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# FBI Law Enforcement Bulletin



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# ***Dealing with Domestic Violence in Law Enforcement Relationships***

By KAREN J. KRUGER, J.D., and NICHOLAS G. VALLTOS, M.A.

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Domestic violence remains a prevalent social and law enforcement problem in the United States, and the public demands that law enforcement agencies work aggressively to prevent it. Sadly, several studies show that too many law enforcement officers themselves commit acts of domestic abuse,<sup>1</sup> which is not only devastating to the families of these officers but also damaging to the agencies and communities that they serve. This unlawful behavior undermines the credibility and effectiveness of the officer and diminishes the standards of the department and the profession.<sup>2</sup>

As law enforcement responds to the demands of the community for stronger enforcement of domestic violence laws, it cannot ignore those within its own ranks who commit the same offenses. Law enforcement managers must respond when domestic violence occurs within the ranks—to enforce the law, to protect the integrity and reputation of the agency, and to reflect the ethical standard of

stewardship expected of law enforcement leaders.

Responding appropriately and adequately when domestic violence hits “home” often is not as easy as it may sound. The problem comprises many issues and requires a comprehensive approach, involving leadership, recruitment screening, policies and procedures, training, and violation investigation and response. As always, because state and local laws may vary, readers should consult their legal advisors before embarking on a new

departmental policy and response plan. Be forewarned, however, law enforcement administrators should not delay in implementing such a plan. The next family tragedy could fall squarely on anyone's doorstep.

### **Step One: Leadership**

Effective law enforcement executives lead both by example and by setting clear expectations for the behavior of those who serve under them. The first step in establishing an effective intradepartmental response to domestic violence involves the leader demonstrating intolerance for such behavior, speaking out against it, and standing as an advocate for those who are harmed by it. Leaders' public policies, established for enforcement by the officers in their communities, must remain consistent with those that they establish for their law enforcement personnel.

Domestic violence has many faces and harms many victims. It

proves critical that administrators' messages address all of the forms of prohibited conduct to place all personnel fairly on notice and to deter all family violence. To have an effective message, managers must have a good understanding of the dynamics of domestic violence.

Domestic violence is defined, in part, by the nature of the relationship between two individuals and, in part, by the conduct of the offender. It includes abuse inflicted on spouses; children; older or otherwise vulnerable adults, including parents; and any other persons similarly situated to a spouse, child, or parent. The abusive conduct may be physical, sexual, emotional, or financial.

The behaviors identified as domestic violence are varied, but have several common unique characteristics.<sup>3</sup> First, it occurs within an intimate relationship. Officers may commit physical violence against a family member that they never

would consider inflicting on a criminal suspect, in part, because of the perceived "safety" of the intimate relationship. Second, domestic violence is a learned behavior; it cannot be attributed to genetics, illness, use of alcohol or other drugs, or stress, although these elements may increase the likelihood that violence will occur. Behavior is learned and reinforced as an acceptable, or even expected, way of behaving toward family members. Finally, domestic violence is recurrent and generally follows a cycle and involves various abusive behaviors.

Keeping all of this in mind, law enforcement administrators must explore ways of helping their employees avoid violence in their personal relationships. To have an effective approach to officer-involved domestic violence, managers must begin with—

- a good understanding of the dynamics of domestic violence and the magnitude of the problem;
- a commitment to addressing the problem and the support of other top members in doing so;
- an ability to create a culture of disapproval of abusive behavior and the means to communicate that position; and
- the resources to follow through on the commitment.

### **Step Two: Recruitment Screening and Background Investigations**

Ironically, individuals who make good law enforcement officers often share some personality



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traits with those who batter or abuse their family members, such as the inclination to maintain control in emotional and tense circumstances, the tendency to establish a position of power and authority, and the physical presence to use weapons and other methods of physical control when needed.<sup>4</sup> However, every police recruit also must demonstrate the ability to recognize and curtail inappropriate, aggressive behavior. Those who cannot must be screened out during the recruitment process.

Because domestic abuse is a learned behavior, effective background investigations, including a polygraph examination and a medical/psychological screening, can help identify potential or current batterers. The background investigation must include a thorough interview with all immediate family members to determine the existence of any domestic violence during the potential recruit officer's formative years. The applicant investigator must probe this extremely delicate and private matter with sensitivity and understanding. Because of the learned behavior aspect of domestic violence, this line of questioning proves absolutely essential because it represents one of the best predictors of possible future domestic violence.<sup>5</sup> Investigators should question each family member in a limited but direct manner, using appropriate follow-up questions as necessary. Some pertinent questions include the following:

- Have you ever been the victim of domestic violence?
- Have you ever witnessed an act of domestic violence

against a member of your immediate family?

- Are you aware of an act of domestic violence committed by a member of your immediate family against anyone?

An affirmative answer to any of these questions may not suffice as the sole basis for disqualifying an applicant. However, it provides another avenue for the applicant investigator to explore and certainly is an area that the investigator should share with the mental health professional conducting the psychological evaluation of the applicant.

### **Step Three: Policies and Regulations**

To institutionalize an agency's "zero tolerance" for domestic violence, administrators must have legally based policies and regulations (e.g., "General Orders") in place to articulate their agency's position. Additionally, the policy should state clearly and succinctly the potential punishment and other repercussions for any violation associated with domestic abuse matters, including the agency's intended administrative response,

how it will deal with court orders, and the necessity of psychological follow-up.

In general, agencies can and should have simple and straightforward policies. Two standard regulations will apply to most of these situations: conduct unbecoming and failure to conform to law. Agencies also should promulgate regulations that are specific to domestic abuse, in part, to underscore its significance and to serve as a deterrent.<sup>6</sup>

Agencies should require officers to immediately report any instances in which they are the respondent to any ex parte protective and peace order, and the supervisor should make appropriate command notification. At the command level, managers should determine investigative responsibility: first-line supervisor or internal affairs, depending on the seriousness of the alleged conduct. Investigators should begin with in-person visits to the victims to ensure their safety and to promptly collect any evidence related to officer misconduct. Administrators also must make a decision concerning the seizure of any department-issued equipment, especially firearms, from a liability standpoint. At this point, involved officers should receive a psychological referral prior to returning to duty. Agencies also should consider reciprocal agreements with surrounding jurisdictions to ensure timely, official notification of officer-involved domestic violence.

### **Step Four: Training**

The key to any long-term strategy in preventing domestic violence

is based on training. To institutionalize an agency's zero tolerance for domestic violence, the department initially should train recruit officers in all aspects of domestic violence. Recruit officers should learn not only about the dynamics of domestic violence as it pertains to citizens but also, more specifically, about the silent problem of officer-involved domestic violence. As officers progress in their careers, they should have the lessons they learned in basic training reinforced through periodic in-services.

This emerging phenomenon of officer-involved domestic violence has placed on-duty officers in confrontation with other police officers who are overwhelmed by a personal crisis situation. The calm professional demeanor usually displayed by the participant officer now may be replaced with the emotionally distraught bearing of an individual who may not be thinking in a rational manner.

To better prepare officers for this phenomenon, training must cover a broad spectrum of activities, including response, tactics, and officer safety. Classroom instruction should encompass the origin and history of domestic violence and should include a history of officer-involved domestic violence, perhaps using adjudicated departmental cases generically to ensure confidentiality. The field strategies and techniques in which the officers are trained should be aimed at officer and participant safety. The use of role-playing and group forums represent excellent training models that interactively involve officers in diffusing and mediating domestic

violence. In addition, some law enforcement executives, who would say that they "think outside the box," should assign new police officers to work several hours taking hotline calls at their local domestic violence crisis center.

Employing trained practitioners (whether in-house employee assistance personnel or private mental health providers) as instructors and facilitators brings resources and experience, in a theoretical sense, that range from general to specific relevance of domestic violence. The use of these

same practitioners in family and group orientations constitutes an excellent, nonthreatening outreach model to educate the families of recruit officers, as well as veteran officers, in intervention, resolution, and prevention strategies.

In-service and roll-call training should reinforce the initial instruction that all officers receive, with updates that focus on contemporary issues and trends in domestic violence. Once again, trained

practitioners should present the information because of their unique insight into personal crisis situations. The incorporation of a "practitioner" approach gives the officers significantly more tools in their arsenal and could create a new foundation of how they, as law enforcement professionals, can handle domestic calls more effectively.

The practitioner also can prove invaluable in the area of supervisory and command in-service training, providing an overview of how to conduct basic crisis assessment that can lead to a more appropriate avenue of referral. This important step, in the initial stages of domestic violence situations, could represent the most effective vehicle, short of physical arrest, at an agency's disposal by which it can mitigate, and actually prevent, officer-involved domestic violence. Supervisors also must learn to recognize the risk factors and behavioral clues that people who are abused or are committing abuse commonly exhibit. It is, in the first instance, the supervisor's responsibility to monitor such factors and to refer employees for appropriate counseling, education, and support as an early intervention technique.

### **Step Five: Violation Investigations**

The passage of new laws and the increased media attention on the number of officer-involved domestic violence cases has prompted police administrators to critically assess their agencies' responses to this emerging crisis. Every agency should respond with a comprehensive approach to the underlying

problems and not merely with a superficial quick fix.

Depending upon the unique circumstances of each case, agencies should have their internal affairs personnel immediately conduct an inquiry into the facts of the case. The results of this inquiry will dictate the need for a formal internal investigation. This investigation should follow established agency protocol for criminal misconduct cases. If criminal charges are pending, the prosecutor's office should screen the case; if the prosecutor declines to prosecute, the investigator should obtain a written declination.

If and when criminal or administrative charges are imposed, agencies must suspend involved officers' police powers and reclaim their weapons and departmental vehicles. Administrators should order that these officers be placed in an off-duty status and that they receive psychological evaluations to determine their fitness for any type of duty.

If the psychologist determines that the officers are fit for duty, agencies may transfer them from leave to noncontact assignments until the criminal charges are adjudicated. Internal affairs investigators should attend all hearings related to the cases to ensure that the agencies remain aware of all case developments. If agencies contemplate restoring the officers to full duty prior to the adjudication of administrative charges, if any, they should undertake such a decision cautiously and in concert with their psychological examiners, internal affairs personnel, the officers' commanders, and legal advisors.



*Officers are trained to separate the domestic complainants to hear both sides of the story. The officers position themselves so they can see each other during the encounter and will later compare notes to determine a fair and safe outcome.*

If officers return to full duty during the course of a criminal or internal investigation, their supervisors should conduct periodic follow-ups to ensure that the officers fully comply with any applicable court orders. Administrators may find it prudent to issue a personnel order that concurs with, or even exceeds, the terms of a court order or stands in the place of such orders. If officers violate these standing orders, agencies immediately should suspend these officers from duty and initiate an investigation into charges of insubordination, if appropriate.

