

U.S. Department of Justice  
Federal Bureau of Investigation



JULY 1997

# FBI Law Enforcement

B • U • L • L • E • T • I • N

**Domestic Violence**



# FBI Law Enforcement

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July 1997  
Volume 66  
Number 7

United States  
Department of Justice  
Federal Bureau of  
Investigation  
Washington, DC  
20535-0001

Louis J. Freeh  
Director

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

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

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodical postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to *FBI Law Enforcement Bulletin*, Federal Bureau of Investigation, FBI Academy, Quantico, VA 22135.

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## Time Crime

### *Protecting the Past for Future Generations*

By ROBERT D. HICKS

**B**eneath the plowed soil of Slack Farm in rural Union County, Kentucky, rested an important Native American village, a community of wattle and daub houses where acres of maize, beans, and squash grew at the confluence of the Wabash and Ohio Rivers between 500 and 1,300 years ago. Although relic hunters periodically visited the site, the Slack family, who had owned the farm for generations, turned them away.

But successive owners welcomed them. In the late 1980s, several men paid the new landowner \$10,000 to lease digging rights between planting seasons. To obtain the Native American artifacts they sought, the men bulldozed the site.

Neighbors, annoyed at and suspicious of the digging, contacted the Kentucky State Police, who stopped the operation. Inspecting the property, police found human remains strewn everywhere. Aerial views of the bulldozed site, which aired on national television, showed a pockmarked landscape that, according to many observers, resembled a World War I battlefield.

In their quest for wealth, the men had pushed aside centuries of a people's history—their tools, potsherds, hearths, and houses—while leaving modern debris, including soda and beer cans, among the artifacts. In particular, the men



had disturbed or destroyed hundreds of graves.<sup>1</sup>

Residents were understandably upset, not only by the desecration of the graves but also by the inability of Kentucky law to cope with the damage and theft. Because the men had crossed state lines with their bounty, they faced felony charges

stemming from the interstate commerce provision of the Archeological Resources Protection Act (ARPA), a federal law. However, under state law, the men could be charged only with "desecration of a venerated object," a misdemeanor. Outraged Kentuckians demanded an amendment to the law; members

of the state legislature responded by voting unanimously to criminalize grave desecration as a felony.

Looters illegally obtain artifacts or antiquities whereas relic hunters obtain them legally but unscientifically. They both span the spectrum of socioeconomic background, education, and upbringing. In some places, looting has become an accepted, multigenerational activity, a part of the local culture. In other cases, hobbyists, ignorant of the law, trespass and loot wherever they choose, even in national parks. Whatever their motivations and methods, these people are stealing a part of history. And, unfortunately, they often get away with it.

#### THE SCOPE OF THE PROBLEM

An archeologist who serves as a consultant to police investigating archeological theft estimates that

over half of the 6,000 recorded sites on national forest lands in Arizona have been destroyed by looters. In southwest Virginia, 95 percent of all Native American graves have been destroyed or severely disturbed by "headhunters," the local term for looters.<sup>2</sup> Three recent developments have fueled an increase in looting—the public's fascination with the past, a growing interest in collecting, and the rapidly escalating value of the artifacts.

Over the last 30 years, interest in popular history has soared. Local history has become a do-it-yourself industry. People untrained in academic history plod through local records to construct their genealogies. Seeking links to a fading past, but not necessarily their own, they collect everything from rock albums and memorabilia to salt and pepper shakers and Victorian mourning jewelry, creating a

multimillion dollar market for objects variously described as historic, antique, or merely nostalgic.

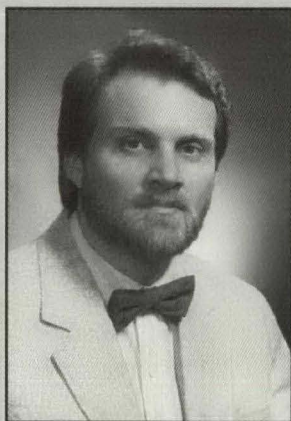
Indeed, relic hunting has been, and continues to be, a vigorously pursued pastime for some and a commercial enterprise for others. Looters live by the motto, "If it's old, it can be sold."<sup>3</sup> They have cut up and sold Inuit (Eskimo) totem poles. They have stolen old tombstones from cemeteries and used them as lawn ornaments. They even have stolen and sold human remains.

The high prices some artifacts bring on the commercial market confirm their value and inevitably invite criminality. Civil War belt buckles fetch over \$10,000 each; a Native American pot from the Southwest sells for \$400,000. German and Japanese collectors alone buy approximately \$20 million worth of Native American artifacts yearly.<sup>4</sup>

In many countries, antiquities have provided an alternate economy. Civil wars in Asia and Europe leave plundered museums in their wake, either through deliberate destruction or merely as casualties of war. Many of the pillaged art treasures enter the international art market, where other museums may purchase them, sometimes unwittingly, sometimes knowingly.<sup>5</sup> Competition for artifacts has become so fierce that armed looters have assaulted and shot at archaeologists performing scientific work in Central and South America.

#### APPLICABLE LAWS

The role of law enforcers has expanded recently; enforcement of



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**...law enforcement, in addition to protecting life and property, must preserve the past as well.**  
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laws relating to the preservation of history has become a key responsibility in some jurisdictions. These agencies have realized that law enforcement, in addition to protecting life and property, must preserve the past as well.

While federal law has prohibited looting from federal or Native American properties since the beginning of the 20th century, enforcement of those laws rarely occurred until about 20 years ago. The Archeological Resources Protection Act, which became law in 1979, was strengthened in 1988, mainly to overcome obstacles encountered during prosecutions. A general-intent law, ARPA prohibits people from excavating, damaging, defacing, altering, or removing archeological resources (or attempting these acts) from public or Native American lands without a permit.<sup>6</sup>

To be protected resources under ARPA, looted objects must constitute evidence of past human existence, possess archeological *interest* (not necessarily *significance*), and be over 100 years old. Objects, or resources, are defined broadly to include not only such relics as pottery, tools, and shipwrecks but also rock art, skeletal remains, features of houses or other construction, and even vegetal remains or organic waste.

Of particular interest to state and local law enforcement, however, is ARPA's commercial provision. No one may sell, purchase, exchange, or transport resources (or offer to do the same) in violation of ARPA, any other federal law, or

any state or local law. Thus, looters who dig up Native American relics on private property without permission and traffic those relics across state lines violate ARPA.

The 1988 amendments to ARPA included a felony threshold of \$500. If the cost to repair a damaged resource plus either the commercial value of the stolen artifacts or the archeological value (usually measured as the cost of retrieving

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[looting] offenses  
when pursuing  
other violations.**  
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archeological information from the site through scientific investigation) exceeds \$500, then the crime is a felony. Under this definition of value, then, most ARPA cases are felony investigations. The law also prohibits *attempts* to destroy, damage, or remove protected resources, so that officers do not have to idly stand by and watch while looters destroy those resources.<sup>7</sup>

As a result of over a decade of prosecutions, ARPA “is well enshrined in the legal landscape.”<sup>8</sup> Indeed, formidable and inventive challenges to ARPA in the courts have affirmed the law's utility and effectiveness. In the late 1980s, for example, Bradley Owen Austin was

convicted for looting in the Deschutes National Forest in Oregon. He challenged the constitutionality of ARPA, claiming vagueness, and also argued that he had the right to hunt relics to further his education. The court ruled against him, reinforcing the notion that public lands are held in the public trust. Another more recent case affirmed ARPA's jurisdiction over interstate trafficking in antiquities stolen in violation of state law.

ARPA contains other features that make it attractive to law enforcement. In addition to calling for criminal penalties, ARPA permits civil recourse through an administrative law judge. Also, relic hunters convicted under ARPA forfeit their assets, including vehicles, equipment or tools, contraband, and clothing.

The other significant federal law that protects past resources is the Native American Graves Protection and Repatriation Act (NAGPRA). Important for museums, NAGPRA mandates that holdings of Native American human remains be inventoried and surveyed. In some cases, skeletons have been returned to Native American descendants for reburial according to tribal custom.

The law also prohibits trafficking in Native American human remains or any cultural items. After becoming law in 1991, NAGPRA's first prosecution and conviction occurred a few years later in Virginia, where a federal government employee took illegally obtained Cheyenne bones from the Custer Battlefield in Montana and sold

them to an undercover officer in Virginia.<sup>9</sup>

### **LOOTING METHODS AND INVESTIGATIVE COUNTERMEASURES**

The nature of looting presents enforcement difficulties. Once unearthed, artifacts are difficult to link to a looted site. Many protected resources, whether above or underground, are hidden from public view, some within thousands of acres of national forests or parks, where one officer may patrol millions of square acres. As a result, much looting goes undetected and unpunished.

Professional looters take steps to avoid detection. They carefully plan their illegal excavations, studying archival or library materials and topographical maps. If the sites are remote, looters may reach them by horseback, all-terrain vehicle, or foot.

Looters observe law enforcement patrol behavior and may approach sites only when law enforcement presence is low or hampered, for example, at night (using the full moon to illuminate digging), during inclement weather, or on holidays. To further avoid detection, looters may post lookouts, use watchdogs, or employ radio scanners to track law enforcers. Some looters carry false identification or forged permits. Law enforcement officers have even caught looters wearing fake park ranger uniforms.

Not all looters develop such elaborate schemes to avoid detection. Many simply wear camouflage clothes and disguise their equipment by painting shovels or metal

detectors black. The more sophisticated looters carry sifting screens and probing rods that locate graves or artifacts by detecting changes in soil density. Near or on the looted site, the thief may store tools, supplies, or unearthed artifacts for later retrieval.

Once looters find artifacts, they may sell the items directly, through a dealer, or through a broker who serves only a few clients. During

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lawn ornaments.***

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Project Sting, agents from the National Park Service offered artifacts allegedly looted from federal property to lure a real estate businessman. The arresting investigator had first identified the suspect at a relic show. At these legal events, looters may sell legally obtained items aboveboard, while surreptitiously arranging illicit deals under the table. By comparison, hobbyists ignorant of the law may openly try to sell illegally obtained artifacts.

Relic shows can assist law enforcement officers in many ways. The shows can provide law enforcement officers with investigative leads needed to pursue undercover operations. Officers also can use

these shows to enlist assistance from legitimate traders who want to keep their own reputations unblemished. Officers even may be able to catch looters in the act as they attempt to obtain merchandise for upcoming relic shows.

While the best enforcement opportunity obviously involves catching looters in the act, officers also may cultivate local informants or obtain confessions from the looters themselves. Informants—nearby farmers, campers, or hikers who may witness looting—can provide crucial intelligence.

As for the looters, anyone on or near public property at odd hours becomes a candidate for further investigation. In addition, if officers discover fresh digging or site damage, they may be able to locate a suspect close by and conduct a surveillance to obtain additional information.

No law enforcement officer can afford to devote dozens of hours to tracking looters. Fortunately, officers are most likely to encounter offenses when pursuing other violations.

In one case, officers executing a search warrant at a residence photographed a collection of Native American relics later described as “the most impressive collection of Indian artifacts in northern California.”<sup>10</sup> A sheriff’s deputy who had been an archeologist saw the photographs, recognized the significance of the relics, and after developing additional intelligence, served another warrant at the same property, this time for ARPA violations. As it turns out, the suspect previously had been convicted under ARPA

and had hidden the artifacts in order to prevent their seizure by federal authorities.

As another example, officers might stop the driver of a pick-up truck on suspicion of driving under the influence. If officers notice that the truck bed contains cardboard boxes of what appears to be freshly dug relics or human remains, along with dirt-encased shovels, they should investigate further.

Officers must be able to identify and describe the tools and equipment used by looters. Many tools and the camouflage clothing that some looters wear are innocuous by themselves, but taken

in context create a suspicion of criminality.<sup>11</sup>

It is important that law enforcement officers not presume that looters, by virtue of the kind of crime they commit, are benign hobbyists. Some looters arm themselves and may fire at officers. In any event, officers encountering looters should take precautions for their own safety.

Although looting cases involve some unique procedures, officers should process a looting scene much as they would any other crime scene. First, they must document, measure, and photograph the scene carefully.

Second, they should collect soil samples. For most other crimes, soil reveals little about the crime. However, in looting cases, soil becomes important evidence. A laboratory analysis might reveal pieces of pottery or bone or even pollen that match the evidence to the crime scene and perhaps to individual suspects if dirt is found on their confiscated clothing.

