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# FBI Law Enforcement

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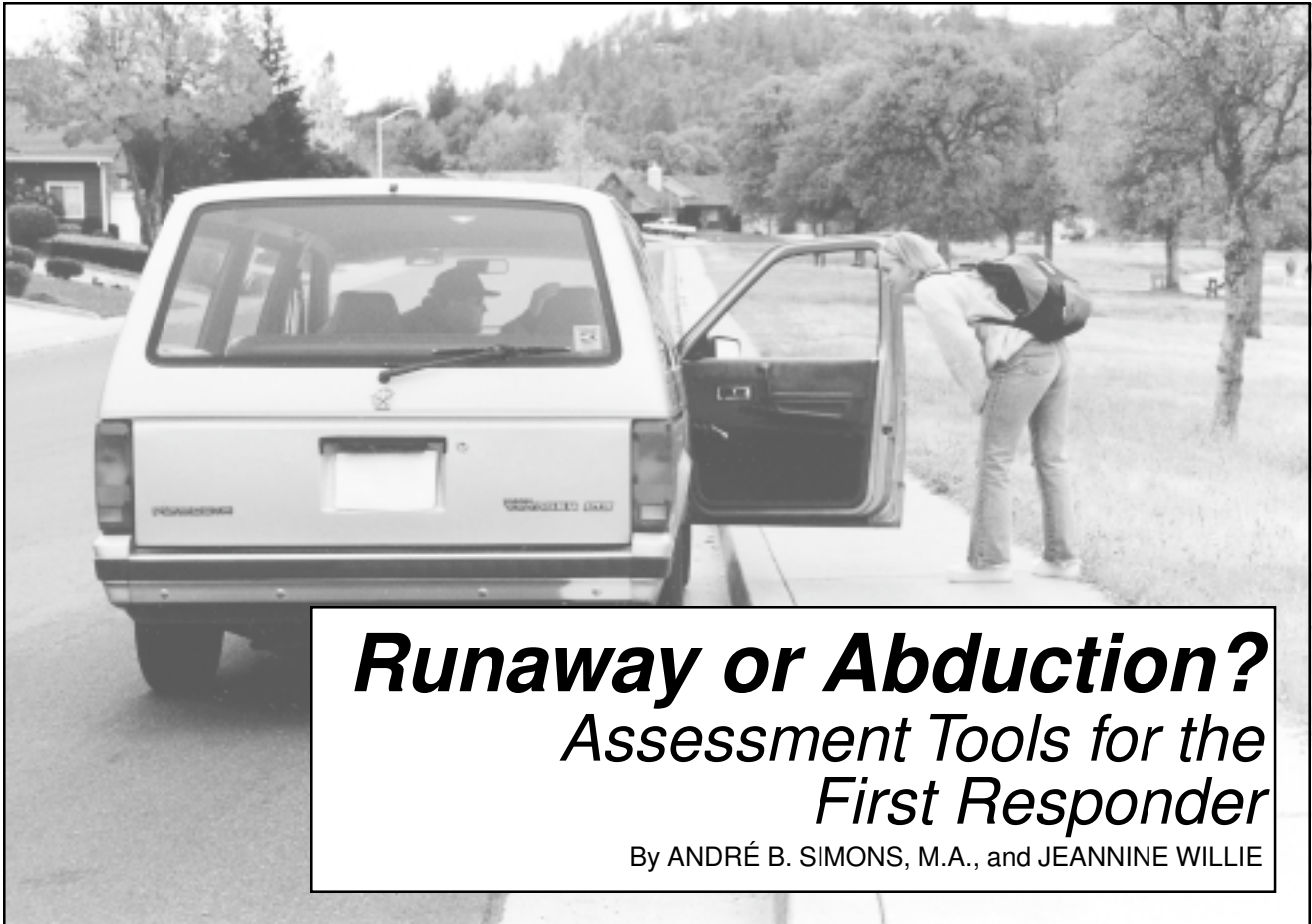
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# ***Runaway or Abduction?*** ***Assessment Tools for the*** ***First Responder***

By ANDRÉ B. SIMONS, M.A., and JEANNINE WILLIE

© André B. Simons

**A** 15-year-old girl disappeared from her home in a small California coastal town. Police initially classified her as a runaway. Eight months later, her abused body was discovered. Subsequent investigation revealed that three high school-aged boys involved in a Satanic cult had abducted, raped, tortured, and murdered the girl the night of her disappearance.

In another case, a jury ordered a town to pay a family \$3.8 million because police failed to respond adequately to the father's plea for help when he reported his daughter missing. The father stated later that the verdict presented "a clear warning

to third parties who assist in a child abduction,<sup>1</sup> even through inaction."<sup>2</sup>

Such inaction may often result when law enforcement erroneously categorizes a child abduction as a voluntary disappearance, or a runaway. When someone reports a child missing, traditionally, law enforcement quickly confirms or eliminates evidence of an abduction. Police agencies decide easily how to respond to cases with clear indicators about what happened, such as dealing with a witnessed stranger abduction, a runaway who packs a bag and leaves a note, or a very young missing child, which police generally investigate

whatever the circumstances. Between the extremes, however, decision making often proves difficult.<sup>3</sup> When a child simply vanishes, no clear indicators may exist to suggest a voluntary or an involuntary disappearance. When responding police officers navigate through a situation with no witnesses, obvious crime scene, nor clues to what happened, they might find it difficult to distinguish an abducted child from a runaway initially. A recent survey requested law enforcement agencies to identify common obstacles to a successful investigation in a missing child case.<sup>4</sup> Fifty-eight percent of the agencies responded that the highest ranking concern involved



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the difficulty of knowing whether a child has disappeared voluntarily.

