domestic violence if police conduct actually interfered with the protective services that would have otherwise been available in the community.

Freeman involved a Section 1983 action against the police chief and city for the death of a woman and her daughter at the hands of the woman's estranged husband. The plaintiff alleged that the police chief failed to perform his duties by reason of a close personal relationship with the estranged husband and that he interfered with the conduct of other officers by directing them not to enforce a restraining order.

The court found the allegation in *Freeman* distinguishable from *DeShaney* because it constituted a

claim that the violence the decedents were subjected to was not solely the result of private action, but rather resulted from an affirmative act by the police chief to interfere with the protective services that would have otherwise been available in the community. The court acknowledged that it is not clear under *DeShaney* how large a role the police must play in the creation of danger before police assume a corresponding constitutional duty to protect, but "...that at some point such actions do create such a duty."¹³ Courts have also suggested

“As a matter of constitutional law, police have considerable discretion in deciding whether and when to make an arrest.”

that police can be held liable for escorting or removing domestic violence victims to locations that actually increase their vulnerability to danger.¹⁴

Equal Protection Claims

The Supreme Court in *DeShaney* stated in a footnote that a State may not selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause.¹⁵

However, an earlier Federal district court decision in *Thurman v. City of Torrington*¹⁶ is generally considered the seminal case spawning litigation against the police under the Equal Protection Clause.

In *Thurman*, a woman and her son were allegedly threatened and assaulted numerous times by the woman's estranged husband in violation of his probation and a restraining order, despite numerous requests to the police department that they protect her and arrest her estranged husband. It was also alleged that the police department used an administrative classification that resulted in police protection being fully provided to persons abused by someone with whom the victim has no domestic relationship, but less protection when the victim is either: (1) A woman abused or assaulted by a spouse or boyfriend, or (2) a child abused by a father or stepfather.

The *Thurman* court concluded that police are under an affirmative duty to preserve law and order and to protect the personal safety of persons in the community. The court further noted that police who have notice of the possibility of attacks on women in domestic relationships are under a duty to take reasonable measures to protect them; failure to perform this duty would constitute a denial of equal protection.¹⁷

It is important to note that the precedential value of *Thurman* has been substantially undermined by the holding in *DeShaney* that the government has no constitutional duty to protect citizens against private domestic violence. In addition, more recent Federal court decisions hold that extensive

evidence of intentional discrimination based on gender is required to prove an equal protection claim. These cases demonstrate the difficult burdens of proof that plaintiffs must meet in order to sustain an

refusal of police officers to make an arrest after a domestic assault call and that this non-arrest was the result of a city policy that discriminated on the basis of gender in violation of the Equal Protection

any constitutional duty to do so.²¹ The court held that *DeShaney* leaves officers and law enforcement agencies with discretionary authority regarding arrest decisions, and that officers need not fear that in any close case, they must choose between liability for a potential false arrest and liability for a potentially actionable non-arrest.²²

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...the Supreme Court recently...concluded that the Due Process Clause does not legally obligate law enforcement to protect an individual absent a custodial relationship.

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equal protection claim against the police for a failure to protect a victim of domestic violence.

Police Discretion in Arrest Decisions

As a matter of constitutional law, police have considerable discretion in deciding whether and when to make an arrest. In *McKee v. City of Rockwall, Texas*,¹⁸ the U. S. Court of Appeals for the Fifth Circuit interpreted *DeShaney* as endorsing the general principle that choices about the extent of governmental obligation to protect private parties from one another have been left to the democratic political process. It also held that there is no constitutional violation when the most that can be said of the police is that they stood by and did nothing when suspicious circumstances dictated a more active role.¹⁹

In *McKee*, a woman claimed she was injured as a result of the

Clause. Evidence of this policy consisted of: (1) An alleged statement by the chief of police that his officers did not like to make arrests in domestic assault cases because the women involved either wouldn't file charges or would drop them prior to trial, and (2) statistics that purported to show a lower percentage of arrests in domestic violence calls than in non-domestic assault calls.

The *McKee* court ruled that the proffered evidence did not constitute an equal protection violation and that *DeShaney* should not be circumvented by converting every due process claim into an equal protection claim via an allegation that police officers exercised their discretion to act in one incident but not in another.²⁰ The court pointed out that police officers are not authorized to arrest absent probable cause, and that under *DeShaney*, officers who could have arrested the suspect in this case are not under

Proving Discriminatory Intent

Is an equal protection violation established by proof that the failure of police to protect a victim of domestic violence resulted from a police department policy or practice of treating domestic assaults differently from non-domestic assaults and that women were disproportionately disadvantaged? The answer is "No." Courts have ruled that a police department's facially neutral policy of treating domestic assaults differently than non-domestic assaults only violates the Equal Protection Clause if it is proven that the policy disproportionately disadvantages women *and* that it was adopted with an intent to discriminate against women. The cases discussed below illustrate the significant evidentiary difficulties plaintiffs face in trying to prove discriminatory intent.

