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# **FBI** **Law Enforcement** **Bulletin**

## **Officer-Involved Shootings**

Memory, Stress,  
and Time





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# FBI Law Enforcement Bulletin

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# ***Working Toward the Truth in Officer-Involved Shootings*** ***Memory, Stress, and Time***

By GEOFFREY P. ALPERT, Ph.D, JOHN RIVERA, and LEON LOTT

**A**n important area of psychological research examines “how trauma and other highly emotional experiences can impact perception and memory.”<sup>1</sup> Studies indicate that individuals display two distinct ways of processing information into memory: the “rational-thinking mode” during low-emotional states and the “experiential-thinking mode” in a high-stress situation, such as an officer-involved shooting (OIS).<sup>2</sup> This distinction illustrates that the trauma caused by an OIS likely will impact the memories and perceptions of the officers involved.

However, not enough research has been done to determine exactly how these effects distort memories of stressful events. Many studies relate only to routine memory and eyewitness identification, rather than the use of deadly force.<sup>3</sup> Further research must focus on determining how other variables may cause officers’ memories of such incidents to vary from reality. Investigators who interview officers following an OIS should remain cautious because their subjects’ memories may have been impacted by their experience in numerous and, at times, unpredictable ways.<sup>4</sup> Law enforcement agencies should acknowledge these difficulties when determining protocol for when and how to interview involved officers following an OIS.<sup>5</sup>





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## Prior Research

While much study has been conducted on memory and stress, only limited research has focused specifically on how this relates to OIS.<sup>6</sup> These gaps led one researcher to study how memories function differently during traumatic events. To investigate this issue, she surveyed officers over a 6-year period after they had been involved in shooting incidents. Her research found that officers exhibited a variety of reactions and responses to an OIS. For example, more than 60 percent of the officers felt that the incident transpired in slow motion, while 17 percent recalled time speeding up. Over 80

percent of the officers reported auditory lockout, while 16 percent heard intensified sounds. Similarly, more than 70 percent claimed that they experienced heightened clarity of vision and that they responded to the threat not with “conscious thought,” but, rather, on “autopilot.” Interestingly, almost 40 percent reported disassociation, while 46 percent reported memory loss. Her findings are both important and consistent with other research indicating that officers experience perceptual and memory distortions during a critical incident, such as an OIS.<sup>7</sup>

Another study also deserves attention. Researchers surveyed 265 police officers from the

Midwest who were exposed to three stressful conditions: a live-fire simulation, a video of the training that included the shooting, and a video of the simulation scene without sound or a shooting. Most of the officers were not questioned about their experiences until 12 weeks later, but a sample of the officers participated in a “rehearsal” interview—they answered the questions immediately after the exposure and then again 12 weeks later.

The researchers concluded that, overall, stress was positively related to memories of armed people, unrelated to memories of unarmed people, and negatively related to objects.<sup>8</sup> Their findings echoed



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*Sheriff Lott heads the Richland County, South Carolina, Sheriff's Department.*

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other research that suggested eyewitnesses focus on the source of the threat or stress (e.g., the shooter) more intensely than the peripheral information about a scene or incident (e.g., the furniture in the room where the shooting occurred).<sup>9</sup> Interestingly, the study also found that the officers subjected to the immediate rehearsal questioning recalled clearer memories in their second interview 12 weeks later compared with the officers interviewed only once.

This study is important for several reasons. First, it showed that during high-stress events, officers more likely will focus on a threat, rather than peripheral objects or people. If an officer vividly remembers a person with a weapon but has only a blurred vision of an unarmed individual or an object in the room or area, this does not necessarily indicate that the officer's testimony is a conscious deception, planned response, or otherwise illegitimate. Instead, these distortions may be caused by stress—the research indicated that officers' memories after a traumatic event can play tricks on them or vary from reality. This might result from pressure or anxiety caused by the incident, officers' exhaustion during the event, or other factors that influence memory.<sup>10</sup>

Second, the study supported the argument that it remains unclear as to when officers should

be interviewed concerning their observations, actions, and reactions after an OIS. Many ambiguities exist regarding this issue, and, thus, no proven best practices exist for collecting information from officers involved in an OIS. However, most agencies follow the intuition that exhausted, injured, or otherwise impaired officers should not be questioned immediately after a traumatic event.

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***...the trauma caused by an OIS likely will impact the memories and perceptions of the officers involved.***

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Otherwise, not only does this pose serious risks to the officers' health and well-being but information gleaned from these interviews may sabotage an investigation. These case studies indicated that through no fault of their own, these officers' memories may suffer from distortions due to the stress caused by such traumatic incidents. As such, investigators must keep these factors in mind when determining the timing and structure of post-OIS interviews.

## **Authors' Study**

To look at this phenomenon more closely, the authors organized a pilot study in December 2010 to examine how officers recall high-stress events. They used the Richland County, South Carolina, Sheriff's Department as the subject of their study. The researchers surveyed officers' reactions to training that involved live-fire simulation and role play by interviewing the officers and analyzing their responses.<sup>11</sup>

The department periodically conducts training activities that involve these live-fire simulations. This instance involved a group of deputies learning to respond to active-shooter situations in schools. The training occurred in an abandoned school that realistically emulated a real world environment. Officers responded to one of two active-shooter scenarios: a school shooting or a terrorist attack. Each simulation involved similar reportable and measurable characteristics.

During the simulation, officers worked in teams to clear a building, assist victims or hostages, and secure suspects. Following the incident, each deputy attended a short debriefing. When the training concluded for the day, half of the officers (Group A) wrote a report detailing the event. Then, the researchers asked Group A to recount the event again



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3 days later. The other half of the officers (Group B) were required only to detail their recollections of the event after 3 days passed but were not asked to write a report immediately after the training.

By dividing the subjects into these two groups, the study aimed to determine whether officers' memories were sharper and more accurate in the time immediately following the shooting or sometime later. Also, Group A's rehearsal interview would help illustrate how their memories of a high-stress event changed over time.

Officers' memories were evaluated based on their ability to recall five elements of the event and the level of specificity that they provided. These five items were divided into two categories: threat variables and environmental variables. Each correct assessment of one of

these elements earned officers a certain amount of points.

For threat variables, officers received 0 to 3 points for their descriptions of the number, type, and descriptions of weapons. An additional category of threat variables included information on the suspects, including race, gender, and clothing, earning officers another 0 to 4 points. Conversely, for environmental variables, officers earned 0 to 3 points for reporting the location of the incident, including the type of room and surroundings; 0 to 2 points for remembering facts from dispatch, including the nature of the altercation in progress; and another 0 to 2 points for reporting the number and names of other officers on the team.

Each report was assessed based on how accurately the officers could remember the five threat and environmental

variables, and the deputies' scores in each category were summed to arrive at an overall score. Then, the total scores of all officers within the two groups were averaged.

## Findings

When officers in Group A detailed the event immediately after the simulation, their total score averaged 7.5 with a high score of 12 and a low score of 4 (out of 14 points possible). Three days later, when Group A's officers provided their recollections for the second time, their average score improved to 7.8 with a high score of 13 and a low score of 4. The total score for Group B's officers, who only provided their recollections 3 days after the simulation, averaged 6.4 with a high score of 10 and a low score of 2.

These results demonstrated that the deputies' memories remained sharper when asked to recount the incident immediately after it occurred, compared with the deputies who were not asked until a few days had passed. Additionally, the memories of individuals asked to share their recollections immediately after the incident improved slightly in their second report.

The researchers analyzed these results further by distinguishing officers' scores for threats versus environmental variables. A separate analysis of

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these scores (with a maximum score of 7 for each category) showed that the deputies recalled threats more accurately than environmental variables. Group A received an average score of 4.4 for threat variables compared with 3.3 for environmental variables. Also, the results revealed that officers' recollections of threats weakened slightly over time as their score for threat variables decreased to 4.2. The subjects did not remember environmental variables as accurately in either condition. Group A showed an average score of 3.3 immediately after the event and 3.5 after 3 days passed. Group B averaged 3.3.

Although the differences were not drastic, they demonstrated that, overall, the deputies maintained stronger memories of threats (e.g., the people and weapons that could harm them), rather than the environment (i.e., the conditions under which the event occurred). Additionally, asking officers to recall facts immediately after an event may prove important for collecting accurate threat-related information because the officers' memories of threats weakened slightly after time passed.<sup>12</sup> This could suggest that for investigators to obtain the most precise information about an OIS, it might be best for them to ask officers about threat-related information as soon as possible.

Conversely, it may not be as urgent to interview witnesses about environmental variables right away.

Because this study involved a simulation, the subjects were not at risk for the same type of exhaustion, injury, or other impairments that can affect officers' memories after a real live-fire incident. But, the major lesson from this pilot study

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***...the research indicated that officers' memories after a traumatic event can play tricks on them or vary from reality.***

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remains that these deputies recalled the threat variables better than environmental factors, and they remembered them best immediately after the incident.

### **Policy Implications**

Although a pilot study with significant limitations, this research presents important information for policy makers who determine whether an OIS investigation should involve immediate or delayed interviews of officers. Currently, no law enforcementwide best practice

or proven method exists for the timing of these interviews. However, several influential sources have suggested guidelines.