The fact that hundreds of thousands of children leave their homes voluntarily each year compounds the difficulty in accurately classifying a missing child as a runaway or a victim of abduction. National averages indicate approximately 450,000 runaways in the United States at any given time.<sup>5</sup> In California in 1999, nearly 101,000 children left their homes voluntarily. Comparatively, only 64 witnessed abductions of children by a stranger or nonfamily member occurred. Not surprisingly, law enforcement officers may believe initially that a missing child between 13 and 17 years of age has run away. Without obvious indicators of an abduction, such as witnesses who observed the actual kidnapping event, signs of forced entry, or a ransom note, statistics indicate that the missing child most likely has run away. This philosophy often may cause the

responding law enforcement officers to overlook evidence of an abduction. Such predispositions can become particularly hazardous in light of research indicating that in cases where individuals abduct and murder children, the population at highest risk for victimization consists of teenage girls ages 13 to 17.<sup>6</sup>

### **ASSESSING THE SITUATION**

The responding police officers' initial assessment will have a great impact on the outcome of the missing child case. The attitude or approach that officers take in the initial response to a missing child call actually may determine whether the child is recovered and returned home safely, remains missing, or, worse yet, is found dead.<sup>7</sup> No other criminal investigation is as time-sensitive as this type of case, where the very life of the victim often may depend on the swift and effective mobilization of investigative resources. The police agency's

administrative and investigative branches must rely on the patrol officer's assessment to determine the most appropriate course of action. Police agencies may jeopardize crucial investigative opportunities if they classify an abduction case erroneously. Almost no other crime investigation will stretch resources and generate public criticism as a missing child case. A law enforcement agency may find itself in the unenviable position of having to make up for precious lost hours or days if they mistakenly classify the missing child as a runaway. However, the large amount of voluntary missing reports each year makes a full-scale law enforcement response unreasonable and inappropriate for all incidents.

To assess a missing child report accurately, responding officers must explore the missing child's lifestyle and behaviors. Officers must have the motivation and availability of resources necessary to take the extra time needed for such an evaluation and to form an assessment as to whether a voluntary departure proves consistent with the child's behavior patterns.

### **The Parental Interview**

The need to interview parents separately from other family members and reporting parties remains critical. Responding officers may feel reluctant to conduct separate interviews of the parents because of their emotionally escalated state. Conversely, if the parents do not appear particularly concerned about the child's absence, the officers may not view separate interviews as necessary. While they cannot

determine what a parent's "normal" reaction to a missing child would be, officers must remain objective and realize that a family member may later become a suspect if the child has been abducted. Officers must balance this objectivity with empathy and support if the parents are in a state of emotional crisis. Most important, officers must ensure that they interview parents individually and preserve potential evidence while remaining alert to document each parent's demeanor and attitude throughout the interview.

During the parental interview, officers quickly should compile accurate physical characteristics, such as the child's appearance, age, clothing, and obtain recent photographs and videotapes. Officers should attempt to include a full criminal and psychiatric history check of all family members with access to the child, as well as acquire local agency history of prior abuse or neglect calls to the house.

Through separate interviews of family members, responding officers should question if the child's absence shows a significant deviation from established patterns of behavior.<sup>8</sup> Only a further exploration into the victimology of the missing child can answer this question.

### **Victimology**

To understand if the child's absence is consistent with established patterns of behavior, officers first must understand the child's normal actions prior to the disappearance. Officers should use the following guidelines for assessing the missing child's personality.<sup>9</sup>

- Develop and verify a detailed timeline of the child's last known activities up to the time the child was last seen or reported missing.
- Determine habits, hobbies, interests, and favorite activities.
- Identify normal activity patterns, and determine the victim's known comfort zone. Officers should assess the child's survival skills and ability to adapt to new or strange circumstances, which include an examination of the child's intellectual maturity. Did the child travel alone frequently? Did the child have a routine where independent travel occurred on a regular basis (e.g., riding a bike to school)? What fears and phobias did the child exhibit? For example, if the child was afraid of the dark,

the probability of leaving voluntarily at night is low. Similarly, if the missing child was afraid to travel without a favorite item, such as a toy or security blanket, and the item remains in the house after the disappearance, the child possibly did not leave voluntarily.

- Note any recent changes in behavior or activity patterns and unusual events and stressors. Officers should explore any motivations for leaving. How does the child normally deal with stressful situations? Have any recent traumatic or stressful events caused such a prompt departure? Do abuse issues occur within the residence or family? Officers also should determine any recent changes in sleeping and eating patterns that would indicate stress.

### **Guidelines to Clarify Procedures for Categorizing the Missing Child Case**

- The parental interview: separation of parents, family members, and reporting parties during interviews.
- Victimology: examination of the missing child's family dynamics, comfort zones, and school and peer group associates.
- Scene assessment: assessment of the child's residence for evidence, or lack of, predeparture preparation.
- Resources: evaluation of resources available to the child that would enable or inhibit a voluntary departure.
- Time factors: consideration of the amount of time that has passed since the child was last seen.

## Resources

To successfully sustain a voluntary long-term absence, the runaway child must have access to resources that will satisfy basic needs, such as food, shelter, and transportation.

### Money

- Does the child have access to money or credit cards? Officers should verify if the child recently has accessed bank accounts through ATM withdrawals or other means. Is money missing from parents or siblings? Officers also should determine if the child possesses adequate skills to obtain employment and, therefore, additional money.

### Transportation

- Does the missing child have access to a vehicle, and if so, is that vehicle present or absent? Officers should determine if the child is familiar with public transportation, such as a public bus or train system, and conduct appropriate follow-up contacts with local transportation providers. Friends or family members unwittingly may have helped the child run away by providing some form of transportation.

### Clothing/toiletries

- Does evidence suggest that the child has packed any clothing or toiletries? Remembering the possibility that a crime scene may exist within the child's residence, officers should attempt to verify what items, if any, are no longer present in the child's room. Missing clothes, toiletries, makeup, medications, or other items of personal significance often may indicate predeparture preparations.

- Identify and separately interview close friends, schoolmates, teachers, coworkers, and other significant individuals. Again, although responding officers reluctantly may conduct separate interviews of distraught friends and family members, they must obtain independent statements not influenced by other witnesses. The FBI's National Center for the Analysis of Violent Crime

(NCAVC) created a general assessment form to distribute to family members and associates to assist in police officers' efforts to understand the child's personality.<sup>10</sup>

- Determine any history of alcohol and other drug use. Does the child have any particular medical conditions or allergies? If so, are the child's medications to treat the

existing conditions still present in the house? The presence of medications that the child needs may indicate an involuntary departure.

- Identify and interview boy-friends/girlfriends; determine normal dating patterns, including sexual activity. If the missing child is a postpubescent female, are there pregnancy and abortion issues? If so, officers should consider contacting local pregnancy health and abortion clinics. Also, officers should familiarize themselves with department policy and legal issues concerning confidentiality if they find the missing child at such a clinic.
- Obtain and review any personal writings, diaries, drawings, and schoolwork, including any entries into a personal computer or interaction with on-line computer systems or services. A critical item often overlooked in the missing child call is the presence or absence of journals/diaries. Besides the obvious insights that diaries may provide into the child's state of mind, the presence or absence of any written communication can prove relevant. A child who consistently and regularly has memorialized thoughts and feelings in writing might not depart voluntarily without leaving some form of written communication for people left behind.<sup>11</sup> Similarly, calendars or schedules indicating planned events may provide

insight into the child's possible motivation for staying or leaving.