### **Step Six: Violation Responses**

If a deliberate, proactive investigation establishes evidence that an officer has committed acts of domestic abuse, agencies must take prompt and effective disciplinary action. In many jurisdictions, agencies can impose disciplinary action only after they have prescribed an administrative, evidentiary hearing. To be effective,

agencies must consider certain details to ensure a successful administrative prosecution.

If the suspect officer has been charged criminally, the administrator and legal advisor may determine that it is wise to defer an administrative investigation until the criminal prosecution is completed. However, even in the interim, the agency must take steps to both protect its administrative investigation and guard against liability while the criminal charges are pending. If the administrator decides not to delay the administrative investigation, the agency must keep it separate from the criminal case.<sup>7</sup>

While either the criminal or the administrative investigation remains pending, the agency must consider whether the facts indicate that it should revoke the officer's police powers or suspend the officer from duty, pending resolution. Generally, an agency should suspend the police powers of any officer who is under investigation for credible or substantial allegations of

domestic violence. Multiple reasons underlie this recommendation.

First, applicable court orders in a given case may prohibit a respondent officer from possessing a firearm as long as the order is in effect, thereby prohibiting the officer from performing some essential job functions. Second, officers embroiled in domestic problems may be tempted to misuse their police powers and equipment in a misguided—or even criminal—effort to manage those problems. Such inappropriate actions could create civil liability for agencies. Third, the public may suspect the integrity, impartiality, and effectiveness of an officer under investigation for domestic abuse. It particularly would be inappropriate for such officers to respond to domestic calls.

Agencies also should prepare the administrative prosecution under the assumption that the victim of the domestic abuse will be unable or unwilling to testify against the abuser.<sup>8</sup> It is all too common a feature of domestic abuse situations that once an acute episode is over, a “honeymoon phase” occurs in the relationship, causing the victim to rethink punishing the abuser.<sup>9</sup> However, if the internal affairs investigators have followed the same steps as criminal investigators would have under the circumstances and obtained the necessary evidence, such as reporting to the scene on the initial call, securing the 911 audio tape, taking crime scene and follow-up photographs, obtaining statements, and collecting documents and court transcripts, an administrative prosecutor can prepare and present a successful case.

Following adjudication of the misconduct charges, administrators must determine the appropriate punishment. If the officer suffered a criminal conviction from the underlying domestic events, termination of employment is appropriate in nearly every case.<sup>10</sup> Moreover, a zero tolerance policy would seem to dictate that dismissal constitutes the expected punishment absent some compelling mitigating circumstances. In other words, it is the unusual case in which the officer should not be fired.

### **Step Seven: Related Problems and Concerns**

Responses to officer-involved domestic violence/disturbance cases pose a variety of problems for the law enforcement administrator. How the responding officers handle the unique situation in which a fellow officer is a suspect represents one of the most significant. The response to these calls is far from routine and, in fact, should trigger a higher level of caution in responding officers.

However, many officers feel that they can reason with their fellow officer who is involved in a domestic dispute. Responding officers seem to fail to realize that they are not dealing with a rational, level-headed law enforcement officer, but, rather, a police officer, man or woman, engaged in a fight with a “significant other” and overwhelmed with heated emotion. The involved officer knows every tactic and ploy and may have received the same, if not more, specialized training than the responding officers and may outrank them. The involved officer has ready access to a service weapon, as well as other defensive weapons, such as pepper spray, that the officer could use offensively. And, the involved officer invariably knows that the domestic events could result in dismissal from the agency. Often, the victim is aware of this probability as well.

Administrators have an obligation to institutionalize agency response to officer-involved domestic violence/disturbance cases and support the officers who attend to these calls. In addition to the basic reports, appropriate supervisory and command notification, whether the officer is employed with the responding agency or not, should occur. Agencies should mandate this notification, with variations to the reporting procedures by supervisory approval only.

If an agency allows its officers to treat officer-involved domestic violence/disturbance cases differently from those involving other citizens, the agency could face serious liability issues—specifically, allegations of deliberate

indifference with regard to the victim's well-being. If officer-involved domestic violence becomes more prevalent, the agency needs to enhance proactive strategies in handling and reporting protocols.

Citizens, as well as law enforcement employees, demand the best from those who direct public safety activities. Promoting effective policies and contingencies to personal crises within law enforcement's ranks is the least that the profession can do to better serve everyone.

### Conclusion

While domestic violence creates a repugnant reaction in every civilized human being, the thought that those who protect and serve the public also may participate in such offenses goes beyond most people's comprehension. Unfortunately, this proves true in all too many cases. The law enforcement community must unite in an effort to eradicate such behavior from its ranks not only to restore the public's faith and trust in the profession but, more important, to show that it will not tolerate such actions by any individual, regardless of position or authority.

Law enforcement agencies can implement several strategies to combat domestic violence in their ranks. Most require a comprehensive approach that includes effective leadership, recruitment screening, straightforward policies and procedures, appropriate training, and efficient violation investigation and response. By incorporating such actions into their daily efforts, agencies can safeguard its members and their families from the toll that

domestic violence takes on the law enforcement community and the citizens it serves.

### Endnotes

<sup>1</sup> Darrell L. Sanders, "Responding to Domestic Violence," *Police Chief*, June 1997, 6.

<sup>2</sup> For a comprehensive overview, see U.S. Department of Justice, Federal Bureau of Investigation, *Domestic Violence By Police Officers* (Washington, DC, 2000).

<sup>3</sup> Lenore Walder, *The Battered Woman* (New York, NY: Harper-Row, 1979), 43.

<sup>4</sup> *Supra* note 2, 15.

<sup>5</sup> Stephen F. Curran, Ph.D., "Law Enforcement Response to Domestic Violence Committed by Police Officers: Pre-Employment Selection," lecture at annual conference of the International Association of Chiefs of Police, November 2000; Patricia Tjaden and Nancy Thomas, U.S. Department of Justice, Office of Justice Programs, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* (Washington, DC, July 2000); Douglas R. Marvin, "The Dynamics of Domestic Abuse," *FBI Law Enforcement Bulletin*, July 1997, 13-18.

<sup>6</sup> See a model policy endorsed by the International Association of Chiefs of Police, "Officer-Involved Domestic Violence Model Policy," *IACP National Law Enforcement: A Compilation of Model Policies*, Volume IV, Section 77, April 1, 1999; and as a state model, see the "Model Regulation for Law Enforcement Agencies Relating to Domestic Violence Committed by Law Enforcement Officers" issued in 1997 by the Legal Advisors Committee to the Maryland Chiefs of Police Association.

<sup>7</sup> *Supra* note 6 (IACP).

<sup>8</sup> George Wattendorf, "Prosecuting Cases Without Victim Cooperation," *FBI Law Enforcement Bulletin*, April 1996, 18-20.

<sup>9</sup> Douglas R. Marvin, "The Dynamics of Domestic Abuse," *FBI Law Enforcement Bulletin*, July 1997, 13-18.

<sup>10</sup> Under 18 U.S.C. 922 (g) (9), a person who is convicted of a misdemeanor crime of domestic violence is prohibited from possessing a firearm or ammunition.

*The opinions expressed in this article are the authors and not those of the Maryland attorney general or his staff.*

## Wanted: Notable Speeches

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

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered. When possible, an electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

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## ***Accidentally Dead Accidental Line-of-Duty Deaths of Law Enforcement Officers***

By ANTHONY J. PINIZZOTTO, Ph.D.,  
EDWARD F. DAVIS, M.A.,  
and CHARLES E. MILLER III



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On a rainy November night in a large southern city, a uniformed patrol officer, 38 years of age with less than 12 years of law enforcement service, was assigned to a one-person, marked patrol vehicle. He received a radio broadcast to respond to assist other officers working a burglary assignment at a local school. The responding officer heard the officers on the scene request help after they observed a male inside the school. He then realized that this was not just another accidental burglary alarm that frequently goes off on rainy nights.

The rain was the first the city had received in over a month, making the asphalt streets very slick. The officer activated his emergency equipment and headed toward the school. At a curve in the roadway, the officer lost control of his vehicle and slid into a tree. He never arrived at the school; he was killed on impact. It took rescue personnel several hours to cut the officer out of the vehicle. The accident reconstruction team estimated his speed at less than 50 miles per hour. This was within the speed limit, but unsafe for the existing road conditions at that time. The officer's death was very traumatic for his department, fellow officers, and the community he served.

Unfortunately, this type of incident is not isolated, and statistics reflect that these types of accidental deaths are increasing throughout the United States.<sup>1</sup> In the past two decades, 1,407 officers have died feloniously in the United States while 1,362 officers have died accidentally. However, in 1998, a startling change in this trend began to emerge. The number of accidental line-of-duty deaths surpassed the number of officers killed by felons. A dramatic shift in 1998 showed that 20 more officers died in accidents (81) than due to criminal action (61). This climb continued in 1999 with 23 more officers dying accidentally (65 to 42) and culminated in 2000 with 33 more officers losing their lives in accidents than in felonious incidents (84 versus 51).<sup>2</sup>

These numbers become more disturbing and of even greater concern when seen in a broader context. Many officers are involved in various types of on-duty accidents that do not result in their death. Unacceptable numbers of these officers are confined to beds, wheelchairs, or otherwise totally disabled. Many others, although not totally disabled, will never work in law enforcement again. Moreover, most officers personally know at least one fellow officer

disabled through some type of on-duty accident. Clearly, the law enforcement community must examine ways to reduce these tragedies that increasingly are decimating its ranks.

## CONTRIBUTING FACTORS TO ACCIDENTAL DEATHS

The authors' experiences and research suggest that many factors have contributed to reducing the number of felonious deaths over recent years.<sup>3</sup> These include improved training practices and procedures and increased supervision directed toward safety concerns during high-risk tactical situations.

To try and uncover what has led to the dramatic increase in accidental line-of-duty deaths, the authors examined 5 years (1996-2000) of data pertaining to these incidents. They had a twofold purpose: first, to describe similarities and differences that surfaced during the examination of accidents that resulted in the deaths of law enforcement officers and, second, to raise a number of questions and issues that officers and administrators should consider to reduce the number of officers accidentally killed in the line of duty.

