



# FBI Law Enforcement Bulletin

May 2008  
Volume 77  
Number 5

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

Robert S. Mueller III  
Director

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

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

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

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Issues are available online at  
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**Cover Photo**

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*FBI Law Enforcement Bulletin*,  
FBI Academy, Law Enforcement  
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Quantico, VA 22135.

## Features

### Traffic Stops

By Anthony J. Pinizzotto,  
Edward F. Davis, and  
Charles E. Miller III

1

*These routine, repetitive tasks can turn deadly for officers accustomed to resolving them by issuing a traffic violation notice, written warning, or verbal reprimand.*

### Future Technology in Law Enforcement

By Ben Reed, Jr.

15

*Technology is developing rapidly in areas relative to the law enforcement profession.*

### Civil Liability and Criminal Prosecution in Federal Court for Police Misconduct

By Richard G. Schott

23

*Law enforcement officers should be aware of the legal bases for being the subject of federal civil actions and federal criminal prosecutions.*

## Departments

11 **Perspective**  
Law Enforcement  
Internship Programs

22 **Leadership Spotlight**  
Relationship Leaders and  
the Leadership Notebook

# Traffic Stops

## Surviving Interactions with the Motoring Public

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



Legislators enacted laws governing the use of motor vehicles on America's roadways shortly after the invention of the automobile. In turn, criminals soon realized the benefits of using cars to expand the areas of their activities, enhance their mobility, and efficiently transport contraband.

The invention of the automobile also increased the duties of the nation's law enforcement personnel. Officers now had to

have frequent interactions with the motoring public to enforce traffic laws. The vast majority of these involved ordinary citizens who had violated minor traffic regulations. Today, these encounters occur with such frequency that most officers consider traffic stops as a routine, repetitive task. As a result, they have become accustomed to resolving these infractions by issuing a traffic violation notice, a written warning, or a verbal

reprimand. Traffic stop contacts often are the most frequent, and sometimes only, interactions that many citizens have with law enforcement officers.

According to the FBI's *Law Enforcement Officers Killed and Assaulted* (LEOKA) annual publication, 106 law enforcement officers were feloniously killed and 61,353 were assaulted while conducting traffic stops and traffic pursuits during the 10 years from 1996 through

2005. Moreover, while performing such roadside duties, officers face additional dangers, such as being accidentally struck by a motorist. The 2006 LEOKA publication reported that 11 officers were struck and killed by errant drivers, 2 more than were slain due to criminal action during traffic stops and pursuits for that year.<sup>1</sup>

What causes an apparent routine contact with a motorist to escalate into a potentially life-threatening situation? Do any policies, procedures, or training programs exist that law enforcement agencies can implement to better assist their personnel in safely conducting these highly repetitive activities? Because the vast majority of traffic stops involve ordinary

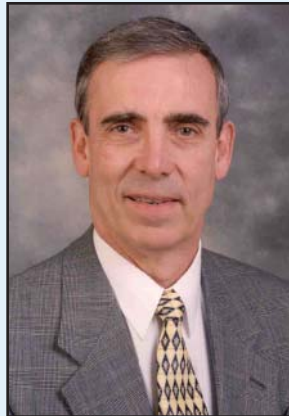
citizens who have violated minor traffic regulations and officers perform these duties without incident, do so many successful outcomes “condition” officers to expect continued positive results? Do these favorable encounters cause officers to believe that they can take shortcuts, or do such experiences contribute to officers missing indicators that otherwise may have alerted them to possible danger? Are there traits, mannerisms, or behaviors that officers exhibit that criminals could perceive as allowing an opportunity to successfully attack them? If so, what are some of those behaviors? Finally, what can agencies teach their sworn personnel to help them present an image proclaiming that they

are alert, formidable, and prepared to defend an attack?

To examine possible answers to some of these questions, the authors present findings from their trilogy on officer safety: *Killed in the Line of Duty: A Study of Selected Felonious Killings of Law Enforcement Officers*, published in 1992; *In the Line of Fire: Violence Against Law Enforcement, A Study of Felonious Assaults on Law Enforcement Officers*, published in 1997; and *Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers*, published in 2006.<sup>2</sup> In *Killed in the Line of Duty*, 22 percent of the 54 victim officers were conducting traffic pursuits or stops at the time they were killed. In the



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other two studies, *In the Line of Fire* and *Violent Encounters*, 18 percent of the 52 and 30 percent of the 50 victim officers, respectively, were attacked while conducting the same activities. The authors' findings focus on information from investigative reports; forensic evidence; and interviews with the killers, assaulters, and surviving officers as related to traffic pursuits and stops. The authors also provide information gleaned from researching additional, relevant law enforcement assault cases not included in their original research but subsequently brought to their attention.

## FATAL ENCOUNTERS

In *Killed in the Line of Duty*, the authors obtained information from forensic evidence, police reports, and interviews with the offenders convicted of killing the officers.<sup>3</sup> In examining the cases involving traffic stops, they found no evidence to suggest that any of the officers realized that they were dealing with anything more serious than a traffic infraction.

One officer was killed prior to exiting his patrol vehicle by an offender who opened fire with a rifle. In another incident, as an officer attempted to exit his cruiser, an offender shot and killed him with a handgun. This offender stated that he deliberately positioned his vehicle in a manner that would afford

him the opportunity to shoot the officer. Both offenders had preplanned these attacks because they either were wanted or believed themselves wanted for felony violations.

In another case from this study, an officer was killed by an offender with a handgun as he approached the offender's vehicle from the front. Because the offender had refused to stop, the pursuing officer had driven his patrol unit in front of the

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***What causes an apparent routine contact with a motorist to escalate into a potentially life-threatening situation?***

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offender's vehicle. “I knew he didn't think I was armed,” advised the offender, even though he could not articulate specific observations that led him to believe this. However, what is important is that the offender acted on this assumption.

In the remainder of the incidents examined in this study, the officers were killed following significant interactions with the offenders. In all of these cases, the victim officers either ordered or allowed the

offenders to exit their vehicles after the initial stop and approach. One passenger who shot and killed an officer stated, “He was talking on the radio, not paying attention to us. I walked back to his window and pointed the gun; he looked up just as I was pulling the trigger.” In another case, the officer placed the offender in the front passenger seat of the police vehicle and, apparently deciding to arrest him, then ordered the offender to exit the car. The offender reported, “That gave me the opportunity to walk to the back of my open pickup truck, retrieve the handgun, and shoot the officer.”

What did the victim officers in this study do or fail to do that may have contributed to their deaths? What led the offenders to believe that an attack would be successful? According to statements of the offenders in these cases, several felt that the officers were not attentive and gave the appearance of not viewing them as a threat. Some of the offenders stated that the officers' lack of attentiveness actually assisted them in various ways. Several offenders advised that the officers were preoccupied with other matters, such as completing the information on a traffic violation notice or talking on the radio. In each of these cases, offenders said that the officers failed to show concern for their movements.



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Forensic evidence indicated that the offenders' perceptions may have been correct. None of the victim officers had unholstered their service weapons, called for assistance, or made any other radio transmissions that would imply that they were aware of a potential threat to their safety.

This study on officers killed in the line of duty raised more questions than it answered and revealed the need for further research. The authors developed protocols to use in the next two studies, *In the Line of Fire* and *Violent Encounters*, to elicit some of this missing information by interviewing officers who survived attacks, something they obviously could not accomplish in the first one. They expanded the offender protocols to capture more detailed information about the offenders' observations but made no deletions to allow comparisons among all three studies.

## NONFATAL ASSAULTS

Together, *In the Line of Fire* and *Violent Encounters* contained only three incidents where the officers were attacked during the initial approach of an occupied motor vehicle. No officers were assaulted while walking away from stopped vehicles. The majority of the officers were attacked at some point in the process of engaging in some type of interaction with the offenders.

## Initial Approach

In the three cases where officers were attacked upon the initial approach to the vehicle, one officer, who sustained minor injuries after stopping a vehicle for speeding, stated that he believed he had encountered a cooperative motorist because the driver pulled over immediately when he activated his emergency lights. The officer approached the vehicle, stood at the back door of the four-door automobile, and advised

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***What did the victim officers in this study do or fail to do that may have contributed to their deaths?***

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the lone occupant that he had stopped him for speeding. The officer said, “The answer was two shots in the chest from a handgun. I spun around from the shots and took a position of cover behind his car and in front of mine and returned fire to the vehicle. I did fire seven rounds into the car, at which point, I saw the car drive away. The two rounds that the subject fired did go into my vest.”

In the second assault, an officer activated his emergency and takedown lights and approached the driver. The officer deliberately stood behind the doorpost on the driver's side of the vehicle. He illuminated the inside of the vehicle with his flashlight and observed the offender raising a handgun in his direction. The officer stated, “I stepped back, drew my weapon, and fired. The offender never did get a shot off.” The round struck the offender in the left arm. He fled in the vehicle but was captured shortly thereafter.

In the final incident, two officers stopped a lone offender on a dark, desolate road. The officers approached the offender's vehicle utilizing their agency's contact-and-cover technique. The contact officer stopped at the left rear corner while the cover officer came along the right side. The contact officer asked the offender to step out of the car. The offender looked at him and then turned and stared straight ahead, ignoring the request. The cover officer then advanced on the passenger side of the car, observed the offender holding a handgun, and informed the contact officer of the weapon. The contact officer then instructed the offender to show his hands. Instead of complying, he turned and pointed the handgun at the contact officer. The cover officer fired two times, immediately

incapacitating the offender. Both officers stated that they avoided injury due to the training they received from their agency. The contact officer said, "The way I was taught to approach vehicles by my training officers was the safest way possible: to stay back from the window, don't get in front of the doorpost, always be aware of what's going on around you, and, when things go bad, they'll go bad real quick. If you've trained properly, you can react without thinking about how to react. You will react the way you were trained and come out okay. That's what we did."

When asked about the incident, the offender responded, "I looked back in the side-view mirror and I noticed a figure, a person, get out of the car that was behind me, the squad car. It was much of a silhouette. I couldn't tell if he was holding a gun or what he was doing, but I heard him say..., 'I need you to get out of the car, please.' I didn't say anything back. I just grabbed the gun that was between the seats and started to make this motion with my arm." When asked about the presence of the cover officer, he replied, "No, I never thought of it. I don't know why, but I never did. I never thought that there might be two of them because every time when I was growing up as a kid, there was always one cop in the car. Every time I

was ever talking with a cop or being searched by a cop, there was always one officer per squad car."

In all three of these cases, the offenders were committed to attacking the officers who approached their vehicles. And, in all three instances, the officers avoided serious bodily injury by employing sound, effective tactics taught by their agencies.