- Determine any history of running away, discontent with home life, or suicidal ideations. Has the child disappeared voluntarily on prior occasions? Officers should note the last time the child ran

away and the length of time spent away. Did the child go to friends, other family members, or a runaway shelter? Officers should determine what enabled the child to run away successfully, or conversely, what prevented the child from sustaining a long-term absence. What happened that

prompted the child's departure in prior absences? Officers should determine if the child exhibited any runaway gestures, such as staying out all night, threats to leave, or other behaviors that violated clear expectations from parents or caregivers. Officers should determine the existence of any

### Case Example

**I**n June 1997, 16-year-old Mary Roberts (name has been changed) disappeared from a small mountain skiing community in northern California. The town's crime rate is low, and residents generally leave their doors and windows open in the summer to take advantage of the cool mountain breeze. After living in the town for only 1 year, Mary reportedly was yearning for the bustling activity of Los Angeles, her hometown.

At approximately 10 p.m. one night, Mary was walking home alone through the quiet streets. She had just broken up with her boyfriend and was upset. Mary walked around the neighborhood, talked with a friend, then started to head home. Her walk was only a few blocks, and most of the dark streets were empty. Without a sound, without a witness, and without a trace, Mary disappeared. She has never been found.

Local law enforcement officials initially classified Mary as a runaway. She had, in recent weeks, spoke of leaving town and returning to Los Angeles where family members still lived.

Her friends knew she was heartbroken over troubles with her boyfriend. Final exams at school were looming as Mary struggled with her studies. It seemed reasonable to think that, perhaps, Mary had just decided to leave.

After 2 weeks had passed with no contact from Mary, investigators developed a sense that Mary had not disappeared voluntarily. An

assessment of Mary's residence failed to yield evidence of any preparation or packing. Investigators examining Mary's bedroom discovered her favorite purse, which family members identified as an item Mary never left home without. After looking at Mary's available resources, investigators discovered that she did not have access to a vehicle, nor did she have access to any money to fund a departure from the area. In creating a victimology for Mary, officers realized that she probably did not have the survival skills or psychological stamina to engineer a long-term absence successfully. People knew Mary was afraid of the dark, so it seemed unreasonable that she would choose the nighttime for an exit. Interviews with family members and friends revealed that Mary had never attempted a voluntary departure before. The investigation began to focus on Mary's disappearance as an abduction. As investigators quickly discovered, 2 weeks of lost time created substantial investigative problems: witnesses' recollections were dulled, no trail existed for scent-tracking dogs to follow, and any potential crime scenes had been contaminated. Even more frustrating, the investigators realized that Mary's initial runaway classification possibly had provided additional time for her abductors to further conceal evidence of the crime. This case remains open and unsolved.

## Investigative Resources

- The FBI's National Center for the Analysis of Violent Crime has published a manual entitled *Child Abduction Response Plan*—an investigative tool for first responders and investigators. Law enforcement agencies can request a copy by contacting the NCAVC coordinator at their local FBI field office.
- Additionally, the National Center for Missing and Exploited Children (NCMEC) has published an investigative resource guide entitled *Investigator's Guide to Missing Child Cases*. Agencies can contact NCMEC at 1-800-THE-LOST.

prior suicide attempts or gestures by the child and consider the possibility that the child has disappeared as a result of a self-inflicted injury.

These observations will assist officers in crafting the child's victimology, which will indicate whether the child had the motivation and capability of leaving voluntarily. If the victim assessment suggests that these two factors do not exist, officers seriously must consider the possibility that an abduction has occurred.

### Scene Assessment

In a survey of police agencies, approximately 93 percent of law enforcement officers responding to a missing child call state that they usually interview the parents or guardian in person. However, only 41 percent routinely would search the child's home.<sup>12</sup> A search of the missing child's residence can provide a preliminary assessment with useful information to officers. Upon arriving at the child's residence or last known location, officers must remember that the entire house may prove a potential crime

scene and they should take all necessary steps to prevent the destruction of evidence. Officers can make some important observations. They can note the presence or absence of obvious signs of disruption, such as forced entry. How did the offender and the victim enter and exit the house? If the house appears disorderly or in disarray, officers should compare this with the child's personal living space and determine if this remains consistent with the way the room appears now. Officers should note any dramatic changes in the child's room that coincide with the departure, which may indicate predeparture preparation or an attempt by an abductor to conceal evidence. Officers should attempt to verify if any of the child's clothing or toiletries are missing that would indicate packing or preparation. If officers or family members cannot find any such items missing nor evidence of packing, officers must consider the possibility that the child may have been abducted.

Has the child left any communication for discovery by parents or guardians? This may include

written letters, voice mail messages, and computer messages. Law enforcement officers should consider all modes of communication available to the missing child, including their access to on-line chat rooms and communication with others via the Internet.

While the initial response logically may include an examination of the child's room, responding officers also should consider an examination of the parents' room or other areas of the house. If no items appear missing from the child's room, are items missing from other areas of the house that may provide additional resources?

Officers should attempt to compile and examine a list of known associates or family members that the child most likely would seek assistance from. Should those associates or family members be unaware of the child's whereabouts, officers must consider this as part of the child's lack of available resources and once again contemplate the possibility that someone has abducted the child.

### Time Factors

How long does a runaway child typically stay away from home, and how does the passage of time influence the classification of a missing child case? The California Department of Justice's Missing/Unidentified Persons Unit has reported the following trends in runaway returns:

<u>Time Frame</u>	<u>Percent Returned</u>
within 7 days.....	50 percent
7-14 days.....	30 percent
14-30 days.....	17 percent
30+ days.....	3 percent

These statistics indicate that the majority of runaway children cannot sustain an absence for more than 2 weeks. In general, the longer the absence, the greater the likelihood that an individual has abducted the child or that the child has fallen victim to a violent crime. If the child has a history of running away, officers should determine the length of time the child remained missing during previous absences. If the length of time in the current absence grossly exceeds previous absences, officers should consider the current disappearance a deviation from normal behavior patterns.