The Police Assessment Resource Center conducted a study of the Portland, Oregon, Bureau of Police and subsequently recommended that the department's internal affairs investigators interview officers who were involved in or witnessed an OIS no later than a few hours after the event.<sup>13</sup> Conversely, the International Association of Chiefs of Police stated in Police Psychological Services guidelines that investigators should give officers time to recover after the incident before they conduct any detailed interviewing, with this recovery time ranging from a few hours to overnight. Other experts echoed this recommendation; they suggested that officers may make more accurate and thorough statements if they are allowed to wait at least 24 hours before questioning, giving the officers time to rest and recuperate before they make a formal declaration.<sup>14</sup>

Many agencies embraced these suggestions and implemented policies requiring officers to wait before giving an interview or speaking to an investigator about an OIS. In this respect, these departments treat officers differently than they do suspects or civilian witnesses. If agencies think that



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officers involved in a traumatic event provide better accounts after a waiting period, then why are witnesses and suspects interviewed as soon as possible after the incident? Prior research consistently determined that individuals' memories react strangely to stressful or traumatic events—officers and civilians alike experience perceptual and memory distortions after these incidents. What remains unknown, however, is what factors influence the distortions and how to minimize them.

To this end, it might be best for agency protocol to allow for case-by-case flexibility when determining the timing and structure of interviews following an OIS. Investigators must remain sensitive to personnel who have just experienced one of the most traumatic events in the life of a police officer but also strive to obtain the most accurate information possible about the incident. For example, if investigators need precise intelligence about the incident, then it may be important for them to give the officers and civilian witnesses an initial walk-through of the incident without providing details. This walk-through may function as the “rehearsal” interview that helps trigger better memory recall later on as demonstrated in the authors' study. Similarly, an expert highlighted the value of

this time delay in the interview process, stating that interviewers can consider “...providing enough brief information during an immediate on-scene ‘walk-through’ to get the investigation started.”<sup>15</sup>

Also, investigators should remain sensitive to the fact that individual officers can react to an OIS differently. Some personnel handle the stress of a shooting better than others, and depending on the outcome



of the event, it may be necessary to delay some detailed interviews. For example, if the officers' or witnesses' friends or family suffered injuries, investigators may need to delay asking them to rehash the incident in great detail. Additionally, if individuals are exhausted, injured, or otherwise impaired,

they will not provide meaningful information for any type of fact-finding mission. The decision of when to conduct post-OIS interviews should balance the humanistic concerns for the witnesses with the investigators' need for information.

Even officers employed by the same department and who received the same training may react differently to an OIS; as such, they could display varying levels of detail and accuracy in their recollections of the event. Officers' ages, backgrounds, and life experiences can impact significantly how they will respond to an OIS. Far too often, officers who suffer postshooting trauma feel further pressure from department administrators anxious for information. This practice could be counterproductive because anything that causes the witness additional stress may hamper memory or recall. Putting pressure on officers by forcing them to recount a traumatic event too soon may result in incomplete and inaccurate information, possibly leading to grave errors in an investigation.

## Conclusion

Clearly, more rigorous and precise research must focus on the factors that influence memory distortions and how to minimize them. Researchers have not reached a consensus



on how to trigger more accurate memories of stressful events. Additionally, most investigators fail to anticipate the natural distortions, which likely occur due to expected variance rather than deception, that likely will appear in officers' memories. Until a greater understanding of these issues is reached, inconsistencies and inaccuracies in eyewitness testimonies will continue to hamper OIS investigations. Department leaders and personnel alike must acknowledge the many unpredictable factors that influence the memories of the involved officers after an OIS to ensure a successful investigation. ♦

#### Endnotes

<sup>1</sup> Alexis A. Artwohl, "Perceptual and Memory Distortions in Officer-Involved Shootings," *FBI Law Enforcement Bulletin*, October 2002, 18-24.

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<sup>3</sup> Terry Beehr, Lana Ivanitskaya, Katherine Glaser, Dmitry Erofeev, and Kris Canali, "Working in a Violent Environment: The Accuracy of Police Officers' Reports About Shooting Incidents," *Journal of Occupational and Organizational Psychology* 77 (2004): 217-235.

<sup>4</sup> David Hatch and Randy Dickson, *Officer-Involved Shootings and Use of Force: Practical Investigative Techniques* (Boca Raton, FL: CRC Press, 2007).

<sup>5</sup> Nelson Cowan and Angela M. AuBuchon, "Short-Term Memory Loss

Over Time Without Retroactive Stimulus Interference," *Psychonomic Bulletin Review* 15, no. 1 (2008): 230-235.

<sup>6</sup> Matthew Sharpes, *Processing Under Pressure: Stress, Memory and Decision-Making in Law Enforcement* (Flushing, NY: Looseleaf Law Publications, 2009); *AELE Monthly Law Journal*, "Administrative Investigations of Police Shootings and Other Critical Incidents: Officer Statements and Use-of-Force Reports Part Two: The Basics," <http://www.aele.org/law/2008FPAUG/2008-8MLJ201.pdf> (accessed May 3, 2011).

<sup>7</sup> Charles A. Morgan III, Gary Hazlett, Anthony Doran, Stephan Garrett, Gary Hoyt, Paul Thomas, Madelon Baranoski, and Steven M. Southwick, "Accuracy of Eyewitness Memory for Persons Encountered During Exposure to Highly Intense Stress," *International Journal of Law and Psychiatry* 27 (2004): 265-279; Alexis A. Artwohl and Loren W. Christensen, *Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Survive a Gunfight* (Boulder, CO: Paladin Press, 1997); R.M. Solomon, "I Know I Must Have Shot, But I Can't Remember," *The Police Marksman*, July/August 1997, 48-51; R.M. Solomon and J.M. Horn, "Post-Shooting Traumatic Reactions: A Pilot Study" in *Psychological Services for Law Enforcement*, ed. J. T. Reese and H.A. Goldstein (Washington, D.C.: U.S. Government Printing Office, 1986), 383-394; D. Grossman and B.K. Siddle, *Critical Incident Amnesia: The Physiological Basis and the Implications of Memory Loss During Extreme Survival Situations* (Millstadt, IL: PPCT Management Systems, 1998); David Klinger, *Into the Kill Zone: A Cop's Eye View of Deadly Force* (San Francisco, CA: Jossey-Bass, 2004); A.L. Honig and J. E. Roland, "Shots Fired: Officer Involved," *The Police Chief*, October 1998, 116-119; and Geoffrey Alpert, Dallas Police Department, *Review of Deadly Force Training and*

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<sup>8</sup> Terry Beehr, Lana Ivanitskaya, Katherine Glaser, Dmitry Erofeev, and Kris Canali, "Working in a Violent Environment: The Accuracy of Police Officers' Reports About Shooting Incidents," *Journal of Occupational and Organizational Psychology* 77 (2004): 228.

<sup>9</sup> Cowan and AuBuchon, 230-235; David Frank Ross, J. Don Read, and Michael Togli, ed., *Adult Eyewitness Testimony: Current Trends and Developments* (New York: Cambridge University Press, 1994); and Patricia Yuille and John Tollstrup, "A Model for the Diverse Effects of Emotion on Eye Witness Memory," in *The Handbook of Emotion and Memory: Research and Theory*, ed. S. A. Christianson (New Jersey: Lawrence Erlbaum Associates, 1992), 201-215.

<sup>10</sup> Marian Joëls and Tallie Z. Baram, "The Neuro-Symphony of Stress," *Nature Reviews Neuroscience* 10 (2009): 459-466.

<sup>11</sup> Deputies from numerous divisions in the department attended this training, and, as such, the researchers made no attempt to randomize the subjects or create a sample based on any factors. Additionally, no individual data were collected on the deputies' background or characteristics.

<sup>12</sup> No statistical significance tests were conducted because the purpose of this exercise was to examine the issues, rather than test for significant differences.

<sup>13</sup> Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths* (Los Angeles, CA, 2003).

<sup>14</sup> Grossman and Siddle, *Critical Incident Amnesia: The Physiological Basis and the Implications of Memory Loss During Extreme Survival Situations*.

<sup>15</sup> Artwohl, "Perceptual and Memory Distortions in Officer-Involved Shootings," 22.

# Leadership Spotlight

## Determined Leadership

*Some men give up their designs when they have almost reached the goal while others, on the contrary, obtain a victory by exerting, at the last moment, more vigorous efforts than ever before.*

—Herodotus

*Great works are performed not by strength, but by perseverance.*

—Dr. Samuel Johnson

Sometimes, leaders appropriately “call it a day” in a particular endeavor. If the timing proves wrong for a venture or the return on the investment does not merit the expenditure of additional effort or resources, leaders correctly bring a struggle to a halt. Too often, however, they simply fail to triumph and “snatch defeat from the jaws of victory” by not aggressively seeing through a matter to its ultimate and proper conclusion. Knowing when *not* to give up at a time when resistance seems overwhelming is more of an art than a science. A combination of perspective, strong and timely support from trusted advisors, and personal courage appears to mark leaders who consistently push through adversity. Even currently successful leaders will benefit by cultivating higher capacities for those variables. In that way, they remain prepared to thrive in the periods of greater adversity that accompany additional responsibility.