### Interactions with Offenders

As with the first study, the majority of officers in the subsequent two studies were attacked after having had some interactions with the offenders they stopped. Some offenders perceived that the officers they attacked were not prepared to protect themselves. One case involved an offender stopped for speeding who believed that he was wanted for a felony parole violation and did not want to go back to jail. When he originally passed the officer shooting

radar, he waved. The officer said that he interpreted the wave as a friendly gesture. The offender advised that he assessed the capabilities of the officer after several minutes of interaction with him. The offender stated, "He seemed very lax, very bored. He didn't seem like he was keyed in on doing his job. It was just, you know, playing a role, just kind of going along because this is the thing he does from 9 to 5 or 7 to 11 or whatever hours he works. It didn't seem like it was something he really, really wanted to do. He showed very little, if any, enthusiasm that I recall, very little vigor." The offender told the officer that he did not have his driver's license with him. The officer asked the offender to step out of the vehicle. The offender informed the officer that he had borrowed the car from a friend and was unsure of the location of the registration and insurance papers. The officer patted the offender's pockets and discovered a driver's license. Then, he instructed the offender to reenter the vehicle and locate the requested papers. The officer returned to the patrol vehicle. The offender found the papers, concealed a .45-caliber pistol under a jacket, and approached the officer seated in the patrol car. The officer did not notice the offender until he was standing by his window. He immediately exited the police

### Survival Recommendations

- Managers, who set the tone for the entire agency, must ensure that supervisors enforce well-written policies that clearly outline traffic stop and pursuit procedures.
- Managers must see that officers receive timely, updated in-service training. They also must inform citizens about how to conduct themselves when stopped to increase understanding about the dangers all officers face.
- Officers must remain mindful of the image they project and consider how citizens perceive them. The verbal and nonverbal messages that officers communicate while conducting traffic stops can potentially yield as much protection as their weapons or body armor.
- Officers' mannerisms, traits, and behaviors must reveal a readiness and preparedness to react appropriately to defend the citizens they serve, their fellow officers, and themselves.

vehicle, but the offender successfully assaulted him with the pistol and fled the scene. When interviewed, the officer said that he had no idea that he was going to be attacked.

In another incident, an officer stopped a vehicle for making an improper turn. The officer advised that he did not run the tag number of the stopped vehicle because the radio frequency was very busy. Because he did not have time to wait until it was clear, he did not know that the offender was driving a reported stolen car. The officer detected the odor of an alcoholic beverage on the offender's breath and asked the offender to perform several psychomotor tests. The offender politely cooperated until the officer placed him under arrest for DWI. At that point, the

offender physically attacked the officer, removed his service weapon, and shot him several times before fleeing the scene. When asked if he realized that he was going to be attacked, the officer replied, "No, I was completely surprised. It came out of nowhere. All of a sudden, he was all over me." The officer also stated that had he known he was attempting to make an arrest for operating a stolen vehicle, he would have handled the situation much differently. The offender stated, "He wasn't prepared to take me on. He was focusing on a drunk-driving arrest, not knowing the car was stolen. I charged him, and he was totally unprepared for that."

During another case, an officer stopped an offender for speeding. Because he believed that he was wanted on a felony

warrant, the offender told the officer that he had left his driver's license at home. The officer returned to his patrol unit to prepare a citation after advising the offender that he would arrest him unless he could verify the driver's license number. When the officer approached the stopped vehicle a second time, the offender shot him several times in the chest and fled the scene. The offender reported, "It was like his mind wasn't on me. All he was thinking about was the speeding ticket. It was like he didn't want to know anything else that might be going on. I knew if he arrested me for anything at all, I was going to jail for a long time. I wasn't going to let that happen. He stepped right up to the car and made it easy for me." When asked if he was in any way aware that he

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might be attacked, the officer responded, “No, it was my last ticket for the day. I was thinking about a lumber purchase I was going to make when I got off work. It came from nowhere. I couldn’t believe it was happening.”

An additional example occurred in the early morning when a lone officer attempted to conduct a traffic stop on a pickup truck occupied by two males. After a brief pursuit in a rural area, the pickup slowed from 60 or 70 miles per hour to approximately 10 miles per hour. The passenger jumped out of the still-moving vehicle, fell to the pavement, and rolled around. The driver then stopped the truck and fled the area on foot. The passenger continued to roll around in the roadway holding his arm and screaming as if in extreme pain until turning on his side in what the officer described as “somewhat of a fetal position.” The passenger continued to scream and requested the officer’s assistance in helping him sit upright. As the officer bent down to search him, the passenger used his legs to knock him to the ground while simultaneously attempting to remove his service handgun. The officer retrieved a collapsible baton from his belt and struck and incapacitated the offender. Although his attempt to escape failed, the offender said that “it

almost worked” and he would continue to practice this technique until he “gets it right.” When asked if he realized that he was going to be attacked, the officer replied, “No, he sucked me in. I should have waited for backup that I knew was coming. I really thought he needed help. It turns out there was nothing wrong with his arm.”

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***What can law enforcement agencies do to better prepare their officers to safely conduct traffic pursuits and stops?***

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In an incident that started out as a traffic stop for speeding, an officer discovered a large amount of marijuana in an offender’s vehicle. The officer instructed the offender to place his hands on the hood of the patrol car. The officer related, “During the attempted arrest, he turned and struck me in the face and got me on the ground and continued to beat me.” The officer’s injuries included a crushed nose and a crushed left eye socket. In addition, her left cheek and jaw were displaced, and she experienced numerous

facial fractures and a moderate concussion. The offender then fled the scene but was captured a short time later. When asked about the incident, the offender said, “I knew I couldn’t go to jail because I would never see daylight again. I feel that the officer in my situation made a mistake. I think that the mistake is that when she found it [marijuana], she didn’t draw her gun. She reached over to get her handcuffs. And, at the time she was telling me to put my hands on the car, I was already in a position to do anything because I could easily turn because I have my feet spread out. I could hear the handcuffs, and I could hear the officer’s voice directly behind me. It was all one motion because when I turned around, I was already balling up my fist and, because of hearing her voice, I knew where she was standing. When I swung, I caught the officer flush on the face. When I made contact, the officer proceeded to fall to the ground. I climbed on top of the officer, and, every time she moved, I felt like I couldn’t run off. This was actually what made me continually hit the officer.” When asked if he attacked the officer because of a perceived opportunity, he stated, “I don’t know if I was looking for an opportunity, but I sure recognized it when it was there.”



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## REFLECTIONS

A review of the findings of this trilogy on law enforcement safety points to an interesting dynamic of officer perception and behavior. Self-awareness, attentiveness to immediate circumstances, and willingness to use appropriate force when justified are critical to officer survival. The results of each of these three studies can be seen as building blocks of information leading to this understanding.<sup>4</sup>

### Recognize Threats

How much of the officers' inattention to immediate circumstances, faulty perception of the degree of danger, and unwillingness to use appropriate force contributed to their serious assaults and deaths? The data from the first study suggested that officers were not aware that they were about to be attacked. Statements made by the offenders seemed to support this. Data from the second and third studies indicated that approximately two-thirds of the officers did not realize that an attack was forthcoming. Subsequent interviews with the officers confirmed this. The officers in the latter two studies were willing to use the appropriate amount of force when justified; however, they could not contemplate the use of force until they recognized the threat. Often, this recognition came too late.

The authors know from their 20 years of research that no clear profile of an offender who assaults or kills a law enforcement officer exists. Yet, many officers continue to possess a picture of this imaginary offender. They anticipate a physically dominating individual who exudes danger from every pore. Research, however, does not support this image. Only the offenders know how high the stakes are in a traffic stop situation. They have more

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information—or believe they do—than the officers. This puts officers at a disadvantage from the beginning of an encounter. This detriment greatly increases when officers judge the level of dangerousness based on the erroneous belief that risk can be measured or predicted by the physical characteristics an offender displays. In several of the traffic stop incidents studied, officers, by their own admissions, missed obvious danger cues because they viewed the

offenders as safe. They based these judgments on assessing physical characteristics without giving any thought to the offender's emotional state or possible mind-set.

### Avoid Complacency

During traffic stops, law enforcement officers' greatest danger lies in the unknown. Officers have no way of knowing for sure who they are stopping, where those individuals have been, or what their intentions are. It is not what officers *know* that will get them killed or injured; instead, it is what they *do not* know. The authors' second and third studies demonstrated the degree to which the offenders assessed the capabilities of the officers they assaulted. One descriptor of the victim officers that remained constant throughout all three studies was the ability to "read" people and situations. Unlike veterans, relatively inexperienced officers rarely exhibit this trait. Because seasoned officers have experienced so many successful outcomes in the past, they begin to rely on experience and believe that they can read people and situations accurately. This causes them to walk a dangerous tightrope. They become complacent, thinking that they can shortcut a thorough examination of the incident. Complacency, however, is the worst enemy of a veteran officer.

As an example, an offender in the third study advised, "I'm going to fight for my life. You, you're just doing a job. You might pull me over for a traffic ticket, but I might not be able to afford to have you run my NCIC. I might have just come from a robbery. I might be jacked up on meth that morning. There are agendas out there and everybody has one and most are hidden. Never assume that the person you're dealing with is just an altar boy coming from choir practice 'cause it just ain't happening. I can go from a nice-looking, distinguished gentleman...to a monster in a heartbeat. And, if you're not prepared for that, you lose."

### **Employ Sound Tactics**

What can law enforcement agencies do to better prepare their officers to safely conduct traffic pursuits and stops? What policies, procedures, and training can they implement to assist their officers? The three studies indicated that proper tactics were of critical importance in conducting traffic stop and pursuit activities. In the first one, officers were killed as they approached vehicles in an unsafe manner. For example, during a traffic pursuit, one officer drove his patrol unit alongside the vehicle he was chasing and the driver pointed a handgun out the window and shot him. Conversely, in the two subsequent

studies, offenders attempted to kill officers approaching their vehicles but did not succeed because the officers employed sound tactics taught to them by their agencies. Such cases clearly demonstrate how the use of proper tactics contributed to saving these officers' lives.



Although officers cannot control certain elements of a traffic pursuit or stop, they can greatly influence other aspects of the encounter. The proper use of sound, effective tactics can greatly reduce the potential for serious injury, even if an offender is committed to carrying out an attack. In instances where officers experience interactions with offenders contemplating an assault, the officers can continue to employ sound tactics, combined with presenting a formidable and professional image, that can greatly diminish the perceived opportunity that some offenders may be looking for.

### **Take AIM**

Based on many years of presenting safety issues to law enforcement agencies throughout the United States, the authors have developed a practice to assist officers during any potentially deadly encounter, including traffic stops and pursuits. The authors recommend that officers use it prior to the start of a tour of duty. This simple technique, Take AIM, has three components: awareness, image, and mind-set.<sup>5</sup>

#### *Awareness*

Every year, more than 50,000 law enforcement officers are assaulted in the United States. Everyone tends to think that bad things, such as serious assaults, always happen to other law enforcement officers, but I am aware it could be me. I am aware that I can be assaulted while performing my duties at any time. I am aware that anyone—young or old, tall or short, thin or heavy—may be a potential assaulter. While serving the public, I will be constantly aware of the total environment that I am working in. I am aware that all situations will contain unknown circumstances. Because I am aware of these dangers, I will not become complacent regardless of how many years of experience I have. I am aware that I am responsible for my own safety.