For example, the court in *McKee* ruled that the plaintiff failed to prove that an alleged police department policy of discouraging arrests in domestic violence cases constituted discrimination against women in violation of the Equal Protection Clause. The court found the proffered evidence that some officers dislike making arrests in domestic cases to be different from

a policy that is binding on all officers regardless of their sentiments. In addition, the court noted that the plaintiff's statistical comparison between domestic and non-domestic assault arrests was exaggerated by an error and failed to correct for the wide variety of factors that might influence the likelihood that police would make an arrest. These factors include: (1) Whether the assault was in progress when police arrived, (2) whether a gun or knife had been used, (3) whether the victim had suffered obvious physical injuries and required medical attention, and (4) whether the victim refused to press charges when the police arrived.²³

The plaintiff's statistics also failed to prove gender-based discrimination, since they did not indicate how many of the victims in the cleared assault cases were women or how many of the victims in the domestic violence cases were men. The *McKee* court concluded that the plaintiff was attempting to generalize a single incident of police department inaction in one case into a general policy or practice. To permit such an argument would eviscerate the discretion reserved to police officers by *DeShaney*.²⁴

In *Hynson v. City of Chester Legal Department*,²⁵ it was alleged that police officers engaged in a practice of failing to respond to complaints made by females against males known to them and that they specifically failed to consider the complaint of a woman who was killed by her former boyfriend as seriously as they would consider the complaint of a female against an unknown assailant. The U. S. Court of

Appeals for the Third Circuit held that to sustain an equal protection claim, "...a plaintiff must proffer sufficient evidence that would allow a reasonable jury to infer that it is the policy of the police to provide less protection to victims of domestic violence than to other victims of violence, that discrimination against women was a motivating factor, and that the plaintiff was injured by the policy or custom."²⁶ The court said merely showing that categories used by the police in administering the

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law are domestic violence and non-domestic violence is not sufficient evidence of gender-based discrimination, absent a showing of an intent to discriminate against women.²⁷

Procedural Due Process Claims

Do victims of domestic violence ever have a constitutionally based right to police protection based on a "property interest" created by a State statute or a protec-

tive order?²⁸ In *Coffman v. Wilson Police Department*,²⁹ a spousal abuse victim claimed that her right to due process was violated because the police department never arrested or restrained her husband, despite the existence of a protective order and a contempt finding for violation of the protective order and her numerous reports to the police department of violations of this order. A Federal district court concluded that the State's Protection From Abuse Act did not create an enforceable property interest in police protection, but that a court order in the form of a protective order issued pursuant to that act stating that the appropriate police department *shall* enforce the order does create a constitutionally enforceable property right to police protection.³⁰ The court said "...the right is not to immediate and unthinking obedience to every request for assistance. Rather, it is the right to reasonable police response."³¹ The court conceded that there is a great deal of discretion in police work and that the failure to dispatch a vehicle in response to a domestic violence call because other calls had greater importance would not necessarily constitute a violation of due process.³²

Despite the holding in this one district court decision in *Coffman*, procedural due process claims against police for their failure to protect victims of domestic violence are likely to fail for the following three reasons. First, other courts appear reluctant to adopt the rationale of the *Coffman* court that a State law and protective order creates a constitutionally recognized "property

interest" to police protection.³³ Second, a police officer's negligent deprivation of a "property interest" to police protection would clearly not support a procedural due process claim, and it is not even clear whether an allegation of gross negligence or recklessness would suffice or whether intentional conduct must be proved.³⁴ Third, the Supreme Court in a 1990 decision in *Zinerman v. Burch*³⁵ appears to have precluded Section 1983 liability for a police agency if an officer's random and unauthorized intentional conduct in not enforcing a protective order is subject to a postdeprivation remedy in the form of a State tort action.³⁶

Conclusion

The cases discussed in this article suggest that as a general rule, police do not have a constitutionally imposed duty to protect citizens against domestic violence. While exceptional circumstances may create such a duty and give rise to potential liability under Section 1983, lawsuits against the police for a failure to protect may have a greater likelihood of success in State court under a State-created duty to protect. Therefore, law enforcement administrators must decide how to most effectively allocate limited police resources to protect all the citizens in their communities.

Any potential exposure to liability under Federal or State law for an alleged failure to protect can be reduced if law enforcement organizations take the following three initiatives. First, law enforcement agencies should promulgate a written policy regarding the handling of domestic assault calls that includes

a clear statement of department policy setting forth the extent of officer discretion in making arrest decisions. Second, police departments should document the training officers receive in handling domestic violence situations and ensure that officers also understand what resources are available in the community to assist victims of domestic violence. Third, any statistical disparity in arrest rates that may exist between domestic and non-domestic assaults should be carefully

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evaluated to ensure that such disparity is not caused by any officer bias or animus toward female victims of domestic violence and that the disparity can be explained in terms of legitimate law enforcement interests.

LEB

Footnotes

- ¹ See, "Does the Legal System Batter Women? Vindicating Battered Women's Constitutional Rights to Adequate Police Protection," 21 Ariz. St. L. J. 705, at 711 n. 64 (1989).
- ² U.S. Const. amend. XIV, §1.
- ³ 109 S.Ct. 998 (1989).
- ⁴ *Id.* at 1003.
- ⁵ *Id.* at 1004.
- ⁶ *Id.* at 1005.
- ⁷ *Id.* at 1006.