### Perspective

Accurately assessing the progress of an effort can prove challenging, especially in the midst of resistance. Many leaders prematurely end a worthwhile effort simply because they lack a proper perspective. Even seasoned leaders can fail to remember that anything involving change will meet resistance. Institutional inertia and individual opposition meet virtually

every initiative proactive leaders undertake. In these instances, leaders can gain perspective by undertaking a thorough review of significant events in history. In our quick-return, Web-based world of snippets and abridged accounts of past achievements, we too often lose sight that those historical successes most often resulted from significant investments in time and energy, as well as sacrifices. A study of past victories can help leaders increase their perspective on the challenges that inevitably await them.

Leaders also can gain perspective on resistance by considering the laws of nature. Generally, when compared with smaller objects, larger ones drag and generate more friction when they move and require greater amounts of energy to propel them. Resistance also increases when the larger objects start to gain speed. This effect in nature is analogous to many of the tasks and initiatives that leaders undertake. Reminding themselves that nothing large or significant moves without generating a commensurate amount of friction can provide leaders with perspective. Leaders also can turn friction and resistance into a positive by exploring ways to make their initiative more streamlined or aerodynamic.

With the right perspective, leaders realize that not all resistance is negative in origin.

Some pushback, especially from those who possess high levels of character and competence, can have a “wind tunnel” effect by highlighting aspects of the initiative that can be improved. Accepting and acting upon such feedback can improve the effort and make the implementation process more efficient. For example, a stakeholder posing the question “Do we really need *voice-activated* power locks on the new cruisers?” may be pointing out a way to save money during a major procurement.

### Timely Advice

Although the often used maxim that “it is lonely at the top” contains a kernel of truth, no leader ever generates success in a vacuum. Mentors, coaches, and advisors accompany the path to worthwhile accomplishments. Leaders can prepare for times of adversity in advance by cultivating a broad base of advisors who can fan the flames of perseverance by offering support at the right moments. Building these relationships requires time and trust. Leaders should realize that no one individual—regardless of how well-trusted—can have the right answers for every circumstance. Leaders also face the possibility of receiving conflicting advice about continuing an endeavor in the face of opposition. Nonetheless, support from others genuinely concerned and committed to bringing an important initiative to fruition can provide leaders with well-timed inspiration. Here, wise leaders will think in 360-degree terms and incorporate peers and subordinates into their cadre of trusted advisors.

### Courage

Perhaps the most difficult variable to obtain and apply in support of perseverance is courage. The application of authentic leadership in

difficult situations always has required a generous measure of courage. Impactful leadership is not for the faint of heart. Courage is not always innate and, like most character qualities, can be intentionally developed. However, like wisdom, courage requires exercise and experience to grow. Willingly taking on a variety of small challenges throughout their careers can help leaders build the capacity to take the appropriate risks necessary to persevere. Leaders can improve their courage quotient by identifying and thoroughly analyzing potential challenges facing an effort prior to initiation and at milestones along the way. Identifying future difficulties can lessen the shock of surprise that can drain leaders’ strength to continue. Most important, making a predetermination to carry on in spite of pending adversity can act as a fortitudinous “booster shot” and help to inoculate a leader against the temptation to quit a matter too soon.

### Conclusion

No secret recipe or formula exists that consistently will provide a leader with the precise knowledge of when to abort or continue an undertaking in the face of significant resistance and challenges. However, increasing their capacity for perseverance can enhance leaders’ ability to make proper decisions at critical junctures. Replete in history and reflected in the quotes preceding this article, the decision to persevere ultimately has made the difference between success and failure in many monumental efforts. ♦

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*Special Agent Jeffrey C. Lindsey, chief of the N-DEx Program Office of the FBI’s Criminal Justice Information Division, prepared this Leadership Spotlight.*

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# Perspective

## Leading Through Difficulty and Loss

By Kevin Crawford

Without question, those of us fortunate enough to serve as members of the law enforcement community share an unmatched closeness and bond with our colleagues. The nature of our mission and the inherent danger omnipresent as we perform our duties remain a cause and effect toward the forming of this extremely close relationship. This type of closeness comes with a price—when the life of one of our ranks is lost, we all feel the pain and suffering that follows.

### Surviving Tragedy

On November 29, 2009, the pain and suffering was magnified when the Lakewood, Washington,

*Special Agent Crawford recently retired from the Faculty Affairs and Development Unit at the FBI Academy.*



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Police Department (LPD) lost four members in an unprovoked, meaningless assault that, in truth, was an assassination. Sergeant Mark Renninger and Officers Tina Griswold, Ronald Owens, and Greg Richards were sitting in a coffee shop owned by a retired police officer—ironically, they considered it a safe place. While working on their laptops prior to their shift, an individual unknown to them walked into the shop and appeared calm and nonthreatening. The stranger walked toward the counter as though to order and then, without warning, pulled a semiautomatic pistol from beneath his coat and opened fire on the officers. All four officers were shot and killed. Details remain unclear, but one of the officers wounded the subject during the encounter. The perpetrator did not attempt to commit a robbery or threaten anyone else present. Clearly, he intended to attack the officers, targets simply due to the uniforms and badges they wore.

A few days after these senseless killings, a Seattle, Washington, police officer shot and killed him. Local, state, and federal agencies put forth an extensive effort and worked around the clock for several days. The Pierce County, Washington, Sheriff's Department (PCSD), led by Sheriff Paul Pastor, had jurisdiction over the investigation. Subsequent investigation revealed that the individual had an accomplice who was a former cellmate in Arkansas; he assisted by driving the perpetrator from the scene of the shooting. Authorities discovered that additional accomplices helped the subject after the shooting by providing medical attention, food, and financial assistance.

Attending a law enforcement funeral is a powerful and sad experience never forgotten. I vividly recall the funerals of FBI Special Agents Martha Dixon Martinez and Mike Miller and Washington, D.C., Metropolitan Police Department (MPD) Sergeant Hank Daley, all shot and killed in a similar attack as they sat in the perceived safety of MPD headquarters on November 22, 1994. After the playing of "Amazing Grace" on the bagpipes and taps as a final salute, there always remains in the minds and hearts of grieving colleagues a deep sense of sorrow and regret. If we freely admit it, we must address feelings of despair and trepidation in regard to moving forward.

#### **Moving Forward**

This difficult task of leading that movement forward falls to our leaders; they hold responsibility for starting the healing and recovery process. Both Sheriff Pastor of the PCSD and LPD Chief Bret Farrar confronted a leadership challenge among their ranks usually reserved for

public service organizations, such as police, fire, and military leaders. The time that follows the investigation of the shooting incident—apprehension or removal of the subject as a source of further threat and the funerals for fallen heroes—is a critical time for beneficial leadership.

During this time, surviving officers lose the benefit of focusing on specific tasks or responsibilities and have the opportunity to reflect on the tragic events that took place. Successful law enforcement leaders know when to be physically present and when their presence becomes a burden to an operation or a detriment to productivity and morale. However, in the occurrence of a fallen

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**If we freely admit it, we must address feelings of despair and trepidation in regard to moving forward.**

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officer, the proper place for a leader is front and center. For example, in May 1995, highly respected FBI Special Agent William Christian of the Washington, D.C., field office was gunned down by an adversary while on surveillance. Due to large turnout, his wake was held at the church prior to the funeral mass. Former FBI Director Louis Freeh sat in the front row of the church, keeping vigil for the entire 4-hour wake and following funeral, a true testament and example of care and leadership to the grieving family and colleagues of Special Agent Christian not forgotten or lost on the FBI agents present.

After serving as the lead investigative agency for the shooting of the LPD officers, less than 1 month later, the PCSD suffered the loss of Deputy Kent Mundell in a shooting that also left Sergeant Nick Hausner wounded. Sheriff Pastor and his department, already recovering from the loss of life at their sister agency, now had lost one of their own. As he went about the duties and sadness associated with the line-of-duty death of Deputy Mundell, Sheriff Pastor could not help but think of his colleague Chief Farrer of LPD and imagine the strain of facing the death of four officers: "I have a tremendous amount of respect for him and the way he handled the adversity cast upon the LPD."

Law enforcement officers face many adversities and bear witness to much sadness. Although we are a different breed from other professions and function through adversity, we never get accustomed to seeing the death of a child or one of our own. It is the responsibility of our agencies and leaders to recognize that some officers may require more assistance than others when dealing with their thoughts and sorrow. Sheriff Pastor provided

the assistance of a psychologist for those members most closely involved with the investigation of the LPD tragedy and the loss at his own department. He also instructed his personnel to observe their colleagues to see if they were hurting and to "lean into the issue" if needed. In essence, he sent forth the message "We owe one another and should look out for each other." A support network for surviving family members also was implemented, a never-ending responsibility of the department. Sheriff Pastor quickly pointed out, "We have to remember the community is also suffering and feeling the loss." This is best exemplified by the manner in which the members of the public turn out in such large numbers for funeral services of slain law enforcement officers.<sup>1</sup>

### Responding to Adversity

On May 8, 2006, the Fairfax County, Virginia, Police Department (FCPD) was the victim of an unexpected attack at the Sully District Station in Chantilly. The subject had carjacked a van moments earlier and drove into the police station's back parking lot. Without provocation, he exited the stolen vehicle and opened fire with a hunting rifle. Master Police Officer Michael E. Garbarino, sitting in his patrol car, was struck five times and died from his wounds 9 days later. Detective Vicky O. Armel, in the parking lot, immediately engaged the subject. A firefight ensued. She was fatally wounded during the exchange. Several officers responded to the parking lot and shot and killed the suspect shortly thereafter.