### *Image*

The image I think I am projecting may not be perceived in the same way by potential offenders. I always will strive to project the best possible professional image. My actions will convey that I am alert and prepared. My uniform and equipment will be neat, clean, and well maintained. I will stay in the best physical condition possible. I can be friendly and courteous to citizens and still maintain my professional demeanor without letting my guard down. I never will give the appearance of being laid-back or lax. My mannerisms will imply that I am a formidable opponent.

### *Mind-set*

I will take my training seriously. I will be mindful of safety procedures and never allow myself to take shortcuts. I always will wait for backup when available. I will thoroughly search, properly handcuff, and use the appropriate tactics at all times. I will protect my life and the lives of others by instituting the appropriate amount of force when necessary. If assaulted, I will refuse to quit no matter how bleak things look. I will continue to fight when seriously injured no matter how bad it hurts. When I can no longer physically fight, I will mentally fight to survive. I will not lie down and die. I will maintain

mental preparedness by using what-if scenarios and practicum. I always will hope for the best, yet I will be mentally prepared for the worst. I realize that I cannot read persons and situations. I realize that I cannot assess the dangerousness of others based on physical characteristics. I always will remember to Take AIM before I begin a tour of duty to protect myself and serve my community.

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***This simple technique,  
Take AIM, has  
three components:  
awareness, image,  
and mind-set.***

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## CONCLUSION

The authors have presented this information in the hope of assisting their law enforcement brothers and sisters whose duties include conducting traffic pursuits and stops while protecting the communities they serve. They firmly believe that the number of serious assaults and deaths resulting from these activities can be significantly reduced by developing sound, updated, realistic training programs that teach officers

to prepare for violent encounters *before* they become victims. One offender the authors interviewed in their third study summarized it aptly, “You do yourself, you do the city, and you do society no good if you’re on the side of the road with a bullet in your head because you thought this person, this innocent-looking person, wasn’t dangerous.” ♦

## Endnotes

<sup>1</sup> For additional information, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, “Accidentally Dead: Accidental Line-of-Duty Deaths of Law Enforcement Officers,” *FBI Law Enforcement Bulletin*, July 2002, 8-13.

<sup>2</sup> These three studies reflect approximately 20 years of research conducted by the authors and can be obtained from the UCR Program Office, FBI Complex, 1000 Custer Hollow Road, Clarksburg, WV 26206-0150 or by calling 888-827-6427 or 304-625-4995.

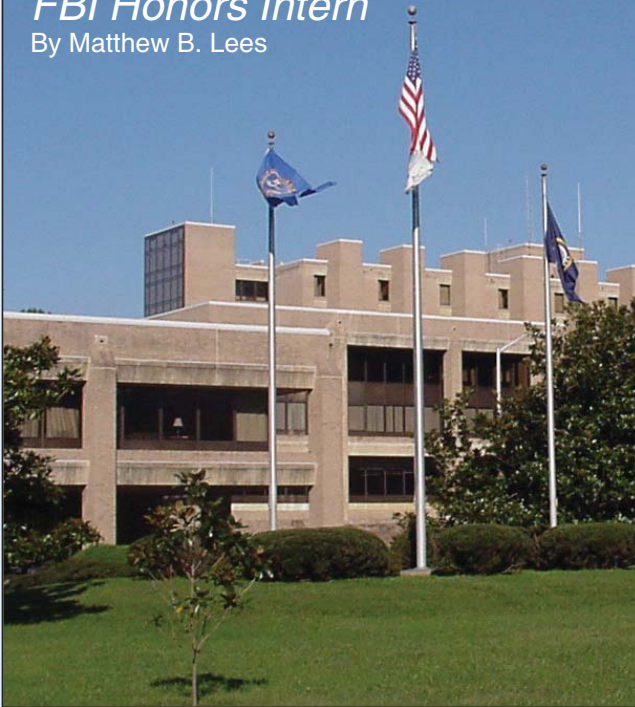
<sup>3</sup> The authors use the term *officer* to refer to all law enforcement sworn personnel regardless of rank and the term *offender* for those individuals involved in the attacks.

<sup>4</sup> For complete details of the authors’ findings, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, “The Deadly Mix: Officers, Offenders, and the Circumstances That Bring Them Together,” *FBI Law Enforcement Bulletin*, January 2007, 1-9.

<sup>5</sup> Take AIM, a mental preparation exercise, has been published in the form of an officer safety pocket guide through the generosity of the U.S. Department of Justice, Bureau of Justice Assistance, Office of Justice Programs, Washington, D.C. Law enforcement personnel can obtain free copies by e-mailing [askncjrs@ncjrs.gov](mailto:askncjrs@ncjrs.gov).

## Law Enforcement Internship Programs Insights from an FBI Honors Intern

By Matthew B. Lees



### BENEFITS OF AN INTERNSHIP PROGRAM

Aspects of a law enforcement internship program will vary depending on the participating students and the structure of the respective venture. However, any college student, as well as agencies of all functions, sizes, and budgets, can expect to derive a variety of benefits.

### Law Enforcement Agencies

One of the most enticing elements of an internship program to many law enforcement organizations is the fact that interns often work for free. Several reasons account for this phenomenon. First, interns generally receive college credit for their time and appreciate that sponsoring agencies are doing them a favor by facilitating participation. In addition, many internships, especially for first-time participants, are designed as exploratory experiences, meaning that students play an observational role and contribute little to the actual “work” of the agency. However, it may prove necessary to compensate interns in certain cases, such as where students complete tasks normally delegated to paid employees or possess certain critical skills desired

Few people can say that they have assisted in serial murder investigations, attended top secret briefings involving issues of national security, or worked inside covert government compounds. However, participants in law enforcement internship programs can do just that. And, many will have these opportunities before graduating from college.

The appeal of such programs to students seems obvious. They jump from tedious book work and routine assignments as regular college students into a world that impacts the issues they watch on the national news. But, the value of internship programs is not one-sided by any means. They can provide distinct benefits to all involved parties.<sup>1</sup>

*Mr. Lees was an FBI Honors Intern in the Crisis Management Unit, Critical Incident Response Group, at the FBI Academy.*





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by the host organization or in those programs with a highly competitive selection process.

Internship programs also function as a partnership between academic institutions and law enforcement agencies. As such, they often provide the foundation for the host organization to network within the academic community. Academic institutions can frequently provide advanced education and training opportunities for law enforcement officials, as well as access to and participation in important research that impacts police practices. Such partnerships inevitably enhance career opportunities for officers and scholars.

Finally, the programs allow law enforcement agencies to identify students who have an interest in their organizations; evaluate their potential as prospective employees; and determine if, and in what capacity, they may later fit into the departments. By providing interns with an unbiased, firsthand experience, both the student and the agency can decide if future employment would be in their respective interests. Internships also serve as an exceptional resource because participants tend to promote the law enforcement agency through informal channels upon returning to their academic institutions. By discussing their experiences with peers and colleagues, interns provide a unique avenue to share insights about an organization with a large segment of potential applicants.

### College Students

Many college and university undergraduate degree programs view an internship as the hallmark experience of a student's curriculum. Internships provide students with an unparalleled real-world experience and allow them to more effectively explore and formulate career goals. Students also can apply what they have learned in the classroom and

discover the interplay of academic knowledge and practical application. In the case of law enforcement internships, students in degree programs, such as criminal justice, criminology, sociology, forensic science, or related disciplines, may apply theory and research to an agency's investigative work.

Similar to the way organizations employ internship programs to forge partnerships with academic institutions, interns can use the experience to network, both formally and informally, with law enforcement professionals. Ultimately, networking proves an invaluable tool that greatly enhances the student's experience.

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**Internship programs...  
function as a  
partnership between  
academic institutions  
and law enforcement  
agencies.**  
”

### DESIGN AND UPKEEP OF AN INTERNSHIP PROGRAM

Creating a law enforcement internship program without prior organizational precedence may seem like a daunting task. However, while the initial

implementation process may require a degree of planning and coordination, the work involved to sustain the program is relatively minimal. On the most basic level, designing an internship initiative primarily involves designating a program coordinator, determining the interns' roles, coordinating with academic institutions, and recognizing security issues.

### Designating a Coordinator

A single individual or working group should have responsibility for program oversight. In geographically confined law enforcement organizations, such as state and local police agencies, one individual usually can assume this role. Federal jurisdictions may require multiple coordinators on a regional level to reduce unnecessary travel by staff and internship applicants. The coordinator

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can assume the role as a collateral duty, and the position may be best suited for the agency's applicant administrator or human resources department.

### **Determining the Interns' Roles**

Agency leaders should decide the ultimate scope of the program and anticipated roles of the interns. Funding and staffing represent important preliminary issues to consider. Managers need to determine the number of interns their departments can and want to employ in a given time period based on their needs. For example, certain units or efforts may be understaffed where an intern could be of potential use. Leaders also must take into account the proximity of colleges and universities. Without institutions within a reasonable travel distance, internships during the traditional school year may prove impractical.

Law enforcement agencies also need to decide what skill sets or degree programs they want and should base these decisions on where they expect to use students. Interns assisting in the day-to-day operations of the organization may be studying criminal justice or related disciplines. On the other hand, larger departments with a wider variety of assets and programs often can find a place for students in any academic field.

### **Coordinating with Academic Institutions**

The law enforcement agency makes up only one-half of the internship program. An effective enterprise should involve a strong professional relationship with participating colleges and universities. Points of contact at academic institutions should first include department chairpersons of the degree programs of interest. These

### **The FBI Honors Internship Program**

Every October, college students submit application packets to the 56 FBI field offices located throughout the United States. Applicant coordinators then identify qualified candidates and forward their applications to FBI Headquarters for review and final selection. There, administrators select an alternate and a finalist for each office. Approximately 100 interns participate in the 10-week summer program. Assigned to various units at FBI Headquarters, the FBI Academy, the FBI Laboratory, or the Criminal Justice Information Services Division, they earn a salary comparable to entry-level professional support employees.

The interns become involved in a wide array of activities in their short stint with the FBI. One described this as a "crash course in everything FBI." Personal experiences vary widely based on the interns' backgrounds and assignments. For example, working in the Crisis Management Unit, a part of the FBI's Critical Incident Response Group, the author received assignments primarily involved with planning and participating in national, multiagency emergency-preparedness exercises. These tasks familiarized him with the National Response Plan and National Incident Management System and allowed him to absorb real-life conditions while working with crisis command-post operations. Through personal experience and interactions with other interns, the author found the program extremely rewarding and beneficial to both the interns and the FBI.<sup>2</sup>

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individuals then may designate an internship coordinator, or assume the role themselves, to work with the agency internship coordinator to determine mutual objectives for the program. Coordination with the academic institution should include discussing desired intern qualifications, designing a student curriculum that satisfies both parties, and determining the selection and nomination process. The two entities also should take into account logistical issues, such as the length of the internship and college credit requirements. The most important consideration centers on the agency and the academic institution finding the various details of the program mutually acceptable.

### Recognizing Security Issues

Additional aspects of an internship program focus on the sensitive nature of law enforcement work. Most agencies wisely screen interns in the same manner as regular employees. Most important, they need to consider the type of information interns may have access to. Particularly in smaller departments, interns may know individuals under investigation due to the social environment and ages of the people involved. Therefore, officials should take the necessary security precautions, including seeking legal advice, to preserve the integrity of the organization and the program. Finally, agencies should advise potential interns and academic internship coordinators of the anticipated length of the application process to ensure that all parties can meet deadlines and clear students for work within the desired time frame.