Responding officers also should note the amount of time that transpired between the last known sighting of the missing child and when the parents or guardian alerted authorities. While 24 hours or more may indicate apathy or neglect, this time frame also can perpetuate the common misconception that an individual must be missing for 24 hours before law enforcement can respond. The responding officers should construct a time line identifying the parents' activities during this window. This time line highlights family dynamics and clarifies the parents' potential role in the child's disappearance.<sup>13</sup>

## CONCLUSION

Given the extraordinary amount of time and resources an abducted child case can drain from a police department, law enforcement agencies should take measures to ensure that they do not label an abduction as a runaway—an error that can cripple the subsequent investigation. This mistaken labeling

often may occur during the initial response, where the patrol officer struggles to assess the circumstances of a missing child report appropriately. While the statistics suggest that a majority of missing children have run away, overlooking indicators of an abduction can jeopardize attempts to locate the missing child and expose law enforcement agencies to civil liability. Although the large number of runaway cases makes a large-scale response impractical in every circumstance, police officers have the responsibility of examining each individual case with a critical, informed eye, and as the evidence indicates, they should always err on the side of caution.

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**Almost no other crime investigation will stretch resources and generate public criticism as a missing child case.**

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Finally, law enforcement agencies must provide their patrol officers with adequate resources and training that will allow for a thorough assessment of the facts. Research indicates that when police agencies pursue missing child cases with vigor, child recovery outcomes improve.<sup>14</sup> In spite of the often ambiguous nature of the missing child report, law enforcement officers

should make every attempt to assess the situation accurately in an effort to classify the missing child appropriately. ♦

## Endnotes

<sup>1</sup> For purposes of this article, the term child is used when referring to anyone under 18 years of age.

<sup>2</sup> *Guidelines and Curriculum for Handling Missing Person and Runaway Cases*, Sacramento, CA: California Commission on Peace Officer Standards and Training, 1989.

<sup>3</sup> U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children in America* (Washington, DC, 1990), 97.

<sup>4</sup> J.J. Collins, M.E. McCalla, L.L. Powers, and E.S. Stutts, *The Police and Missing Children: Findings from a National Survey*, (Research Triangle Park, NC: Research Triangle Institute, 1989), 11.

<sup>5</sup> National Center for Missing and Exploited Children, *Missing and Abducted Children: A Law Enforcement Guide to Case Investigation and Program Management* (Alexandria, VA, 1994), 93.

<sup>6</sup> K. Hanfland, R. Keppel, and J. Weis, *Case Management for Missing Children: Homicide Investigation*, Washington State Attorney General's Office, 1997.

<sup>7</sup> National Center for Missing and Exploited Children, *Investigator's Guide to Missing Child Cases* (Alexandria, VA, 1987), 2.

<sup>8</sup> *Ibid.*, 6.

<sup>9</sup> Adopted from the Federal Bureau of Investigation, Critical Incident Response Group, National Center for the Analysis of Violent Crime, *Child Abduction Response Plan*, (Quantico, VA), 15-16.

<sup>10</sup> For more information, agencies can contact the NCAVC coordinator at their local FBI field office.

<sup>11</sup> Interview with Supervisory Special Agent Mark Hiltz, Federal Bureau of Investigation, NCAVC, March 2, 1999.

<sup>12</sup> *Supra* note 3, 63. Law enforcement officers should consult with their departments' legal advisors to ensure that any search of a residence is legal.

<sup>13</sup> *Supra* note 9, 17.

<sup>14</sup> *Supra* note 4, 137.



## **Professional Police Traffic Stops Strategies to Address Racial Profiling**

By Grady Carrick, M.S., M.P.A.

**T**he phenomenon of targeting “people of color” in traffic enforcement as a pretext to further investigation or search describes the term *racial profiling*. To professional law enforcement officers and the public, racial profiling is blatantly objectionable and indefensible. Basically, it amounts to the improper practice of selecting potential criminal suspects because of their race or ethnicity.

The law enforcement response to racial profiling, termed *professional police traffic stops*, can ensure that officers base their behavior on sound legal reason, safety for officers and citizens, and the accepted standards of modern policing. The reason for the stop and any enforcement action of the officer must be legally and morally defensible. The mechanical elements of executing a professional police traffic stop aside, agencies need a comprehensive strategy for success. To implement professional police traffic stops, agencies must adopt a three-dimensional approach. Organizational policy, officer training, and data collection represent the essential ingredients of a comprehensive agency strategy.

### **Agency Policy**

Policy formation is the process of establishing a new direction for agency philosophy or employee conduct. Agencies must develop a well-structured policy concerning professional traffic stops, outlining the conduct of officers and prohibition of discriminatory practices. Managers, supervisors, and the entire workforce must embrace and employ the policy.

Involving the organizational decision makers and managers in the policy development process ensures that the agency leader works from complete, accurate information and assumptions. It also dramatically increases the chance that subordinate supervisors will “buy into” the new agenda. Workshop discussions on

the issue of racial profiling will elevate the level of information and institutional knowledge about the problem. Administrators can defuse potential controversy with officers by assuring them that the objective of the agency is the protection of individual rights for all citizens.

Establishing policy in a potentially controversial arena, such as racial profiling, requires leadership from the top of the organization. Once an agency has established its direction through a well-structured policy, the agency’s leaders must bring the message personally to the employees, as well as the public. “Management by walking around” represents a sound leadership practice and proves crucial when implementing a policy regarding racial profiling. Administrators must demonstrate that they hold personal convictions about the issue and welcome questions on the topic. By taking the message to the public, they provide assurance that their agency will not tolerate any type of racial discrimination.

### **Officer Training**

Integrating discussion about racial profiling into diversity and refresher training proves beneficial. Agencies may not need to create an additional forum for the issue, provided they adequately can infuse it

*Major Carrick serves as a Florida Highway Patrol troop commander for northeast Florida.*



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into an existing program. Nationally, the Police Officer Standards and Training Commission should evaluate the topic for inclusion in current diversity training programs required for all officers. Moreover, the discussion of racial profiling is appropriate for both entry-level and in-service officer training.

The body of knowledge concerning racial profiling is growing rapidly. Reams of information are available on the Internet, and many media stories are readily obtainable. While empirical data is lacking, stories and accounts from the public can assist officers in understanding the scope of the problem and the emotions created by racial profiling. Most cases focus on stops to search for contraband in vehicles, but the tentacles of the misconduct reach into every aspect of life for the targeted motorist. Agencies may want to consult local chapters of the National Association for the Advancement of Colored People or the American Civil Liberties Union to obtain accounts and examples for use in training programs.

Raising sensitivity to the issue, as well as reinforcing the agency's position, stands as the objective of the training. Agencies must ensure that a clear message is delivered to all employees—racial profiling is not an acceptable law enforcement practice and will not be tolerated.