Major Ed Roessler, then the commanding officer of the department's Administrative Support Bureau responsible for the nonstanding Incident Support Services (ISS) program, was notified. In accordance with casualty assistance plans, he



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headed directly to Fairfax INOVA Hospital. “It is a somewhat unnatural feeling for a police officer to not respond to the incident location, but this is the way we had prepared for such an event,” Major Roessler recalled. His role at the hospital would include many duties. Initially, he and his ISS staff contacted key hospital personnel while en route to advise them of the urgent situation. As hospital officials had done many times in previous training with the FCPD, they set aside a private section of the hospital trauma unit to provide emergency treatment for the officers involved in the shooting. Next, Roessler ensured peer support team (PST) members coordinated notifications of the next of kin who the officers had designated as emergency contacts and informed them of the unfolding events and updated medical conditions. Additionally, PST members provided transportation of the next of kin to the hospital. With the assistance of its public information office, the department quickly took control of all information released to the media to avoid having family members and loved ones learn of the event and the condition of the officers through public broadcasting.

The department’s ISS standard operating procedures set forth specific parameters for helping surviving family members. These relatives are not required to fill out forms and complete paper work after suffering through the loss of their loved one. In addition, the FCPD realizes that surviving family members always will be a part of their department. The ISS also provides a police psychologist to help law enforcement officers, current and retired employees, and family members during and following critical incidents. PSTs, chaplains,

and an employee assistance program (EAP) are in place and ready for activation immediately in crisis situations.

The PST concept existed for many years in the FCPD prior to these tragic events in May 2006. Past leaders of the department realized the need and importance of such an entity. The PST was formed to provide support resources to employees and their families during times of crisis. The first level of response in times of need for the “police family” is the PST. The team consists of highly dedicated employees (sworn and civilian) who have received standardized training on crisis intervention techniques and who serve in an on-call capacity ready to respond to crisis incidents, such as police-involved shootings and serious injuries to employees. Through the dedication of its membership and the support of department leaders, the PST of the FCPD continues to provide employees with an effective array of professional support services.

The shooting at the Sully Station provided the FCPD with an extreme test of leadership, courage, and commitment. The department’s casualty assistance plan (CAP) was put into place as members of the PST were activated, and personnel assigned to command roles under the plan ensured the coordination of all action items. Through prior leadership preparation, the PST resources were activated and in place before the arrival of the fallen officers at the trauma hospital. Significant tasks were begun.

- PST members contacted affected family members and arranged immediate transportation to the hospital to stay ahead of the saturation of media coverage.

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**The department’s  
ISS standard operating  
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helping surviving family  
members.**

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- Key emergency plan elements were activated with hospital staff involvement.
- A public information office area was established on the other side of the complex away from officers and their families.
- A large break room was secured with food and communications for family members and officers.
- Private rooms were obtained for relatives to have privacy and rest.
- Private parking was provided for family members and officers in one of the parking garages, which afforded private entry and exit shielded from media coverage.
- Commanders were allowed to establish confidential risk management billing (e.g., registering officers under assumed names for protection from the media and ensuring all bills are sent to the risk management division, rather than a spouse or family member).
- A room was established for a command post.
- A full lockdown of the hospital was ensured until events settled (for officer safety in case of multiple attacks).
- The department's honor guard was deployed to the hospital.
- Uniformed officers provided security presence at the homes of the involved officers and served as the immediate-family resource adjuncts.
- Peer support supervisors established a debriefing protocol at the Sully Station with

the assistance of mutual aid from other law enforcement agency peer support teams.

- The Patrol Bureau leadership activated emergency staffing plans to deal with the Sully Station going off-line after becoming a crime scene.

The FCPD's existence of a CAP and prior training regarding implementation of the plan was a tremendous asset to the department during this traumatic time. Agency leadership had prepared for the worst case scenario, and because of their diligence and support, operations during this extremely difficult time went as smoothly as possible. Leaders of law enforcement agencies must ensure they are prepared to respond to events that result in serious injuries and death to their employees.<sup>2</sup>

### Finding Support

The International Association of Chiefs of Police (IACP) and Concerns of Police Survivors (COPS) support and assist surviving families and colleagues of law enforcement officers killed in the line of duty. The IACP recognizes the difficulties departments and police executives face during this time of sorrow. This realization led to the creation of the IACP Tribute to Slain Officers' program in 1995, which provides a tribute for surviving family members and presentation guidelines to executives of departments that have lost an officer in the line of duty. COPS started in 1984 and "provides resources to assist in the rebuilding of the lives of surviving families and affected coworkers of law enforcement officers killed in the line of duty as determined by federal criteria. Furthermore, COPS provides training to law enforcement agencies on

**“The long blue lines present at the funerals of our fallen heroes, along with their legacies, do not end when the ceremonies do; rather, they continue forever.”**

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survivor victimization issues and educates the public of the need to support the law enforcement profession and its survivors.” COPS provides several programs including the well-known COPS Kids and COPS Teens and conferences for survivors.<sup>3</sup>

### Conclusion

If past behavior and statistics indicate future events, the law enforcement community will continue to suffer and endure losses despite our best efforts to increase and improve our technology and training. The Uniform Crime Reporting (UCR) Program, conceived in 1929 by the IACP, led to several other annual publications, including Law Enforcement Officers Killed and Assaulted (LEOKA). The number of law enforcement officers killed in line-of-duty encounters since the inception of LEOKA has remained fairly constant—we lose slightly more than 50 per year. Officers assaulted in the line of duty during this same time period average consistently above 10,000 annually. Taking these statistics

into consideration, executives and leaders of our nearly 17,000 police agencies should be prepared and ready to deal with the loss of personnel and the pain and suffering among the ranks that surely will follow.

Those who commit crimes and are violent in nature toward police officers and the general public should be aware and forewarned that law enforcement professionals will not be deterred or cease in our efforts to serve and protect the public. The long blue lines present at the funerals of our fallen heroes, along with their legacies, do not end when the ceremonies do; rather, they continue forever. ♦

### Endnotes

<sup>1</sup> Sheriff Paul A. Pastor, Pierce County, Washington, Sheriff's Department, interview by author.

<sup>2</sup> Major Edwin C. Roessler, Jr., Fairfax County Police Department, interview by author.

<sup>3</sup> For additional information on COPS, visit <http://www.nationalcops.org/>.

## Wanted: *Notable Speeches*

**T**he *FBI Law Enforcement Bulletin* seeks for its Notable Speech department transcripts of presentations made by criminal justice professionals. 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 ½- by 11-inch white paper with all pages numbered, along with an electronic version of the transcript, or e-mail them. Send the material to: Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135, or to [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu).



# ViCAP Alert

## **Attention**

### ***Violent Crime, Cold Case, and Crime Analysis Units***



***Amber Lynn Wilde***

***Missing since 09/23/1998  
from Green Bay, Wisconsin***

**O**n September 23, 1998, Amber Wilde was involved in a minor automobile accident in which she hit her head. Her last known location was her apartment in Green Bay, Wisconsin. On October 1, 1998, her vehicle was recovered in a sports bar parking lot in Green Bay, but there was no sign of Wilde. There were 900 unaccounted-for miles on her vehicle. She was 6 months pregnant at the time of her disappearance. Her DNA profile and dental chart are available for comparison.

Race: White  
Sex: Female  
Age: 19 at disappearance  
Height: 5'6"  
Weight: 135 lbs.  
Hair Color: Brown  
Eyes: Brown  
Hair Style: Longer than shoulder length, straight  
Piercings: Both ears pierced eight times  
Vehicle: Dark gray, 4-door 1988 Subaru GL, Wisconsin license plate X5725T

To provide or request additional information, please contact Lieutenant Keith Knoebel of the Green Bay, Wisconsin, Police Department at 920-448-3319 or [keithkn@ci.green-bay.wi.us](mailto:keithkn@ci.green-bay.wi.us) or the FBI's Violent Criminal Apprehension Program (ViCAP) at 800-634-4097 or [vicap@leo.gov](mailto:vicap@leo.gov). This and other ViCAP Alerts can be reviewed at <http://www.fbi.gov/wanted/vicap>. Contact ViCAP for information on how your agency can obtain access to the ViCAP Web National Crime Database and view this case.

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# Synthetic Marijuana

By ROLAND MACHER, TOD W. BURKE, Ph.D., and  
STEPHEN S. OWEN, Ph.D.