Third, officers should take casts of footprints and impressions of shovels. Coupled with the soil, this evidence can link suspects and artifacts to a particular site.

The case file should contain a statement from the appropriate

### Project Sting

An archeologist and three agents, all from the National Park Service, arrived at a motel in San Antonio, Texas, to conduct a sting. With confiscated stolen artifacts on loan, including Mexican clay figurines, part of a flute, and yucca-fiber sandals, the team set up a surveillance post with microphones, radio receivers, and a tape recorder. One agent, posing as a convicted felon and relic dealer, had arranged an appointment with a real estate agent, a part-time relic trader willing to do business illegally. The two had met previously at a relic show in Kentucky.

The suspect arrived at the motel, inspected the artifacts, and against an asking price of \$1,500, finally agreed to pay \$400. With the exchange of \$100 in cash and a \$300 IOU, the

awaited criminal transaction occurred, and the enforcement officers entered the room. After questioning him for several hours, the officers released him, threatening him with indictment on federal charges. But, more important, the officers offered reduced charges in exchange for the names of the suspect's business associates. By doing so in this case and others like it, the members of this temporary task force succeeded in sending a strong message to other looters and dealers that law enforcement is watching.

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Source: John Neary, "Project Sting,"  
*Archaeology*, 46(5), Sept/Oct 1993.

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issuing authority that no state or federal permit existed to allow the suspect to excavate, remove, displace, or destroy protected resources. Finally, federal cases require that an archeologist provide a damage assessment—including an exact description of what has been lost, recovered, damaged, or displaced—and determine the costs significant to ARPA.

### FEDERAL, STATE, AND LOCAL COOPERATION

Despite federal successes, antilooting efforts at the state and local level have been irregular. State laws protecting historic or archeological resources vary and sometimes do not parallel the ARPA. Nevertheless, many state initiatives show promise. Investigative and prosecutorial efforts have displayed creativity and ingenuity in both sting operations and innovative applications of the law.

In 1993, Florida applied its own Racketeer Influenced and Corrupt Organizations Act to obtain guilty pleas for conspiracy from four men for destructive relic hunting at both state-owned and federally owned parks. Using bulldozers and backhoes, the men had destroyed thousands of cubic yards of historic materials.<sup>12</sup> In Indiana, the state supreme court affirmed a lower court decision that applied the state's archeological protection law to private property.<sup>13</sup>

In Virginia, most historic or archeological protection laws have specific applications that do not always compare to federal interests. Virginia protects human burials wherever they are found, on pain of

a felony penalty. Misdemeanor penalties attach to other heritage laws.

There is one difference between Virginia's law and the ARPA that has important implications for law enforcement. In Virginia, archeologists are not required to help investigate crimes. Still, without an archeologist's assistance, an officer would find it difficult to process a crime scene or present a case for prosecution. This is because an archeologist's expertise usually is needed to describe what was disturbed, vandalized, or recovered and to place a monetary value on the

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***...relic hunting has been, and continues to be, a vigorously pursued pastime for some and a commercial enterprise for others.***

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damage to the site and the recovered artifacts. For this reason, the state trains officers to contact archaeologists to help conduct investigations, and a number of professional archaeologists have volunteered to assist law enforcement officers with investigations and to testify in court.

### TRAINING INITIATIVES

Under its Archeological Resources Protection Program, the

Federal Law Enforcement Training Center provides a 1-week training program for federal law enforcement officers and prosecutors. This comprehensive program reviews applicable laws, teaches investigative and crime scene techniques, includes a field trip to an archeological site, and tests participants with a practical scenario.

Some states have developed their own training initiatives as well. In Florida, a new law mandates a 2-hour curriculum on archeological resource protection for basic law enforcement academy classes. In Virginia, the Department of Historic Resources and the Department of Criminal Justice Services created a policy on the theft of historic resources. An accompanying training program acquaints law enforcement officers with the looting problem, reviews applicable state and federal laws, and outlines an investigative protocol, modeled closely on federal procedures and honed through prosecutions.

While law enforcement officers need training, the public also must be educated. In many places, looting serves people's hobbies or supplements their incomes. In Arizona, for example, looting has become so firmly entrenched in the culture that in order to present their case in court, two Arizona attorneys first had to justify why looting is a crime.

### CONCLUSION

“Like words plucked from the middle of a sentence,”<sup>14</sup> artifacts stolen from their resting places leave a question mark in the timeline of history. But with the



appropriate tools, training, and support, law enforcement officers can help preserve the past. ♦

#### Endnotes

<sup>1</sup> Harvey Arden, "Who Owns Our Past?" *National Geographic* 175(3) (1989): 376-393; Also, see Brian Fagan, "Black Day at Slack Farm," *Archaeology* 41(4) (1988): 15-16, 73.

<sup>2</sup> Thomas Klatka, archeologist, Virginia Department of Historic Resources, interview by author, October 12, 1995.

<sup>3</sup> Tom Dunkel, "A Nation's Heritage at Risk," *Insight*, February 17, 1992, 14.

<sup>4</sup> The theft of and trafficking in antiquities and their market values has been documented widely. See Dunkel, *Insight*; Daryl F. Gates and William E. Martin, "Art Theft—A Need for Specialization," *Police Chief*, March 1990,

60-62; Barbara Hoffman, "The Spoils of War," *Archaeology* 46(6) (1993): 37-40.

<sup>5</sup> See Stephenie Slahor, "Society to Prevent Trade in Stolen Art," *Law and Order*, October 1996, 181-2.

<sup>6</sup> ARPA is defined under 16 U.S.C. Section 470aa-47011. For a legislative history of the law and its current application, see Sherry Hutt, Elwood W. Jones, and Martin E. McAllister, *Archaeological Resource Protection* (Washington, DC: The Preservation Press, 1992).

<sup>7</sup> ARPA was carefully drawn to exclude hobbyists or collectors. Surface finds of arrowheads or coins, for example, from protected federal or Indian lands are allowable without a permit. However, taking such items may constitute theft of government property.

<sup>8</sup> Sherry Hutt, "The Archaeological Resources Protection Act," *The Federal Lawyer*, October 1995, 34.

<sup>9</sup> *United States v. Maniscalco*, No. CR-94-1139-M (E.D. Virginia March 21, 1995). The defendant was also charged with violating the ARPA.

<sup>10</sup> Quoted in *Common Ground*, 1(1), 1996, p. 8.

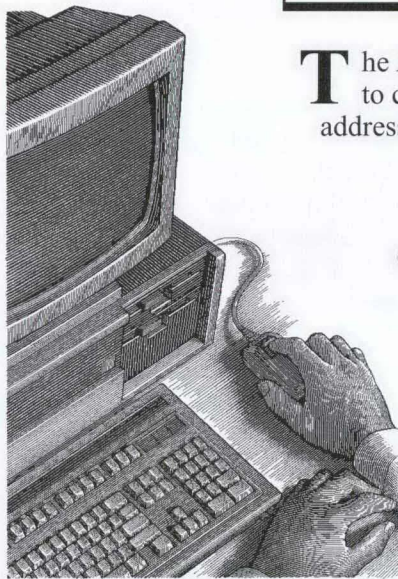
<sup>11</sup> See Charles R. Swanson, Neil C. Chamelin, and Leonard Territo, *Criminal Investigation*, 5th ed. (New York: McGraw-Hill, 1992), 67.

<sup>12</sup> Reported in *Federal Archaeology*, 7(2), summer 1994, 11.

<sup>13</sup> Indiana's Historic Preservation and Archeology Act prevailed in *Whitacre v. State*, 619 N.E.2d 605 (Ind.App.1993), *aff'd*, 629 N.E.2d (1994), where the state required a man to obtain a permit to dig Indian relics on his own property.

<sup>14</sup> Supra note 3, 36.

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# Notable Speech

## Ethics and Police Integrity

By Stephen J. Vicchio, Ph.D.

We should therefore examine whether we should act in this way or not, as not only now, but at all times.

—Plato

If he really does not think there is no distinction between virtue and vice, why sir, when he leaves the house, let us count the spoons.

—Samuel Johnson, *Letters*

**T**here is an old saying that “philosophers bake no bread.” What I suppose this expression means is that philosophers spend a good deal of time minding other people’s business while not spending nearly enough on their own. Working entirely in this spirit, the spirit of an interloper, I wish to talk about three issues—issues vital, ultimately, to the success of police organizations throughout the country. First, I wish to sketch out in a brief way what I see as the component parts of the concept of integrity. Second, I would like to spend a little time exploring what the latest social scientific research and common sense have to say about whether integrity can be taught. And, finally, I will end with some observations on the question of whether integrity can be measured in professional contexts such as police work. I will also make some general recommendations about additional questions and approaches that might be helpful in discussing the issue of police integrity. I will begin, however, with a short take from Plato’s *Republic*.

In Book II of the *Republic*, Socrates discusses with his friend Glaucon what it means to act in a morally responsible way. Glaucon puts forth a theory that is not all that far from a general view of the issue that many hold in this country. In essence, Glaucon says that we do good because we risk punishment if we do wrong. Thus, we accept certain limitations on our freedom because we are afraid of being caught. So justice, in Glaucon’s view, is a kind of arrangement (like traffic lights or stop signs) that is

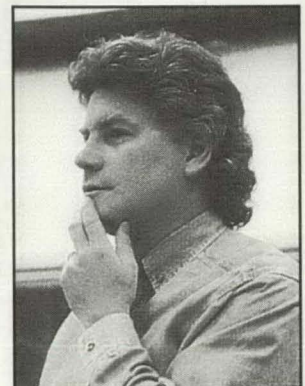
not intrinsically good or valuable but put into place to avoid harm.

In the course of their discussion, Glaucon and Socrates allude to an old Greek story, “The Ring of Gyges.” The wearer of the ring was rendered invisible, though he or she could still affect the material world as visible bodies do. In the course of the tale, the shepherd Gyges is given the ring, and he uses it without fear of reprisal. Indeed, he uses it to kill the king of Lydia and later to rape the queen.

Glaucon argues that anyone in the shepherd’s position would be foolish not to take full advantage of the power of the ring. In essence, it gives the wearer the ability to do wrong with impunity. Glaucon then goes on to suggest that justice is nothing more than a series of checks, a system of preventive devices. But if we possessed the ring of Gyges, there would be no good reason for doing the good. In the remainder of the *Republic*, Socrates attempts to counter Glaucon’s view by suggesting that the citizens of a good society would act justly because they knew and appreciated the moral good and not merely because they were afraid of getting caught.

There are several reasons why I begin with Plato’s story. It is best, I think, to look at “The Ring of Gyges” as a cautionary tale, for it seems to me, for better or worse, the police officers in this country, at least when they are working on the street, often are possessors of the ring of Gyges. No supervision of police officers working with the public, no matter how thorough and conscientious, can keep bad cops from doing bad things. There simply are too many police officers and too few supervisors. Like it or not,

*Dr. Stephen J. Vicchio, a professor of philosophy at the College of Notre Dame in Baltimore, Maryland, and nationally renowned ethicist, delivered this keynote address at the National Symposium on Police Integrity co-sponsored by the National Institute of Justice and the Office of Community Oriented Policing Services.*



the police in this country are possessors of the ring of Gyges.

A second realization to be made from Plato's tale is that police departments in this country often operate as if Glaucon's view of justice is the proper one—that we do the good out of fear, a level that developmental psychologists tell us is the lowest common denominator in the moral equation. If we put these two points together, that there will never be enough supervision to catch everyone and that good behavior on the job is motivated by fear, we should see that they are contradictory. If there is not enough supervision, then the bad cop will not be afraid. If we add a third element, that the bad cop always makes the news, then we have a recipe for disaster.

### Public Trust in the Police

One of the major repercussions of the confluence of these three elements, 1) Glaucon's view of virtue, 2) there will never be enough supervisors to catch everyone, and 3) the bad cop always makes the news, is that we see over the past two decades in America an erosion of public confidence in public officials and their institutions. Consider, for example, the following tables of Americans' ratings of their confidence in various professionals. In this study, 100 Americans were asked to rank the moral confidence/trust they have in the following professionals to do the right thing. Position 1 is the most trusted, and position 12 is the least trusted of those professions listed.