### CONCLUSION

The design and operation of an internship program is relatively simple and involves few additional resources. Through mutual efforts with

nearby colleges and universities, almost any law enforcement agency could gain a great deal from undertaking the task. The cost-to-benefit ratio is notable, particularly in instances where the department provides unpaid opportunities. Interns also facilitate important and beneficial liaison between colleges and universities and host law enforcement organizations. Students bring innovative ideas from the academic setting, and law enforcement agencies have the opportunity to evaluate potential future employees.

Internships provide great benefits to students as well. Interns can gain a practical understanding of their field of study and enhance their classroom knowledge with real-life experiences. Internships also provide students with a chance to network and obtain firsthand information about an organization and the type of work it

performs. Finally, students can gain a tremendous experience while, at the same time, receiving college credit.

Such endeavors can offer both law enforcement professionals and college students opportunities to grow and learn from one another. The author's participation in the FBI Honors Internship Program enabled him to witness the value and utility of a law enforcement internship program and to offer the insights he garnered to students and law enforcement agencies. ♦

### Endnotes

<sup>1</sup> The author based this article on his participation in the FBI Honors Internship Program. His insights reflect common perceptions gained through interactions with dozens of FBI special agents in supervisory and executive-level management positions, other interns in the program, and professors at his academic institution.

<sup>2</sup> Additional information about the FBI's initiative is available at <http://www.fbi.gov> under Apply for a Job, Internship Programs.

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**An effective enterprise should involve a strong professional relationship with participating colleges and universities.**

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A large, detailed eye is the central focus, set against a dark blue background with glowing circuit patterns. The eye's iris is a complex, multi-colored pattern. Overlaid on the eye are several white and blue lines, including a large circle and a square, suggesting a targeting or scanning system. The overall aesthetic is high-tech and futuristic.

# ***Future Technology in Law Enforcement***

By BEN REED, Jr.

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*My interest is in the future  
because I am going to spend  
the rest of my life there....  
People are very open-minded  
about new things—as long as  
they're exactly like the old ones....*

—Charles F. Kettering<sup>1</sup>

Officer Sample starts his shift by leaving the station in his powerful, yet ultraefficient, hydrogen-fueled patrol unit and surveils the streets of Civil City.<sup>2</sup> “Hey Holly, what’s going on today?” “Good day, Officer Sample,” responds his personal assistant, a 6-inch animated hologram that stands on the passenger-side dashboard. Holly has access to hundreds of public and private databases, executes a number of commands simultaneously, uses voice

interaction software, and communicates with Officer Sample through sensors in his helmet that transmit commands to her through a mind switch. She states, “Your voice log-on imprint, password, and system-access level were confirmed. Let us review a summary of crime highlights for the past 24 hours in Civil City, focusing on your assigned district. Then, we’ll follow with brief accounts of regional, state, national, and international news that may impact your duties today.”





Captain Reed commands the Administrative Services Division of the Redding, California, Police Department.

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***Understanding and discussing futures issues help citizens grasp the concepts and make better use of new ideas.***

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“What else do you have for me today?” asks Officer Sample. Holly immediately responds, “We detected a disproportionate amount of criminal activity at Pine and Century during the past 24 hours. Units were sent to two disturbances in the street; one vehicle was towed; and Officer Citem temporarily detained, but did not arrest, a convicted drug dealer. Based upon historical data, there is a 41 percent possibility of drug sales, prostitution activity, or a felony street crime occurring there within the next 48 hours.”

“Send a UAV,”<sup>3</sup> directs Officer Sample. “Have it scan two blocks in every direction from Pine and Century. Advise me if any known felons, prostitutes, or drug dealers are loitering in the area.”

Holly responds, “Executing now. The UAV is launching from the city corporation yard.

ETA is 12 minutes.” Within 30 minutes, Holly advises Officer Sample that through facial and voice recognition technology, the UAV identified a subject with an active arrest warrant charging sexual assault. Investigators had placed the subject’s biometric data (fingerprints, palm prints, voice imprint, DNA code, facial images, and blood type) into the wanted persons database. Officer Sample drives to the area while Holly simultaneously advises the dispatcher, field sergeant, watch commander, and case investigator of the activity.

As Holly feeds stabilized, real-time video images from the UAV to the heads-up display on the patrol unit windshield, Officer Sample listens to the UAV’s digitally enhanced audio feed in one earpiece of his LEAP<sup>4</sup> uniform helmet. In the other ear, he hears the radio communications of units

responding to assist him. The UAV provides GPS (the U.S. Department of Defense’s Global Positioning System) coordinates on the windshield, directing Officer Sample to the subject. The dispatcher, sergeant, and watch commander make quick adjustments to their monitors, listening to and watching the same sequence.

As Officer Sample exits his patrol unit, the subject runs. The UAV easily follows him despite the disadvantage of darkness. Officer Sample could have continued to watch the video feed from the UAV on his wrist module but, instead, lowers his helmet’s facial visor, automatically engaging the digitally enhanced night-vision lenses that easily allow him to see the suspect in the darkness. His helmet provides his location to the others via the built-in GPS system. As he begins to pursue the fleeing criminal, the sensors on his exoskeleton suit sense his exertion and provide sufficient energy to propel him at three times his normal running speed; he catches the subject within 10 seconds.

## **CURRENT RESEARCH AND TECHNOLOGIES**

Could this scenario be right around the corner? Law enforcement agencies may begin using some of these new devices in the field. At least one large U.S. metropolitan police agency

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is experimenting with UAVs and another with facial recognition technology through cameras mounted in a public park known for frequent incidents of violent crime.<sup>5</sup> Will future technology benefit or hinder the law enforcement profession?

As with any futures issue, it is difficult to present hard data and fact-based research because the future has yet to occur.<sup>6</sup> Many of the advancements will require corresponding legislation to make their use lawful. Further, they will need publicity, documentation, explanation, and success stories to gain public acceptance. Understanding and discussing futures issues help citizens grasp the concepts and make better use of new ideas.

In the past few decades, technology has advanced quicker than earlier years. The law enforcement profession has the need, at a minimum, to stay current with the tactics and techniques of criminals and, presumably, should be a step or two ahead. If it gets too far behind, it may be technologically outgunned. Research in areas relevant to law enforcement (e.g., weapons, communications, computers, brain wave sensors, density scanners, vision enhancement, augmented reality, and biometrics) continues to develop rapidly. For agencies, the challenge lies in adapting the technology into workable

field equipment and anthropomorphic devices—those that enhance the effectiveness and efficiency of law enforcement officers.<sup>7</sup>

### **Compartment Detectors**

Scientists at the President's Office of National Drug Control Policy, Counterdrug Technology Assessment Center (CTAC) developed the mini buster secret compartment detector, a handheld device that senses density in solid objects. When scanned over the body of a motor vehicle, it can locate hidden compartments used to smuggle contraband, terrorist devices, or other illegal items.

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***The U.S. military's development of the UAV would significantly affect law enforcement.***

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### **Wireless Systems**

In the communication arena, CTAC scientists produced the wireless interoperability system, which connects the radio frequencies of various emergency first responders (federal, state, and local) who may need to

coordinate activities at a large incident.<sup>8</sup> The system provides smooth, fast, and accurate real-time communications for emergency personnel.

### **Search and Evidence Aids**

Two projects underway at CTAC are aimed at helping with searches and evidence presentation.<sup>9</sup> Nonintrusive cargo inspection technology would reveal the presence of contraband in a sealed container and identify the contents (drugs, weapons, biological agents, explosives, or lawful cargo described on the manifest) without expending costly time and resources searching by hand. This handheld device could prove valuable for use on shipping containers and vehicles passing through seaports, truck inspection facilities, airports, and ports of entry.

Additionally, the video stabilization system electronically converts useless, unstable surveillance video into clear, court-presentable evidence. CTAC also provides federal, state, and local law enforcement agencies with such equipment as third-generation night-vision and digital-wiretap devices.

### **LEAP Uniforms**

U.S. Department of Defense researchers are designing the LEAP system uniform. LEAP is a comprehensive, integrated modular-system approach to a

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tactical uniform, offering ballistic, chemical, and biological protection for special operations police officers—a hybrid of soldiers, SWAT officers, and hazardous materials specialists. Because special operations officers have difficulty performing tactical duties while wearing existing large, plastic hazardous materials suits, the U.S. Department of Homeland Security, Office of Science and Technology, is sponsoring a multiagency effort to integrate several technologies into an advanced law enforcement uniform. The LEAP uniform employs an extra layer just above an officer's waist that actually is the top part of the chemical-biological protective material connected to a nonpermeable bottom. When needed, the officer doffs the load-carriage vest, slips into the rolled-out top half with built-in gloves and hood, and then dons a mask, helmet, and the vest again. Soft body armor covers the torso, shoulders, and upper arms. The vest can be configured to carry radios, extra ammunition, hydration pouches, and other items. The ergonomic load-bearing belt holds a pistol, magazines, handcuffs, flash bangs, and other equipment. In addition to protecting the head against ballistic trauma, the LEAP helmet incorporates a GPS, radio antenna, flashlight, drop-down visor with heads-up display, and a detachable

mandible to cover the face and neck. The uniform includes boots, kneepads, elbow pads, and a waste management zipper.

### **Biometrics**

Researchers at the United Kingdom Police Information Technology Organization use biometrics research to build a database of violent criminals and sex offenders.<sup>10</sup> The technology uses facial and voice recognition systems to enhance automated fingerprint and palm print identification. Video cameras and microphones used in public or private surveillance systems may recognize thousands of these types of criminals.

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***Another powerful new technology is augmented reality....***

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The Pinellas County, Florida, Sheriff's Office uses facial recognition technology to identify prisoners booked into the county jail. A station in the booking area takes four facial images in less than 5 seconds. Along with the normal data, such as name, address, physical

descriptors, and date of birth, collected during booking, the images are stored in a database. Deputies then print a temporary jail identification card, complete with a color photo, that they use to identify inmates during incarceration. This allows them to easily transfer the data and images, via e-mail, to computer workstations for use by other personnel in records, investigations, and patrol units.<sup>11</sup> Deputies throughout the county have better access to criminal histories that include multiple photographs of the defendant. Further, they conduct mobile searches through personal computers and digital assistants. Using a digital camera, deputies in the field can take images of a person and launch a database search by using a docking station inside a patrol unit. Then, they can search the database using a digitized image of a person from a still, video, or composite source.

### **UAVs**

The U.S. military's development of the UAV would significantly affect law enforcement. Using existing nanotechnology, police UAVs would be the size of a small bird and stay aloft quietly for hours. Using facial and voice recognition software, the devices would scan hundreds of yards omnidirectionally, day or night, for felons or wanted persons. One UAV

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could perform many of the same tasks as several plainclothes officers in unmarked vehicles.<sup>12</sup>

### Exoskeleton Suit

The exoskeleton suit uses nanotechnology and artificial muscles to allow an officer to run with minimal effort over prolonged periods at a speed of up to 20 mph.<sup>13</sup> Top speed is 35 mph for shorter distances. The suit enables officers to lift items up to four times their own weight. Several institutions are studying the applicable technology.