**I**n Florida, a 14-year-old boy was admitted to the emergency room after experiencing seizures and difficulty breathing. He and his brother had smoked herbal incense, referred to by local police as Mr. Nice Guy.<sup>1</sup> In another case, a 17-year-old boy in western Texas was hospitalized in May 2010 after smoking synthetic marijuana before school. After feeling sick on the bus ride to the campus, his symptoms became progressively worse. He was admitted to the hospital,

treated, and released within the same day.<sup>2</sup> Statistics indicated that emergency room visits across the country due to the use of synthetic marijuana have risen from 13 in 2009 to approximately 560 in the first half of 2010.<sup>3</sup>

In March 2011, the U.S. Drug Enforcement Administration (DEA) temporarily placed five synthetic chemicals—*JWH-018*; *JWH-073*; *JWH-200*; *CP-47, 497*; and *cannabicyclohexanol*—into Schedule I of the Controlled Substances

Act (CSA).<sup>4</sup> These substances produce druglike effects that resemble those resulting from *tetrahydrocannabinol (THC)*, a *cannabinoid* and the primary psychoactive ingredient in marijuana, but have distinct chemical structures.<sup>5</sup> Individuals use them to coat herbal blends and then sell these products under such names as K2, Spice, Mr. Nice Guy, Genie, and others.<sup>6</sup> Under the DEA's ruling, punishments for the possession or sale of these chemicals mirror those for marijuana. Law enforcement

agencies should gain an understanding of synthetic marijuana, its distribution, potential harmful effects, and concerns for officers.

### Definition

In 1995, a Clemson University professor used a synthetic compound to conduct research identifying the effects on the brain from cannabinoids. Following the publication of a paper detailing the experiment, the description of the method and ingredients became popular among persons searching for a marijuana-like high. People began spraying the synthetic chemical compound described in the article on dry herbs and then smoking them as they would regular marijuana.<sup>7</sup>

The main chemical used to produce synthetic marijuana is JWH-018 (the initials are those of the professor conducting the Clemson University experiment), similar to THC.<sup>8</sup> The moniker “imitation marijuana” actually may be a misnomer as no psychopharmacological differences exist between this substance and marijuana. Both chemicals are considered cannabinoids, which attach themselves to the *cannabinoid*, or *CB*, receptors in the brain. However, the synthetic compounds and THC differ in levels of potency.<sup>9</sup>

While significantly different, marijuana and the synthetics share many similarities, including their appearance, method of consumption,

euphoriclike high experienced after inhaling or ingesting, negative side effects, and the concerns of law enforcement officials regarding the dangers associated with all such substances. The manufacturing of these products proves fairly simple: Individuals produce the synthetic chemicals separately and then spray them onto dry herbs and plants. Their simplistic creation and low cost (\$20 to \$50 for 3 grams) make synthetic forms of marijuana attractive to users.<sup>10</sup>

Smoke shops and convenience stores across the nation sell synthetic marijuana labeled as incense. Because local dealers, not laboratories, manufacture the products, health officials have concerns. The risk of



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contamination—and, therefore, negative side effects—increases.<sup>11</sup> In addition to the United States, Britain, Germany, Poland, France, and Canada also have banned synthetic marijuana.<sup>12</sup>

### Response

The DEA has expressed concern about synthetic marijuana's recreational use and its potential for harm, abuse, and addiction. The agency has controlled five synthetic cannabinoids in Schedule I under the temporary scheduling provision of the CSA, placing them in the same category as LSD, heroin, and marijuana.<sup>13</sup> A Schedule I drug or substance has a high potential for abuse, provides no currently accepted medical use in the United States, and lacks accepted safety standards for use under medical supervision.<sup>14</sup>

In addition, the U.S. Food and Drug Administration does not approve for human consumption synthetic chemicals banned by the DEA. The increasing number of poison control center calls—2,500 through mid-December 2010—and emergency room visits from individuals smoking synthetic marijuana prompted the DEA to act quickly.<sup>15</sup>

Research identifying how consuming these chemicals may affect the body exists but has been limited. For

instance, a 2011 study noted a variety of negative physical effects resulting from the use of synthetic marijuana. While most effects dissipated after several hours “with no residual adverse effects in many cases,” the study did highlight both short- and long-term impacts of synthetic marijuana as causes for concern.<sup>16</sup>

Both prior and subsequent to the DEA's action, many states moved to ban synthetic

**“  
Smoke shops  
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marijuana. As of March 2011, 20 states had imposed bans either through legislation or administrative and regulatory processes. Additional legislation remains pending in 37 states. Each state differs in terms of how it approaches synthetic marijuana. For example, among states, some have listed it as a Schedule I drug while others have not, definitions of what constitutes synthetic marijuana differ, and penalties (including classification as a felony or

misdemeanor) also vary.<sup>17</sup> In spite of the differences, the theme is clear: States see synthetic marijuana as a significant concern.

### Potential Harmful Effects

The DEA's recent restriction provides federal regulations that allow law enforcement officials throughout the country to crack down on the use of synthetic marijuana. One state senator recognizes that the illicit drug market will adapt to the bans on synthetic marijuana, perhaps increasing the street demand for the substance; however, he still believes that laws will successfully minimize “the threat to public safety.”<sup>18</sup>

According to the American Association of Poison Control Centers, some users of synthetic marijuana have reported “a fast, racing heartbeat, elevated blood pressure, and nausea.”<sup>19</sup> In addition, research found that the chemicals in synthetic marijuana “are three to five times more potent than THC found in marijuana,” leading to symptoms, including “loss of consciousness, paranoia, and, occasionally, psychotic episodes.”<sup>20</sup> Research in Germany also discovered that synthetic marijuana use can lead to “withdrawal symptoms and addictive behaviors.”<sup>21</sup>

One researcher, a toxicologist and the director of the Missouri Regional Poison

Center (MRPC), conducted a study on the effects of synthetic marijuana on humans. He has observed over 30 instances in which teenagers have had negative reactions after using the substances, including harmful effects on the “cardiovascular and central nervous systems.”<sup>22</sup> One death has potential links to synthetic marijuana—a teenager in Iowa committed suicide after using a synthetic. The young man’s friend said the victim “‘freaked out’ from the drug.”<sup>23</sup>

The MRPC expert further concluded that symptoms resulting from use of the synthetics differ from those of marijuana. In addition to the observable symptoms, such as elevated heart rate and blood pressure and muscle twitching, agitation sometimes accompanies synthetic marijuana use. This differs from marijuana intoxication, commonly marked by “euphoria and a sense of detachment.”<sup>24</sup> This has led some medical professionals to suggest that, perhaps, attaching the label “marijuana” to synthetic substances could be misleading because they may more appropriately be viewed as “an altogether different...chemical entity.”<sup>25</sup>

### **Concerns and Recommendations**

A man from West Virginia overdosed after trying synthetic marijuana in February 2011.

Emergency room officials stated that he experienced extreme agitation and had a heart rate of around 200, well over the normal rate of 60 to 100. Doctors were unsure how to treat him because of the lack of available information and research on the substances. Only after contacting a local poison control center did the doctors learn about



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synthetic marijuana and properly treat the victim, who made a full recovery.<sup>26</sup> While the lack of information about synthetic marijuana presents a significant public health concern that emergency department physicians must address, a similar issue arises for law enforcement officials. Officers must receive training and information to raise their awareness of synthetic marijuana.

One of the potential problems with synthetic marijuana is the inability to identify the substances or recognize the immediate effects they may have on

an individual. One report suggested that the aroma of synthetic marijuana contains elements of mustard, tarragon, oregano, and pepper, with additional similarity to “stale lavender... like an antique shop.”<sup>27</sup> The same report also indicated that smoke from synthetic marijuana “smelled nothing like marijuana smoke.”<sup>28</sup> This type of information may aid in the identification of synthetic marijuana. With the recent ban of the chemicals associated with synthetic marijuana, law enforcement officers also should be trained to identify the substances and the dangers associated with them. Medical officials should share information with police officers, particularly school resource officers, in hopes that the spread of knowledge will aid in efforts aimed at prevention and treatment of abuse.

Until society becomes better informed, law enforcement professionals and health officials must recognize the risks posed by synthetic marijuana chemicals to individuals. Drug and field tests should focus on helping to identify the substances because standard marijuana screens may not detect the chemicals.<sup>29</sup> This also will allow medical personnel to better treat individuals under the influence of synthetic marijuana. Further research likely will aid the DEA in its determination of whether these chemicals need to be

placed on the federal list of controlled substances permanently and, if so, how they should be scheduled. Although some light has been shed on the negative effects of synthetic marijuana, and the recent DEA ban has given law enforcement officials basis on which to enforce punishment, the future of these substances remains unclear. However, apparently, concerns about the risks of synthetic marijuana will continue as a topic of discussion among legislators, medical professionals, and law enforcement officers.