### Data Collection

Agencies must offer a skeptical public more than rhetoric concerning their stance on the issue. Statistics comparing traffic stop demographics with population demographics can assure the public that an agency does not practice racial profiling. In short, agencies must collect information that shows that they do not stop a disproportionate number of minorities. According to recent proposed federal legislation,<sup>1</sup> traffic stop data collection should include the—

- reason for the stop;
- race, sex, approximate age, and ethnicity of the individual stopped;
- type of search conducted, if any;

- rationale for the search;
- nature of contraband recovered, if any; and
- enforcement action taken during the stop (e.g., ticket issued or warning given).

While traffic citation data can prove useful, critics argue that many stops do not result in the issuance of a citation. Notably, the “questionable stops” that are predicated on no articulatable reason cannot result in enforcement action because they were not the result of a violation occurring. Officers who use profiling tactics typically do not “give paper” to individuals they stop who subsequently turn out not to be criminals. Therefore, agencies may find traffic ticket or other statistical information a good starting point, but may need a more comprehensive data set to provide insight into their use or nonuse of profiles.

To obtain complete data, agencies may need to modify their traffic citation, written warning, or field interview forms. An alternative to these changes may include having officers complete a separate form that captures the desired information. Either way, a snapshot of who officers are stopping is needed. Policy should require officers to document each traffic stop they initiate. By requiring data collection on all stops, agencies obtain a complete data set and an accurate depiction of officer actions. Complete data collection on all stops also minimizes the ability of unethical officers to hide improper conduct.

Many jurisdictions have taken the initiative to begin tracking traffic stop statistics, including San Diego and San Jose, California; Houston, Texas; and many others. Two states, Connecticut and North Carolina, have enacted legislation that will require such record keeping. Recently, the Florida Highway Patrol, like other state police agencies, has implemented collection. Many other states and jurisdictions are considering similar action.

While this trend toward voluntary data collection can result in aggregate statistics demonstrating that an agency's enforcement action is consistent with population demographics, it also can monitor individual

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performance. At the officer level, agencies can use this data to ensure that individual officers do not base their enforcement on racial profiles. Using this two-pronged data analysis, agencies can address adequately any issues that arise concerning racial profiling.

### Conclusion

Both state and federal lawmakers continue to consider legislation prohibiting racial profiling. This issue concerns every community, and law enforcement must recognize these concerns. Citizen perceptions regarding professional police practices may require agency modification of policy, additional training, and statistical monitoring. While the topic of racial profiling often proves uncomfortable for law enforcement, ensuring that appropriate measures are in place reduces some of the anxiety that accompanies the issue.

Besides a well-structured policy and effective training, reliable data can bolster agency prohibition of such practices and arm law enforcement officials

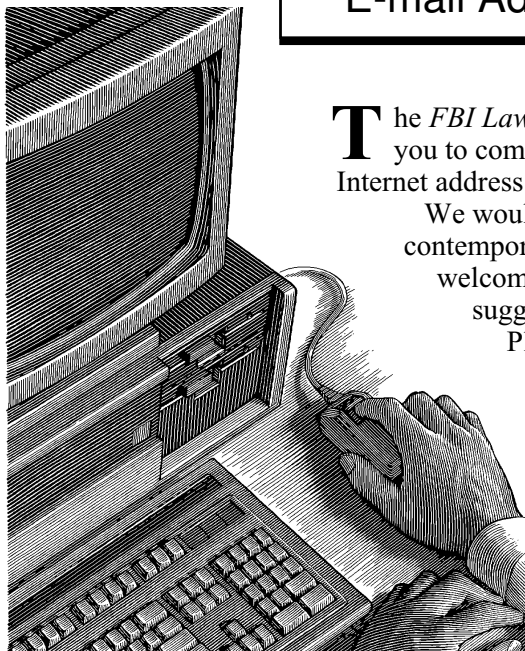
with the facts necessary to assure their communities that they do not employ racial profiling. Voluntary collection of traffic stop data is an attractive route for agencies who may undertake collection on their own, or as part of a broader program among multiple agencies. A systematic and standardized approach is desirable, implemented at the state level where possible. Uniformity allows for a larger data set that will increase reliability and validity in the statistics derived.

The highly visible function of police patrol and traffic enforcement mandates professionalism in traffic stops. By implementing a strategy that addresses racial profiling, agencies move closer to professionalism. Moreover, implementing a program for professional police traffic stops can protect and strengthen the bond of trust between the public and the police. ♦

### Endnotes

<sup>1</sup> Traffic Stop Statistics Act of 1999, U.S. Senate Bill 821, 106th Congress, April 15, 1999.

## The *Bulletin's* E-mail Address



**T**he *FBI Law Enforcement Bulletin* staff invites you to communicate with us via e-mail. Our Internet address is [leb@fbiacademy.edu](mailto:leb@fbiacademy.edu).

We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions concerning the magazine.

Please include your name, title, and agency on all e-mail messages.

Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.

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# ***Stealing Secrets Solved***

## ***Examining the Economic Espionage Act of 1996***

By THOMAS R. STUTLER

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**I**n January 1997, Ted Hong “Victor” Lee attended a meeting at Avery Denison, one of the largest manufacturers of adhesive products in the United States, where he and others learned of a binder containing confidential information on the company’s plans for the Far East. Later, closed-circuit television showed Lee gaining access three times to the file drawer where the binder was kept, and wearing gloves once, when he removed it from the office for a few minutes.<sup>1</sup> Confronted by FBI agents in March 1997, Lee admitted that he had provided confidential information to Four Pillars, a company that

manufactures and sells pressure-sensitive products<sup>2</sup> in Taiwan, Malaysia, Singapore, the United States, and the People’s Republic of China.<sup>3</sup> Avery Denison estimated its lost at over \$50 million.

Within U.S. borders, the FBI has assumed the role of understanding and dealing with the problem of stealing secrets. The economy is shifting steadily from one based on tangible goods to one based on information, commonly referred to as intellectual property. The United States produces much of the world’s intellectual property and remains the primary target of economic espionage. The most

frequently targeted industries include aerospace, biotechnology, computer hardware and software, transportation technology, defense and armaments technology, energy research, basic research, and lasers.<sup>4</sup> Estimates of losses from economic espionage in the United States range from almost \$2 billion to \$240 billion per year.<sup>5</sup>

Prior to 1996, state and federal laws did not address economic espionage specifically, or in particular, the theft of intellectual property, in any systematic manner.<sup>6</sup> But, federal law enforcement has a new weapon in its arsenal to use against industrial thieves—the



Special Agent Stutler serves in the FBI's Oakland, California, resident agency.