1980	1995
1. pharmacist	1. firefighter
2. clergy	2. pharmacist
3. firefighter	3. teacher
4. teacher	4. dentist
5. police officer	5. clergy
6. doctor	6. stock broker
7. dentist	7. doctor
8. accountant	8. accountant
9. stock broker	9. funeral director
10. lawyer	10. police officer
11. funeral director	11. lawyer
12. politician	12. politician

Trust in police officers recorded the largest drop from 1980 to 1995 (5 spaces), followed by the clergy (3), doctors (1), and lawyers (1), though lawyers simply moved from 10th position to 11th.

Another disturbing element to these findings is that although there was no significant difference between men and women respondents, there was a very big difference between African American and white respondents. Among blacks, "police officer" held the 9th position in 1980 and the 11th position in 1995, just ahead of "politician."

One major conclusion we can make from this and similar studies from around the country is that the public thinks police departments have an integrity problem, even if the police themselves do not.

What complicates this issue still further is that in departments where corruption appears to be low and where citizen complaints are minimal, we assume that our officers on the job are people of integrity. Sometimes this is a faulty assumption, particularly if the motivation to do the right thing comes from fear of punishment. Often in professional contexts in this country we think of integrity as our ability to refrain from certain activities. But, clearly, if the concept is to mean something more than what Glaucon suggests, it must involve higher levels of thinking and feeling on the part of police officers.

If we believe that community policing is the most effective way to protect and to serve the public and then we put officers who operate from the fear of punishment in more direct contact with the community, then the community will not find officers of integrity but, rather, people who know the rules and regulations and keep them simply because they are afraid of getting caught.

If this conference has some major goals, they should include these: How do we define integrity? How do we identify it in police officers? How do we make sure that the police officers we involve in community policing efforts are people of character and integrity? If we do not answer these core questions, then a conference like this is useless, and indeed perhaps worse than useless, because we have pretended to get something done. Pretending to get something done in any profession is always dangerous. Let us then try to make some headway in our first question: What do we mean by the concept of integrity?

### The Concept of Integrity

The first thing to say about the concept of integrity is that we often use organic or spatial metaphors

to explain it. This hints at the etymological origins of the word *integritas*, "whole or complete." But when we go beyond the metaphors, it is not so easy to articulate what we mean when we say that a person possesses integrity.

In a helpful book called *Splitting the Difference: Compromise and Integrity in Ethics and Politics*, Martin Benjamin identifies five psychological types lacking in integrity. The first he calls the *moral chameleon*. Benjamin describes the type this way:

Anxious to accommodate others and temperamentally indisposed to moral controversy and disagreement, the moral chameleon is quick to modify or abandon previously avowed principles....

Apart from a commitment to accommodation, the moral chameleon has little in the way of core values.... The moral chameleon bears careful watching. If placed in a situation where retaining her principles requires resisting social pressure, she is likely to betray others as she betrays herself.

Benjamin's second type, the *moral opportunist*, is similar to the moral chameleon in that his values are ever-changing. But where the moral chameleon tries to avoid conflict, the moral opportunist places primary value on his own short-term self-interest. While the moral chameleon's motto might be "above all, get along," the moral opportunist's is "above all, get ahead."

The *moral hypocrite* is a third type lacking in integrity. "The hypocrite," writes Gabriele Taylor, "pretends to live by certain standards when, in fact, he does not." The hypocrite has one set of virtues for public consumption and another set for actual use as a moral code.

Individuals comprising Benjamin's fourth type, the *morally weak-willed*, have a reasonably coherent set of core virtues, but they usually lack the courage to act on them. They are unlike the moral chameleon in that they know what the good is, they simply lack

the courage to do it. Benjamin's final type, the *moral self-deceivers*, have at their core a basic contradiction. They think of themselves as acting on a set of core principles, while, in fact, they do not. To resolve this

conflict, and at the same time to preserve their idealized view of themselves, they deceive themselves about what they are doing.

By looking at these five types, we immediately see what integrity does not look like. But if we look a little closer, we also may get some hints about a proper understanding of the concept. First, a person of integrity has a reasonably coherent and relatively stable set of core moral virtues. And second, the person's acts and speech tend to reflect those principles.

Individual integrity, then, requires that one's words and actions should be of one piece, and they should reflect a set of core virtues to which one is freely and genuinely committed.

But what should these virtues be? The answer to that question may differ in different professional contexts, but integrity in the context of police work should amount to the sum of the virtues required to bring about the general goals of protection and service to the public. In short, professional virtue should always bring about the moral goals of the professional organization in question. A list of the virtues of a good police officer, then, ought to tell us something important about why police departments exist. Professional integrity, then, in any professional context, is the integrated collection of virtues that brings about the goals of the profession. Presumably, in police organizations those major goals are connected to protection of and service to the public.

### Core Virtues

Lists of professional virtues can be difficult, if not foolish, to compose, particularly if someone outside the profession is doing the compiling. But an appreciation of core values is integral to the health and well-being of any profession. The following list is, of course, by no means complete. Rather, I consider it to

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be essential to the purposes of police organizations. These virtues, in other words, must be required of police officers if the goals of the organization are to be met. These virtues are not listed here in any particular order.

- *Prudence.* Practical wisdom, the virtue of deliberation and discernment. The ability to unscramble apparent conflicts between virtues while deciding what action (or inaction) is best in a given situation.
- *Trust.* The virtue of trust involves the three primary relationships of the police officer: the citizen-officer relationship, the officer-officer relationship, and the officer-supervisor relationship. Trust should engender loyalty and truthfulness in these three contexts.
- *Effacement of self-interests.* Given the potential "exploitability" of citizens, self-effacement is important. Without it, citizens can become a means to advance the police officer's power, prestige, or profit, or a means for advancing goals of the department other than those to protect and to serve.
- *Courage.* As Aristotle suggests, courage is a golden mean between two extremes: cowardice and foolhardiness. There are many professions—surgery and police work, to name two—where the difference between courage and foolhardiness is extremely important.
- *Intellectual honesty.* Acknowledging when one does not know something and being humble enough to admit ignorance is an important virtue in any professional context. The lack of this virtue in police work can be very dangerous.
- *Justice.* We normally think of justice as giving the individual what he or she is due. But putting the virtue of justice in a police context sometimes requires the removal of justice's blindfold and adjusting what is owed to a particular citizen, even when those needs do not fit the definition of what is strictly owed.



- *Responsibility.* Again, Aristotle suggests that a person who exhibits responsibility is one who intends to do the right thing, has a clear understanding of what the right thing is, and is fully cognizant of other alternatives that might be taken. More important, a person of integrity is one who does not attempt to evade responsibility by finding excuses for poor performance or bad judgment.

At a minimum, then, these seven virtues are required for integrity because they are required as the general goals of police organizations. There are probably other virtues I have missed, but most others will be variants of these seven. In short, a police officer who exhibits integrity is a person who has successfully integrated these seven virtues so that they become a whole greater than the parts. The police officer of integrity habitually will exhibit traits of character that make clear the goals of protection and service.

In the Johns Hopkins Police Executive Leadership Program, we are planning a study that will attempt to identify exemplary police officers. We hope to determine whether the virtues we have listed above, as well as some others, are consistently found among the best of our police officers. Additionally, we hope to analyze the relationship of these virtues to performance evaluations, commendations, citizen complaints, and other variables and also to ask

them for practical advice about how and why they have remained good police officers.

### **Can Integrity Be Taught?**

Needless to say, whether integrity can be taught is a second important question that should be at the top of our research agenda. If one looks at what evidence is now available from social scientific literature, the answer to this question seems to be "yes" and "no." Since most researchers agree that the practice of virtue—the component parts of integrity—is a habitual activity, it must be learned and reinforced. Other evidence suggests that the most effective time

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to teach virtue is early on, so the “yes” part of the answer is that children in stable, loving homes who regularly have the requisite virtues modeled for them are the most successful people at developing a track record for integrity.

The “no” part of the answer comes with the realization that most evidence about problems with integrity suggest that they, too, are habitual problems. By and large, people who habitually have trouble in school with behavioral problems become adults who have the same problems. This is not to say that people’s behaviors cannot change. But change always comes when the person has a clear goal and incentive for changing. The fear of punishment has rarely been enough to change habitually undesirable behavior.

These findings should have some important ramifications for the way we go about recruiting and testing police officers. Testing instruments need to be better than they are now. Longitudinal studies need to be completed that show us how well we have done in the past and the present in recruiting people who will grow to be police officers of integrity. This is one of the goals of the John Hopkins study.

One other area of inquiry worth pursuing is to track the relationship of the kind and extent of ethics training in police academies to the performance of those recruits as police officers. My initial sense is that the more extensive the training, the clearer the effect will be, though the social scientific evidence on the relationship of academic ethics training and moral behavior, at least at this point, is ambiguous. One element about academy ethics training is clear: if it is to be effective, it needs to be rigorous and it needs to emphasize critical thinking skills, reasoning skills, reasoning ability, and problem-solving techniques. In short, ethics training needs to be the right blend of the theoretical and the practical.

### **Can Integrity Be Measured?**

In the general area of professional activity, we do not know if integrity can be adequately measured. If

we attempt to measure police integrity the way state medical organizations measure the integrity of physicians or the way state judicial review boards measure the integrity of lawyers, we will not be successful. Historically, these organizations try to determine what their members have been successful in avoiding. Integrity in these contexts is seen as not leaving a sponge in a patient’s abdominal cavity or

not having conflicts of interest. In short, these governing bodies look to see if the doctor or lawyer has followed the rules and regulations and has avoided doing wrong. But avoiding wrong behavior is not the same as having integrity, any more than simply avoiding bad notes will get a singer to Carnegie Hall.

If we are to be successful in measuring police integrity, we must find measuring tools that not

only enable us to determine that police officers effectively avoid certain behaviors, but that they also regularly practice prudence, courage, justice, honesty, trust, self-effacement, and responsibility. One way to begin this task is first to refine the definition and identification of the virtues that go into producing a police officer of integrity. If we have missed the boat in identifying what we see as the core virtues, we will know soon enough.

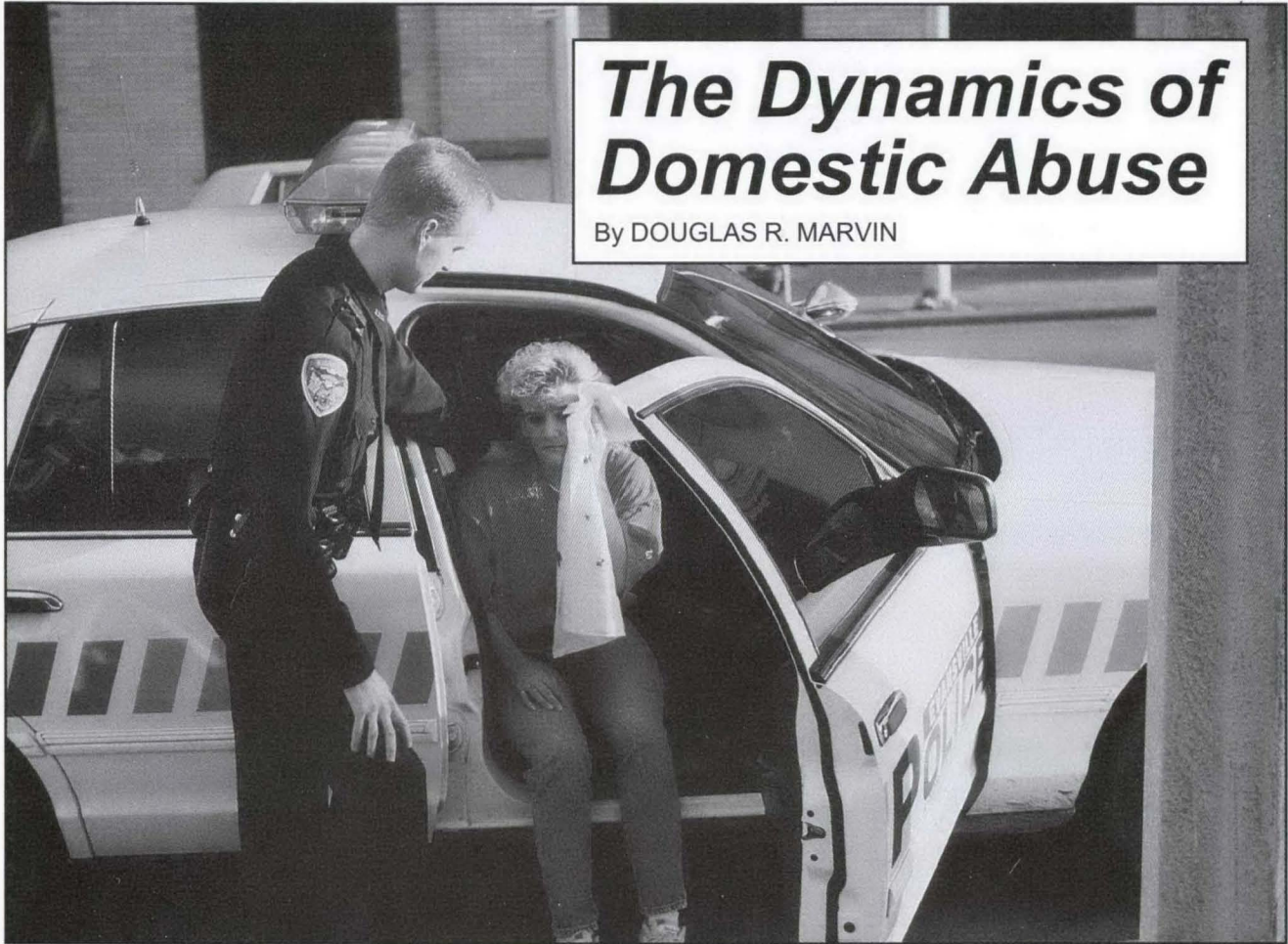
A second item that must be put on our list of things to do is the development of an agenda—a national mission statement, if you will—that says in a broad way what the moral purposes are of police organizations. All definitions of virtue and integrity, Aristotle forcefully argues, only make sense in the context of what he calls *telos*, the larger reason or purpose in which those virtues are placed. What we want a department to be ultimately should tell us a great deal about what we want our officers to do.