The authors used data from the FBI's annual *Law Enforcement Officers Killed and Assaulted* (LEOKA)

report, which contains statistics not only regarding felonious killings but also information about accidental deaths. An analysis of the circumstances in relation to these accidental deaths indicated several factors that the authors compared with the results of their earlier research regarding felonious deaths and assaults. In these previous studies, behavioral descriptors surfaced for officers feloniously killed and assaulted, including being hardworking, not following departmental rules, and tending to perceive themselves as service oriented.

Currently, no behavioral descriptors exist for officers who have died accidentally. However, after reviewing annual LEOKA data and interviewing a limited number of peers and supervisors of officers accidentally killed, the authors found that several characteristics emerged. These included a certain mind-set of some officers who think, "It will never happen to me," regarding the possibility of an accidental, duty-related death. These officers seemed to possess an increasing feeling of invincibility when inside a departmental vehicle. A sense of invincibility often accompanies a higher level of risk-taking behavior. For example, one officer, off duty and driving home in his cruiser, observed a disabled vehicle in an ice storm. The officer stopped in the middle of the

## Circumstances of Accidental Deaths 1996-2000

Circumstances	Total	1996	1997	1998	1999	2000
Total	344	51	63	81	65	84
Automobile accidents	197	33	33	48	41	42
Motorcycle accidents	23	4	4	3	6	6
Aircraft accidents	19	0	4	4	4	7
Struck by vehicles	59	7	15	14	9	14
Traffic stops/roadblocks	22	4	4	4	3	7
Directing traffic/assisting motorists	37	3	11	10	6	7
Accidental shootings	12	2	1	3	3	3
Other (e.g., drownings and falls)	34	5	6	9	2	12

Source: U.S. Department of Justice, Federal Bureau of Investigation, Law Enforcement Officers Killed and Assaulted 2000 (Washington, DC, 2001), 64.

## **Safety Issues**

- To be of assistance to anyone, the officer must arrive safely.
- A great percentage of electronic alarms are falsely activated.
- Officers must know their physical limitations.
- Officers must understand that their physical limitations increase while driving at night.
- Officers must accept vehicle limitations, especially taking into account weather and road conditions.
- Officers must balance the benefit of a particular arrest with the possible damage to the community and citizens by having an accident.

highway to determine if the driver needed help and was struck accidentally and killed by a vehicle that had lost control. Consistent with the attributes of officers killed and assaulted in the line of duty, this officer was hardworking and service oriented.

These descriptors pertain to the majority of officers, regardless of their age or years in law enforcement. However, when combined with other factors that the authors have uncovered, these attributes can increase the potential of an accidental fatality. The other factors include an officer's particular level of performance comfort and a lack of in-service training.

### **Increasing Comfort Level**

Officers develop a particular level of performance comfort, or a "comfort zone," by successfully completing various law enforcement tasks over an extended period of time. This comfort zone interacts with their sense of invincibility, enabling officers to take greater risks. These risk-taking behaviors often result in successful outcomes that, in turn, lead to commendations by their agencies for performance above and beyond the call of duty. The greater the risk, the higher the reward. Hardworking officers

## **Characteristics of Officers Killed in Vehicle Accidents**

- Mid-30s with approximately 10 years of law enforcement service
- Works hard and takes risks
- Possesses sense of invincibility (e.g., "It won't happen to me.")
- Develops performance comfort (e.g., a "comfort zone") from years of successfully carrying out duties
- Lacks motor vehicle in-service or refresher training
- Pursues misdemeanor property crime suspects under high-risk conditions more often than less-experienced counterparts

who observe coworkers win such awards attempt to increase their productivity by learning shortcuts that often involve greater risk-taking behaviors.

Because these officers have succeeded in these high-risk situations for many years, their sense that an accidental fatality "will never happen to me" increases. In 1996, researchers examined 246 situations of law enforcement vehicle pursuits.<sup>4</sup> They concluded that veteran officers were more likely to engage in pursuit of misdemeanor property crime suspects under high-risk conditions than were their less-experienced counterparts.

### **Diminishing Physical Skills**

Operating a police vehicle involves a set of physical skills that officers develop during academy training. Unlike weapon proficiency, where a set of physical skills continually are reinforced through in-service training programs, driving skills rarely, if ever, are augmented through in-service training. This lack of periodic training leads to an eventual erosion of the motor skills needed for emergency driving. One study stated, "Although many police officers and supervisors recognize the inherent dangers of pursuit

and are making efforts to control them, this study reveals a lack of initial and continuing training on the issues involved.”<sup>5</sup>

In contrast to actuarial data from automobile insurance companies that show males under the age of 25 are more likely to be involved in vehicular accidents, law enforcement officers face a different experience. In law enforcement, once these physical skills have diminished and an increased sense of security has developed, officers in their mid-30s with approximately 10 years of law enforcement experience face a greater risk of dying in a duty-related automobile accident,<sup>6</sup> the primary cause of accidental law enforcement deaths (197 officers died from 1996-2000).<sup>7</sup> The next leading, albeit significantly lower, cause of death involves officers struck and killed while out of their vehicles (59 officers died from 1996-2000).<sup>8</sup> This category includes situations where officers engage in traffic stops, investigate accidents, or render assistance to operators of disabled vehicles. Again, periodic in-service training highlighting the dangers of such activities while providing supplementary instruction in safely handling these assignments could help reduce accidental deaths.

## **REDUCING ACCIDENTAL DEATHS**

In the authors’ previous studies of felonious deaths and assaults on officers, training surfaced as a key factor in reducing the number of felonious deaths and assaults.<sup>9</sup> In reviewing data on accidental deaths, they found that no easy answers exist to the complicated problem of reducing accidental deaths in the law enforcement profession. Rather, they discovered questions, considerations, and factors for agencies to consider within the scope of their own department’s size, area of patrol, number and kinds of vehicles, budget, and demographics. Overall, four main issues emerged as needing review: training procedures and tactics, safety supervision, equipment checks, and further data analysis.

## **Training Procedures**

Basic motor vehicle training has helped law enforcement recruits develop successful and safe driving skills. As in other areas of law enforcement safety, agencies should tailor the specifics of training to address their own needs. For example, agencies should use national law enforcement data on accidental deaths only as a point of reference when making decisions that affect local training needs. Weather conditions; roadway construction; volume of vehicular and pedestrian traffic; jurisdictional/geographic size; diverse sizes, types, and manufacturers of vehicles employed; and different departmental policies represent variations that agencies should consider. Managers first should analyze their own department’s accidents, as well as those from similar jurisdictions, to identify correctly areas where training will provide the greatest benefit to the patrol officer.

The results of these analyses can assist law enforcement managers in identifying important problems that they can address through in-service training. Common areas of concern may include, but are not be limited to, the following:

- Is speed a primary contributing factor?
- What particular shift or time of day do the accidents generally occur?
- Is fatigue (perhaps resulting from tour of duty, court attendance, overtime, or part-time employment) a possible factor?
- Does a correlation exist between vehicular deaths and officer activity type (e.g., patrol, emergency assistance, nonemergency assignment, vehicle pursuits, or traffic stops)?

## **Safety Supervision**

Subsequent to an accidental, as well as a felonious, death of an officer, many questions occur. Should the officer have initiated a vehicular chase? Should the officer have given or requested more

information from the dispatcher before engaging emergency equipment? Should the officer have stopped the chase earlier? Did the officer follow all established policies and guidelines? With closer, timely, and aggressive supervision, some of these questions can be addressed during the activity in question.

When supervisors closely monitor activities within their location, they are more aware of possible dangers that might be reduced before an officer is hurt or killed. This in no way removes the necessary discretion that officers should have in their everyday work. Rather, what supervision might offer is a more objective evaluation of the set of circumstances that has turned into a highly emotional and volatile scene. Agencies should answer some basic questions to discover how they can provide their officers with the best supervision to ensure their safety.

- Have agency managers written and implemented policies for the safe operation of motor vehicles (e.g., the mandatory wearing of seat belts)?
- Do the written policies clearly specify the type of radio assignments designated as emergency situations?
- Do the written policies clearly define when officers may conduct high-speed pursuits and when they must discontinue them?
- Do all supervisors enforce these written policies?
- Does the agency reevaluate and alter the policies as needed?
- Do supervisors ensure that departmental vehicles are inspected regularly and are in compliance with local safety regulations?



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- Do supervisors of officers regularly monitor emergency dispatched assignments and individual responses?
- Do supervisors respond to and monitor proper vehicle placement and stop location selection sites for personnel?
- Do supervisors ensure that officers attend periodic safety-related in-service training?

## Equipment Checks

Traditionally, equipment checks of vehicles in many departments merely meant that sergeants noted when cruisers or patrol cars received regular service. This frequently covered only such items as changing the oil, ensuring that emergency equipment functioned properly, and repairing major observable damage to the vehicle. Recently, however, a more aggressive approach to vehicle maintenance has begun to entail not only the vehicle but

also how an officer operates the vehicle. Supervisors need to become more alert to the dangers in which officers sometimes place themselves by improperly using their vehicles, a tool that sometimes can cause more damage than the weapons they carry. In addition, law enforcement officials and managers should become aware of potential hazards that added features on vehicles (or their absence) could present to officers.

- Are departmental vehicles purchased based on price or safety considerations?
- Are airbags safer than harness restraints?
- Are vehicles equipped with side air bags necessarily any safer?
- Are electronic door locks a help or hindrance in an accident?

- Is the location of the fuel source of the vehicle acceptable by national safety standards?
- Are antilock braking systems required for agency vehicles?
- Is the installation of governors (speed regulators) on agency vehicles feasible, acceptable, desirable, or counterproductive?
- Would wearing a safety helmet by officers operating agency vehicles significantly decrease their chances for injury?

### Data Analysis

Differences in the size, type, and location of law enforcement agencies allow for only general recommendations and guidelines regarding the safe use of vehicles in law enforcement. Therefore, agencies should research and analyze what is occurring within their own departments. Agencies of any size might benefit from developing a working relationship with local colleges, universities, and technical institutes to collect and analyze various aspects of the complex phenomenon of accidental deaths in law enforcement. Such institutions may have fresh and innovative insights into this problem. The more information gathered and analyzed, the greater the likelihood that appropriate and applicable answers may be found and, ultimately, result in lives saved.

### CONCLUSION

When law enforcement officers die in the performance of their duties, their agencies, their families and fellow officers, and the communities they serve suffer greatly. While those deaths attributed to criminals represent truly tragic occurrences, those caused by accidents, especially vehicle accidents, often create the additional heartache of unresolved issues about the reasons for these incidents. In the former, agencies capture the offenders and the court

system renders justice. In the latter, who resolves an "accident?" The officer is just as dead; the family is just as devastated; the loss is just as tragic, perhaps even more so because it may have been preventable.