### Mind Switch

The ultimate interface between humans and computers may be a neural link directly from the human brain to the computer. Scientists at the University of Technology Sydney in Australia have developed a revolutionary mind switch. Labeled the environmental control unit (ECU), the mind switch is activated by a burst in alpha brainwaves when a person closes the eyes and imagines the desired activity.<sup>14</sup> A computer receives the signal and activates a home electronic device, such as a radio, appliance, or television. Participants in the experiment also were able to adjust controls, such as volume. In its latest testing, the switch was over 90 percent reliable when used by severely disabled persons who received minimal

training. The research opens a new world of possibilities when humans and computers begin to communicate through the brain.

### Augmented Reality

Another powerful new technology is augmented reality (AR).<sup>15</sup> Advanced AR virtually overlays computer-generated images onto a person's real-world vision. "Situational awareness is greatly improved,



theoretically allowing one person equipped with AR technology to do the same amount of work as three unequipped individuals."<sup>16</sup> AR could have a number of possible uses for law enforcement, including—

- 1) having patrol car operator data and regional traffic management information on a heads-up display to make driving safer and more efficient, especially during

pursuit and rapid response situations;

- 2) using identification friend-or-foe technology, worn by every officer, to reduce or eliminate friendly fire casualties by visually, audibly, or haptically highlighting fellow officers both on and off duty;
- 3) projecting a display of officer location, activity, and status information on a three-dimensional map of the community;
- 4) managing the coordinated use of robots, UAVs, and police officers through an AR network to enhance surveillance activities; and
- 5) employing realistic training scenarios to simulate dangerous police environments while blending real-world equipment and fellow trainees into the scenario.<sup>17</sup>

### ADDITIONAL DEVELOPMENTS

Several other technological advancements are on the horizon for the law enforcement community. Such innovations include personal assistants, speech synthesis, wearable computers, data mining, liquid body armor, electronic clothing, artificial intelligence, and crime forecasting.<sup>18</sup>

For some time, computers have processed commands from



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human speech using voice interpretation software. The next natural step is voice interaction, similar to an interactive robot. Personal assistants are highly intelligent computers that use a blend of emerging technologies, such as speech recognition, synthesis, and augmented reality. Integrating the device to an unlimited number of public and private databases, employing data-mining technology, and communicating with existing law enforcement communications systems (e.g., computer-aided dispatch, GPS-guided locator systems, mobile data computers) could create a powerful and efficient information management system. A police officer using such a tool in the field could accomplish many tasks simultaneously by simply conversing with the device and issuing verbal commands.

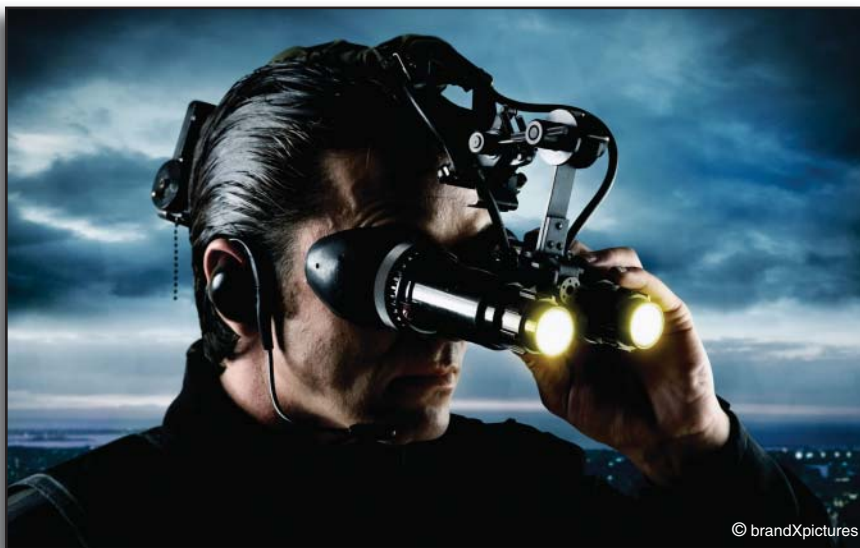
## LEGAL CHALLENGES

Legal constraints associated with the use of a personal assistant present a significant hurdle. Law enforcement agencies continuously navigate the information privacy laws. The issues include not only how the data is obtained but also how it is used and by whom. Once the legal system sorts out these issues, law enforcement's use of personal data may significantly enhance the efficiency of police officers and investigators.<sup>19</sup>

## FUNDING ISSUES

Obtaining funding resources presents another substantial barrier to technology innovation. Many government agencies operate with fairly lean or underfunded budgets. In many local public safety agencies, most funding resources go toward personnel. Managers are

reluctant to gamble with public funds on equipment, devices, or systems representing innovative technology because such designs may fail. Why purchase a digital camera when the silver halide film camera has worked well for decades? The inability to stay current with and fund technological advances poses a significant problem for state and local agencies.<sup>20</sup> Just providing some basic items that other metropolitan agencies have had for years can be a difficult task. Local agencies increasingly rely upon federal departments and the military to furnish these items through grants and other assistance programs. State and federal agencies typically provide grant funding for research, as well as new products just emerging from the research and design phase. Cash-strapped law enforcement agencies should take every possible advantage of grants aimed at introducing new products and technology into the field. Smaller agencies may want to follow the lead of large metropolitan ones, which typically have more resources to acquire, evaluate, and implement new technology. Smaller agencies should form a committee of forward-thinking individuals, sworn and nonsworn, who meet occasionally to assess new technology resources and make recommendations to the agency



executive. Those suggestions should serve to guide the organization in a direction that embraces future technology compatible with existing systems. Applying undeveloped technology products to the future market is largely dependent upon the needs of law enforcement and available funding. Legal issues and privacy concerns also must be resolved along the way.

## CONCLUSION

Law enforcement officers serve as information brokers. The future of policing depends on both the use of technology to provide officers with information and on computers to enhance human ability. The seamless integration of computer systems is essential to the law enforcement profession. Notwithstanding costs and legal constraints, officers may become even more efficient with the proper application of such advanced technology. The more information officers have at their disposal, the more effectively they can serve their communities and protect not only themselves but their citizens as well. Future technology definitely can benefit the law enforcement profession—are officers ready? ♦

## Endnotes

<sup>1</sup> <http://www.quotemonit.com>

<sup>2</sup> The author based the idea for the opening scenario on A.M. Olligschlaeger, "20/20 Vision: A Brief Glimpse from the Future," *National Academy Associate* 6, no. 4 (2004): 16-31.

<sup>3</sup> Unmanned aerial vehicle.

<sup>4</sup> Law enforcement advanced protection system.

<sup>5</sup> "Los Angeles Uses Technology to Cut Crime Without Adding New Officers"; retrieved from <http://www.allbusiness.com/public-administration/justice-public-order/904687-1.html>.

<sup>6</sup> The author began conducting research for this project in March 2005 while attending a National University course. However, he conducted the bulk of the research while attending the FBI National Academy Session 221 during the spring of 2005.

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***The future of policing depends on both the use of technology to provide officers with information and on computers to enhance human ability.***

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<sup>7</sup> Scientists at the President's Office of National Drug Control Policy, Counterdrug Technology Assessment Center (CTAC) are working with other federal agencies to develop several high-tech devices. See, A. Brandenstein, "Counterdrug and Counterterrorism: A Report from Dr. Al Brandenstein," *Office of National Drug*

*Control Policy, Counterdrug Technology Assessment Center Online Magazine*; retrieved April 16, 2005, from <http://www.whitehousedrugpolicy.gov>.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> A. McCue, "Biometrics Key to Future of Police Crime Fighting," *Silicon.com*, June 25, 2003; retrieved on April 16, 2005, from <http://management.silicon.com/government/0,39024677,10004850,00.htm>.

<sup>11</sup> "Facial Recognition in Action," *Corrections Forum* 13, no. 6 (Nov/Dec 2004): 12; retrieved on July 13, 2005, from ProQuest database, article no. 783839071.

<sup>12</sup> A.M. Olligschlaeger, "20/20 Vision: A Brief Glimpse from the Future," *National Academy Associate* 6, no. 4 (2004): 16-31.

<sup>13</sup> Ibid.

<sup>14</sup> J. Rice, "Mind Switch," *UTS: Science* (March 1, 2004); retrieved on April 16, 2005, from [http://www.science.uts.edu.au/research/mind\\_switch.html](http://www.science.uts.edu.au/research/mind_switch.html).

<sup>15</sup> For more information, see Thomas Cowper, "Improving the View of the World: Law Enforcement and Augmented Reality Technology," *FBI Law Enforcement Bulletin*, January 2004, 12-18.

<sup>16</sup> T. Cowper and M. Buerger, "Improving Our View of the World: Police and Augmented Reality Technology," *The Futures Working Group—A Collaboration Between the Society of Police Futurists International and the Federal Bureau of Investigation*, FBI Academy, Quantico, VA.

<sup>17</sup> Ibid.

<sup>18</sup> Supra note 12.

<sup>19</sup> J. Carafano, "The Future of Antiterrorism Technologies," *Heritage Lectures*, No. 885, retrieved July 19, 2005, from <http://www.heritage.org/research/homelanddefense/hl885.cfm>.

<sup>20</sup> W. Schwabe, L. Davis, and B. Jackson, *Challenges and Choices for Crime-Fighting Technology: Federal Support of State and Local Law Enforcement*, (Santa Monica, CA: Rand Corporation, 2001).

# Leadership Spotlight

## *Relationship Leaders and the Leadership Notebook*

*Anytime an individual takes an active role in directing the course of a relationship and sets the objectives of that relationship, that individual inevitably becomes the “relationship leader.”*

—Robin K. Dreeke

In today's high-speed technical world, the thoughtful process of knowing your people and looking out for their welfare often can fall by the wayside. As a young officer in the Marine Corps, I learned that one of the main leadership principles is to “Know your people and look out for their welfare.” An excellent tool used for that purpose by the Marine Corps is the compilation of a leadership notebook. The exact content of the notebook is not formally defined, but officers generally are encouraged to keep such information as biographical data, emergency contact information, anniversary dates, children's names, and other important events. Officers also can use this notebook as a repository for professional notes, as well as performance assessments of job-related skills. They then can refer to this information when conducting evaluations and counseling sessions and in establishing rapport and credibility with their troops. If officers use the notebook to its full potential, they will remember significant events in the lives of those in their charge and be well versed on the strengths and weaknesses of their troops. This notebook is easily adaptable for law enforcement leadership modalities, as well as numerous corporate entities.

A solid foundation to a leadership notebook involves formulating general topical

headings, which can be further broken down into more specific categories of personal preference. Choosing unique categories provides a sense of ownership of the content, as well as uniqueness to the tool that will inherently make it more fitting to the individual using it. Some suggested topical headings for the leadership notebook include personal information, physical characteristics, family history and religion, health, education, employment and employment history, financial (past and present), family dynamics, residence, office, vehicle, appearance, behaviors, interests/hobbies, and personal traits. By using such topical headings, leaders will be well equipped to elicit the information necessary to best know their people and look out for their welfare.