## Conclusion

Synthetic marijuana is not the first type of drug that has raised such concerns, nor will it be the last. For instance, attention recently has focused on the abuse of bath salts, which have effects mimicking those of methamphetamine.<sup>30</sup> Regardless, the increasing popularity and evident health risks associated with synthetic marijuana have raised concerns among legislators, medical personnel, and law enforcement officers across the country. The number of unreported cases of negative effects from consumption of synthetic marijuana remains unknown. The DEA designed its recent ban to address these problems, at least temporarily, giving researchers time to study the effects of synthetic marijuana. ♦

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## Bulletin Honors



### *Huron, South Dakota Police Memorial*

The Police Memorial in Huron, South Dakota, was dedicated on May 21, 2011. This monument, located near the municipal building, memorializes Huron police officers killed in the line of duty. Decades have passed since the men died, but this memorial now stands in their honor to ensure they never are forgotten. The police department worked on the memorial for more than 2 years. Members of the community and officers themselves donated the \$6,000 needed to erect it. In more than 100 years, three police officers have died while serving with the Huron Police Department. Detectives spent hours searching for relatives of all three officers so they could participate in the ceremony.

DEDICATED TO THE  
POLICE OFFICERS  
WHO HAVE SERVED  
HURON S.D.  
AND TO THE BRAVE  
OFFICERS WHO MADE  
THE ULTIMATE  
SACRIFICE IN THE  
LINE OF DUTY

CLIFFORD HAWLEY SEP 9 1909  
VIRGIL DEYO NOV 29 1966  
THOMAS CALLIES MAR 30 1982



# *Indian Country and the Tribal Law and Order Act of 2010*

By MICHAEL J. BULZOMI, J.D.



*Shiprock located on the Navajo Nation in San Juan County, New Mexico.*

**C**rime remains an endemic problem in Indian country. Shocking homicide rates, skyrocketing levels of juvenile crime and gang activity, child abuse, and substance abuse plague the over 1.4 million people who populate tribal land.<sup>1</sup> Crime data showed that violent victimization of Indians and Alaska natives is 2.5 times greater than that of other

ethnic and racial subgroups within the United States.<sup>2</sup>

Some people have wondered if confusion over criminal jurisdiction in Indian country contributes to an increased rate of crime.<sup>3</sup> Others point to the lack of resources allocated to the criminal justice system in tribal land. Undoubtedly, many factors lead to the high crime rate. Regardless of the

contributing factors, an obvious need exists for additional federal legislation to improve the criminal justice system in these areas. On July 29, 2010, Congress responded to this need by enacting a sweeping criminal reform known as the Tribal Law and Order Act (TLOA) for Indian country.<sup>4</sup>

This article reviews briefly the major federal legislative acts



impacting criminal jurisdiction on tribal land. It then will highlight changes and improvements in jurisdiction and the criminal justice system under TLOA in Indian country.<sup>5</sup>

## **CRIMINAL JURISDICTION**

Congress has responded routinely to criminal jurisdiction problems in Indian country

by passing legislation tailored to address the problems faced at a given time. The main legislative acts in Indian country include the Federal Enclaves Act, the Assimilative Crimes Act, and the Major Crimes Act.<sup>6</sup> Two other legislative acts impacting tribal land are Public Law 280 and the Indian Civil Rights Act of 1968.<sup>7</sup>

### **Federal Enclaves Act**

In 1817, Congress passed the Federal Enclaves Act, which asserts federal criminal jurisdiction over non-Indians for crimes they commit on tribal land and over Native Americans for some offenses against non-Indians.<sup>8</sup> Under the Act, “the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States...[extend] to the Indian country.”<sup>9</sup> Consequently, for jurisdictional purposes, Indian land today is treated as a “federal enclave,” similar to a federal building, park, prison, or military base. The Act has three important exceptions. It does not apply to crimes by Indians against other Native Americans, offenses by Indians punished by the tribe, or crimes over which a treaty gives the tribe exclusive jurisdiction.

The Act applies the entire body of federal criminal law to Indian country. By making the site of the crime one of their elements, federal enclave

laws adopt or define traditional crimes, such as arson, murder, and robbery, addressed by state laws and apply them to federal enclaves. Thus, someone can violate an enclave law by committing a certain act in an enclave. However, the federal criminal code applied to federal enclaves by no means is complete.

### **Assimilated Crimes Act**

Congress recognized that some criminal acts committed within federal enclaves went unpunished because no specific federal laws prohibited them, and state law had no force within these enclaves, including Indian country. To address this oversight, in 1825, Congress enacted the Assimilated Crimes Act, which reads in part:

Whoever within or upon any [federal enclave] is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.<sup>1</sup>

This provision made state criminal law applicable to any offense not otherwise specifically addressed by a separate federal

statute when committed in a federal enclave. The definition of federal enclave makes this provision applicable to Indian country through the Federal Enclaves Act.

An important question left open by the Federal Enclaves Act was which sovereign has jurisdiction over crimes involving a non-Indian defendant and victim on tribal land. The U.S. Supreme Court addressed that issue in 1881 in *United States v. McBratney*.<sup>11</sup> This case involved the murder of a non-Indian by another non-Native American on the Ute Indian Reservation in Colorado. The defendant, tried and found guilty of murder in federal court, appealed his conviction on the ground that no federal jurisdiction existed to try his case. The Supreme Court ruled in favor of the defendant,

finding that when a non-Native American commits a crime against another non-Indian on a reservation, the state in which the reservation is located has criminal jurisdiction. The Court reasoned that unless the enabling act admitting a state into the Union excluded state jurisdiction over crimes involving only non-Indian parties committed on tribal land, state courts are vested with jurisdiction.<sup>12</sup>

### Major Crimes Act

In 1885, Congress passed the Major Crimes Act to address the resolution of cases in which a crime involving two Native American parties occurs in Indian country.<sup>13</sup> This Act established federal jurisdiction over seven crimes committed in these instances. The original seven covered by the Act

include murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny. Subsequent amendments to the Act have added seven more offenses: kidnapping, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault with intent to commit rape, robbery, and felonious sexual molestation of a minor. Although the intent of the Act is to permit federal punishment of major crimes by Indians against other Native Americans, the Major Crimes Act applies even in offenses committed by Indians against individuals of another ethnicity.<sup>14</sup>

The question of criminal jurisdiction over misdemeanors where the defendant is non-Indian remained unanswered until the Supreme Court decided *Oliphant v. Suquamish Indian Tribe*.<sup>15</sup> In this case, tribal police arrested Oliphant, a non-Native American living on a reservation in Washington State. Oliphant was charged with resisting arrest and assaulting a police officer. He was found guilty in tribal court and appealed his conviction, claiming he was not subject to Indian jurisdiction because he was not Native American. The Supreme Court upheld Oliphant's claim, finding that due to the tribe's domestic, dependant status, it did not have jurisdiction over non-Indians unless Congress granted such power.



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

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***In response to the skyrocketing crime rate and confusion with respect to jurisdiction in Indian country, Congress passed the Tribal Law and Order Act of 2010 (TLOA).***  
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Congress passed Public Law 102-137, amending Title 25, Section 1301, U.S. Code, providing Native American tribes jurisdiction in misdemeanor crimes over all Indians to include nonmember Indians (belonging to another tribe). This was done in response to the Supreme Court's decision in *Duro v. Reina* where Duro, a nonmember Indian, was convicted of the misdemeanor offense of unlawfully discharging a firearm, killing a 14-year-old boy on the Salt River Pima-Maricopa Indian Reservation in Arizona.<sup>16</sup> Duro appealed his conviction. The Supreme Court held that the tribe had no jurisdiction over nonmember Indians, ruling that tribes differ in social and cultural structures and that enrollment in a tribe constitutes consent to the authority of that tribe but not to others. Congress responded to the *Duro* decision by passing Public Law 102-137, granting tribal jurisdiction to all enrolled Indians and not just tribal members.<sup>17</sup>

Taken together, the Major Crimes Act, Federal Enclaves Act, and Assimilative Crimes Act give the federal government exclusive jurisdiction to prosecute crimes committed on tribal lands and involving non-Indian defendants perpetrating offenses against Native Americans or Indian interests, as well as cases featuring Indian defendants

committing one of the major crimes enumerated in the Major Crimes Act. States have jurisdiction over crimes committed on Indian lands within their borders involving non-Indian defendants and victims. The tribes have jurisdiction over nonmajor crimes (misdemeanors) committed on Native American lands by Indians.

***Congress has responded routinely to criminal jurisdiction problems in Indian country by passing legislation tailored to address the problems faced at a given time.***

#### **Public Law 280**

In 1953, with the passage of Public Law 280, Congress transferred criminal jurisdiction in Indian country to six states.<sup>18</sup> This federal law granted so-called mandatory states all criminal and civil jurisdiction over Indian land within their borders. The states affected by the legislation included California, Minnesota (except for the Red Lake Reservation), Nebraska, Oregon (excluding

the Warm Springs Reservation), Wisconsin, and Alaska (except for the Annette Islands Metlakatla Indians) after it gained statehood. This law effectively terminated all tribal criminal jurisdiction in the affected tribal area within these states. Public Law 280 also provides that any state (so-called optional states) wishing to assume jurisdiction over tribes within their borders may do so by state law or by amending the state constitution. Following passage of Public Law 280, 10 states chose to do so. In 1968, an amendment to Public Law 280 was passed requiring tribal consent before additional states could extend jurisdiction.<sup>19</sup> Since 1968, no tribe has consented.