If we are going to think of policing as a profession, then we must assume the level of responsibility that a professional life entails. The profession should require more from its members than we expect from the general population. ♦

“ The fear of punishment has rarely been enough to change habitually undesirable behavior. ”

# The Dynamics of Domestic Abuse

By DOUGLAS R. MARVIN



**W**hile on their honeymoon, 23-year-old Mike becomes verbally abusive to his wife, Mary, after she suggests that he has had enough to drink. Mary is surprised by Mike's behavior and his hostile reaction to her. Soon after, however, he apologizes, and because he has always been so kind and gentle, Mary believes him when he tells her that this will never happen again.

Several months later, a similar episode occurs. This time, Mary takes the blame, telling herself that these types of incidents are normal in a new marital relationship. She resolves to do things that

will make Mike happy and avert confrontations.

Three weeks later, Mike hits Mary during an argument. After several violent episodes during a 2-month period, Mary finally calls the police because she fears for her safety. Responding officers arrest Mike and charge him with assault under the state's domestic violence laws.

Recognizing the trouble that awaits him, and in an effort to get her back on his side, Mike sends Mary flowers while he is in jail. With the flowers, he includes a long note, in which he expresses his deep sorrow for the pain he has caused

her and promises that the behavior will never be repeated. Because his note is so compelling, Mary believes that he has learned his lesson and that their relationship will improve. The following day, she informs the city attorney's office that she does not wish to cooperate with the prosecution. When the prosecutor concludes that the state's case is too weak without Mary as a witness, the state drops its charges against Mike, and he is released from jail.

Scenarios such as this have long constituted a staple of American policing. In many communities, reports related to domestic abuse

make up the largest category of calls to which police officers respond. Yet, until fairly recently, police officers rarely ventured into the private domain of the marital relationship. At most, officers responding to calls for help attempted to calm things down and arrange for one party to leave the home for the evening. While such an approach provided a short-term solution, it rarely helped bring about an end to the violence.

During the 1980s, this response began to change as communities implemented more aggressive strategies to address domestic abuse. Many law enforcement agencies began to explore new ways for officers to respond to domestic violence calls. Gradually, the focus shifted from merely "maintaining the peace" to arresting offenders, protecting victims, and referring battered women to shelters and other community resources available to help victims of domestic violence.

This move toward fostering a better understanding of domestic violence represents a clear departure from the approach law enforcement agencies once took toward the issue. However, despite the progressive changes that have taken place during the past two decades, law enforcement still does not address domestic violence in the same way it addresses other violent crimes. While investigators attempt to understand the motivations and characteristics of such offenders as rapists or serial murderers, little attention has been given to profiling batterers. Law enforcement officers who must confront batterers on an almost-daily basis would be well served to develop a better understanding of the dynamics of domestic abuse.

#### **A CLOSER LOOK AT DOMESTIC ABUSE**

Officers called upon to respond to and investigate domestic abuse calls need to have a full

understanding of the complex social, economic, and psychological issues that surround acts of domestic violence. To assist in the investigation of these cases and to educate police officers about this type of abuse, New Jersey's domestic violence laws require that all police officers receive biannual training in this area. This training brings several pieces of the puzzle together to provide officers with a greater understanding of the dynamics of domestic violence.

#### **Not a Fair Fight**

During training, officers learn that domestic violence is not mutual combat. Domestic abuse is about one person dominating and controlling another by force, threats, or physical violence. The long-term affects of domestic violence on victims and children can be profound. A son who witnesses his father abuse his mother is more likely to become a delinquent or batterer himself.<sup>1</sup> A daughter sees abuse as an integral part of a close relationship.<sup>2</sup> Thus, an abusive relationship between father and mother can perpetuate future abusive relationships.

Battering in a relationship will not improve on its own. Intervention is essential to stop the reign of terror. When intervention is lacking, the results can be dire: An average of 1,500 American women are killed each year by husbands, ex-husbands, or boyfriends.<sup>3</sup>

#### **Types of Abuse**

Officers investigating domestic violence should have an understanding of the types of abuse they



*Lieutenant Marvin serves with the New Providence, New Jersey, Police Department.*

**“ Law enforcement officers...should make clear to victims that the criminal justice system can help protect them and will work for their benefit. ”**



may encounter. Because domestic violence is a pattern of coercive control founded on and supported by violence or the threat of violence, this abuse may take the forms of physical violence, sexual violence, emotional abuse, and/or psychological abuse.

Physical violence includes punching, choking, biting, hitting, hair-pulling, stabbing, shooting, or threats of this type of violence. Sexual violence is characterized by physical attacks of the breast and/or genital area, unwanted touching, rape with objects, and forced sexual relations, including marital rape.

Emotional abuse takes the form of a systematic degrading of the victim's self-worth. This may be accomplished by calling the victim names, making derogatory or demeaning comments, forcing the victim to perform degrading or humiliating acts, threatening to kill the victim or the victim's family, controlling access to money, and acting in other ways that imply that the victim is crazy.

Psychological battering involves all of these features of emotional abuse, but also consists of at least one violent episode or attack on the victim to maintain the impending threat of additional assaults. Destruction of property is violence directed at the victim even though no physical contact is made between the batterer and the victim. This includes destroying personal belongings, family heirlooms, or even the family pet. This destruction is purposeful and the psychological impact on the victim may be as devastating as a physical attack.

### Characteristics of Batterers

Most batterers are masters of deception. Few exhibit violent behavior to anyone other than their victims. Often, batterers possess winning personalities and are well liked in the community. However, they frequently exhibit vastly different public and personal behavior.

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**Domestic abuse is about one person dominating and controlling another by force, threats, or physical violence.**

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In the wake of a violent domestic abuse incident, batterers often attempt to convince responding police officers that their victims are mentally off balance. Many times they fool officers into leaving without conducting a proper, thorough investigation.<sup>4</sup>

Developing a deeper understanding of the characteristics of batterers will help police officers realize when batterers are attempting to manipulate them. To help identify potential batterers, officers should be aware of other common traits they generally possess. These include:

- *Low self-esteem.* This often results from physical or sexual abuse and/or disapproval or neglect by a parent

or authoritarian figure from the batterer's childhood.

- *Extreme insecurity and an inability to trust others.* Batterers have difficulty establishing close friendships. They tend to be critical or jealous of their partners.
- *Denial of responsibility for their behavior.* Batterers often deny that abuse has occurred. They also minimize the impact of their assaultive behavior or blame their partners for causing an incident.
- *Need to control.* Batterers choose to abuse their partners. Their purpose is to control them. Batterers use violence or attempted or suggested violence to make their partners comply with their wishes.

### THE CYCLE OF VIOLENCE

Police generally become involved in a domestic abuse situation once it has reached a flash point. However, in most domestic abuse cases, physical abuse occurs during one of the three phases that make up the cycle of violence. By becoming familiar with the features of each phase in this cycle, responding officers can help victims understand that the cycle of abuse is likely to continue if nothing is done to address the underlying causes.

In a battering relationship, the cycle of violence includes three distinct phases.<sup>5</sup> Investigating officers who understand these phases can offer objective insight to victims of the violence. For example, if an officer can advise a victim that the batterer's next step likely will be to

apologize and possibly send flowers in order to keep her in the relationship, she may be more inclined to understand that the cycle will repeat itself if no intervention occurs.

### **Tension-Building Phase**

During the first—and usually the longest—phase of the overall cycle, tension escalates between the couple. Excessive drinking, illness, jealousy, and other factors may lead to name-calling, hostility, and friction. Unless some type of professional intervention occurs at this point, the second phase of the cycle—acute battering—becomes all but inevitable.

During the tension-building phase, a woman may sense that her partner is reacting to her more negatively, that he is on edge and reacts heatedly to any trivial frustration. Many women recognize these signs of impending violence and become more nurturing or compliant or just stay out of the way.

A woman often will accept her partner's building anger as legitimately directed at her. She internalizes what she perceives as her responsibility to keep the situation from exploding. In her mind, if she does her job well, he remains calm. If she fails, the resulting violence is her fault.

### **Acute-Battering Phase**

The second phase of the cycle is the explosion of violence. The batterer loses control both physically and emotionally. Many batterers do not want to hurt their partners, only to teach them a lesson and control them. However, this is the stage where the victim, the

batterer, or responding officers may be assaulted or killed.

Unless the battering is interrupted, the violence during this phase will take at least as severe a form as is necessary for the abuser to accomplish his goal. Once he has the victim under his control, he may stop. In other cases, where the batterer completely loses emotional and physical control, the consequences can be deadly.

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**...an experienced batterer generally will not leave marks on the victim that would be readily noticeable to others.**  
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The violence may be over in a moment or last for several minutes or hours. Although there may be visible injuries, an experienced batterer generally will not leave marks on the victim that would be readily noticeable to others.

After a battering episode, most victims consider themselves lucky that the abuse was not worse, no matter how severe their injuries. They often deny the seriousness of their injuries and refuse to seek medical attention.<sup>6</sup>

Law enforcement officers who respond immediately after a violent episode may find an abusive perpetrator who appears extremely calm

and rational. His calm demeanor is deceptive; he has just released his anger and vented his tensions at his victim. The batterer may point to the victim, who may be highly agitated or hysterical because of the abuse, and attempt to blame her for the violence. The victim may, in fact, respond aggressively against officers who attempt to intervene.

Officers should be aware that this reaction may be due to the victim's fear that more severe retaliation awaits her if officers arrest the batterer. The victim also may feel desperate about the impending loss of financial support or even emotional support she receives from the abuser.

Although officers should not make any false promises, they should reassure the victim that the mechanisms are in place for the criminal justice system to help. Officers have a responsibility to provide a complete, professional investigation so that the system will work. A haphazard investigation, or a lack of concern by responding officers, could result in a violent abuser's being released from jail to retaliate against a vulnerable victim.

### **Honeymoon Phase**

The third phase of the cycle is a period of calm, loving, contrite behavior on the part of the batterer. The batterer may be genuinely sorry for the pain he has caused his partner. He acts out of his greatest fear—that his partner will leave him. He attempts to make up for his brutal behavior and believes that he can control himself and never again hurt the woman he loves.

## New Jersey's Domestic Violence Laws

**D**omestic violence laws in New Jersey—as in other states—clearly express that the *primary duty* of a law enforcement officer when responding to a domestic violence call is to enforce the laws allegedly violated and to protect the victim. At the same time, the New Jersey statutes provide protection from liability for law enforcement officers who act to enforce domestic violence laws by:

- Making an arrest based on probable cause
- Enforcing a court order in good faith, or

- Acting (or refraining from any action) in good faith under the domestic violence laws.

The statutes clearly define what is expected of law enforcement officers and reflect the legislature's intent to ensure that officers take the necessary steps to protect the victims of domestic violence.