**“  
Finally, long-standing  
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a twin in the  
criminal world.  
”**

Economic Espionage Act of 1996, a comprehensive federal criminal statute that helps law enforcement investigate economic espionage and punish criminals and spies in an unprecedented manner.

#### **BEHIND THE LAW**

On May 9, 1996, FBI Director Louis J. Freeh testified to Congress that individuals or organizations from 23 different countries were conducting economic espionage activity against the United States. Long-time political and military allies target the United States and, in some cases, take advantage of their considerable legitimate access to U.S. sources to collect sensitive information. Experts have identified foreign nations involved in 21 percent of incidents concerning intellectual property loss where they knew the nationality of the perpetrators.<sup>7</sup> Some countries maintain a military alliance with the United States and use their intelligence services to simultaneously target U.S. technologies. In cases not involving

a foreign government or a company, the perpetrator of the theft had a “trust” relationship with the company, such as an employee or former employee, retiree, contractor, vendor supplier, consultant, or business partner.

Since the signing of the Constitution, corporations to Congress have sought hard to protect people who create ideas and punish people who steal ideas, regardless of whether they are competitors or spies. Many companies do not have resources to pursue a defendant, and some are confounded by situations involving foreign defendants or those with no assets. In other instances, companies have declined to pursue legal remedies to avoid the discovery process because it would force the disclosure of the sensitive information they sought to protect. History has shown that the security and survival of a nation depends on how well it keeps secrets.<sup>8</sup> The development of trade secrets, also known as proprietary economic information, represents an

integral part of economic well-being in the United States. Moreover, the nation’s economic interests are a part of its national security interests. Thus, threats to the economy jeopardize the nation’s vital security interest. Congress remains committed to stopping the often-elusive adversary, as evidenced by its efforts in this area.

Unlike patents, copyrights, and trademarks, no federal trade secrets statute existed. On October 11, 1996, the President signed the Economic Espionage Act,<sup>9</sup> which gave the U.S. Department of Justice the authority to prosecute cases both domestically and internationally in the area of economic espionage. Thus, the theft of trade secrets became a federal criminal offense. This echoes the civil view that “trade secret protection is an important part of intellectual property that is of growing importance to the competitiveness of American industry. The future of the nation depends in no small part on the efficiency of industry, and the efficiency of industry depends in no small part on the protection of intellectual property.”<sup>10</sup> Finally, long-standing civil remedies that recognize the value of intellectual property now have a twin in the criminal world.

Previously, most federal criminal enforcement in this area used the Interstate Transportation of Stolen Property Act (ITSP),<sup>11</sup> the mail fraud statute,<sup>12</sup> or the fraud by wire statute.<sup>13</sup> Agencies used mail and wire fraud statutes on a limited basis because they required use of mail or interstate communications. Also, the U.S. Supreme Court

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essentially negated the use of the ITSP Act in intellectual property cases by holding that “the element of physical goods, wares, or merchandise in sections 2314 and 2315 is critical. The limitation which this places on the reach of the ITSP Act is imposed by the statute itself, and must be observed.”<sup>14</sup> With little chance that other courts would rule differently to expand the ITSP Act—a 1930s vintage law—to include intellectual property, Congress enacted the Economic Espionage Act of 1996, which effectively provides a unique and independent means to combat economic espionage.

#### UNDERSTANDING THE LAW

The Economic Espionage Act creates a new crime of wrongfully copying or otherwise controlling trade secrets, if done with the intent either to benefit a foreign government, instrumentality, or agent, or to disadvantage the rightful owner of the trade secret and for the economic benefit of another person. The law applies to conduct occurring in the United States, and to conduct occurring outside the United States provided that the offender is either a U.S. citizen or resident alien, an organization substantially owned or controlled by a citizen or permanent resident, or an organization incorporated in the United States or that an act in furtherance of the offense was committed in the United States.

As intangible assets, such as intellectual property and trade secrets, became increasingly important to a company’s survival, Congress expanded Title 18 with

two sections: Section 1831, Economic Espionage, and Section 1832, Theft of Trade Secrets, which together form the Economic Espionage Act of 1996. In an effort to protect corporate equities from spies, as well as criminals, Congress punishes them both under this law.

#### What Is Economic Espionage?

Economic espionage expands on concepts related to industrial espionage. It includes activity by foreign governments that might use the classic espionage apparatus to spy on a company, and ranges from behavior such as two U.S. companies

requires an “economic benefit,” which recognizes that the foreign entity necessarily might not receive an economic benefit. The Economic Espionage Act is not intended to apply to innocent innovators or to individuals who seek to capitalize on the personal knowledge, skill, or abilities they may have developed.<sup>16</sup> The statute is not intended to prosecute employees who change employers or start their own companies using general knowledge and skills developed while employed. However, Congress purposely criminalized the act of individuals who leave their job and use their knowledge about specific products or processes in order to duplicate them or develop similar goods for themselves or a new employer to compete with their former company.

An earlier version of the statute contained language that exempted “knowledge, experience, training or skill that a person lawfully acquires during their work as an employee” from coverage under the act. Some commentators speculate that by subjecting employees and their subsequent employers to potential criminal liability in this area, the law will hamper the mobility of employees and have a chilling effect on this mobility, in part responsible for the vibrancy of the American economy and substantially conducive to the stability of the nation’s democracy. Perhaps in recognition of this, the U.S. Attorney General stated that the Attorney General’s Office must review all complaints brought under this act for the 5 years following its enactment in 1996.<sup>17</sup>

“  
***The economy is  
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”

attempting to uncover each other’s bid proposals to the disgruntled former employee who leaves the company with a computer diskette full of engineering schematics.<sup>15</sup>

The Economic Espionage Act prohibits the taking, copying, or receiving of trade secrets without authorization. Section 1831 prohibits anyone from doing so for the “benefit” of any foreign government, foreign instrumentality, or foreign agent. Interestingly, Section 1832 deals with domestic theft and

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## What Are Trade Secrets?

Two key concepts used in the Economic Espionage Act involve the requirement that the economic information involved is a secret in the legal sense and that the owner of secret information takes reasonable measures to keep it a secret.<sup>18</sup> Previously, the courts were reluctant to regard intellectual property as tangible goods to have protection under federal criminal law. In the statute, Congress uses terms usually associated with ownership of tangible property. A proprietary secret for purposes of the economic espionage law applies to information not generally known to the public or the business, scientific, or educational community in which the owner might seek to use the information.<sup>19</sup>

## What Constitutes Reasonable Measures?

A trade secret requires that the owner of the information must have taken reasonable and active measures to protect the information from becoming known to unauthorized individuals. Thus, if owners fail to attempt to safeguard their proprietary information, no one can be rightfully accused of misappropriating it.