Effective relationship leadership ultimately comes down to productive communication. Using the knowledge accumulated in the leadership notebook can produce leaders who know how to successfully communicate with those they lead on topics of greater interest. In turn, this can help transcend the art of relationship leadership into solid, formidable, and useful dimensions for leaders. ♦

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*Special Agent Robin K. Dreeke, an adjunct faculty member of the Leadership Development Institute at the FBI Academy, prepared this Leadership Spotlight.*

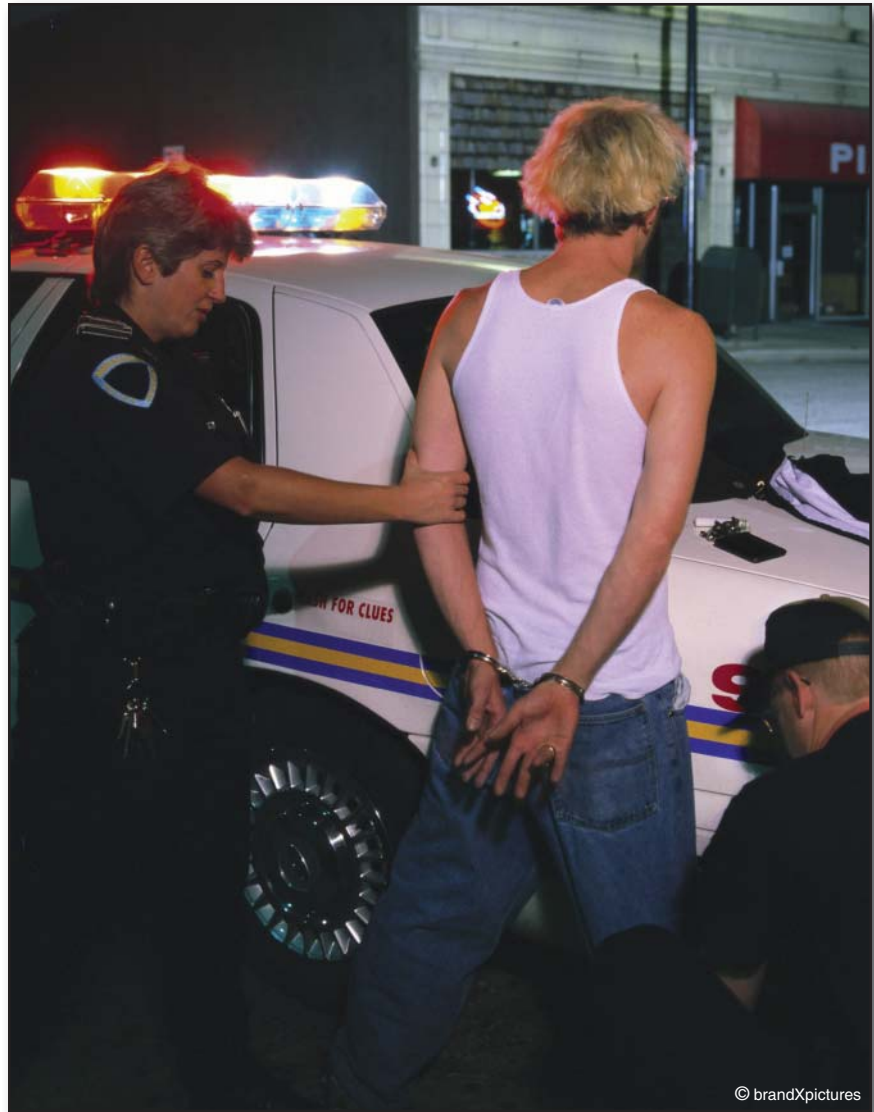
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# Double Exposure Civil Liability and Criminal Prosecution in Federal Court for Police Misconduct

By RICHARD G. SCHOTT, J.D.

**T**he law enforcement profession comes with many risks, most of which are knowingly accepted by its members. As in many other occupations, lesser-known, more subtle risks also are inherent in law enforcement. When officers are involved in a physical struggle or violent confrontation, they run the risk of sustaining injury or even death to accomplish their law enforcement mission. They may be called upon to meet force with force, sometimes having to use deadly force. All uses of force by law enforcement are subject to review; none subject to more scrutiny than the use of deadly force. Officers can quickly become familiar with internal review boards, citizen review boards, presentations of cases to



local grand juries to determine whether state criminal charges are appropriate,<sup>1</sup> and civil lawsuits brought in state courts by alleged victims against individual officers (or their employing agency) that allege wrongdoing on the part of the officer (or entity).<sup>2</sup> Under federal law, there are two additional and

distinct causes of action that officers may find themselves encountering—a *civil* civil rights lawsuit<sup>3</sup> and a *criminal* civil rights prosecution.<sup>4</sup> Familiarity with these federal actions will help officers navigate the potential minefield of consequences that may result from one single action.



This article examines these distinct causes of action under federal law; how the two proceed independent from each other, as well as from state legal proceedings or internal reviews; and why being the subject of both does not place the officer in double jeopardy.<sup>5</sup> It also traces the evolution of the relevant federal statutes and highlights certain nuances of the laws that sometimes leave officers defending themselves against unexpected and otherwise perplexing federal actions.

### **The Federal Civil Cause of Action: Title 42 U.S.C. 1983**

In 1871, the U.S. Congress passed the Ku Klux Klan Act (now known as the Civil Rights Act of 1871) in an attempt to discourage the corrupt influence of the Ku Klux Klan in state government.<sup>6</sup> The passage of the

act meant that certain crimes, such as conspiracies to deprive citizens of the right to vote, hold office, serve on juries, and enjoy the equal protection of the laws, could be prosecuted at the federal level, rather than in state courts, which were often infected with or at least influenced by Klan members.<sup>7</sup> Additionally, those wronged by these actions also could bring an action at law (a civil lawsuit) against those responsible for the wrong if they were acting under color of state law. The efficacy of the statute in achieving its original goal can certainly be questioned. For various reasons, not the least of which was the extent of the Ku Klux Klan's strength in certain southern states, the "statute remained virtually dormant" for the first 90 years after its passage.<sup>8</sup> Beyond challenge, however, is

the influence the statute has had on law enforcement officers in this country during the past half century.

In 1961, Title 42 U.S. Code Section 1983<sup>9</sup> (hereinafter § 1983) was recognized for the first time by the U.S. Supreme Court as the basis for a civil lawsuit against individual law enforcement officers. Based on the language of the statute, which at the time read "[e]very person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the territorial jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,"<sup>10</sup> James Monroe sued several individual members of the Chicago Police Department, as well as the city of Chicago in its own capacity. In his federal civil lawsuit, Monroe alleged that 13 Chicago police officers broke into his family's apartment, woke him and his wife, and forced them to stand naked in the living room while they ransacked every room. They then took Monroe to the police station on open charges for 10 hours. Monroe was interrogated about a murder during his confinement but was



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

***“ All uses of force by law enforcement are subject to review; none subject to more scrutiny than the use of deadly force. ”***

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ultimately released without ever being charged with a crime. The officers had neither a search warrant nor an arrest warrant at the time of the alleged behavior.<sup>11</sup> Monroe and other family members claimed that the officers and the city were liable for violating the Fourth Amendment to the Constitution, which prohibits unreasonable searches and seizures,<sup>12</sup> while acting under color of state law. The defendant officers and city sought dismissal of Monroe's lawsuit, in part based on the grounds that the actions alleged violated not only the U.S. Constitution but the constitution and laws of the state of Illinois also.<sup>13</sup> Both the federal district court and the appellate court entertaining the defense ruled that dismissal of the lawsuit was appropriate.<sup>14</sup> The Supreme Court reversed when it discounted the individual officers' position, recognizing that "[i]t was not the unavailability of state remedies but the failure of certain States to enforce the laws with an equal hand"<sup>15</sup> that led to the passage of the law in 1871. The Court further noted that "[t]he federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."<sup>16</sup> As a practical matter, to hold otherwise almost always would preclude a federal suit at the outset because nearly all law enforcement action violative of

the U.S. Constitution (or federal laws) also is a violation of one or more state statutes.

While the primary focus of this article is exposure to individual liability facing law enforcement officers, it should be noted that the portion of Monroe's lawsuit against the city of Chicago was dismissed, as the Supreme Court ruled that the city was not subject to suit under the statute. Relying on the intent of Congress in passing the 1871 act, the Supreme Court



ruled that it "did not intend to bring municipal corporations within the ambit of 1979."<sup>17</sup> This part of the ruling left individual officers as the only defendants liable to victims of their wrongdoing. In 1978, the Supreme Court reversed this portion of its *Monroe* decision.

In *Monell v. Department of Social Services*,<sup>18</sup> the Supreme Court changed course and found that an "analysis of the

legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies."<sup>19</sup> While this decision would seem to have created a lucrative option for a plaintiff to sue the proverbial "deep pocket" defendant in lieu of the individuals who actually deprived the plaintiffs of their rights, individuals have remained the most likely liable defendants. Ironically, this is because of another aspect of the Supreme Court's pronouncement in *Monell*. While recognizing that nonstate government entities could be held liable for constitutional violations where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers,"<sup>20</sup> the notion that the entity should be vicariously liable whenever one of its officers violates a person's constitutional rights was flatly rejected. Thus, for the government entity to be found liable, it must have somehow caused the constitutional violation to occur with an official policy or regulation, not simply because it employed the individual who violated someone's rights.

An example of this causation requirement is illustrated

by the *Bryan County, Oklahoma v. Brown* decision.<sup>21</sup> In that case, Bryan County avoided liability even though the sheriff's decision to hire the reserve deputy who violated the plaintiff's Fourth Amendment right to be free from an unreasonable seizure was deemed a policy of the county.<sup>22</sup> The Supreme Court made clear that "it is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its *deliberate* conduct, the municipality was the 'moving force' behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights."<sup>23</sup>

Even though it has proven difficult for plaintiffs to reach the deep pockets of the employing entity defendant, § 1983 lawsuits still are often filed at the federal level, as opposed to filing a cause of action in state court, in part due to another feature of federal civil rights legislation. In 1976, Congress passed the Civil Rights Attorney's Fees Award Act, which allows the prevailing parties in § 1983 proceedings to receive a reasonable attorney's fee as part of their costs.<sup>24</sup> This recovery of attorney's fees is a lucrative

aspect of federal suits not typically afforded litigants in state court.