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*Source: New Jersey Criminal Justice Code 2C:25-18 et. seq.*

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The victim wants to believe that her partner really can change. She feels responsible, at least in part, for causing the incident, and she feels responsible for her partner's well-being.

It is at this stage that many victims request that complaints against batterers be dropped. If police conducted a thorough investigation, the prosecutor's office can reacquaint a reluctant victim with photographs of her injuries. When the victim sees the cuts and bruises that she received at the hands of her now-apologetic partner, she may reconsider the wisdom of dropping the charges.

Likewise, if officers had the victim provide a statement of events at the time of the incident, this could prove an invaluable tool for prosecutors. Not only does such a statement establish probable cause, but prosecutors can have the reluctant victim review the details of her abuse to refresh her memory.

Officers and prosecutors also can explain that the contrite behavior being exhibited by the batterer may, in all likelihood, give way to a new cycle of violence.

For police officers, the possibility that a victim will forgive her abuser during the honeymoon phase underscores the importance of conducting a thorough investigation. The goal of officers responding to a domestic abuse call should be to develop a case that can be prosecuted even if the victim becomes reluctant.<sup>7</sup>

### **Understanding the Cycle of Violence**

While most domestic relationships involving violence include some type of cycle, not all violent relationships go through each phase as described above. Some batterers never express any type of remorse for their actions and, in fact, will continue to use threats and intimidation to discourage a victim from

filing a complaint or testifying in court. For such abusers, the thought of resorting to flowers or apologies would never cross their minds. However, most domestic abuse cases follow a pattern corresponding, in some way or another, to the cycle of violence.

### **CONCLUSION**

In recent years, law enforcement has enhanced its ability to resolve various types of cases by studying the motivations and profiling the characteristics of offenders who perpetrate certain types of crimes. The police can apply this same strategy to help address the issues surrounding domestic violence.

Investigations of domestic violence cases should evolve with a full understanding of the characteristics of batterers and the cycle of violence. Law enforcement officers also should make clear to victims that the criminal justice system can

help protect them and will work for their benefit. But the police must back up such guarantees with thorough, professional investigations.

The abusive relationships of the past were allowed to persist, in part, because restrictive statutes and misplaced social mores concerning violence within the domestic setting tied the hands of police and prosecutors. Thanks to new laws and an evolving understanding of the dynamics of domestic abuse, these

ties have been cut. Law enforcement should make the most of this new freedom to address an old problem. ♦

#### Endnotes

<sup>1</sup> John Zorza, "The Criminal Law of Misdemeanor Domestic Violence, 1970-1990," *The Journal of Criminal Law and Criminology*, (Chicago, Ill: Northwestern University School of Law—Office of Legal Publications, 1992), 83.

<sup>2</sup> Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A*

*Model Framework for Domestic Violence Intervention*, 74 B.C.L. REV. 329, (1994).

<sup>3</sup> National Woman Abuse Prevention Project, "Understanding Domestic Violence: Fact Sheets," 1989, 21.

<sup>4</sup> *Ibid.*

<sup>5</sup> Leonore E. Walker, *The Battered Woman* (New York: Harper-Row, 1979), 43.

<sup>6</sup> Domestic Violence Prosecution Protocol, Office of the Attorney General, San Diego, Calif., April 1990.

<sup>7</sup> See George Wattendorf, "Prosecuting Cases Without Victim Cooperation," *FBI Law Enforcement Bulletin*, April 1996, 18-20.

## Author Guidelines

### Manuscript Specifications

*Length:* 2,000 to 3,500 words or 8 to 14 pages.

*Format:* All manuscripts should be double-spaced and typed on 8 1/2- by 11-inch white paper. All pages should be numbered, and three copies should be submitted for review purposes. When possible, an electronic version of the article saved on computer disk should accompany typed manuscripts.

### Publication

*Basis for Judging Manuscripts:* Manuscripts are judged on the following points: Relevance to audience, factual accuracy, analysis of information, structure and logical flow, style and ease of reading, and length. Favorable consideration cannot be given to an article that has been published previously or that is being considered for publication by another magazine. Articles that are used to advertise a product or a service will be returned to the author.

*Query Letters:* Authors may submit a query letter, along with a detailed one- to two-page outline before writing an article. This is intended to help authors but does not guarantee acceptance of the article.

*Author Notification:* Receipt of manuscript will be confirmed. Notification of acceptance or rejection will be sent following review. Articles accepted for publication cannot be guaranteed a publication date.

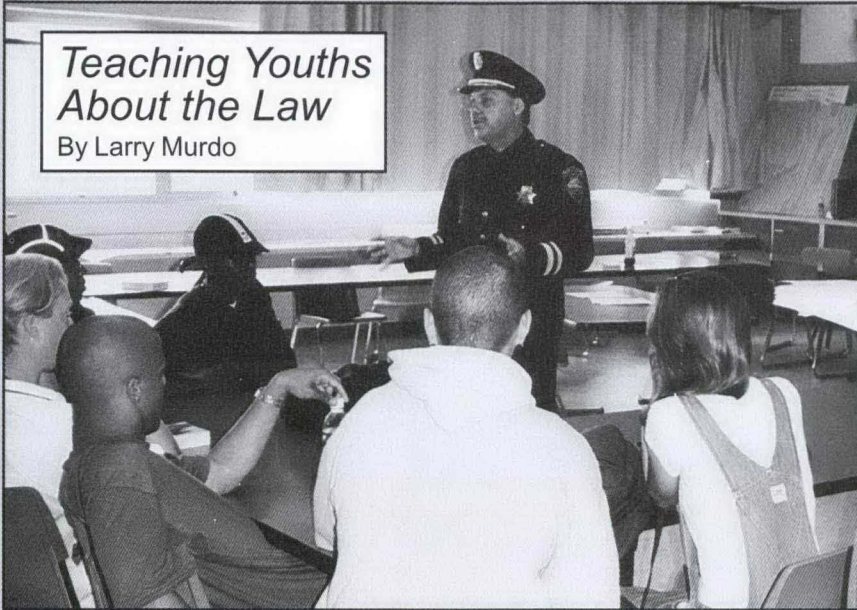
*Editing:* The *Bulletin* reserves the right to edit all manuscripts for length, clarity, format, and style.

### Submission

Authors may contact the special agent police training coordinator at the nearest FBI field office for help in submitting articles, or manuscripts may be forwarded directly to: Editor, *FBI Law Enforcement Bulletin*, Law Enforcement Communication Unit, FBI Academy, Quantico, VA 22135.

## Teaching Youths About the Law

By Larry Murdo



With increasing frequency, law enforcement officers around the country are voicing a common refrain: "Today's kids have no respect for the law!" Police administrators often review incident reports involving confrontational field contacts between officers and juveniles. While the tenor of many of these contacts seems to bear out the claim that today's young people do not respect the law, it, in probability, points to a more basic truth—many of today's youths do not *understand* the law.

Americans should be proud of their system of written laws—the oldest in the modern world. These laws usually provide clear parameters that govern acceptable societal behavior and outline the response of the criminal justice system to unacceptable behavior. In essence, the law—as delineated by federal, state, and local courts—provides the practical application of the social contract that citizens and their government enter into to ensure a free and orderly society, in which the rights of the individual are tempered by the rights of society as a whole.

But who can best convey the practical relevance of the nation's laws and legal traditions to today's youths? While traditional government, history, and social studies classes touch upon the major themes

that underpin the legal system, they rarely explore the more practical aspects of the law that youths might encounter.

Although junior and high school teachers might not possess the requisite expertise to develop lessons on the practical application of the nation's criminal codes, many law enforcement officers and administrators do. In fact, police work embodies the practical application of constitutional law. Simply discussing the details of police-citizen contacts within the framework of the relevant laws can help students understand what the police do and why.

In recent years, police officers in Albany, California, as in other areas of the country, have experienced a frustrating number of confrontational contacts with young people. Often, the acrimonious nature of these contacts is fueled by the youths' general lack of understanding of their rights *and responsibilities* under the law. In an effort to address this void and the problems it often spawned, the Albany chief of police developed a program to provide area students with practical instruction about the law and the methods law enforcement officers and the criminal justice system use to uphold it. Since it was introduced in spring 1992, the course has proven to be an effective way to communicate important information to this young and impressionable audience, while cultivating an enhanced understanding of the role police play in society.

### THE INSTRUCTION

*Constitutional Law/Practical Applications Instruction for Youth* is delivered each May to students in the city's public middle and high schools. The chief meets with 8th grade students as they prepare to advance to high school and with high school seniors as they prepare to graduate. By delivering the instruction twice—in slightly modified formats—the program reinforces the principles at pivotal points in the students' lives.

## Concepts Addressed

The day-long instruction program covers a wide range of topics. These include

- Exigent circumstances allowing warrantless residential searches
- Specific legal points related to the scope of warrantless vehicle searches
- An individual's expectation of privacy
- Searches incident to arrest
- Legality of "pat-down searches"—when and why they may be conducted
- The safeguards—and limitations—of the Fifth Amendment protection against compelled self-incrimination.

The instruction stresses the balance the law seeks to strike between the rights of individuals as protected by the Constitution and the responsibilities of citizens. The curriculum explains, for example, that no constitutional right exists to resist arrest or defy a court-ordered sanction.

During the free-flowing discussions with the students, it quickly becomes evident that, prior to the classroom instruction, they received most of their information regarding the police or the legal system from television, motion pictures, and other products of the entertainment industry. The rampant misinformation featured in such entertainment makes it a poor teacher in an area as complex and vital as the application of constitutional standards.

The students' lack of a balanced and accurate sense of the law becomes most clear early in the discussion when the youths respond to a series of questions designed to gauge their grasp of practical legal matters. The students rarely articulate informed responses to such questions as:

- If police officers stop a car, can they order all of the passengers out and conduct personal searches? Can officers search the interior of the

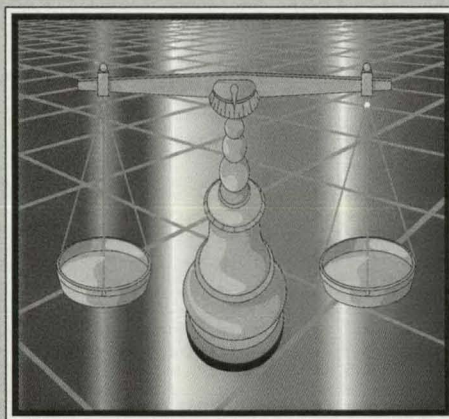
vehicle? Can they search individual bags or cases within the passenger compartment without a warrant?

- If a police officer stops a citizen in a public place and begins to ask questions, must the citizen respond?
- Can police officers lawfully enter a private residence, without a warrant, to arrest the homeowner or someone else in the home?

The concepts of probable cause and related issues are introduced to students so that they can formulate informed and accurate responses to such questions. While students may not always agree with the laws and judicial rulings presented, most gain a new appreciation for the reasoned approach the law must take to balance maintaining order and protecting personal freedoms.

A comprehensive handout given to each student reinforces the lecture component of the program. The written material covers areas of police field operations such as consensual encounters, detentions, and

arrests. These issues generally spark lively discussions, which provide an opportunity to explain to the youths how their observable behavior—e.g., threatening posture or abusive language—may impact the tenor of an encounter with police officers. These discussions help the students appreciate that officers must respond to what they *observe* about an individual's behavior at the time of an encounter because they cannot know the person's mind-set.



## Adding to the Program

After the *Practical Law* instruction had been delivered to several different classes, Albany school officials and the chief met to evaluate the curriculum. The evaluation panel determined that adding instruction from an attorney's perspective might encourage a broader appreciation for the scope of the law. A constitutional law attorney from the nearby city of Berkeley agreed to volunteer her time to the

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instruction program and now copresents a revised curriculum with the chief.

Sessions now begin with opening remarks from the attorney and the chief. Students then pose questions to the instructors, both of whom respond to each question. The resulting discussions, often marked by spirited debate among the students, help bring to life the concepts of constitutional law and abstract theories about the proper role of law enforcement in a free society.

As the presentations unfold, students often are surprised to find that the police chief and the constitutional law attorney agree on more points than they disagree. Through this expanded forum, the students learn that both the police and those who represent criminal defendants operate from a position of respect for the Constitution.