#### **Indian Civil Rights Act of 1968**

In 1896, the Supreme Court decided *Talton v. Mayes*.<sup>20</sup> The case involved a tribe's use of a grand jury system that did not use the number of jurors specified in the U.S. Constitution. The Court ruled that the Constitution's provisions do not bind Indian tribes. Further, the Court recognized Indian tribes as sovereign nations established and recognized as such prior to the adoption of the Constitution that had not ratified the Constitution as the states had. Consequently, the tribes were not constrained by any of the Constitution's provisions when dealing with

tribal members, and tribal members could not claim any constitutional protections against the actions of their tribes. Congress became concerned about the implications of this holding and passed the Indian Civil Rights Act of 1968 (ICRA).<sup>21</sup>

The ICRA imposed most of the substantive restraints of the Bill of Rights upon the tribes. The most important exclusions from the Act include the right to appointed counsel (at the tribal member's expense) and the Grand Jury Clause of the Fifth Amendment. The ICRA prohibits the exclusion of evidence as a remedy for violations of its provisions. The Act also limits tribal criminal jurisdiction over Indians to misdemeanors. The maximum penalties in tribal court for misdemeanors include up to 1 year in jail and \$5,000 in fines per count.<sup>22</sup>

## **TRIBAL LAW AND ORDER ACT OF 2010**

In response to the skyrocketing crime rate and confusion with respect to jurisdiction in Indian country, Congress passed the Tribal Law and Order Act of 2010 (TLOA).<sup>23</sup> Senator Byron Dorgan, the main sponsor of TLOA, stated that the Act is premised on the notion that "Native American families have a right to live in a safe and secure environment. The federal government has treaty and trust obligations to see that they do."<sup>24</sup> In enacting TLOA, Congress sought to live up to its obligations by improving law enforcement in Indian country, ensuring tribal criminal justice, increasing tribal sentencing authority, and extending federal authority and responsibility over Indian country.

## **Accountability and Coordination**

Tribal leaders long have complained that federal prosecutors decline an excessive number of criminal cases, leaving many crimes in Indian country unaddressed. Statistical data seem to support their claims. Fifty-two percent of the reported violent cases and 40 percent of the nonviolent cases in tribal lands between 2005 and 2009 were declined for prosecution by federal prosecutors.<sup>25</sup> The tribes often receive no notification of the declinations. Lack of notification frustrates tribal efforts to prosecute because requests for evidence from the federal case languish, evidence is lost or damaged, or federal witnesses are unavailable. Even if the tribe resolves the case, punishment often is inadequate for serious crimes because sentences cannot exceed 1 year of incarceration.

To address these concerns, Section 212 of TLOA amends Title 25, Section 2809, U.S. Code and states that "any federal department or agency" in cases of nonreferrals or declinations of criminal investigations in Indian country "shall coordinate" with their tribal counterparts.<sup>26</sup> This requirement extends to the FBI; U.S. Attorneys Offices; Drug Enforcement Agency (DEA); Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); and



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others conducting investigations in tribal land. Coordination includes the status of the investigation and the use of relevant evidence in tribal court.<sup>27</sup> The FBI and the U.S. Attorney's Office also must report to Congress annually concerning declinations of prosecution.<sup>28</sup> The rate of declination should drop with this reporting requirement.

To assist in the coordination and prosecution of cases, the U.S. Attorney's Offices in Indian country may appoint special assistant U.S. attorneys.<sup>29</sup> These prosecutors should increase the number of federal prosecutions in tribal land. TLOA authorizes the use of tribal prosecutors in this capacity.<sup>30</sup> This inherently should lead to greater coordination of cases and, hopefully, additional training for tribal prosecutors. To further ensure coordination, U.S. Attorney's Offices have a mandate to appoint one assistant U.S. attorney as a tribal liaison where the U.S. Attorney's Office jurisdiction includes Indian country.<sup>31</sup> TLOA seeks to ensure that criminal misconduct in tribal lands will stand a greater chance of adjudication.

### **Increased Tribal Sovereignty**

TLOA amends the ICRA, increasing tribal court authority by allowing prosecutions of felony cases involving

sentencing limited to up to 3 years imprisonment.<sup>32</sup> Before TLOA, tribal courts handled only misdemeanor cases; they now may prosecute less serious felonies often passed over by federal authorities. The sentencing is limited to up to 3 years per count and up to 9 years per case with a \$15,000 cap on fines.<sup>33</sup> This enhancement is limited by the tribe's ability to provide both bar-licensed defense counsel to indigent defendants (not required under the

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***Confusion about jurisdiction in Indian country remains a problem.***

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ICRA) and a presiding judge who has “sufficient legal training” and is a licensed attorney.<sup>34</sup> The tribe also must make available published tribal criminal statutes and rules of criminal procedure and evidence, along with a record of tribal criminal and court proceedings.<sup>35</sup>

In tribal systems, there are internal obstacles to overcome in terms of developing, expanding, and funding adequate law enforcement, courts, and treatment services. TLOA provides

for the reauthorization of funding to support and improve tribal justice systems.<sup>36</sup> These measures should help close the gap where lesser violent crimes are nonprossed by federal authorities and former sentencing restrictions made tribal prosecution meaningless.

Because Indian country has limited facilities generally designed for short-term incarceration, Native Americans sentenced for felonies by a tribal court may be incarcerated in a federal facility at government expense under a pilot program that allows for up to 100 such inmates.<sup>37</sup> They also may be held in tribal facilities approved by the U.S. Bureau of Indian Affairs (BIA) for long-term incarceration, tribal rehabilitation facilities, or state facilities under contract with the tribe.<sup>38</sup> The U.S. Bureau of Prisons now must notify tribal law enforcement officers whenever a prisoner convicted of a sex offense, drug trafficking, or a violent crime is released into Indian country.<sup>39</sup> Previously, only state and local governments received this notification.

Finally, TLOA allows for federal prosecution of crimes not prosecuted due to lack of resources or interest by Public Law 280 states.<sup>40</sup> Tribes may request that the U.S. attorney general approve concurrent jurisdiction where applicable between the federal



government, the state, and the tribe.<sup>41</sup> This means that Public Law 280 states no longer have to give concurrence to such a change of status as previously required under federal law because the state's jurisdiction remains unchanged. It is important to note that the tribes make the decision to seek federal intervention, thus, showing the expanding recognition of tribal sovereignty.

### Law Enforcement

Federal laws and court decisions make criminal jurisdiction in Indian country complicated. Law enforcement officers must know and navigate through these complications while doing their job; they must determine what authority they have in a given situation. Further, a low number of law enforcement officers (less than 3,000) patrol these large rural areas (more than 56 million acres in 35 states) and respond to crime in Indian country.<sup>42</sup> Improvement in law enforcement is needed, and TLOA addresses this improvement in several ways.

One, TLOA enhances tribal law enforcement by giving tribal police mandated statutory access to databases containing federal criminal intelligence information.<sup>43</sup> This access includes the FBI's National Crime Information Center (NCIC).<sup>44</sup> Access to information from

such databases greatly assists in the resolution of crime.

Two, TLOA encourages cross-deputization. Tribal and state law enforcement agencies in Indian country receive incentives through grants and technical assistance to enter into cooperative law enforcement agreements to combat crime in and near tribal areas.<sup>45</sup> At the federal level, TLOA enhances existing law to grant deputization to expand the authority of



existing officers in Indian country to enforce federal laws normally outside their jurisdiction regardless of the perpetrator's identity.<sup>46</sup> This measure simplifies the exercise of criminal jurisdiction and provides greater protection of Indian country from crime through increased enforcement.

Three, recruitment and retention of law enforcement officers in Indian country proves

difficult. Many tribal officers leave their departments within 2 years of hire. Of course, TLOA can accomplish very little if too few officers exist in Indian country to enforce the law and protect and serve the people. The Act increases the hiring age of tribal officers from 37 to 47.<sup>47</sup> This allows dedicated and experienced officers to keep working and for retired military personnel already living in Indian country to start a second career. The Act also establishes training standards for tribal police officers and provides some funding for the training.<sup>48</sup> Tribal areas benefit by TLOA keeping officers working in Indian country and allowing for greater hiring flexibility.

Four, BIA law enforcement officers previously had the authority to make warrantless arrests for a number of predicate offenses (mainly related to domestic abuse) based on "reasonable grounds." TLOA changed the justification requirement for warrantless arrests to "probable cause."<sup>49</sup> Some would argue that probable cause is a higher standard to meet and that officers may end up with fewer arrests, but it proves necessary for warrants and likely will result in greater conviction rates. The list of predicate offenses for warrantless arrest expanded to include controlled substance offenses, bootlegging, firearms

offenses, and assaults.<sup>50</sup> These changes should facilitate quicker apprehension of criminals in Indian country.

Finally, mandated training for all BIA and tribal law enforcement and judicial personnel is included in TLOA regarding illegal narcotics investigations and prosecutions and alcohol and substance abuse and prevention for adults and youths.<sup>51</sup> This training is to be provided by the secretary of the U.S. Department of the Interior, the U.S. attorney general, the administrator of DEA, and the director of the FBI through existing or newly created training programs.<sup>52</sup> Through improved and increased training, a greater understanding of jurisdiction and crime resolution and prevention becomes possible, resulting in more efficient and professional protection from crime for everyone in Indian country.