### The *Bivens* Cause of Action

One hundred years after the Civil Rights Act of 1871 and 10 years after its *Monroe v. Pape* decision, the Supreme Court expanded the reach of civil liability for constitutional violations to those who were acting under federal authority when the violation occurred. In its *Bivens v. Six Unknown Named Agents of*

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**...for the government entity to be found liable, it must have somehow caused the constitutional violation to occur with an official policy or regulation....**

”

*Federal Bureau of Narcotics* decision,<sup>25</sup> the Supreme Court created a cause of action that parallels § 1983. Like the plaintiff in *Monroe*, the plaintiff in *Bivens* claimed that he was subjected to both an unreasonable search and an unreasonable seizure. He sued the six unknown Federal Bureau of Narcotics agents who were involved personally for \$15,000 apiece.<sup>26</sup> His suit was

filed in federal court. The district court dismissed for, among other reasons, failing to state a cause of action.<sup>27</sup> The federal court of appeals affirmed the dismissal.<sup>28</sup> The Supreme Court reversed and found that a federal cause of action against the federal agents did exist under the Fourth Amendment. While recognizing that "the Fourth Amendment does not in so many words provide for its enforcement by an award of money damages for the consequences of its violation,"<sup>29</sup> the Court pointed out "that it is... well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done."<sup>30</sup> In creating this federal cause of action against federal officials, the Supreme Court rejected the notion raised by the defendants that because Congress had specifically created the § 1983 remedy against those acting under state authority, it did "not desire to permit such suits against federal officials."<sup>31</sup> As a result of the *Bivens* decision, any law enforcement officer, whether acting under color of local, state, or federal law, can be sued in federal court for violating someone's rights granted to them by virtue of federal law or the Constitution of the United States.

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## The Federal Criminal Violation: Title 18 U.S.C. 242

The criminal companion to Title 42 U.S. Code Section 1983 is Title 18 U.S. Code Section 242 (hereinafter “§ 242”). In wording extremely similar to that found in § 1983, § 242 establishes that

[w]hoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States...shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosive, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any

term of years or for life, or both, or may be sentenced to death.<sup>32</sup>

Like any other criminal statute, but unlike the remedy found in § 1983, the punishment imposed upon people who engage in a violation of § 242 includes monetary fines or, depending on the nature of the violation, a term of imprisonment up to life in prison or even a death sentence.



Noticeably absent from the plain language of § 242 is any reference to authority given by the state.<sup>33</sup> Clearly, Congress intended for all law enforcement officers (whether they be federal, state, or local) to be criminally culpable for willfully depriving people of constitutional rights. Furthermore, even private citizens are viable defendants in a § 242 prosecution if they act in concert with government officials acting under color of law.<sup>34</sup>

A well-documented example of this theory involved a group of 18 defendants who were indicted following the disappearance of Michael Henry Schwerner, James Earl Chaney, and Andrew Goodman, three civil rights workers who disappeared in Philadelphia, Mississippi, on June 21, 1964. As alleged in the federal indictment, Deputy Sheriff Cecil Ray Price of the Neshoba County, Mississippi, Sheriff's Department detained the three victims in the Neshoba County jail in Philadelphia on June 21. He was then alleged to have released them, intercepted them later on Highway 19, and removed them from their vehicle and placed them in an official Neshoba County Sheriff's Office vehicle. At this point, he was alleged to have transported the three victims to a remote area where they were turned over to the 18 defendants, “including Deputy Sheriff Price, Sheriff Rainey and Patrolman Willis of the Philadelphia, Mississippi, Police Department.”<sup>35</sup> The defendants then allegedly “‘did willfully assault, shoot, and kill’ each of the three.”<sup>36</sup> The 3 law enforcement officials were indicted, along with 15 nonofficial individuals, for conspiring together and also for committing substantive violations of § 242.<sup>37</sup> The U.S. District Court for the Southern District of Mississippi dismissed the



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substantive § 242 counts against the nonofficial defendants “because the counts d[id] not charge that the latter were officers in fact, or de facto in anything allegedly done by them under color of law.”<sup>38</sup>

The Supreme Court viewed the nonofficial individuals’ conduct differently. The Court ruled that “[p]rivate persons, jointly engaged with state officials in the prohibited action, are acting under color of law for purposes of the statute,”<sup>39</sup> and, therefore, were criminally responsible under § 242.

Compounding the long reach of this criminal statute is the notion that the illegal conduct need not be authorized by governmental authority or occur while the violating officer is on duty. As early as 1879, the notion that the illegal act giving rise to the official’s prosecution needed to be based on actual authority given him by the government was rejected by the Supreme Court.<sup>40</sup> If the criminal violation were to be interpreted otherwise—requiring the illegal action to be something authorized under government authority—the statute would be virtually useless. Consider, for example, the behavior that led to the prosecution of two law enforcement officials in *Catlette v. United States*.<sup>41</sup> The prosecution stemmed from the detention of a group of Jehovah’s Witnesses by Nicholas

County, West Virginia, Deputy Sheriff Martin Catlette and Richwood, West Virginia, Chief of Police Bert Stewart. On June 29, 1941, the group of Jehovah’s Witnesses traveled to the Richwood Town Hall to request police protection while carrying out their work as Jehovah’s Witnesses. Three individuals from the group were ushered into the mayor’s office, which was also utilized by Deputy Sheriff Catlette, and were

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detained there. A short time into the detention, Deputy Sheriff Catlette removed his badge “and stated in substance and effect, ‘What is done from here on will not be done in the name of the law.’”<sup>42</sup> The group was then subjected to blatantly illegal and unconstitutional treatment.<sup>43</sup> After being charged with violating Title 18 U.S. Code Section 52,<sup>44</sup> Catlette urged that the charge was

“fatally defective in that it fails to charge the commission of a federal offense, because it does not state that the alleged acts were within the scope of Catlette’s authority...,”<sup>45</sup> as evidence by the removal of his badge and accompanying statement before his illegal conduct. The U.S. Fourth Circuit Court of Appeals pointed out the fallacy in Catlette’s argument in no uncertain terms. It countered that “it was certainly within the lawful authority of Catlette as a Deputy Sheriff to detain a person in his office.”<sup>46</sup> In more harsh wording, the appellate panel concluded that “Catlette’s argument is, therefore, reduced to nothing more than the notion that an officer can divorce himself from his official capacity merely by removing his badge of office before embarking on a course of illegal conduct, and thereby blithely absolve himself from any liability for his ensuing nefarious acts. We must condemn this insidious suggestion that an officer may thus lightly shuffle off his official role. To accept such a legalistic dualism would gut the constitutional safeguards and render law enforcement a shameful mockery.”<sup>47</sup>

Another expansive view of the color of law notion was recognized by the U.S. Fifth Circuit Court of Appeals in 1991 and involved clearly

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off-duty conduct. In *United States v. Tarpley*,<sup>48</sup> William Tarpley, a deputy of the Collingsworth County, Texas, police force, learned of a past affair involving his wife and Kerry Vestal. Tarpley and his wife devised a plan to lure her former lover to their residence so that Tarpley could beat and threaten Vestal. When Vestal arrived at the house, "Tarpley immediately tackled Vestal and hit him repeatedly in the head. He also inserted his service pistol in Vestal's mouth. He told Vestal that he was a sergeant on the police department, that he would and should kill Vestal, and that he could get away with it because he was a cop."<sup>49</sup> The scheme also involved two other officers who, along with the Tarpleys, followed Vestal in their patrol cars until Vestal drove out of their town. Tarpley and one of the other officers were convicted of conspiring to and actually "subjecting Vestal to a deprivation of his constitutional rights, in violation of...§ 242,"<sup>50</sup> which, of course, requires the officers to have been acting under color of law. Tarpley appealed his conviction, arguing that he had not acted under color of law but, rather, that he had acted as a jealous husband.<sup>51</sup> The appellate court affirmed Tarpley's conviction, reasoning that a "rational juror could conclude that Tarpley was acting under

color of law. Tarpley did more than simply use his service weapon and identify himself as a police officer. At several points during his assault of Vestal, he claimed to have special authority for his actions by virtue of his official status. He claimed that he could kill Vestal because he was an officer of the law. Significantly, Tarpley summoned another police officer from the sheriff's station and identified him as a fellow



officer and ally. The men then proceeded to run Vestal out of town in their squad car. The presence of police and the air of official authority pervaded the entire incident."<sup>52</sup> Clearly, without these persuasive factors the outcome would have been different; however, it was no defense for Tarpley to simply argue that his actions were those of a jealous private citizen.

Historically, criminal prosecution for violating § 242 most often stems from arrest

situations where an inappropriate amount of force is used, rather than from unique situations, such as those detailed above.<sup>53</sup> The constitutional deprivation occurring in the context of an arrest is the right to be free from an unreasonable seizure.<sup>54</sup> Probably the most well-known example of this type of prosecution came about as the result of the videotaped arrest and beating of Rodney King in 1991.<sup>55</sup> The individuals involved in the arrest of King who later faced federal prosecution for their actions during the arrest raised several defenses, two of which warrant discussion in the context of this article.

First, Sergeant Stacy Koon argued that he was not guilty of violating § 242 merely by being on the scene and not doing more to prevent the unnecessary use of force.<sup>56</sup> The district court judge considering Koon's argument disagreed. Relying on U.S. Ninth Circuit Court of Appeals precedent, the trial judge pointed out "that a police sergeant who stands by and watches while officers under his command use excessive force and refuses to order them to stop may, thereby, subject the victim to the loss of his or her right to be kept free from harm while in official custody or detention."<sup>57</sup> Similar to the absence of vicarious liability in its civil counterpart (§ 1983), to violate § 242, a supervisor's actions

### Side-by-Side Comparison of the Federal Statutes

Civil (§ 1983)	Criminal (§ 242)
<b>Elements</b>	
Who	Whoever
Color of Law	Color of Law
Deprives	Willfully Deprives
Constitutional Right	Constitutional Right
<b>Remedy</b>	
\$\$ Damages	Prison/Fine

must be more than passive to satisfy the willful component found in the criminal provision. Applying the proper legal analysis to Sergeant Koon's inaction in the King case, the district court did, in fact, find him guilty. The test was set forth as, "[t]he police sergeant must recognize that the force is excessive and that there are reasonable steps within his power that he could take to prevent the use of force" and "[f]inally, the police sergeant must *deliberately* or *willfully* refrain from preventing the excessive force."<sup>58</sup>

#### The Double Jeopardy Argument

The second defense raised in the federal prosecution of the officers involved in the Rodney King altercation that is relevant to the topic of this article was

that, in light of the officers' acquittal in state court, the federal charges should have constituted double jeopardy. This was determined not to be the case. Four officers involved in the apprehension of King were "tried in state court on charges of assault with a deadly weapon and excessive use of force by a police officer. The officers were acquitted of all charges, with the exception of one assault charge...that resulted in a hung jury."<sup>59</sup> Only after the resulting widespread rioting left more than 40 people dead, more than 2,000 injured, and resulted in nearly \$1 billion in property destruction did the United States seek and obtain indictments charging the same officers with violating § 242.<sup>60</sup> The officers argued that the federal prosecution constituted double jeopardy.<sup>61</sup> The Ninth Circuit Court

of Appeals disagreed based on the doctrine of dual sovereignty, which, simply stated, excludes from the double jeopardy prohibition prosecutions brought by separate sovereigns. Clearly, the state of California and the United States government constitute separate sovereigns.<sup>62</sup> The officers argued, however, that their prosecution satisfied a narrow exception to the dual sovereignty doctrine. According to the appellate panel considering their argument, the so-called *Bartkus*<sup>63</sup> exception is satisfied when "the second prosecution, otherwise permissible under the dual sovereignty rule, is not pursued to vindicate the separate interests of the second sovereign, but is merely pursued as a sham on behalf of the sovereign first to prosecute."<sup>64</sup> If that standard is proven, the second prosecution, although brought by the second sovereign, is barred based on double jeopardy. The officers in the instant case did not carry the burden. The fact that the state and federal investigators and prosecutors cooperated with each other did not turn the federal prosecution into a mere sham.<sup>65</sup>

For an even more obvious reason, there is no exposure to double jeopardy if an officer is sued civilly based on § 1983 and prosecuted under § 242 for the same action. Simply put, the Double Jeopardy Clause applies only to criminal cases.<sup>66</sup>

## Conclusion

All actions carry certain consequences. Some are realized immediately, some may take years to materialize. The law enforcement profession is fraught with dangerous consequences. Awareness is always taught—awareness of surroundings and danger signs, for example. Awareness of the potential legal consequences of actions also is useful. This article has discussed federal civil actions against law enforcement officers and federal criminal prosecution of those same law enforcement officers. Having an awareness of the legal bases for these consequences can make being the subject of one, or both, much less stressful for the officers. ♦

## Endnotes

<sup>1</sup> For example, a Prince George's County, Maryland, police officer was indicted for two counts of vehicular manslaughter stemming from an accident he caused while engaged in a pursuit of a motorcyclist during rush-hour traffic. Megan Greenwell, "Md. Officer Indicted in Crash That Killed Two," *The Washington Post*, February 14, 2008, p. B1.