#### DEVELOPING A PROGRAM

Departments interested in developing a practical-law instruction curriculum should begin by crafting a comprehensive student handout that covers the intended scope of the class.<sup>1</sup> Department administrators should consult their agency legal advisor to aid in the development of the lesson plan. They then should submit the plan to the local school board for approval. Although school administrators may want to monitor development of the instruction, most school systems would fully embrace the concept of a practical law course for students. As with the Albany program, this type of instruction would be delivered most effectively as a supplement to the civics or government components of the regular school curriculum.

Instructors do not have to be lawyers to teach the fundamentals of the law and the legal parameters within which the police operate. Nor is it necessary that a department's ranking officer deliver such school-based instruction. Rather, the individual accepting the opportunity to present the material must possess effective and demonstrable communication skills, especially an ability to relate to juveniles. The presenter also must possess a thorough and pragmatic

knowledge of the Constitution, most notably the Fourth Amendment. While some formal teaching experience may be helpful, such experience should not be considered an absolute requirement. An appreciation for and understanding of the law combined with enthusiasm for the subject matter and an interest in helping youths in a positive forum represent the most important qualifications.

#### CONCLUSION

As the most visible component of the criminal justice system, the police always have represented different things to different people. For too many young people, the police have come to represent an oppressive force that views youths contemptuously and treats them unfairly. Unfortunately, this perception becomes understandable given the steady stream of distorted

and often-negative messages youths receive about law enforcement via the media and the entertainment industry. These images not only reinforce a negative view of law enforcement, but they also undermine respect for the law, which is essential to the functioning of a free society.

But law enforcement can take steps to correct the misinformation youths receive. By taking the time to discuss practical aspects of constitutional law, as well as the complex role police play to maintain order and ensure individual rights, agencies can help nurture a deeper appreciation for the law among youths. As youths come to see the positive aspects of the laws they are asked to live by, they gain a more balanced view of law enforcement and the role police play in society. ♦

#### Endnote

Police administrators can receive a copy of the student handout used in Albany by sending a request on agency letterhead to the author at the Albany Police Department, 1000 San Pablo Avenue, Albany, CA 94706.

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*Chief Murdo commands the Albany, California, Police Department.*

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The instruction stresses  
the balance...between  
the rights of individuals  
as protected by the  
Constitution and the  
responsibilities of  
citizens.  
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# Militias Initiating Contact

By JAMES E. DUFFY and  
ALAN C. BRANTLEY, M.A.



**T**he growth of the organized militia movement represents one of the most significant social trends of the 1990s. This significance is due less to the actual size of the movement—by all measures, militia membership remains an almost imperceptible percentage of the population—than it is to the potential for death and destruction emanating from the most radical elements of the movement.

Few Americans knew of the militia movement or antigovernment extremists until the morning of April 19, 1995, when a bomb blast destroyed the Alfred P. Murrah Federal Building in Okla-

homa City, Oklahoma. Although no apparent direct connection exists between members of any militia group and the bombing, those arrested held and expressed views espoused by some militia groups. Following the bombing, television, newspaper, and magazine features presented in-depth—if somewhat alarmist—exposés of the militia movement and the beliefs and values of militia members.

While the intense scrutiny given the militia movement during the past few years has served to educate the public, as well as police officials, about the fundamental beliefs and motivations of militia

groups, this scrutiny also has served to raise as many questions as it has answered. What specific factors have fueled the growth of the militia movement? What immediate aims do militia groups wish to achieve? Are militia leaders primarily driven by defensive or aggressive philosophies? What explains the suspicion and distrust many militia members apparently feel toward law enforcement?

Of course, such questions can only be answered with any degree of accuracy by militia members themselves. So, to move beyond a surface understanding of the militia movement, logic dictates that law



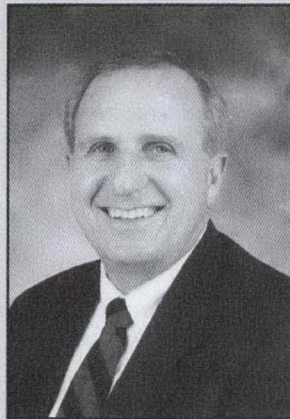
enforcement agencies go to the source, local militia leaders, to learn more detailed information.

This suggestion is not as impudent as it might first appear. In fact, as part of a broad-based effort to establish positive contacts between law enforcement agencies and local militia groups, simply establishing a dialogue with militia leaders can go a long way to removing some of the mystery that provides fertile ground for the suspicion and distrust that exist in both camps.

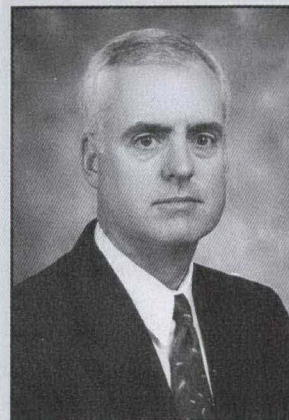
This article first summarizes what is known about the militia movement and then suggests a strategy that law enforcement agencies can use to initiate constructive dialogue with militia groups that have not demonstrated a propensity for aggressiveness and violence. The article also includes a threat assessment typology recently developed by the FBI to assist agencies in determining the threat level posed by individual militia groups.

### **MILITIA MEMBERSHIP**

Most militia organization members are white males who range in age from the early 20s to the mid-50s. The majority of militia members appear to be attracted to the movement because of gun control issues, as epitomized by the Brady Law, which established a 5-day waiting period prior to the purchase of a handgun, and the 1994 Violent Crime Control and Law Enforcement Act, which limited the sale of various assault-style weapons. Many militia members believe that these legislative initiatives represent a government conspiracy to disarm the populace and ultimately abolish the Second Amendment to



*SA Duffy serves with the Critical Incident Response Group's Crisis Management Unit at the FBI Academy.*



*SA Brantley serves with the Profiling and Behavioral Assessment Unit at the FBI Academy.*

the Constitution. The federal government's role in confrontations with the Branch Davidians near Waco, Texas, and Randy Weaver at Ruby Ridge, Idaho, have further fueled conspiratorial beliefs that the government is becoming more tyrannical and attempting to reverse constitutional guarantees.

Militia members generally maintain strong Christian beliefs and justify their actions by claiming to be ardent defenders of the Constitution. They often compare the American Colonial period (1607-1783) to their present existence by relating significant Colonial dates and events to lend historical weight to their own beliefs and actions. Many militias claim to represent the ideological legacy of the founding fathers tracing their core beliefs to select writings and speeches that predate the Revolutionary War. Colonists at that time rebelled against the tyranny of King George III and what they saw as the British government's practice of oppression and unjust taxation. Various present-day militias pattern

their actions on what they believe their ideological ancestors would do if they were alive today.

Using their interpretation of constitutional rights and privileges as their calling, militia members and antigovernment extremists have challenged federal and state laws and questioned the authority of elected officials to govern, tax, and maintain order. In doing so, they have created concerns for law enforcement and public officials who come into contact with them.

Still, many militia members and individuals who espouse antigovernment beliefs remain law-abiding citizens and do not advocate terrorist acts. Many organized militias have, in fact, condemned the Oklahoma City bombing and have stated that those responsible for the attack do not represent the philosophy and goals of today's militia groups.

Clearly, elements of the militia movement represent a threat to law enforcement and to the general public. At the same time, the militia movement is far from the

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monolithic terrorist conspiracy that some media accounts have portrayed it to be. How can law enforcement agencies determine which groups represent more of a threat than others? How can agency commanders assess the specific beliefs and philosophies of the groups they may encounter in their own jurisdictions? In many cases, all they need to do is ask.

### **INITIATING DIALOGUE**

Law enforcement officials should make proactive contacts with local militia leaders so that the two sides can voice their concerns and discuss relevant issues in a nonconfrontational way. Agency executives can establish the initial contact simply by calling the local militia leadership and arranging an informal meeting at a mutually agreeable location. By talking, law enforcement officials allow militia representatives to assess the character of the officers apart from the positions they hold.

Nonconfrontational dialogue also allows for a moderation of any negative stereotypes that militia members might hold toward law enforcement officers. Conversely, such contact should allow law enforcement representatives the chance to gauge and assess the true, or at least unprovoked, nature of the militia leaders.

After making the initial contact, a law enforcement agency should be in a position to arrange for future meetings, especially if a troubling issue arises or a crisis appears imminent. When each side realizes that the other is not as threatening or unreasonable as originally believed,

nonconfrontational contacts will reduce anxiety levels and the potential for misunderstanding.

At times of impending crisis, established contacts will keep open the avenues of communication, enhancing the opportunities for affected parties to understand the issues and to resolve trouble in a peaceful manner. Such rational problem-solving strategies greatly

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***During a recent incident in Louisiana involving a barricaded subject with militia connections, the value of a pre-established dialogue became apparent.***  
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increase the likelihood of achieving agreement between two groups whose goals may appear to be at cross purposes but, in reality, may be quite similar.

### **Making Contact**

Since the Oklahoma City bombing, a growing number of law enforcement officials have established regular contacts with militia leaders in their jurisdictions. These contacts have improved understanding and promoted ongoing relationships between leaders of both groups.

Contacts with militia groups should be made by ranking departmental personnel who are in a position to speak with authority for the agency. Ideally, the agency's

commanding officer should meet with the militia group's leader, as the two can best represent the goals, objectives, and legal positions of their respective organizations.

Historically, militia groups have placed more trust in county sheriffs' offices than in other law enforcement agencies, whether they are federal, state, or city. Law enforcement agencies at any level that previously have established contacts with local militia leaders should assist other agencies attempting to do so. In this way, law enforcement invokes a unified presence and demonstrates its ability to work together without territorial conflict, a strength militia leaders will notice.

Of course, law enforcement officials should take appropriate strategic precautions when meeting with militia groups. They should advise their agencies of the time and location of any meetings and should make sure meetings take place in areas that afford safety and security.

### **Nature of Contacts**

Law enforcement agencies should not use contacts with militia groups as a way to gain or confirm intelligence information. Law enforcement possesses many ways to obtain intelligence and should not risk inflaming the suspicions of militia leaders by asking probing questions. Likewise, law enforcement representatives should not volunteer any sensitive information to militia representatives, as such disclosures may expose sources or investigative techniques.

During the initial meeting, law enforcement representatives should

## The Militia Threat Assessment Typology

### Category I Militia Groups

- Conduct paramilitary training
- Base their organizational philosophies on antigovernment rhetoric
- Maintain a primarily defensive philosophical posture. Plans for violent action are contingent upon perceived government provocation
- Engage in no known criminal activity.

### Category II Militia Groups

- Conduct paramilitary training
- Base their organizational philosophies on antigovernment rhetoric
- Maintain a primarily defensive philosophical posture. Plans for violent action are contingent upon perceived government provocation
- Engage in criminal activity to acquire weapons and explosives. Criminal activity may range from minor firearms violations, e.g., illicit weapons sales and transfer, to illegal firearms modifications and property crimes.

### Category III Militia Groups

- Conduct paramilitary training
- Base their organizational philosophies on extreme antigovernment rhetoric, denoting deep suspicion and paranoia. Group may direct threats toward specific individuals or institutional targets
- Maintain a primarily defensive philosophical posture. Plans for violent action are

contingent upon perceived government provocation, but response plans are highly detailed and may include an escalation of overt acts beyond planning, such as testing explosive devices, gathering intelligence, and identifying/conducting surveillance of potential targets

- Engage in criminal activity, ranging from property crimes to crimes of interpersonal violence, e.g., resisting arrest, armed robberies, burglaries, and attempts to provoke confrontations with government officials.

### Category IV Militia Groups

- Demonstrate many of the same traits and characteristics as category III groups but are likely to be smaller, more isolated cells or fringe groups whose members have grown frustrated with their peers' unwillingness to pursue a more aggressive strategy. Unlike militias in the other categories, category IV groups often maintain an openly offensive, rather than defensive, posture
- May grow out of other less threatening militia groups or may evolve independently from any other group associations
- Often attract individuals with frank mental disorders. These individuals may either act alone or with a small number of associates who share similar paranoid/disordered beliefs
- Plot and engage in serious criminal activity, e.g., homicide, bombings, and other acts of a terrorist nature.

set a conversational tone that will lead to an open discussion of issues important to both sides. The goal is to establish an ongoing relationship.

During a recent incident in Louisiana involving a barricaded subject with militia connections,

the value of a pre-established dialogue became apparent. As the incident unfolded, local militia leaders reached out to their law enforcement contacts to verify the information they received from various sources. Because law enforcement officials previously had established

trust with militia leaders, the police were able to dispel false information being publicly conveyed by the subject. The subject eventually surrendered peacefully to the FBI and local law enforcement officials. Pre-established contacts allowed law enforcement to provide local

militia leaders the facts surrounding the incident and to quell the misinformation and rumors that had spread through elements of the militia community.