⁸ *Id.*

⁹ 901 F.2d 696 (9th Cir. 1990).

¹⁰ *Id.* at 700. In *Bryson v. City of Edmond*, 905 F.2d 1386 (10th Cir. 1990), the court held that the fact police surrounded a post office where there was a hostage situation and did not attempt to enter the building for more than 1 1/2 hours did not create a special situation in which affirmative duties of protection arose. A contrary rule would impose constitutional duties on the police whenever they respond to reports of violence and assemble at the scene contrary to the holding in *DeShaney*.

¹¹ In *Horton v. Flenory*, 889 F.2d 454 (3d Cir. 1989), the court concluded that the holding in *DeShaney* is limited to situations in which the State is not involved in the harm, either as a custodian or as an actor.

¹² 911 F.2d 52 (8th Cir. 1990).

¹³ *Id.* at 55.

¹⁴ See, e.g., *Dudosh v. City of Allentown*, 722 F.Supp. 1233 (E.D. Pa. 1989).

¹⁵ 109 S.Ct. at 1004, n. 3.

¹⁶ 595 F.Supp. 1521 (D. Conn. 1984).

¹⁷ *Id.* at 1527.

¹⁸ 877 F.2d 409 (5th Cir. 1989), cert. denied, 110 S.Ct. 727 (1990).

¹⁹ *Id.* at 413.

²⁰ *Id.*

²¹ *Id.* at 414.

²² *Id.*

²³ *Id.* at 415.

²⁴ *Id.* at 416.

²⁵ 864 F.2d 1026 (3d Cir. 1988).

²⁶ *Id.* at 1031.

²⁷ *Id.* See also, *Watson v. City of Kansas City, Kansas*, 857 F.2d 690 (10th Cir. 1988); and *Howell v. City of Catoosa*, 729 F.Supp. 1308 (N.D. Okla. 1990).

²⁸ For a general discussion, see, "Actionable Inaction: Section 1983 Liability for Failure to Act," 53 U. Chi. L. Rev. 1048 (1986).

²⁹ 739 F.Supp. 257 (E.D. Pa. 1990).

³⁰ *Id.* at 264.

³¹ *Id.* at 265.

³² *Id.* at 266.

³³ See, e.g., *Doe by Nelson v. Milwaukee County*, 903 F.2d 499 (7th Cir. 1990); and *Hynson v. City of Chester*, 731 F.Supp. 1236 (E.D. Pa. 1990).

³⁴ *Daniels v. Williams*, 106 S.Ct. 662 at 666, n.3 (1986).

³⁵ 110 S.Ct. 975 (1990).

³⁶ *Id.* at 984.

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

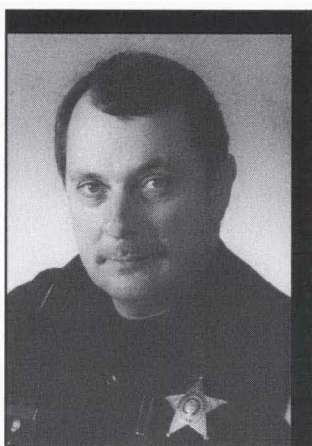
The Bulletin Notes

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



Captain Presley

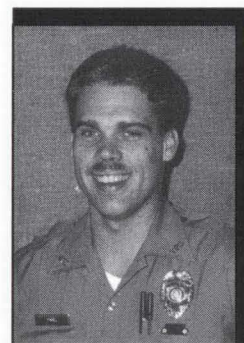
While on patrol, Capt. Larry Presley of the Tupelo, Mississippi, Police Department came upon a vehicle that had struck a utility pole and burst into flames. He observed the unconscious driver trapped inside the pickup truck. After calling for backup, Captain Presley rescued the victim from the burning vehicle and pulled him to safety.



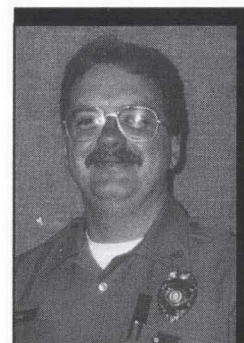
Corporal Hansen

Cpl. Roger Hansen of the Albany, Oregon, Police Department responded to a waterfront area, where a woman was reportedly contemplating suicide. Upon arriving, Corporal Hansen observed the woman wading into the waters of the swiftly moving river. Immediately, he removed his gun belt, shoes and shirt and followed the woman, who was now swimming out into the river. When the woman disappeared beneath the surface, Corporal Hansen searched until he located her. Though the woman resisted, he was able to maintain control until both were safely on shore.

During the early morning hours, Officers Eric Pagel and Milton Hardy of the Vernon, Connecticut, Police Department responded to reports of a fire at a residential complex. When they arrived at the scene, they found heavy black smoke and flames engulfing part of the building. The officers entered the building to search for residents trapped by the blaze. Inside, they located a youth and a woman with four children and brought them to safety. The officers were treated for smoke inhalation, but no residents were injured in the blaze.



Officer Pagel



Officer Hardy

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