Everyone within the law enforcement community hopes that the day will arrive when felonious killings, serious assaults, and accidental deaths are only a part of law enforcement's history. However, realistically, the profession accepts the sad, but inevitable, reality that deaths and assaults will continue to occur. Although they may continue, law enforcement agencies, local governments, civic groups, and academic institutions can work toward reducing their number by analyzing past incidents, developing new training procedures, and reminding officers of the dangers inherent in the profession. The dedicated men and women of law enforcement who tirelessly serve and protect the public deserve no less.

### Endnotes

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<sup>4</sup> Geoffrey P. Alpert, Dennis Kenny, Roger Dunham, William Smith, and Michael Cosgrove, U.S. Department of Justice, Institute of Justice, *Police Pursuit and the Use of Force* (Washington, DC, 1996).

<sup>5</sup> Geoffrey P. Alpert, U.S. Department of Justice, *Police Pursuit: Policies and Training, Research in Brief* (Washington, DC, 1997), 7.

<sup>6</sup> Supra note 1, 73.

<sup>7</sup> Supra note 1, 64.

<sup>8</sup> Supra note 1, 64.

<sup>9</sup> Supra note 3.

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# ***High-Speed Police Pursuits***

## ***Dangers, Dynamics, and Risk Reduction***

By JOHN HILL, M.S., M.A.



High-speed police pursuits and the inherent risk of injury and death that can result constitute an important law enforcement and public safety issue. Police pursuits are dangerous. Available data indicate that the number of pursuits continues to increase, as well as the number of pursuit-related injuries and deaths. A traffic accident constitutes the most common terminating event in an urban pursuit,<sup>1</sup> and most people agree that these pursuits should be controlled. Yet, researchers note a widespread lack of accurate data on the subject.

Officers face the basic dilemma associated with high-speed pursuits of fleeing suspects: Do the benefits of potential apprehension outweigh the risks of endangering the public and the police?<sup>2</sup> Research indicates that too many restraints placed on the police regarding pursuits can put the public at risk.<sup>3</sup> On the other hand, insufficient controls on police pursuit can result in needless accidents and injuries.

### **The Dangers of Pursuit**

The interpretation of the term “pursuit-related crash” represents one common police practice that

affects accuracy of reporting. Often, police officers or their agencies will make the determination that a crash occurred right after a pursuit was “terminated,” hence the crash is not pursuit-related. Agencies immediately can determine if this occurred by replaying tapes of radio transmissions during the pursuit, even days after completing a comprehensive accident investigation or reconstruction. Either way, the process can be very subjective.

Some research indicates that police pursuits result in about 350 deaths per year and the number of pursuits increases each year.<sup>4</sup> One

organization estimates that about 2,500 persons die each year as a result of police pursuits and that another 55,000 are injured.<sup>5</sup> Although some law enforcement sources argue that these estimates are exaggerated, they concede that the 350 figure may be too low.

The National Highway Traffic Safety Administration (NHTSA) reported that 314 people were killed during pursuits in 1998. Of this total, 2 were police officers and 198 were individuals being chased. The remaining 114 were either occupants of unrelated vehicles or pedestrians.<sup>6</sup> The total was higher in each of the 4 previous years.

The lack of a mandatory reporting system hampers attempts by NHTSA to track pursuit fatalities and results in the collection of as little as one-half of the actual data.<sup>7</sup> Typically, only 90 percent of states report pursuit fatality data to NHTSA. By extrapolating the 5-year totals to include 100 percent reporting, calculations would show an average of 375 deaths per year. Even conservative estimates by various researchers recalculate the actual number of fatalities between 400 to 500 deaths per year.

Police pursuit records provide some frightening statistics. First, the majority of police pursuits involve a stop for a traffic violation.<sup>8</sup> Second, one person dies every day as a result of a police pursuit.<sup>9</sup> On average, from 1994 through 1998, one law enforcement officer was killed every 11 weeks in a pursuit,<sup>10</sup> and 1 percent of all U.S. law enforcement officers who died in the line-of-duty lost their lives in vehicle pursuits.<sup>11</sup> Innocent third

parties who just happened to be in the way constitute 42 percent of persons killed or injured in police pursuits.<sup>12</sup> Further, 1 out of every 100 high-speed pursuits results in a fatality.<sup>13</sup>

Research indicates that pursuits become dangerous quite quickly. For example, 50 percent of all pursuit collisions occur in the first 2 minutes of the pursuit, and more than 70 percent of all collisions occur before the sixth minute of the pursuit.<sup>14</sup>

Although the public sympathizes with the law enforcement community's position on pursuits, they do not want to be placed in harm's way. Public support for pursuits decreases as the severity of the offense that led to the chase decreases.<sup>15</sup> One study found that 58 percent of people interviewed reported that police act correctly when they pursue a motorist who does not stop.<sup>16</sup> When asked if the police act correctly when the pursuit endangers public safety, support decreased by one-half to 29

percent. Almost two-thirds (64 percent) of respondents said that they felt police overreact sometimes or very often when pursuing motorists who do not stop.<sup>17</sup> To decrease the dangers associated with pursuit, agencies must increase training and ensure that they have clear pursuit policies.

### **Training and Policy**

A lack of training can increase risks of pursuit-related injuries. Only recently has classroom instruction included training on vehicle pursuit tactics, policy, and liability. Previously, agencies taught pursuit-driving techniques behind the wheel without accompanying classroom training. Officers learned *how* to pursue but not *when* to pursue. Inadequate or inapplicable training often resulted, and officers rarely followed training in actual practice. Law enforcement must approach pursuit training similar to firearms training. For example, for every hour agencies spend on training officers how to



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shoot, they also spend several hours teaching when to shoot.<sup>18</sup>

The training deficiency trend has changed in the past few years. Although many agencies have increased or added pursuit training, most have done so only for new officers at the police academy. Therefore, most veteran officers, with their academy days far behind them, lack contemporary pursuit training.

Training should teach officers the phenomena present while they pursue. Tunnel vision makes them oblivious to what is going on around them. Some 96 percent of officers involved in a pursuit focus on catching the violator “if it’s the last thing (they’ll) ever do.”<sup>19</sup> Research shows that this holds true for many officers.<sup>20</sup>

While effective pursuit training can curtail certain dangerous situations, policy constitutes another important aspect in police pursuits.<sup>21</sup> An overwhelming majority of police agencies implemented their pursuit policy in the 1970s.<sup>22</sup> Although most of these same agencies

modified their policies in the past 2 years by adding restrictions due to liability, problems remain. Insufficiencies still exist in data collection, reporting procedures, and accompanying accountability.<sup>23</sup>

One comprehensive study shows that officers can use termination as an effective option to reduce the risks of pursuits.<sup>24</sup> This study involved interviews of 146 jailed suspects who had been involved as drivers in high-speed chases. More than 70 percent of the suspects said that they would have slowed down if police had terminated the pursuit or even backed off a short distance.<sup>25</sup> Fifty-three percent of the suspects responded that they were willing to run at all costs from the police in a pursuit, and 64 percent believed they would not be caught.<sup>26</sup> While 71 percent said that they were concerned for their own safety, only 62 percent said that they were concerned for the safety of others.<sup>27</sup> Clearly, the police must be concerned with public safety during pursuits because the suspects are not.

An integral part of pursuit training involves giving officers a clear understanding about the decision to terminate a pursuit. The Arkansas State Police recently created new pursuit training for state and local officers that stresses keeping pursuits under control and advises that termination is an option.<sup>28</sup>

### Alternatives to Pursuit

The most effective way to reduce risks is to terminate a pursuit. Clearly, too many pursuits continue that officers obviously should have terminated. Research on pursuit data and statistics show that termination dramatically could reduce traffic accidents, fatalities, and injuries. Police must reevaluate their thinking and mission.<sup>29</sup> Agencies rarely can justify endangering the public to pursue a violator.

Although many electronic devices still are being evaluated for effectiveness, technology also can decrease pursuit risks. Officers can carry spiked strips (or “stop sticks”) in their trunks and deploy them in the path of a fleeing suspect. The strips create a controlled loss of air (not a blowout) from the suspect’s tires. Once the violator crosses the strips, the deploying officer quickly pulls them from the roadway to allow pursuing police vehicles to pass. Agencies have begun to use these strips with increasing effectiveness. For example, departments in Cincinnati, Ohio, successfully used them after they sought risk-reduction techniques following a string of pursuit tragedies.<sup>30</sup> Similarly, the Ohio State Highway Patrol, the Utah Highway Patrol, and the Pennsylvania State Police also

### Fatalities in Crashes Involving Law Enforcement in Pursuit 1994–1998

Deaths					
Year	1994	1995	1996	1997	1998
Suspects	283	249	267	194	198
Bystanders	102	127	118	111	114
Officers	3	10	5	1	2

Source: *Fatality Analysis Reporting Systems – ARF, National Highway Traffic Safety Administration, Washington, DC, 2000*

are reporting recent successful use of the spiked strips.

One electronics company is testing a radar warning system that police can activate that sends a signal to any motorist with a radar detector of an approaching police pursuit. Motorists then can pull over to the side of the road or otherwise get out of the way.

Other technological ideas include an ultrasonic device that shoots a burst of microwave energy at a fleeing suspect. This causes the suspect vehicle's electronic system to fail, thus immediately disabling the violator.<sup>31</sup> Experts are studying a similar technology in which a robot-like cart jettisons from the front of the primary police pursuit vehicle. The cart then attempts to overtake the fleeing vehicle and electronically "zaps" the engine out of service. Researchers also are testing radio-technologic devices (similar to stolen car tracking systems) that electronically would disable the fleeing vehicle.<sup>32</sup>

Agencies have used helicopters with good results in pursuits, in parts of California and in cities, such as Baltimore, Maryland; Miami, Florida; and Philadelphia, Pennsylvania. The versatility, range, and vantage point of the helicopter allows ground officers to decrease the use of high-speed pursuits and increase apprehension rates.<sup>33</sup> With a helicopter observing the suspect, ground units can slow down and retreat to reduce accident risks. While most agencies cannot afford their own helicopter, they can develop regional interagency assistance plans.

Most experts agree that increased criminal penalties also will

reduce pursuits. Individuals who elude and flee the police should face severe criminal penalties. Consequently, some states have made eluding a second-degree crime.<sup>34</sup>

## Conclusion

High-speed police pursuits constitute an important public safety issue. Research clearly indicates the dangers associated with these pursuits. While some are necessary, many are not. Curtailing unnecessary pursuits can reduce the inherent risks associated with this dangerous practice.