### ASSESSING THE THREAT

Law enforcement agencies must exercise caution before initiating contact with militia groups. Because different groups operating within the same geographic area may pose widely varying degrees of threats, law enforcement officials should assess the threat level of a militia before attempting to make contact. In most cases, it is unadvisable to attempt proactive contact with groups that openly advocate violence toward law enforcement or other public agencies.

To assist agencies in gauging the threat level posed by militia groups, special agents in the FBI's Critical Incident Response Group developed the Militia Threat Assessment Typology.<sup>1</sup> Law enforcement agencies can use the typology to help determine which groups should and should not be contacted on a proactive basis.

Within the typology, category I groups represent the least threat to law enforcement agencies; category IV groups represent the greatest threat. Generally, only militia groups in categories I and II should be considered candidates for proactive contact. Given the type of criminal activity, threatening behavior, and paranoia exhibited by members of category III and IV militia groups, law enforcement officials should refrain from attempting to establish contact with leaders of these groups.

### SAFEGUARDING INVESTIGATIONS

Before law enforcement officials attempt to make contact with leaders of any militia group, they should consult with other agencies that also may have an investigative interest. This allows agencies the opportunity to report the status of their activities and provide information that could prevent a well-intentioned contact from having a negative impact on ongoing investigations.

### CONCLUSION

Communication represents a key component to successful policing. Initiating and maintaining dialogue with the less dangerous elements of the militia movement enable law enforcement agencies to establish communication with militias on constructive, nonconfrontational terms. With communication established, agencies and militia leaders can discuss issues openly and avert potential problems. If crises do develop, law enforcement commanders can use pre-established contacts to reach out to militia leaders and diffuse tensions. As a growing number of agencies have learned, the best time to begin talking is before trouble erupts. ♦

#### Endnote

The Militia Threat Assessment Typology was developed by Special Agent Alan C. Brantley and former Special Agent Gregory Cooper of the FBI's Critical Incident Response Group, Quantico, VA. The typology is based on the agents' experience and research into militia groups. For more information concerning the Militia Threat Assessment Typology, contact the authors at the FBI Academy, Quantico, VA 22135.

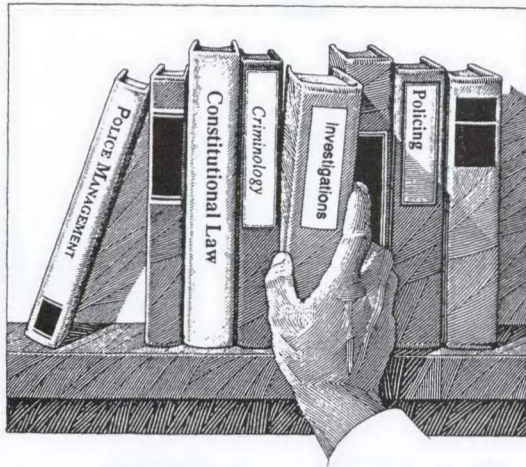
## Wanted: Photographs



The *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

Brian Parnell, Art  
Director, *FBI Law  
Enforcement Bulletin*,  
Law Enforcement  
Communication Unit,  
FBI Academy, Quantico,  
VA 22135.



***Crisis Negotiations: Managing Critical Incidents and Hostage Situations in Law Enforcement and Corrections*** by Michael J. McMains and Wayman C. Mullins, Anderson Publishing Co., Cincinnati, Ohio, 1996.

Effective negotiation skills are among an officer's most important weapons in resolving tense critical incidents. *Crisis Negotiations* takes a very thorough look at an extremely difficult subject. The comprehensive nature of the presentation makes the book an excellent informational resource both for the novice and the expert negotiator.

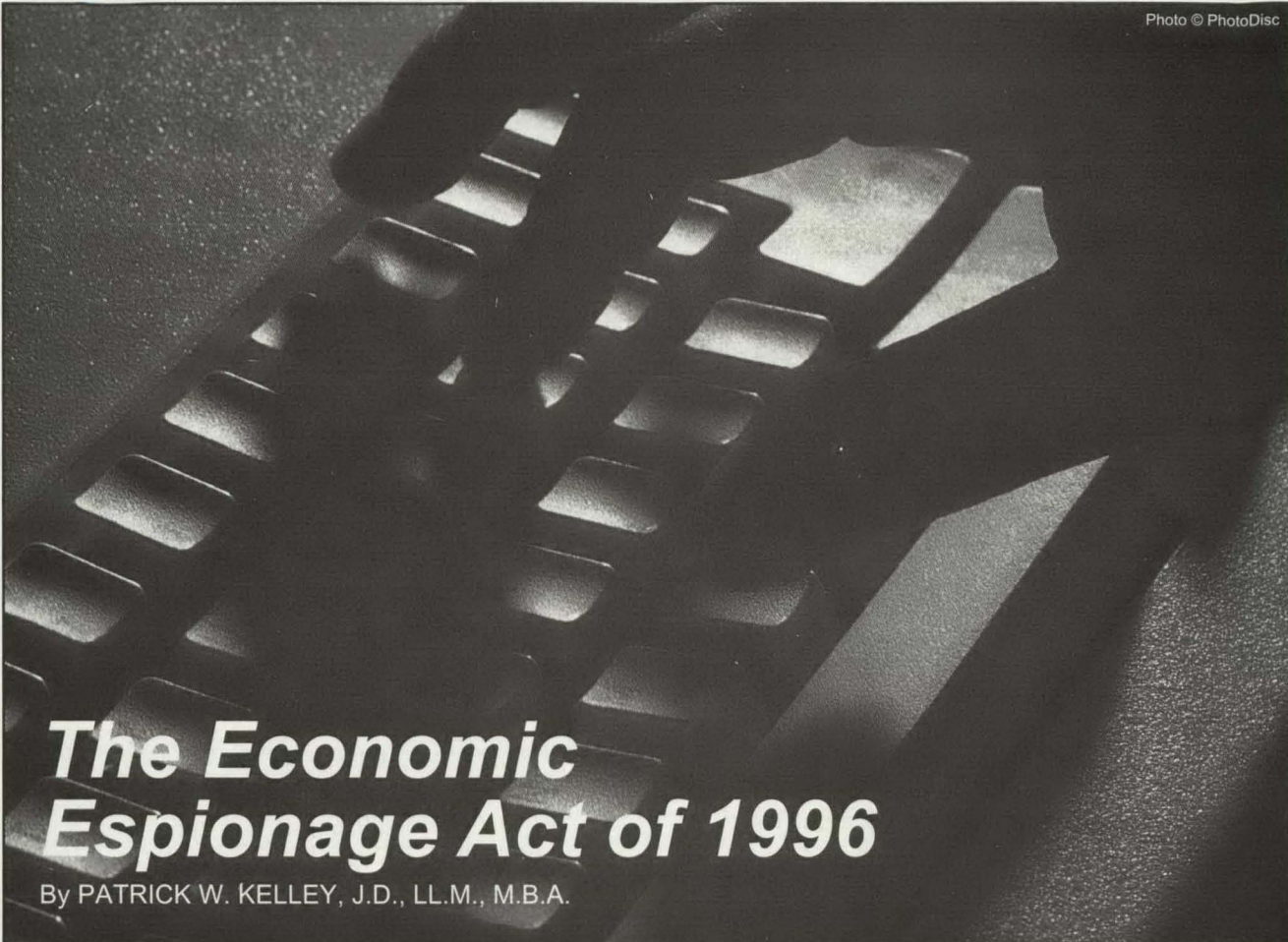
The text is well organized and divided into functional chapters that provide basic definitions and workable examples. The authors suggest communication strategies for classic personality disorders. As they make clear, in the absence of mental health

experts, negotiators must be able to recognize psychiatric conditions and should possess a working knowledge of such areas as communication and stress management.

Each chapter begins with an outline of learning objectives for that particular discussion. The authors thoroughly explain ideas and concepts and have designed the text so that these ideas and concepts can be easily referenced. This referencing makes the book especially user-friendly for practicing negotiators. As the chapters progress, the book presents a complete guide to the negotiation process—from equipment considerations and intelligence-gathering to media relations, tactical response, and post-incident debriefing.

As policing becomes increasingly complex, law enforcement administrators will come to rely more and more on resources that offer practical assistance to personnel. The authors of *Crisis Negotiations* have produced a comprehensive guide designed to help negotiators and line officers through stressful critical incidents. Through its wide-ranging presentation, the book also provides administrators with clear strategies to better prepare their agencies to deal with critical incidents.

Reviewed by  
Linda J. Stump  
Detective Lieutenant  
Purdue University Police Department  
West Lafayette, Indiana



## *The Economic Espionage Act of 1996*

By PATRICK W. KELLEY, J.D., LL.M., M.B.A.

**T**he development of proprietary economic information, commonly called trade secrets, is an integral part of virtually every aspect of U.S. trade, commerce, and business. Protecting trade secrets is essential to maintaining the health and competitiveness of critical segments of the U.S. economy.

The ever-increasing value of proprietary economic information in the global marketplace and the corresponding spread of technology have combined to significantly increase both the opportunities and motives for conducting economic espionage and trade secret theft. As

a consequence, foreign governments, organized criminal enterprises, and rogue thieves use a variety of means to target individuals and industries to gain illicit access to valuable information, data, and technologies.

This article discusses new federal legislation that will assist federal, state, and local law enforcement officers in recognizing and investigating trade secret theft. New laws became necessary because prior state and federal legislation had not kept pace with the rapidly changing technological environment. For example, if an individual downloads a computer

program code onto a disk without the permission of the code owner, has a theft occurred, even though the true owner never lost possession of the original code? If a theft occurred, is the value of the material taken determined by the value of the disk on which the code is now recorded or the value of the code itself? Although Congress had enacted patent and copyright protection laws, computer crime statutes, and laws designed to prevent government employees from wrongfully disclosing proprietary information obtained by virtue of their official duties,<sup>1</sup> no federal law protected, in a systematic, principled

manner, trade secrets from theft and misappropriation. Legislation in the states varies but, in general, offers inadequate protection to victims of trade secret theft.<sup>2</sup>

### **BROADENING PROTECTION OF TRADE SECRETS**

In passing the Economic Espionage Act of 1996 (the Act),<sup>3</sup> Congress moved to remedy these problems by making the theft and misappropriation of trade secrets federal crimes. The Act adds a new Chapter 90 to Title 18 of the *United States Code* and employs a two-tiered approach designed specifically to combat both economic espionage and more conventional forms of trade secret theft and misappropriation. The chapter defines key terms, prescribes stiff maximum punishments, includes forfeiture provisions, provides for extraterritorial jurisdiction under certain circumstances, preserves existing state law on the subject, and protects the confidentiality of trade secrets during enforcement proceedings. Relevant sections of the Act are discussed below.

#### **Section 1831 Economic Espionage**

Economic espionage, as described in Section 1831, refers to foreign power-sponsored or -coordinated intelligence activity, directed at the U.S. government or corporations, entities, or other individuals operating in the United States, for the purpose of unlawfully obtaining trade secrets. Section 1831 punishes the theft, misappropriation, wrongful alteration, and delivery of trade secrets when accused parties intended to, or

knew that their misconduct would, benefit a foreign government, instrumentality, or agent. This section also makes punishable attempts and conspiracies to commit such offenses. The prescribed maximum punishment for an individual offender is 15 years imprisonment, a \$500,000 fine, or both; for an organization,<sup>4</sup> a fine of \$10 million.

The principal purpose of this section is to prevent economic espionage, not to punish conventional commercial theft and misappropriation of trade secrets, which is the function of Section 1832. Investigators should administer Section 1831 with its principal purpose in mind and *should not*, therefore, attempt to apply it to misconduct by foreign corporations when there is no evidence of government-sponsored or -coordinated intelligence activity. Rather, such misconduct should be pursued under Section 1832.

To prosecute an offense under Section 1831, the prosecution must

show that perpetrators acted with the intent to, or had knowledge that their actions would, aid a foreign government, instrumentality, or agent. This specific-intent requirement separates conduct that is criminal from that which is innocent.