<sup>2</sup> For example, in February 2008, a Prince George's County, Maryland, civil jury found a county police officer liable for assault and battery. The jury awarded the man the officer shot and wounded on January 1, 2006, a total of \$2.4 million. This result followed an internal police investigation reviewed by the U.S. Department of Justice, which found the officer acted appropriately. Ruben Castaneda, "Man Who Was Shot by Officer Wins \$2.4 Million Judgment,"

*The Washington Post*, March 1, 2008, p. B2.

<sup>3</sup> 42 U.S.C. § 1983.

<sup>4</sup> 18 U.S.C. § 242.

<sup>5</sup> U.S. Const. Amend. V, in pertinent part, states "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb."

<sup>6</sup> Randy Means, "The History and Dynamics of Section 1983," *The Police Chief*, May 2004.

<sup>7</sup> Eric A. Harrington, "Judicial Misuse of History and § 1983: Toward a Purpose-Based Approach," *Texas Law Review*, March 2007.

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<sup>8</sup> *Supra* note 6.

<sup>9</sup> The section of the original Ku Klux Klan Act that allowed for civil lawsuits to redress a constitutional violation later became, and remains, Title 42 U.S.C. § 1983.

<sup>10</sup> *Monroe v. Pape*, 365 U.S. 167 (1961). It should be noted that the statute has remained virtually unchanged, with the notable exception that a person acting under authority derived from the District of Columbia is now included in its reach. The current version of Title 42 U.S. Code § 1983 reads, "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of

the United States or other person within the territorial jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, *except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.*" Emphasis added to changes made after the *Monroe* decision.

<sup>11</sup> *Id.* at 203 (Frankfurter, J., dissenting).

<sup>12</sup> U.S. Const. Amend. IV reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>13</sup> *Supra* note 10, at 172. Illinois Const., Art. II, sect. 6 at the time was almost identical to U.S. Const. Amend. IV; the actions also constituted a violation of Ill. Rev. Stat., c. 38, sects. 252, 449.1, and Chicago, Illinois, Municipal Code, sect. 11-40.

<sup>14</sup> 272 F.2d 365 (7th Cir. 1959).

<sup>15</sup> *Supra* note 10, at 174.

<sup>16</sup> *Id.* at 183.

<sup>17</sup> *Id.* at 187.

<sup>18</sup> 436 U.S. 658 (1978).

<sup>19</sup> *Id.* at 690 (emphasis in original). In a footnote in its opinion, the Court made clear that, because of the plain language of the Eleventh Amendment, the *Monell* decision was "limited to local government units which are not considered part of the State." FN 54. U.S. Const. Amend. XI reads, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State."



<sup>20</sup> 436 U.S. at 690.  
<sup>21</sup> 520 U.S. 397 (1997).  
<sup>22</sup> *Id.* at 404.  
<sup>23</sup> *Id.* (emphasis in original).  
<sup>24</sup> 42 U.S.C. § 1988 (b).  
<sup>25</sup> 403 U.S. 388 (1971).  
<sup>26</sup> *Id.* at 389.  
<sup>27</sup> 276 F.Supp. 12 (E.D.N.Y. 1967).  
<sup>28</sup> 409 F.2d 718 (2nd Cir. 1969).  
<sup>29</sup> *Supra* note 25, at 396.  
<sup>30</sup> *Id.*, quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946) (footnote omitted).  
<sup>31</sup> *Bivens*, 403 U.S. at 429 (Appendix to opinion of Burger, C.J., dissenting).  
<sup>32</sup> 18 U.S.C. § 242.  
<sup>33</sup> Cf. 42 U.S.C. § 1983.  
<sup>34</sup> While this article examines the features of the Color of Law statute found at 18 U.S.C. § 242, it should be noted that there is a separate Conspiracy statute (18 U.S.C. § 241) that makes it a federal crime for two or more persons to conspire to injure, oppress, threaten, or intimidate any person in any state, territory, commonwealth, possession, or district in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same, which does not require the conspirators to have been acting under color of law.  
<sup>35</sup> *United States v. Price, et al.*, 383 U.S. 787, 790 (1966).  
<sup>36</sup> *Id.*  
<sup>37</sup> *Id.* at 792-794.  
<sup>38</sup> *Id.* at 793.  
<sup>39</sup> *Id.* at 794.  
<sup>40</sup> *Ex parte Commonwealth of Virginia*, 100 U.S. 339 (1879).  
<sup>41</sup> 132 F.2d 902 (4th Cir. 1943).  
<sup>42</sup> *Id.* at 904.  
<sup>43</sup> *Id.*, describing the actual treatment and unlawful acts.  
<sup>44</sup> The defendants were charged with violating Title 18 U.S.C. § 52, which later became § 242.  
<sup>45</sup> *Supra* note 41, at 905.  
<sup>46</sup> *Id.* at 906.  
<sup>47</sup> *Id.*

<sup>48</sup> 945 F.2d 806, reh'g. denied (5th Cir. 1991), cert. denied, 504 U.S. 917 (1992).  
<sup>49</sup> *Id.* at 807.  
<sup>50</sup> *Id.* at 808.  
<sup>51</sup> *Id.* at 809.  
<sup>52</sup> *Id.*  
<sup>53</sup> The FBI's Web site points out that most color of law cases fall into five categories: excessive force, sexual assaults, false arrest and fabrication of evidence, deprivation of property, and failure to keep from harm; retrieved from <http://www.fbi.gov/hg/cid/civilrights/color.htm>. From 2001 through 2007, the Criminal Section of the Department of Justice obtained convictions of 391 defendants in color of law cases; 256 defendants were convicted between 1994 through 2000. January 30, 2008 press release; retrieved from <http://www.usdoj.gov>.

**“  
 ...any law enforcement officer...can be sued in federal court for violating someone's rights granted to them by virtue of federal law or the Constitution of the United States.  
 ”**

<sup>54</sup> *Supra* note 12.  
<sup>55</sup> Because of the familiarity with the Rodney King incident that most law enforcement officers have, the facts giving rise to the subsequent court proceedings will not be recounted in this article. For a full discussion of the underlying events, see *United States v. Koon*, 833 F.Supp. 769 (C.D. Calif. 1993).

<sup>56</sup> It should be noted that the court opinion referenced in *supra* note 55 recognizes that initially the conduct of the arresting officers and the amount of force used on King in effecting his arrest was reasonable and, therefore, not in violation of King's constitutional rights. The force became excessive at a certain point, and Sergeant Koon was present both before and after the point when it became excessive.

<sup>57</sup> *United States v. Koon*, 833 F.Supp. 769, 779, (C.D. Calif. 1993), aff'd in part, vacated in part, 34 F.3d 1416 (9th Cir. 1994), aff'd in part, rev'd in part and remanded, 518 U.S. 81 (1996), quoting *United States v. Reese*, 2 F.3d 870, 889 (9th Cir. 1993).

<sup>58</sup> *Id.* at 779, quoting *Reese* at 890, (emphasis added).

<sup>59</sup> *Koon v. United States*, 518 U.S. 81, 87 (1996).

<sup>60</sup> *Id.* at 88.

<sup>61</sup> *Supra* note 5.

<sup>62</sup> *United States v. Koon*, 34 F.3d 1416 (9th Cir. 1994), aff'd in part, rev'd in part and remanded, 518 U.S. 81 (1996); *Heath v. Alabama*, 474 U.S. 82, 93 (1985).

<sup>63</sup> *Bartkus v. Illinois*, 359 U.S. 121 (1959).

<sup>64</sup> *Supra* note 62, 1439.

<sup>65</sup> *Id.* In footnote 19, the 9th Circuit panel pointed out that the *Bartkus* exception is narrow and seldom successfully pursued.

<sup>66</sup> Kermit L. Hall, James W. Ely, Joel B. Grossman, and William M. Wiecek, eds., *The Oxford Companion to the Supreme Court of the United States* (New York, NY: Oxford University Press, Inc., 1992), 232.

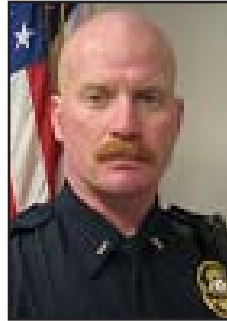
*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

## The Bulletin Notes

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



Sergeant Burton



Lieutenant Schwarzer

While on patrol at a city park, Sergeant Charlie Burton of the Radford, Virginia, Department of Police noticed a man sitting in a pickup truck. He approached the vehicle to check on the person's well-being, and the man, who had a loaded and cocked 9-millimeter handgun in his lap, ordered Sergeant Burton to leave. As was later determined, the individual had a domestic dispute with his wife, left home, and arrived at the park early that morning. Sergeant Burton called for additional officers, and Lieutenant Scott Schwarzer arrived as negotiations with the distraught man continued. After standing in freezing temperatures for 5 hours, the officers finally convinced him to drop the weapon and exit the vehicle. He was peacefully transported to mental health professionals and received the help he needed. Sergeant Burton and Lieutenant Schwarzer not only saved the life of this man but, possibly, the lives of others.



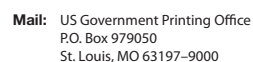
Officer Bomkamp

Officer Matthew Bomkamp of the Monona, Wisconsin, Police Department responded to investigate a disorderly subject who had created a disturbance at a local clinical care center. When the individual realized he was about to be arrested, he climbed on a table and jumped headfirst out of a third-story window. Officer Bomkamp grabbed the man's ankles and held onto the struggling individual as he hung outside the window. Additional officers arrived and assisted in pulling him back into the building.

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

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