The term *reasonable measures* is not defined specifically, but a reading of the House Report indicates that, while owners of information must take reasonable steps to keep the information secret, owners do not have to exhaust every conceivable means to keep the information secure. Thus, reasonableness will vary from case to case and depend upon the nature of the information in question.

## CONFIDENTIALITY ISSUES

Congress recognized the need to preserve the confidential and valuable nature of trade secrets. Therefore, the Economic Espionage Act contains a provision that authorizes the court to issue orders during legal proceedings consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. The House Judiciary Committee pointed out that without such a provision, owners may be reluctant to cooperate in prosecutions for fear of further exposing their trade secrets to public view, thus further devaluing or even destroying their worth.

“

***The Economic Espionage Act of 1996 punishes criminals and spies in an unprecedented manner.***

”

Because courts only recently have begun to test this provision of the statute, it remains too early to tell how it will be implemented in actual practice, but it could prove a serious problem in cases where the secret to be protected is one of the central issues.<sup>20</sup> The criminal defendant has the right to a public trial with all pertinent facts placed before a jury. Should courts prove

reluctant to issue protective orders out of concern for the defendant's right to a fair trial, companies might develop reluctance to bring complaints under this statute in fear that their secrets will suffer even broader exposure.

## PUNISHMENT

The Economic Espionage Act of 1996 punishes criminals and spies in an unprecedented manner. It authorizes substantial sentences for individual and organizational defendants and can include fines and forfeiture penalties. Individuals may receive fines of up to \$500,000 and an imprisonment sentence of up to 15 years for economic espionage benefitting foreign entities and fines of up to \$5 million and imprisonment for up to 10 years for the theft of a trade secret.<sup>21</sup> Organizations may receive fines up to \$10 million for economic espionage and up to \$5 million for the theft of a trade secret.<sup>22</sup> Additionally, a court may require defendants to forfeit any property or proceeds to the United States obtained as the result of the violation of the law as mandated in the Comprehensive Drug Abuse Prevention Control Act of 1970.<sup>23</sup> This statute defines property subject to forfeiture not only as property derived directly or indirectly from the offense, but also “property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation.”<sup>24</sup>

Some individuals argue that, unlike copyrights or patents, trade secrets are not defined clearly and may represent very broad and general business methods or ideas that



affect wide parts of a business or entire industry. Large forfeitures could result based on the theft of a single idea. Similarly, the second provision, which allows forfeiture of property used in any manner to facilitate violations, could subject an entire international computer network to forfeiture because one computer was used. Such broad definitions of forfeitable property may have a stifling effect on lawful business behavior because of the risk of consequences from a minor violation.<sup>25</sup>

Additionally, the statute allows the U.S. government to apply for an injunction against a person committing a violation of the Economic Espionage statute. The individual victims and private parties have the traditional injunctive relief available in state courts.

## THE ROLE OF LAW ENFORCEMENT

The Economic Espionage Act of 1996 expands the FBI's criminal investigative jurisdiction and enhances its existing counterintelligence responsibilities. At present, the FBI investigates approximately 270 criminal violations and is the lead counterintelligence agency in the United States, responsible for safeguarding the nation against the threat posed by foreign intelligence services. In the counterintelligence world, the FBI thwarts efforts through a variety of means, such as identifying threats, stopping such operations through court-authorized electronic or physical surveillance, and recruiting members of foreign intelligence service as double agents.<sup>26</sup>

State and local law enforcement officials' understanding of the Economic Espionage Act helps because oftentimes they receive the first call from a victim company suffering a loss or theft of intellectual property. An understanding of "the bigger picture" aids initial efforts to collect evidence. For instance, a police officer responding to a trespasser sifting through garbage cans on private property might have the only law enforcement opportunity to uncover a widespread

by police officers, detectives, and corporate security personnel remains invaluable for tracking and uncovering schemes to commit economic espionage.<sup>29</sup>

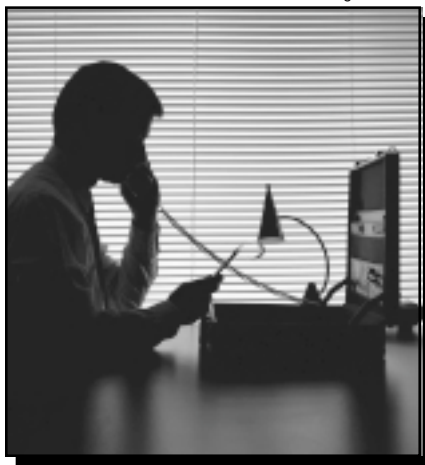
## RECOMMENDATIONS

Due to the nature of economic espionage, violations do not occur on a daily basis. Nor do these violations occur typically in plain view like most white collar crimes, such as fraud, money laundering, embezzlement, and advance fee schemes. Law enforcement discovers most economic espionage violations through the use of criminal informants, cooperating witnesses, and victims. Liaison with corporate security personnel also may lead to developing cases in this area.

Federal, state, and local authorities are working together to increase the awareness and threat of economic espionage. Many agencies take a proactive approach, such as the FBI's ANSIR program that focuses on intellectual property by promoting the existence of the Economic Espionage Act, while some departments offer case studies for corporate entities to digest.

On a day-to-day basis, local law enforcement's understanding of this violation advertises the law to the general public and corporations. The increasing popularity of using e-mail and Web sites and conducting business over the Internet results in companies becoming victims repeatedly without ever knowing it. Oftentimes, the corporate world does not consider security until after a company incurs a loss. Education remains one of the keys to success.

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"dumpster diving" effort by a business competitor or foreign entity to collect intelligence.<sup>27</sup> Trespassers of this nature often have multiple identifications,<sup>28</sup> a vehicle nearby containing more trash collected from other companies, and a time schedule to deliver trash to a central location. Trespassers who claim they recycle for money usually do not know the location of the recycling center. Information, such as names, times, locations, and vehicle description information developed



## CONCLUSION

The days of catching the spy or the criminal sneaking boxes or folders out the door in a briefcase no longer exist. Today, enough information to fill a public library easily fits on a CD-ROM or can go undetected over the Internet in seconds at the push of a button. Law enforcement and security personnel who investigate economic crimes should realize that victims of economic espionage, both individual and corporate, reluctantly may disclose information or work with law enforcement on these matters. Companies answer to shareholders, consumers, and investors and, therefore, often make their decisions not with concern for reporting illegal criminal activity but rather with reference to how disclosure will affect the bottom line and market share. Companies may believe that becoming involved in this sort of criminal prosecution literally could prove counterproductive. Ultimately, they have to protect themselves and often only with the help of law enforcement.