Law enforcement agencies should provide appropriate pursuit training to recruits during their instruction at police academies, as well as to seasoned officers. Additionally, police administrators should ensure that their department's pursuit policy provides clear guidance and they should make use of available technology that can aid in safer pursuits. Taking such initiatives can help departments increase the effectiveness of pursuits while

simultaneously reducing the risks involved to citizens and officers.

## Endnotes

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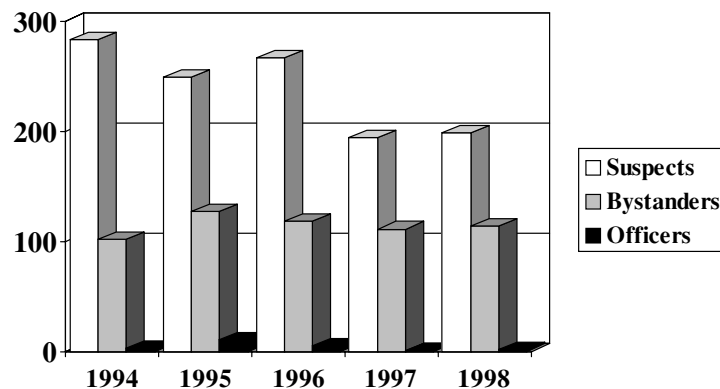
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<sup>11</sup> *In the Line of Duty: Police Pursuits Prove Deadly*, (National Law Enforcement Officers Memorial Fund: Washington, DC, 1997).

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**Police Pursuit Fatalities  
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<sup>17</sup> Ibid.

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<sup>20</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed 1996* (Washington, DC, 1997).

<sup>21</sup> Supra note 7.

<sup>22</sup> Supra note 2.

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<sup>24</sup> Supra note 2.

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<sup>28</sup> P. Hill, "Training, Stiffer Penalties Considered to Curb Pursuits," *Northwest Arkansas Times*, December 14, 1997.

<sup>29</sup> Supra note 7.

<sup>30</sup> T. Bricking, "Flattened Tires End Chase," *The Cincinnati Enquirer*, June 2, 1997; T. Bricking, "Group Advocates Safer Pursuits,"

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<sup>31</sup> J. Hill, "Police Pursuits and The Risks to Bystanders," doctoral program paper presented to Nova Southeastern University (Fort Lauderdale, FL, 1999).

<sup>32</sup> Ibid.

<sup>33</sup> G. P. Alpert, U.S. Department of Justice, National Institute of Justice, *Helicopters in Pursuit Operations* (Washington, DC, August 1998).

<sup>34</sup> Supra note 31.

## Snap Shot

### Boat Accident

While on a boating trip on Indianapolis,

Indiana's White River, two couples and an infant hit an obstruction that damaged the propeller of their boat so extensively that it could not develop sufficient thrust to keep out of the strong current leading to the spillway. The boat went over the spillway and lodged as depicted in the photograph. Over the next several hours, multiple attempts to rescue the occupants by boat, rope pulley, and fire truck ladder proved unsuccessful. Two officers from the Indiana State Police arrived in the department's helicopter and rescued all five people on the craft in less than 15 minutes.

*Submitted by Indiana State Police*



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## Victims

*Juvenile Delinquency and Serious Injury Victimization* (NCJ 188676) draws on data from two studies (the Denver Youth Survey and the Pittsburgh Youth Study) by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to explore the interrelationship between delinquency and victimization. This bulletin, part of OJJDP's Youth Development Series, focuses on victims of violence who sustained serious injuries as a result of the victimization. Being victimized may lead to victimizing others. The studies found that many victims were prone to engage in illegal activities, associate with delinquent peers, victimize other delinquents, and avoid legal recourse in resolving conflicts. A clearer understanding of the patterns and predictors of victimization offers the potential for increased effectiveness in designing and implementing strategies to reduce both victimization and offending. For a copy of this report, call the National Criminal Justice Reference Service at 800-851-3420 or access its Web site at <http://www.ncjrs.org>.

## Grants/Funding

The Office for Victims of Crime (OVC) presents the *OVC National Directory of Victim Assistance Funding Opportunities 2001*, which lists, by state and territory, the contact names, mailing addresses, telephone numbers, and e-mail addresses for federal grant programs that provide assistance to crime victims. The directory includes information on grant programs that assist state and local agencies to prepare for and respond to incidents of domestic terrorism and criminal mass casualty. It also provides a complete listing of professional colleagues nationwide that state victim assistance program administrators can contact for helpful information. This OVC directory provides useful information to state and local organizations interested in applying for state or federal funding to support crime victim assistance programs. For a copy of this 266-page directory (NCJ 189218), call the National Criminal Justice Reference Service at 800-851-3420. It also is available electronically at <http://www.ojp.usdoj.gov/ovc/fund/nrd/2001/welcome.html>.

# Perspective

## The Problem with Gratuities

By Mike White

*"I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities."*<sup>1</sup>

Until 1997, I was in charge of the Detective Bureau in Norwalk, Ohio, which is a relatively small town, but very professional and proactive. When I first came to the department in 1983, officers commonly accepted free coffee and discounted meals, along with other services. But, in 1991, a new chief was hired and these practices stopped.

In 1997, the chief of police position opened in Monroeville, Ohio, the community where I grew up. The department is a small one in the Midwest that, like other departments, is experiencing a change in the culture of law enforcement. I applied for the chief position and was hired on September 1, 1997. I started under a blanket of controversy because I was the first chief that did not progress through the ranks of the Monroeville Police Department (MPD). This caused some resentment, but nothing compared with the response I received when I notified my officers that they were not to accept gratuities. While all agreed that they understood, many felt that I was interfering with long-standing practices. In fact, one officer informed me that accepting gratuities had been a benefit of working for the police department for the past 15 years and that he did not see any harm in accepting free or discounted items. He said that we work in a small town and that we need to take care of the locals who, in turn, will take care of us.

Are law enforcement officers unethical to accept these gifts? What I saw as an unethical act was viewed by others, entrenched in the culture of the department, as an entitlement. Gratuity is something given voluntarily or beyond obligation usually for

some service.<sup>2</sup> The issue becomes cloudy as to whether the acceptance of free coffee and free or discounted meals is actually, by definition, a gratuity. Even if the acceptance of free or discounted items is not classified officially as a gratuity, does this mean that its acceptance is ethically sound? What do officers think? What do community members think? What do the owners of the businesses offering the gratuities think?

### Discussion

I have interviewed many police officers of various ranks within their departments about their views on what practices are ethical as they relate to gratuities.<sup>3</sup> Some officers have departmental policies that state that officers can accept gratuities as long as they do not solicit them. Other officers draw distinctions between what is an allowed gratuity. For example, the cost of the item, the reason it is given, and the expectation associated with the item determines one officer's opinion. Could ethical arguments of accepting gratuities be a matter of opinion, or are the acceptance of gratuities a community social act that should continue as a bridge between the community and the police? Varying opinions exist among officers, as well as in literature that I reviewed.

*Chief White heads the Monroeville, Ohio, Police Department.*



## Arguments For and Against Gratuities

### Allowing Gratuities

- They help create a friendly bond between officers and the public, thus fostering community-policing goals.
- They represent a nonwritten form of appreciation and usually are given with no expectation of anything in return.
- Most gratuities are too small to be a significant motivator of actions.
- The practice is so deeply entrenched that efforts to root it out will be ineffective and cause unnecessary violations of the rules.
- A complete ban makes officers appear as though they cannot distinguish between a friendly gesture and a bribe.
- Some businesses and restaurants insist on the practice.

### Banning Gratuities

- The acceptance violates most departments' policies and the law enforcement code of ethics.
- Even the smallest gifts create a sense of obligation.
- Even if nothing is expected in return, the gratuity may create an appearance of impropriety.
- Although most officers can discern between friendly gestures and bribes, some may not.
- They create an unfair distribution of services to those who can afford gratuities, voluntary taxing, or private funding of a public service.
- It is unprofessional.

One officer asked me if I would turn down a cup of coffee offered by a friend or neighbor while off duty, and I answered no. Does this make it okay to accept one while on duty? I think that different rules apply while officers are on duty. Police officers represent their communities and have powers that regular citizens do not. The public has no way of knowing if the free coffee is given under subtle coercion.

Another officer advised me that his agency's policy states not to accept gratuities. However, if the shop owner becomes insistent, the agency's policy states that officers should lay the money on the table to be used as a tip or payment and then leave the establishment. Differentiating between gratuities and corruption is not a clear concept. "Within the larger community of any police jurisdiction, the practice of

exchanging gifts, swapping services, and extending professional 'courtesies' is accepted by all citizens. It is a normal part of business relations for a salesman to offer a bargain to a steady customer or for a manufacturer to obtain favorable advertising space on a magazine or newspaper by paying 'extra.' Employees on public payrolls also receive gifts for professional services rendered."<sup>4</sup>

The payment of free coffee and discounted meals or services from businesses to police officers is a widespread, traditional practice in many jurisdictions. Free coffee is perhaps the most commonly received gratuity. Extra services that businessmen expect in return for giving a gratuity may include such immediate acts as additional protection during business hours and after closing, police escorts to banks, and frequent patrol of the business vicinity.

When law enforcement officers offer additional services to private businesses in exchange for a free cup of coffee, they detract from other citizens within their communities. Police service cannot be perceived as going to the highest bidder; decisions must be based on need.

In one city, officers arrested a local shop owner for drunk driving. The shop owner had supplied free coffee and discounted meals to department personnel for years. The shop owner took the arrest as a breach of an unwritten contract where he would receive special privileges in return for supplying free coffee and discounted meals. Apparently, the local police department had never done anything to give the shop owner this opinion. The shop owner became irate and demanded that the department drop the charges, which it could not do. Instead, the officers took up a collection and paid his fines. But, the shop owner still was not satisfied. He went to the local newspaper with the names of officers who had received 1,300 free cups of coffee (apparently, the officers had to sign for the cups). In addition, a list of 300 discounted meals, along with the officers' names, appeared on the front page of the local newspaper. Some citizens argued that the officers accepted the coffee with no intention of giving favorable treatment to the shop owner or anyone else, while others claimed that no one else would have had their fines paid by the police. "To determine if corruption exists, use the totality of circumstances. Was there quid pro quo, or were special privileges given in return for the free item?"<sup>5</sup>

Most officers agree that offering free goods and services as an entitlement and basing efforts in handling a complaint on what the complainant has given the officer is unethical. But, according to the majority of officers I spoke to, a huge gray area exists, especially in the acceptance of free coffee to increase officer presence. Perception is important; accepting a free cup of coffee may be harmless. However, the public's perception is important in the support and view that the community has for their

law enforcement agency. One officer I interviewed advised that a new restaurant opened in her town and the owners gave free meals to police officers. Subsequently, the city implemented a policy that began to charge businesses after the police department responded to a limited number of false alarms. The new business received a bill because of its number of false alarms, but the owners refused to pay based on the long list of free meals given to the police department. The media published the story, which reflected poorly on the department.