For example, the section does not proscribe legitimate economic reporting activities conducted by diplomatic, consular, and mission personnel in the United States and abroad. Thus, an economics officer assigned to a mission in the United States may gather unclassified labor statistics, gross domestic product data, import and export figures, agricultural output measurements, and similar publicly available material, without violating the Act. On the other hand, the theft of a secret formula for a newly developed pharmaceutical would be a crime under the Act whether committed by an economics officer or a common thief.

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*Mr. Kelley is the chief of the Administrative Law Unit, Office of General Counsel, at FBI Headquarters in Washington, DC.*

## **Section 1832 Theft of Trade Secrets**

Section 1832 punishes the theft, misappropriation, wrongful conversion, duplication, alteration, destruction, etc., of a trade secret. The section also punishes attempts and conspiracies. The intangible nature of trade secrets required that the section be written broadly enough to cover both conventional theft, where the physical object of the crime is removed from the rightful owner's control and possession, as well as nontraditional methods of misappropriation and destruction involving electronic duplication or alteration in which the original property never leaves the dominion or control of the rightful owner.

The section does *not* require an intent to aid a foreign government, agent, or instrumentality; rather, it is aimed at conventional commercial trade secret theft, misappropriation, criminal conversion, and so forth. Thus, it covers purely "domestic" offenses or crimes committed on behalf of foreign corporations and individuals not affiliated with a foreign government. Because this offense is considered less serious than economic espionage, it warrants less severe maximum punishments: For individuals, 10 years' imprisonment, a fine, or both; for organizations, a fine of \$5 million.

Congress did not intend for the law to apply to innocent innovators or to individuals who seek to capitalize on their lawfully developed knowledge, skills, or abilities. Thus, this section incorporates a high-threshold specific-intent element. To successfully pursue a case under this section, prosecutors must show both that the accused

specifically intended to convert a trade secret to the economic benefit of someone other than the rightful owner *and* intended to or knew that the offense would harm or injure the rightful owner. Prosecutors also must show that the accused knowingly engaged in the misconduct charged. This high threshold of proof clearly separates conduct that is criminal from that which is innocent or simply careless.

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**Investigators who uncover any trade secret theft... potentially concerning an agent or instrumentality of a foreign government must immediately notify the FBI.**  
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## **Section 1834 Criminal Forfeiture**

Section 1834 is designed to permit recapture of both the proceeds and implements of the offenses specified in the chapter. This section may prove especially telling because the proceeds of trade secret theft may be staggering in certain cases. The forfeiture provisions are meant to supplement, not replace, the authorized punishments in appropriate cases. The section provides for an *in personam* action against the offender, rather than one against the property itself, and preserves the rights of innocent third

parties. The section incorporates, through reference, existing law to provide procedures for the detention, seizure, forfeiture, and ultimate disposition of property forfeited under the section.

## **Section 1835—Orders to Preserve Confidentiality.**

Section 1835 requires that a court preserve the confidentiality of an alleged trade secret during legal proceedings under the Act consistent with existing rules of criminal and civil procedure and evidence and other applicable laws. This preserves the trade secret's confidential nature and, hence, its value. Without such a provision, owners may be reluctant to cooperate in cases for fear of exposing their trade secrets to public view, thereby destroying the law's value.

## **Section 1836 Civil Proceedings to Enjoin Violations**

Section 1836 authorizes the U.S. attorney general to seek appropriate civil remedies, such as injunctions, to prevent and restrain violations of the Act. This provision is analogous to Section 1964(a) of Title 18 (part of the Racketeer Influenced and Corrupt Organizations Act). Under it, the district courts may prevent and restrain violations of the new chapter by taking such actions as 1) ordering individuals to divest themselves of any interest, direct or indirect, in any enterprise; 2) imposing reasonable restrictions on the future activities or investments of a person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise used to



perpetrate the offense; and 3) dissolving or reorganizing any organization. Thus, this section provides powerful weapons to enforcement and prosecutorial arsenals.

### **Section 1837 Extraterritorial Investigations**

To rebut the general presumption against the extraterritorial effect of U.S. criminal laws, Section 1837 states that the Act applies to certain conduct occurring beyond U.S. borders. To ensure some nexus between the assertion of such jurisdiction and the offense, extraterritoriality is provided for 1) if the offender is a citizen, permanent resident alien, or an organization incorporated under the laws of the United States; or 2) an act in furtherance of the offense is committed in the United States.

### **Section 1838 State Laws**

Section 1838 states that the Act does not preempt nonfederal remedies, whether civil or criminal, for dealing with the theft, misappropriation, or wrongful conversion of trade secrets. As noted above, several states have criminalized the theft of intellectual property and many have provided civil remedies as well. The Act does not supplant them.

### **IMPACT ON STATE AND LOCAL LAW ENFORCEMENT**

Although the Economic Espionage Act defines federal offenses, its significance is not limited to federal law enforcement agencies alone. State and local law enforcement agencies can play important

roles in administering the Act and protecting the proprietary information of business interests in their jurisdictions.

### **Identifying Offenses**

All law enforcement personnel must learn to recognize the offenses defined by the Act. Some offenses seem obvious, but dealing with intangibles may require officers to expand their perceptions of property, value, theft, and espionage.

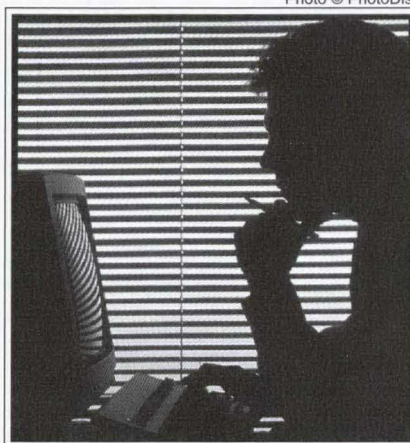


Photo © PhotoDisc

For example, if someone takes a computer with the intent to permanently deprive the rightful owner of its use and benefit, a larceny obviously has been committed. If, however, the same individual merely copies the formula for a newly developed chemical compound stored on that computer with an intent to use the formula for personal gain, would officers recognize that a crime has been committed? Similarly, if an exchange student at a local university is caught copying a professor's research notes on the use of ceramics in high-combustion engines, is it a matter for the dean or the police?

### **Recognizing Proprietary Thefts**

Officers who respond to seemingly innocuous complaints involving commercial enterprises must be alert to trade secret theft possibilities because even owners may not realize the true gravity of an offense. What appears to be a simple breaking and entering with no apparent larceny may actually be a disguised or bungled trade secret theft.

Consider this case: A firm reports what appears to be a simple breaking and entering into a particular office but notes that nothing apparently had been taken. The evening before the break-in, however, a computer in that office had been used to prepare an important bid proposal on a multimillion dollar project. Once the significance of that fact is grasped, the responding officers will realize that they may not be dealing with a petty misdemeanor but, rather, with a serious felony.

### **Processing Crime Scenes**

Officers responding to potential proprietary thefts must ensure that their preliminary investigation and preservation of the crime "scene" is not limited by traditional crime concepts. In the above scenario, for example, preservation of the computer keyboard for possible fingerprint analysis would be just as critical as securing the passageway through which the apparent thief gained entry. Similarly, ascertaining the identities of personnel who knew the computer in question was being used for preparation of the bid proposal would be vital to the investigation.

## Tracking Patterns

State and local agencies should analyze trade secret crime reports and statistics to identify patterns in order to determine whether organized or systematic trade secret offenses are being committed in their jurisdictions. Seemingly random break-ins of high-tech firms in an industrial park, for example, may be the work of sophisticated trade secret thieves. Sharing information concerning such trends with the FBI may prove beneficial.

## Reporting Foreign-Sponsored Proprietary Theft

Investigators who uncover any trade secret theft or misappropriation potentially concerning an agent or instrumentality of a foreign government must immediately notify the FBI, due to the possibility that economic espionage may be involved. Of course, liaison with the FBI is appropriate in any trade secret theft case but becomes absolutely essential in economic espionage cases.

## Ensuring Secrecy

State and local agencies should educate all of their personnel on the proprietary nature of trade secrets and take measures to ensure that trade secrets entrusted to their personnel by victimized owners for investigative purposes be kept secret. Innocent disclosure of such information may destroy its value as surely as would purposeful destruction.

## Advising Businesses

Given the growth in technology and the increasing focus on proprietary information, businesses may

be expected to ask for guidance on how to keep their trade secrets safe. While large corporations often have their own security experts to provide this type of assistance, smaller businesses, particularly sole proprietorships and partnerships, may ask for tips or training on preventing trade secret theft and economic espionage.

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Detailed responses to such questions are beyond the scope of this article, but an excellent place to start is to emphasize that an aspect of trade secret law requires that owners exercise objectively reasonable steps to keep the secret in question secret. Owners who are careless or negligent in safeguarding their secrets will not be able to meet this requirement. Owners must take affirmative steps to mark clearly information or materials that they regard as proprietary, protect the physical property in which trade secrets are stored, limit employees' access to trade secrets to only those who truly have a need to know in connection with the performance of their duties, train all employees on

the nature and value of the firm's trade secrets, and so on.

## CONCLUSION

The Economic Espionage Act of 1996 is a powerful tool for combating trade secret theft, whether committed by agents of foreign governments or by "freelancing" thieves. Because it fills gaps in existing federal and state laws, the Act should establish a clear framework for law enforcement agencies at all levels to pursue both interstate and international trade secret offenses. ♦

## Endnotes

<sup>1</sup> 18 U.S.C. § 1905.

<sup>2</sup> Torren, "The Prosecution of Trade Secret Thefts Under Federal Law," *Pepperdine Law Review*, vol. 22, no. 59, 1994, 94-95. Every state recognizes trade secrets as property that the law may protect from theft; however, the manner in which the states choose to protect them varies. Thirteen states have statutes specifically covering theft of trade secrets; 8 states include trade secrets as valuable property in their statutes governing crimes against property; 2 states include trade secrets in their computer crime statutes; 2 states list trade secrets separately from other property in their larceny statutes; and 24 states and the District of Columbia make no explicit mention of trade secrets in their penal statutes.

<sup>3</sup> Pub. L. No. 104-294, 110 Stat. 3488, (1996). The law's complete name is the Federal Economic Espionage and Protection of Trade Secrets Law.

<sup>4</sup> Defined at 18 U.S.C. § 18. In general, an organization may be held accountable for the criminal acts of its agents under a theory of *respondeat superior* where the agents were acting, at the time of the offense, within the scope of their employment or agency.

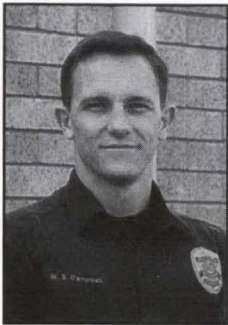
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*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state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

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## The Bulletin Notes

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



*Officer Campbell*



*Officer Rangel*

While on bicycle patrol, Officers William Campbell and Pete Rangel of the Gilbert, Arizona, Police Department detected an odor of smoke. Checking the area, they traced the source of the smoke to a fire at a nearby residence. The officers entered the home, located the source of the fire, and proceeded to evacuate the occupants, one adult and three children, who were unaware of the emergency. As the officers led the occupants to safety, an explosion sent flames 20 feet into the air. After calling for backup patrol units and the fire department, Officers Campbell and Rangel then alerted and evacuated the occupants of surrounding residences. Due to the officers' decisive actions and teamwork, no one was injured during the evacuation, despite two large explosions. Fire department officials later credited the officers' actions with helping to prevent the fire from spreading to other residences.

While off duty and driving in a personal vehicle, Sergeant Don Baier of the Dakota County Sheriff's Office in Hastings, Minnesota, observed a traffic accident on a busy interstate highway. The trunk of one of the vehicles—later



*Sergeant Baier*


identified as an unmarked state patrol squad car—caught fire upon impact. Sergeant Baier parked his vehicle on the opposite shoulder and crossed several lanes of heavy traffic to check for occupants. He found an unconscious Minnesota state trooper slumped in the front seat. Quickly assessing the danger of the situation, Sergeant Baier decided to remove the trooper from the vehicle due to the severity of the fire. With the help of a citizen who had stopped to assist, Sergeant Baier worked to free the trooper, whose foot was trapped under the front seat. After they freed the trooper and carried him to safety, Sergeant Baier stabilized his neck and back. The sergeant then directed other citizens who had stopped to assist and continued to attend to the trooper until emergency personnel arrived. The trooper made a full recovery and has since returned to duty.

U.S. Department of Justice  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, DC 20535-0001

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