## CONCLUSION

Confusion about jurisdiction in Indian country remains a problem. Jurisdiction still is a patchwork of tribal, state, and federal jurisdiction that varies depending on the crime, identity of the perpetrator, identity of the victim, and location of the offense. TLOA does not offer a magic cure for this confusion. However, it does provide the hope of a better quality of life in Indian country.

TLOA allows for the improvement of public safety and criminal justice in Indian country through the combined efforts of tribal government, federal agencies, and the states. Specifically, TLOA has enhanced the ability of the U.S. Department of Justice to prosecute crimes in Indian country and strengthened criminal justice capabilities across varying jurisdictions. TLOA does this

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**Federal laws and court decisions make criminal jurisdiction in Indian country complicated.**

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by establishing new channels for communication and cooperation among the concurrent jurisdictions involved in Indian country. However, the success of improvement hinges on the willingness of these concurrent parties to form a partnership in criminal justice jurisdiction in tribal land. If this occurs, people living in Indian country will have the safe and secure environment promised in the federal government's treaty and trust obligations. ♦

## Endnotes

<sup>1</sup> See U.S. Department of Justice, *Report of the Executive Committee for Indian Country Law Enforcement Improvements: Final Report to the Attorney General and the Secretary of the Interior* (Washington, DC, 1997), <http://www.usdoj.gov/oj/icedAct.htm> (accessed March 8, 2012).

<sup>2</sup> U.S. Department of Justice, National Institute of Justice, *Public Law 280 and Law Enforcement in Indian Country: Research Priorities* (Washington, DC, 2005), <https://www.ncjrs.gov/pdffiles1/nij/209839.pdf> (accessed March 8, 2012).

<sup>3</sup> The topic of jurisdiction was explored by the author in a previous article. See Michael J. Bulzomi, “Indian Tribal Sovereignty: Criminal Jurisdiction and Procedure,” *FBI Law Enforcement Bulletin*, June 2001, 24-32.

<sup>4</sup> See Pub. L. No. 111-211, §§13, 124 Stat. 2258. Technically the Act is entitled *An Act to Protect Indian Arts and Crafts Through the Improvement of Applicable Criminal Proceedings and Other Purposes*. Title I of the Act (§§ 101-103) amends certain provisions that deal with enforcement of laws designed to protect the Indian arts and crafts market from fraud. Title II of the Act (§§ 201-266) is entitled the Tribal Law and Order Act of 2010.

<sup>5</sup> For an expansive explanation of Indian country criminal jurisdiction and procedure, see Bulzomi, “Indian Tribal Sovereignty.”

<sup>6</sup> Title 18 U.S.C.A. §1152; Title 18 U.S.C.A. §13; and Title 18 U.S.C.A. §1153.

<sup>7</sup> Title 18 U.S.C.A. §1162; and Title 25 U.S.C.A. 1301 *et seq.*

<sup>8</sup> Title 18 U.S.C.A. §1152.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; and Title 18 U.S.C.A. §13.

<sup>11</sup> 104 U.S. 621 (1881).

<sup>12</sup> See also *Draper v. United States*, 164 U.S. 240 (1896).

<sup>13</sup> Title 18 U.S.C.A. §1153.

<sup>14</sup> *United States v. Henry*, 432 F.2d 114 (9th Cir. 1970), modified 434 F.2d 1283, *cert. denied* 400 U.S. 1011 (1971).

<sup>15</sup> 435 U.S. 191 (1978).  
<sup>16</sup> 110 S. Ct. 2053 (1990).  
<sup>17</sup> Title 25 U.S.C. §1301(2), (4).  
<sup>18</sup> Title 18 U.S.C.A. §1162.  
<sup>19</sup> Public Law 90-234, codified, 25 U.S.C. §1323.  
<sup>20</sup> 163 U.S. 196 (1896).  
<sup>21</sup> Title 25 U.S.C.A. 1301 *et seq.*  
<sup>22</sup> *Id.* (as amended in 1986).  
<sup>23</sup> Codified at Title 25 U.S.C. 2501, *et seq.*  
<sup>24</sup> Press Release, United States Senate Committee on Indian Affairs (July 29, 2010) available at <http://www.indian.senate.gov/news/pressreleases/2010-07-29.cfm>.  
<sup>25</sup> U.S. Department of Justice Declinations of Indian country Criminal Matters, GAO-11-167R, Dec 13, 2010.  
<sup>26</sup> *Supra* note 16 at §212 (a) (1). Pub. L. No. 111-211, §§13, 124 Stat. 2258.

<sup>27</sup> *Id.*  
<sup>28</sup> *Id.* at §212(a)(2), (4).  
<sup>29</sup> *Id.* at §213.  
<sup>30</sup> *Id.*  
<sup>31</sup> *Id.*  
<sup>32</sup> *Id.* at 25 U.S.C. §§1302 (2006), 234, 124 Stat. 2258, 2280 (*amended* 2010).  
<sup>33</sup> *Id.* at §234(b).  
<sup>34</sup> *Id.* at §234(c)(2) and §234 (c)(3)(A), (B).  
<sup>35</sup> *Id.* at §234 (c)(4), (5).  
<sup>36</sup> *Id.* at §304, 402.  
<sup>37</sup> *Id.* at §234 (d)(1)(B).  
<sup>38</sup> *Id.* at §234 (d)(1)(A),(C), (D).  
<sup>39</sup> *Id.* at §261(a).  
<sup>40</sup> *Id.* at §221.  
<sup>41</sup> *Id.*  
<sup>42</sup> The U.S. Department of the Interior's *Budget Justifications and Performance Information: Fiscal Year 2009, Indian Affairs*, IA-PSJ-6, noted there were 2,758

BIA and tribal criminal investigators and police serving Indian country.

<sup>43</sup> *Id.* at §233.  
<sup>44</sup> *Id.* at §233(b)(3).  
<sup>45</sup> *Id.* at §202.  
<sup>46</sup> *Id.* at §213.  
<sup>47</sup> *Id.* at §231.  
<sup>48</sup> *Id.*  
<sup>49</sup> *Id.* at §211(c)(2)(B).  
<sup>50</sup> *Id.* at §211(c)(2)(D).  
<sup>51</sup> *Id.* at §241(f)(1)(A), (B)  
<sup>52</sup> *Id.* at §241(f)(1).

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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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## Wanted: Photographs

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

We can use digital photographs or color prints. It is our policy to credit photographers when their work appears in the magazine. Contributors sending prints should send duplicate copies, not originals, as we do not accept responsibility for damaged or lost prints. Send the material to: Art Director, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135, or to [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu).



## Bulletin Notes

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



Officer Ferbert

Officer Nathan Ferbert of the Middleborough, Massachusetts, Police Department was dispatched following a report of youths gathered on a rural street shortly after midnight. Upon arriving, he witnessed a vehicle leaving the scene and discovered that one of the youths present had sustained a fatal stab wound. The suspected assailant departed in the vehicle observed by Officer Ferbert. As Officer Bradley Savage arrived and rendered aid to the victim, Officer Ferbert pursued the suspect's vehicle. Within minutes, he conducted a motor vehicle stop and, disregarding his own safety while alone, apprehended the suspect and recovered the weapon involved in the stabbing. The suspect later would be charged with second-degree murder.



Officer Tadrowski



Commander Cimaglia

Officer Jim Tadrowski and Division Commander Mike Cimaglia of the Berwyn, Illinois, Police Department responded to an emergency call reporting smoke coming from a local home. Upon arriving, Officer Tadrowski verified the home was on fire and attempted to make contact with any residents inside. Receiving no answer, he forced his way into the home and heard a man yelling for help. He found the male resident collapsed in the kitchen and, with the assistance of Division Commander Cimaglia, carried the individual from the flame-engulfed residence to the backyard area.

Berwyn Fire Department paramedics soon arrived on the scene and administered emergency medical aid to the unconscious resident, subsequently transporting him to a local hospital for treatment of substantial burns to his upper body.

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 can be mailed to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135 or e-mailed to [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu). Some published submissions may be chosen for inclusion in the Hero Story segment of the television show "America's Most Wanted."

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## ***Patch Call***



The patch of the Tennessee Bureau of Investigation (TBI) depicts the agency's seal. The judicial scales at the top are a reminder of TBI's work to restore justice through investigation. The abbreviation of TBI within the central outline of Tennessee represents the agency's statewide mandate, as well as its motto of "Truth, Bravery, Integrity." At the bottom, the flags of Tennessee and the United States are linked to show the necessary interdependence of TBI's work with other states and federal agencies.



San Juan County, Washington, consists of 176 named islands and reefs located near the state's northwestern border with Canada. Most of the population resides on the four largest islands, accessible solely by private boat, light aircraft, and the Washington State Ferries. All three modes of transportation are depicted on the patch of the San Juan County Sheriff's Office, which patrols about 167 of the islands. Also shown is the rugged shoreline typical of the islands, as well as one of their many nearby straits.