Many argue that the coffee is inexpensive and that owners are showing appreciation by offering a cup and enjoying the fact that officers spend time in their shops. Therefore, what is the harm? On the other hand, what happens in discretionary issues where officers stop the owner or an employee for speeding? They may base their decision whether to cite on the fact that they received free coffee. Should the free coffee factor in the officers' decisions?

I spoke with an officer who wrote the policy on gratuities for his department. He advised that officers may accept gratuities but not solicit them. He explained that the department did not want to deny its officers from taking a cup of coffee or meal as a goodwill gesture. He distinguished between the solicitation and acceptance because when an officer asks for a gratuity, it can be construed as expected. If the gratuity is not given, the perception of retaliation may become an issue if the officer was put into the position of enforcement against the store owner or employee. I asked the officer if the public's perception was a problem, and he advised that it has not become an issue. In this example, the thought behind the acceptance and giving of the gratuity is important. "What makes a gift a gratuity is the reason it is given, what makes it corruption is the reason it is taken."<sup>6</sup> The officer also explained that on a discretionary call the possibility remains that the officer may decide in favor of the violator based on the giving of gratuities, but this has not happened in his department.

## Recommendations

Clearly, no overall consensus exists on the acceptance of gratuities or even what constitutes a gratuity. As an administrator, the commonsense approach would be to not allow officers to accept free coffee and discounted or free meals. Accepting gratuities can lead to unwanted perceptions by the public and bring the agency's discretion into question. However, a Christmas gift given by a private business to a department may be accepted as a token of a working relationship. Additionally, agencies should feel free to accept contributions from fraternal organizations that donate to programs that help the overall community. But, when an individual officer accepts items on a routine basis, an unhealthy relationship may develop or be perceived as such. To eliminate doubt, agencies should implement a policy against the acceptance of free or discounted items by individual officers.

## Conclusion

Police officers often face the dilemma of accepting gratuities. Some officers view the acceptance of free coffee and free or discounted meals as an entitlement, while others view it as an unethical act. Law enforcement agencies should consider the perception of communities, as well as business owners, when accepting gratuities.

Departmental policies on gratuities vary among agencies, and officers may question exactly what constitutes a gratuity. To eliminate confusion, departments should ensure that their policies clearly distinguish what is acceptable.

## Endnotes

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<sup>2</sup> Merriam Webster's Collegiate Dictionary, 10th ed. (1996) s.v. "gratuity."

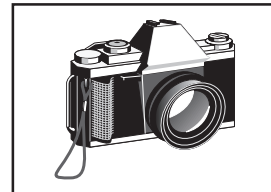
<sup>3</sup> The FBI hosts four 10-week sessions each year during which law enforcement executives from around the world come together to attend classes in various criminal justice subjects and conduct academic research on a variety of related topics. I attended the 206th session of the FBI National Academy and interviewed numerous law enforcement officers on their perceptions of gratuities, as well as their departmental policies on this topic.

<sup>4</sup> International Association of Chiefs of Police, Training Key 254, "Police Corruption," vol. 11, 81.

<sup>5</sup> William McCarthy, *A Police Administrator Look at Corruption* (New York, NY: John Jay Press, Inc., 1978).

<sup>6</sup> John Kleinig, *The Ethics of Policing* (New York, NY: Cambridge University Press, 1996).

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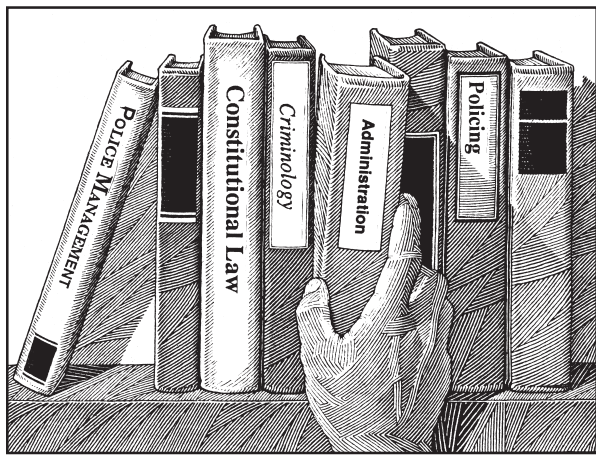


The *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

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:

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# Book Review



**Digital Evidence and Computer Crime:  
Forensic Science, Computers, and the Internet**  
by Eoghan Casey, Academic Press, San Diego,  
California, 2000.

As a place to begin in the investigation of computer-based crime, *Digital Evidence and Computer Crime* represents a very good start. As the title implies, the author works toward a comprehensive explanation of a series of very complex and technical, yet related, issues. Fortunately, he provides well-written and easily understandable explanations, albeit technically abbreviated, throughout. The information he provides in this context allows for concept transition as the text continues into the strategic and tactical application of pursuit. For a new inductee into the world of computers and law enforcement, this book should be on the shelf. While it will not solve the case, it will provide the "rookie" with a number of very well-described starting points.

The chapters are designed to build off the previous ones in terms of an introduction, through basic vocabulary and terminology, and then stepping into the issues associated with law enforcement response. Perhaps, the best aspect of this book is the inclusion of case examples, which highlight various points Mr. Casey makes throughout.

Two of the chapters focus on the behavioral/motivational aspects of computer crime. Each embraces the topic from academia and contain good information, although somewhat limited with respect to long-term utility. While the technology continues to evolve, so too will the targets and the suspect's methodology.

One chapter focuses on the legal and jurisdictional aspects of these issues. The referenced cases occurred in the mid to late 1990s and, in terms of relativity to the discussion, are pertinent. There is, however, a growing list of additional case law, which should be thoroughly researched in any specific investigation involving search and seizure, intercept, and other complex issues. From the perspective of jurisdiction, the text briefly covers an issue that proves significant at any level in responding to and prosecution of computer-related crime.

Accompanying the text is a multimedia CD separated into several sections, including an introduction, a cases section, and a reference section. The cases section permits the reader to commence hands-on pursuit of computer criminals by following a very basic fact set and using some of the knowledge from the book. These scenarios are primers only, but afford the reader with an opportunity for familiarization by hands-on interaction. The reference section provides a list of 24 Internet locations for the reader to continue learning or to obtain law enforcement assistance.

As with any new area of law enforcement, the scope and breadth of understanding and response vary by individual, as well as by location and agency capability. This book is a great resource for any individual seeking knowledge or beginning to understand this growing phenomenon, as well as some of the issues associated with the operational and related strategic challenges.

Reviewed by  
Resident Agent in Charge Matt Parsons  
U.S. Naval Criminal Investigative Service  
Okinawa, Japan

# *Investigating International Terrorism Overseas*

## *Constitutional Considerations*

By MICHAEL J. BULZOMI, J.D.



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**I**nternational terrorism has become more than something occurring in some faraway place that Americans see on the nightly news. It is now a crime to be dealt with in America itself. American law enforcement faces a difficult and dangerous task in investigating international terrorism. The goal of these investigations is to identify terrorists, deter future terrorist attacks, seize financial assets, and build cases that will lead to the conviction of those involved in terrorist acts. At the same time, investigators must carefully balance actions designed to ensure the

security and safety of citizens against individual rights. Criminal investigations involving terrorists must be conducted in accordance with the provisions of the U.S. Constitution.

Local, state, and federal investigators will find themselves working hand in hand on terrorist task forces investigating international terrorists. Cases will be brought in both state and federal courts. Investigators will need to gather evidence, either testimonial or documentary, and assets from within the United States and from foreign sources. This will require

cooperation with foreign law enforcement and security agencies. The subjects of these investigations will include both foreign nationals and U.S. citizens living abroad. The citizenship of suspects and the level of participation of American law enforcement in the overseas investigation will determine the legal standards to which American investigators will be held when prosecuting these cases. For these reasons, it is important that investigators understand how the U.S. Constitution limits their actions in foreign lands. This article examines how American law enforcement officials may

seek foreign assistance in their investigations. It also will consider the constitutional restraints upon these investigations.

### Foreign Assistance

The Fourth Amendment guarantees the privacy of persons, houses, papers, and effects against unreasonable searches and seizures.<sup>1</sup> The U.S. Supreme Court has established the principle that for a search to be reasonable under the Fourth Amendment, it must be authorized by a search warrant or one of the recognized exceptions to this warrant requirement.<sup>2</sup> However, American magistrates do not have the authority to issue search warrants authorizing overseas searches.<sup>3</sup> Fortunately, there are other ways to gather evidence from foreign jurisdictions. One approach is through the use of a mutual legal assistance treaty (MLAT). If an MLAT does not exist between the United States and the foreign nation

involved, then one may seek a letter rogatory or possibly a subpoena.

MLATs between the United States and foreign governments establish procedures by which evidence may be obtained from foreign nations. MLATs allow federal prosecutors to request that foreign law enforcement officers gather evidence in their countries for use in U.S. proceedings. The terms of an MLAT may include the actual involvement of U.S. officials in the evidence-gathering process. For example, U.S. officials may be able to be present, or even participate in, the foreign investigations. The main advantage of MLATs is that compliance on the part of the signatories is mandatory. At present, the United States has entered into MLATs with thirty-four nations.<sup>4</sup>

If an MLAT does not exist between the United States and the foreign nation involved, then investigators may consider a letter rogatory. A letter rogatory is simply

authority from a federal court to request the assistance of the foreign jurisdiction. The foreign authorities may honor the request by using evidence-gathering tools allowed them by their own laws. Any resulting information or evidence is then forwarded to the requesting American authorities. However, assistance rendered through letters rogatory is discretionary on the part of the foreign nation.<sup>5</sup>

U.S. authorities seeking information from overseas also may consider the use of subpoenas issued to persons or entities located within the United States that have actual or constructive possession of the information located overseas. Some courts, however, may refuse to enforce subpoenas for evidence located abroad on comity grounds because compliance with the subpoena may expose the responding party to criminal liability under the laws of the foreign nation.<sup>6</sup> The factors a court must consider include—

- the vital national interests of each of the states;
- the extent and the nature of the hardship that inconsistent enforcement actions would impose upon the person;
- the extent to which the required conduct is to take place in the territory of the other state;
- the nationality of the person; and
- the extent to which enforcement by action of either state can be reasonably expected to achieve compliance with the rule prescribed by that state.<sup>7</sup>

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***...it is important that investigators understand how the U.S. Constitution limits their actions in foreign lands.***

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*Special Agent Bulzomi is a legal instructor at the FBI Academy.*

## Constitutional Protections Overseas

Constitutional protections are assured to any person within the United States whether they are U.S. citizens or not, including illegal aliens. However, U.S. constitutional guarantees may not extend to persons located overseas. The U.S. Supreme Court has struggled with this issue for years.

The question of whether U.S. constitutional protections extend beyond the shores of the United States was first debated in *Ross v. McIntyre*.<sup>8</sup> The Court confronted the issue of whether the Sixth Amendment right to trial by jury applied to a U.S. citizen being tried by an offshore American court. The defendant in this case was charged with committing a murder on an American vessel in Japanese territorial waters. Pursuant to a treaty with Japan, Ross was tried and convicted in an American consular court sitting in Kanagawa, Japan. The consular court consisted of the U.S. consul-general who, with four other persons appointed by him, determined Ross' guilt. Prior to trial, Ross had made a demand for a trial by jury; his demand was denied.

Following his conviction, Ross petitioned for a writ of habeas corpus, arguing that the statute establishing the consular courts was unconstitutional. The U.S. Supreme Court rejected this argument, noting that consular courts established by governments to try their citizens in foreign countries for violations of foreign laws dated back to the Middle Ages. The Court stated that because the Constitution has no extraterritorial force, treaties

extending American judicial power into foreign countries were controlling. Consequently, the Court concluded that consular courts were constitutionally created under Congress' treaty-making power. However, this view, that the Constitution had no extraterritorial force, was later repudiated.

In 1957, the Supreme Court decided the case of *Reid v. Covert*.<sup>9</sup> In this matter, the wives of two American servicemen were charged with murder. The women were tried and convicted in U.S. military courts sitting in the countries where the

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murders were alleged to have occurred. This procedure was in accordance with executive agreements in force between the United States and the countries where the crimes occurred. These agreements permitted U.S. military courts to exercise jurisdiction over American servicemen and their dependents who committed crimes overseas in violation of foreign laws.

The women argued that they were entitled to a civilian trial. The Court agreed with the women, but could not agree on a rationale. In his

plurality opinion, which was joined by three other justices, Justice Black said that when the government acts abroad by reaching out and punishing an American citizen for his acts outside of the United States, the Bill of Rights and the Constitution should not be stripped away just because the citizen happens to be in another country.<sup>10</sup>

The *Reid* case established that there are constitutional protections for U.S. citizens while overseas. Unanswered, however, was the question whether constitutional protections extend to aliens located outside the United States, but facing charges in the United States. In *United States v. Verugo-Urquidez*,<sup>11</sup> the Supreme Court ruled that the Fourth Amendment does not apply to a U.S.-directed search in Mexico. In this case, U.S. DEA agents, working with Mexican police, searched a home belonging to a Mexican national living in Mexico. The DEA agents did not seek a search warrant from an American court because no American court can authorize an overseas search. Instead, they obtained authorization for the search from the director general of the Mexican Federal Judicial Police. Charges were filed against the defendant in the United States, and the defendant moved to suppress evidence obtained during the search, arguing that the search violated his rights under the Fourth Amendment.

The district court granted the motion and the appellate court affirmed, citing the *Reid* decision, and holding that the Constitution imposes constraints on the federal government when it acts abroad.

The U.S. Supreme Court reversed the appeals court. The Court ruled that the appeals court's global view of the application of the Constitution was contrary to its decisions in *Reid* and *Ross*. The Court stated that in light of those cases, it could not be said that every constitutional provision applies wherever the U.S. government exercises power. The Court held that the subject of the search, a Mexican citizen, had no substantial voluntary attachment to the United States, despite the fact that he was being prosecuted in U.S. courts.

In *Verugo-Urquidez*, the U.S. Supreme Court limited Fourth Amendment protections to searches and seizures within the United States. The Court refused to endorse the view that every constitutional protection applies wherever the U.S. government exercises its power. That is not to say, however, that constitutional protections never apply in the overseas context. The *Reid* case makes that clear. What protections apply overseas, and to whom, are questions that slowly are being answered by the courts.

#### **Fourth Amendment Protection**

Evidence that is seized during foreign investigations often is given to American authorities for use in U.S. investigations. Generally, American legal standards do not apply to the seizure of this evidence where a foreign country is conducting the investigation independently and seizes evidence that later is introduced into an American court.

*United States v. Callaway*<sup>12</sup> illustrates this point. Canadian police searched two cars they suspected

were stolen. They uncovered evidence regarding the theft of cars in America and their subsequent sale in Canada. The searches were not based on probable cause as required by courts in the United States. The evidence from these searches was given to American law enforcement and used to prosecute the defendant in the United States. The defendant moved to have the evidence suppressed on the basis that the searches violated the Fourth Amendment. The U.S. District

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Court of New Jersey decided not to apply the Fourth Amendment probable cause standard to the searches of the vehicles in question. The court found that the searches occurred in a foreign country; were conducted by foreign law enforcement officials who were not acting in connection, or cooperation, with American law enforcement authorities; and actions of the Canadian officials were not so outrageous as to shock the conscience of the court. Accordingly, the court refused to suppress the evidence.

As the court in *Callaway* pointed out, there are two circumstances where U.S. courts may exclude evidence gathered by foreign governments: 1) where there is joint action by both the U.S. and foreign governments, and 2) where solo actions by the foreign government shock the conscience of the U.S. court.

#### **Joint Ventures**

Joint investigations between U.S. and foreign law enforcement can create constitutional considerations for American law enforcement operating overseas. The actions of foreign officials against U.S. citizens abroad may be held to American legal standards and subject to the exclusionary rule—they were not independent actions but, rather, “joint ventures.”<sup>13</sup> If an American official substantially participates in the activities of the foreign agency against American citizens or American concerns overseas, these activities could be deemed “joint ventures” and subject to U.S. constitutional scrutiny. Whether or not such a joint venture exists depends upon the facts of each case.

In *United States v. Behety*,<sup>14</sup> an American vessel was searched by Guatemalan authorities. American authorities alerted them to the possibility that cocaine was aboard. In Guatemala, probable cause to believe that evidence or contraband is aboard a vessel is not required for Guatemalan officials to conduct a search of a vessel. American authorities did not actually participate in the search of the vessel, but were present and videotaped the

search. The court held that substantial participation by American authorities is required before the Fourth Amendment reasonableness standard is used to judge the search. The court found that providing information concerning possible criminal misconduct and video taping the Guatemalan search did not constitute substantial participation.

*United States v. Barona*,<sup>15</sup> illustrates that the Fourth Amendment reasonableness standard is applied in cases where there is substantial participation by American authorities. This case involved an international drug conspiracy "joint venture" investigation involving American, Danish, and Italian authorities. Danish police intercepted phone calls of the main suspects at the request of the DEA. Transcripts of the intercepted calls were introduced at the defendants' trial in the United States. Following their conviction, the defendants appealed, claiming an unconstitutional search and seizure on the part of the DEA in conjunction with foreign investigators. The U.S. Circuit Court of Appeals for the Ninth Circuit rejected the defense contention on the grounds that the interception was lawful under the Fourth Amendment if it was reasonable. According to the court, reasonableness in this context means that the foreign authorities either followed their own law, or the U.S. agents acted in the good faith belief that the interceptions complied with foreign law. In this case, foreign law was adhered to. The court pointed out that the Fourth Amendment applies only to the people of the United States. However, even when American

citizens are not the subject of the overseas investigation, violations of foreign law by foreign investigators could result in a judicial finding that the actions of the foreign government shock the conscience of the court and may result in the exclusion of the evidence.

### **Shocks the Conscience of the Court**

As noted in several of these cases, not all evidence gathered by foreign investigators in foreign lands will be admitted into American courts, even if the evidence is collected with no U.S. involvement.



Evidence obtained in a shocking manner, such as through torture or physical abuse, may be excluded as evidence in an American court as a due process violation.<sup>16</sup> However, mere violations of foreign law by foreign governments do not necessarily cause an American court to exclude evidence.

In *United States v. Peterson*,<sup>17</sup> evidence was collected from a wiretap conducted in the Philippines by Filipino officials. When

the evidence was introduced by the U.S. government at the defendant's trial, he challenged it on the grounds that the wiretap had not been properly authorized under Filipino law. American authorities were unaware of its illegality and had been assured that proper authority was sought. The U.S. Court of Appeals for the Ninth Circuit noted that Philippine law governed the reasonableness of the search, but American law governed its admissibility into U.S. courts. The court held that the seized evidence was admissible under the good faith exception to the exclusionary rule, because American investigators relied in good faith upon the assurances of the Filipino authorities. In addition, the court ruled that the actions of the Filipino authorities were not sufficiently outrageous to shock the conscience of the court.

### **Fifth Amendment Protection Overseas**

The Fifth Amendment voluntariness standard and the rights to silence and counsel announced in the *Miranda*<sup>18</sup> case clearly apply to custodial interrogations of U.S. citizens abroad by U.S. investigators.<sup>19</sup> However, confusion exists regarding whether Fifth Amendment rights apply to overseas interrogations of nonresident aliens by American interrogators. Two U.S. district courts faced this issue and reached opposite conclusions.

In *United States v. Raven*,<sup>20</sup> the defendant, a Dutch citizen, was charged with drug offenses in the United States. He was in custody in Belgium when American officials sought permission from Belgium

authorities by a letter rogatory to interview him. American investigators were instructed that Belgium law does not permit a defendant's lawyer to be present. Raven was interrogated by American investigators without his lawyer and made statements the government wished to introduce at his trial. The defendant moved to have the statements suppressed because he was denied counsel during the interrogation in violation of both the Fifth and Sixth Amendments to the Constitution.

In denying the motion to suppress, the U.S. District Court for the District of Massachusetts held that foreign nationals simply are not protected by the U.S. Constitution during custodial interrogations that take place overseas. The court cited the Supreme Court case of *Johnson v. Eisentrager*<sup>21</sup> for the proposition that the Fifth Amendment does not protect aliens outside of the United States. The court went on to say that because the Supreme Court has rejected the extraterritorial application of the Fourth and Fifth Amendments, it also would likely reject the extraterritorial application of the Sixth Amendment right to counsel, even though the Court had not yet answered the question directly.

However, in *United States v. Bin Laden*,<sup>22</sup> the U.S. District Court for the Southern District of New York reached the opposite conclusion. In this case, two alien defendants suspected of involvement in the bombings of U.S. embassies were subjected to repeated custodial interrogations by American and foreign officials after their arrests in Kenya and in South Africa. Both defendants were given modified advice of rights forms, informing

them that they had the right to remain silent and that anything they said could be used against them in a court of law. They also were told that had they been questioned in the United States, they would have had the right to have an attorney present during questioning, but because they were not in the United States, the interrogators could not ensure that a lawyer would be appointed before questioning. Both defendants waived their rights as presented and made statements. Prior

to trial in the United States, both defendants moved to have their statements suppressed, arguing that their Fifth Amendment rights were violated during the overseas interrogations.

The court ruled that the Fifth Amendment privilege against self-incrimination did protect these alien defendants, even though the interrogations occurred overseas. The court went on to hold that U.S. courts should use the *Miranda* warning and waiver framework to judge whether the government may introduce an alien's custodial statement, even when the statement

results from overseas interrogation by U.S. investigators. The court reasoned that a Fifth Amendment violation occurs only when the U.S. government introduces the statement against the defendant at trial. Therefore, the location of the interrogation is irrelevant. In addition, the court opined that the only way to ensure a defendant's (alien or citizen) privilege against self-incrimination is protected—wherever they might be arrested—is to require American interrogators to comply with the *Miranda* warning and waiver regimen.

The court recognized that the content of the warnings provided to defendants interrogated abroad will vary. Warning overseas defendants of the right to silence and that any statements made may be used in a court of law is no problem. However, informing overseas defendants of their right to counsel during custodial interrogation poses particular difficulties. Because the defendants are in foreign custody, they may not be permitted access to counsel under local law. The court resolved this difficulty by saying that American interrogators should do or say nothing that would foreclose any right to counsel, either retained or appointed, that the defendants may have under foreign law, and the warning should conform as much as possible to the local circumstances under the laws of the foreign country.

A related issue is whether or not *Miranda* protections extend to overseas custodial interviews of individuals by foreign officials. In *United States v. Welch*,<sup>23</sup> Welch was arrested by Bahamian officials in Bahama for attempting to deposit

a stolen U.S. Treasury bill in a Bahamian bank. He was taken to the local police station to be interrogated. Prior to the interrogation, he was warned of certain rights under Bahamian law. The warning did not include all of the rights mandated in the *Miranda* case. Welch waived his rights and made statements to the Bahamian interrogators. The U.S. government later attempted to use those statements against Welch in his trial for offenses regarding the stolen Treasury bill. Welch moved to suppress the statements, arguing that they were taken by Bahamian officials in violation of *Miranda*.

The U.S. Court of Appeals for the Second Circuit ruled that the requirements of the *Miranda* case were inapplicable to overseas custodial interrogations conducted solely by foreign officials. The court stated that the *Miranda* warning and waiver requirement was developed to deter American investigators from using coercive techniques during custodial interrogations. When the interrogators are foreign officials, *Miranda* does not have its intended deterrent effect. The only test regarding the admissibility of statements taken solely by foreign officials overseas is whether the statement is voluntary under the totality of the circumstances.<sup>24</sup> Here the statement was voluntary and, therefore, admissible.

## Conclusion

With increasing frequency, American investigators are called upon to conduct investigations overseas in conjunction with foreign investigators. Consequently,

American courts are faced with the difficult task of deciding what constitutional protections extend to these overseas investigations. While the law is still developing, some conclusions can be drawn.

American investigators acting abroad must be aware of which constitutional rights have extraterritorial effect. The application of these rights depends upon several factors: whether the investigations are conducted by foreign investigators alone, foreign and American investigators acting jointly, or American



investigators acting alone. It also depends upon whether the target of the investigative action is an American citizen or a foreign national.

Some conclusions are clear. American investigators acting overseas always should comply with foreign laws. To the extent possible, American investigators abroad should conduct their investigations as if they were operating in the United States. American investigators operating abroad should consult with their prosecuting attorneys whenever a question of the

applicability of a constitutional right arises.

When working jointly with foreign officials overseas, investigators should be mindful that their activities will be subject to constitutional limitations when the subject is an American or an American interest. Substantial participation in searches or interrogation on the part of American investigators will invoke constitutional protections on the part of the subject. Investigators should ensure that these protections are adhered to under these circumstances.

Robert Ingersoll said, "Give to every human being every right that you claim yourself."<sup>25</sup> If investigators follow that simple rule, they will have few legal obstacles interfering with their efforts overseas in identifying terrorists, interdicting their operations, seizing their assets, and securing criminal convictions. ♦

## Endnotes

<sup>1</sup> U.S. Const. amend. IV.

<sup>2</sup> *Flippo v. West Virginia*, 120 S. Ct. 7 (1999).

<sup>3</sup> *United States v. Verugo-Urquidez*, 494 U.S. 259 (1990), at 274 (noting that warrants issued by U.S. magistrates are ineffective outside the United States).

<sup>4</sup> U.S. State Department Website, <http://travel.state.gov/mlat.html>. Currently, there are 19 MLAT's in force with Argentina, Bahamas, Canada, Hungary, Italy, Jamaica, Korea, Mexico, Morocco, Netherlands, Panama, Philippines, Spain, Switzerland, Thailand, Turkey, United Kingdom (Cayman Islands), United Kingdom, and Uruguay. There are 15 MLAT's that have been signed but are not yet in force with Antigua and Barbuda, Australia, Austria, Barbados, Belgium, Columbia, Dominica, Grenada, Hong Kong, St. Lucia, Luxembourg, Nigeria, Organization of American States, Poland, and Trinidad.

<sup>5</sup> Title 28, U.S.C. Sec. 1781.

<sup>6</sup> This was the case in *United States v. First National Bank of Chicago*, 699 F.2d 341 (7th Cir., 1983) where compliance with a subpoena issued to a Greek bank would have exposed the bank and its employees to criminal liability under Greek bank-secrecy laws. The court in this case refused to enforce the subpoena. However, in *United States v. Nova Scotia*, 740 F.2d 817 (11th Cir., 1984), the court ignored foreign bank secrecy and "blocking" statutes that made compliance to the U.S. subpoena an illegal act and enforced the subpoena.

<sup>7</sup> *Id.* at 827, citing Restatement (Second) of Foreign Relations Law of the United States (1965).

<sup>8</sup> 140 U.S. 453 (1891).

<sup>9</sup> 354 U.S. 1 (1957).

<sup>10</sup> *Id.* at 6.

<sup>11</sup> 494 U.S. 259 (1990).

<sup>12</sup> 446 F.2d 753 (3rd Cir., 1971).

<sup>13</sup> See *Stonehill v. United States*, 405 F.2d 738 (9th Cir., 1968)

<sup>14</sup> 32 F.3d 503 (11th Cir., 1994).

<sup>15</sup> 56 F.3d 1087 (9th Cir., 1995).

<sup>16</sup> See *United States v. Toscanino*, 500 F.2d 267 (2d Cir. 1974).

<sup>17</sup> 812 F.2d 486 (9th Cir. 1987).

<sup>18</sup> *Miranda v. Arizona*, 384 U.S. 1 (1968).

<sup>19</sup> See *Reid v. Covert*, 354 U.S. 1 (1957) (The Court extended Fifth and Sixth Amendment protections to U.S. citizens overseas).

<sup>20</sup> 103 F. Supp. 2d 38 (D. Mass 2000).

<sup>21</sup> 339 U.S. 763 (1950)

<sup>22</sup> 132 F. Supp. 2d 168 (S.D.N.Y. Feb. 16, 2001).

<sup>23</sup> 455 F.2d 211 (2nd Cir., 1972).

<sup>24</sup> See *Bram v. United States*, 168 U.S. 532 (1887).

<sup>25</sup> Robert Green Ingersoll, 1833-1899, U.S. lawyer, agnostic, and writer, *Amercian College Dictionary*, Random House (1970).

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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.



Lieutenant Klug



Officer Kiser



Officer Hoffpauir

A concerned motorist stopped at the main gate of the Bureau of Engraving and Printing, Western Currency Facility, in Fort Worth, Texas, and reported that a vehicle had driven off the road and into a ditch near the facility. Someone was trapped inside the vehicle and was yelling for help. Lieutenant Thomas L. Klug and Officers Jerry L. Kiser and Edward L. Hoffpauir of the Bureau of Engraving

and Printing Police Force responded to the scene of the accident. After arriving at the scene, Officer Hoffpauir alerted passing traffic of the accident and began monitoring and directing traffic. Lieutenant Klug and Officer Kiser found a vehicle partially submerged in the water-filled ditch. Ignoring the rushing water and heavy rain and disregarding their own safety, Lieutenant Klug and Officer Kiser entered the ditch in waist-high water and contacted the lone female occupant, who told them that she had injured her left leg and arm during the accident. She had difficulty moving and could not get out of the vehicle. To avoid aggravating the victim's injuries or hindering extraction efforts, Lieutenant Klug and Officer Kiser stayed at the vehicle with the victim and monitored the rising water until medical and emergency personnel arrived. Lieutenant Klug and Officers Kiser and Hoffpauir exhibited professionalism and courage in handling this incident and subsequently prevented the victim from drowning.



Sergeant Apffel

Late one night, a subject armed with a semiautomatic pistol shot and seriously injured two men. A short time later, the same subject rode by an occupied fast food restaurant and fired several shots into the establishment. Sergeant Jerry Wayne Apffel of the Fauquier County, Virginia, Sheriff's Office observed the suspect approximately 1 hour after the shootings. The subject refused to pull over and a high-speed pursuit began in the direction and path of the first shooting crime scene, where deputies were present. Sergeant Apffel, fearing for the deputies in the street, quickly alerted them to get out of the way seconds before the pursuit passed through. Sergeant Apffel employed a precision immobilization

technique, which brought the suspect's vehicle to a stop. As Sergeant Apffel approached the vehicle, the suspect raised a pistol in an effort to shoot him. Sergeant Apffel discharged his weapon, disabling the suspect. Sergeant Apffel's quick and decisive action led to the prompt apprehension of a dangerous offender.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

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## ***Patch Call***



The outline of the Oneida, New York, Police Department patch represents Madison County, and the red star pinpoints the location of the city of Oneida. The house featured in the circle is the home of the founder of Oneida. It also was the location of the first bank in the city and currently is the home of the Madison County Historical Society.



The patch of the Rockland, Maine, Police Department features the lighthouse and the breakwater that protects the Rockland Harbor on Penobscot Bay. Rockland Harbor is Maine's largest natural harbor and is home for numerous coastal sailing schooners, as well as commercial fishing vessels and recreational boats.