Fortunately, the loss of intellectual property is no longer just a civil matter and, therefore, law enforcement should not treat it as one. The Economic Espionage and Theft of Trade Secrets Act of 1996 provides a powerful and viable tool for law enforcement to protect individuals and corporations, while seriously punishing spies and thieves. ♦

### Endnotes

<sup>1</sup> *United States of America v. Pin Yen Yang et al.*, Criminal No. 97 CR 288 (N.D. Ohio, September 4, 1997).

<sup>2</sup> For example, pressure-sensitive products include address and mailing labels designed to pass through all types of printers without adversely affecting the adhesive backing of the label.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> Senator Specter, Congress, U.S. Senate, speaking on the Economic Espionage Act of 1996 to the Select Committee on Intelligence of the U.S. Senate and the Subcommittee on Terrorism, Technology, and Government Information of the Committee on the Judiciary of the U.S. Senate. 104<sup>th</sup> Cong., 2<sup>nd</sup> Session, S12208 (daily ed. October 2, 1996).

**“  
Law enforcement  
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and victims.  
”**

<sup>5</sup> See, e.g., Peter J. G. Toren, “The Prosecution of Trade Secrets Thefts Under Federal Law,” 22 *Pepperdine Law Review* 59, at 62 (1994) (\$1.8 billion) and Sam Perry, “Economic Espionage: The Corporate Threat,” (\$240 billion) available from <http://the-south.com/USInternational/econ.html>; accessed September 11, 2000.

<sup>6</sup> State law did not adequately fill the gaps left by federal law. While the majority of states have some form of civil remedy for the theft of proprietary economic information (trade secrets), either by recognizing a tort for the misappropriation of the information or by enforcing contracts governing the use of the information, these civil remedies often are insufficient. House Report 104-788, 104<sup>th</sup> Cong., 2<sup>nd</sup> Session (September 16, 1996).

<sup>7</sup> Richard J. Heffernan, Dan T. Swarthwood, “Trends in Intellectual Property Loss Survey,”

American Society of Industrial Security, (Arlington, VA: March 1, 1996).

<sup>8</sup> Economic Espionage Act of 1996, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.R. 104-788 (September 16, 1996).

<sup>9</sup> 18 U.S.C. 1831 (Economic Espionage) and 18 U.S.C. 1832 (Theft of Trade Secrets).

<sup>10</sup> *Rockwell Graphic Systems, Inc., v. DEV Industries*, 925 F.2d 174, 180 (7<sup>th</sup> Cir. 1991).

<sup>11</sup> 18 U.S.C. § 2314.

<sup>12</sup> 18 U.S.C. § 1341.

<sup>13</sup> 18 U.S.C. § 1343.

<sup>14</sup> *United States vs. Brown*, 925 F.2d 1301 (10<sup>th</sup> Cir. 1991).

<sup>15</sup> *Supra* note 8.

<sup>16</sup> *Supra* note 8.

<sup>17</sup> 21 U.S.C. § 853.

<sup>18</sup> 18 U.S.C. § 1839. The term *owner*, with respect to a trade secret, means the person or entity in whom or in which rightful legal or equitable title to or license in the trade secret is reposed.

<sup>19</sup> *Supra* note 8.

<sup>20</sup> See *U.S. v. Kai-Lo Hsu*, 982 F. Supp. 1022 (E.D. Pa. 1997) 20, cited as example.

<sup>21</sup> 21 U.S.C. § 1831 and § 1832.

<sup>22</sup> *Ibid.*

<sup>23</sup> 21 U.S.C. § 853.

<sup>24</sup> 21 U.S.C. § 853(a)(2).

<sup>25</sup> Leslie G. Berkowitz, “The Economic Espionage Act of 1996: An Experiment in Unintended Consequences?” 26 *Colorado Lawyer* 12 (December 1997).

<sup>26</sup> Speech by Howard M. Shapiro, former General Counsel, FBI, at a Cornell Law School forum sponsored by the Criminal Justice Society, October 18, 1994.

<sup>27</sup> Dumpster diving is the act of going through someone’s trash to get information about them. As a general rule, trash on the curb has no expectation of privacy while trash on private property does.

<sup>28</sup> More than five false identifications may be a violation of federal law under the Fraud and Related Activity to Identification Documents (FRAID) Act, 18 U.S.C. § 1028.

<sup>29</sup> The FBI uses the Awareness of National Security Issues and Response (ANSIR) program to communicate with industry, provide advisories and alerts on topics such as economic espionage, and present unclassified briefings to corporate security personnel nationwide. For more information or to make a referral, contact the FBI ANSIR coordinator at the local FBI field office, or access [www.fbi.gov](http://www.fbi.gov).

### **Police Auditing: Theories and Practices**

by Allan Y. Jiao, Ph.D., Charles C. Thomas, Springfield, Illinois, 1999.

*Police Auditing* focuses primarily on theories and practices in law enforcement auditing. It provides a comprehensive view of auditing by examining empirical standards, procedures, and practices and evaluations of conducting and responding to such audits.

Developing and maintaining positive changes in law enforcement departments that eliminate gaps in performance and enhance interface with technology and the community are stressed in *Police Auditing*. These improvements help managers develop their short- and long-range strategies and operational planning efforts. This book does not cover accounting practices and is not a summary of a scientific research report.

The book provides law enforcement with various auditing methods to assist police departments in becoming more efficient, effective, and financially competent. It accomplishes this through a model for planned change and police auditing that incorporates certain interrelated elements applicable to police auditing, regardless of a department's mission and size.

This book examines eight components of implementing auditing changes that will give shape and direction to a law enforcement agency's vision and culture. Some examples of these include coping with external/internal pressures, closing performance gaps, meeting goals and objectives, and developing solutions and alternatives. These points will aid administrators in developing a systematic and comprehensive review in improving their departments.

The author served as a member of a municipal budget review task force and as chairman of a city public safety committee that evaluated law enforcement responses to various audit

recommendations. These credentials allow him to draw upon his research and practical audit experience at the city level and from governmental and international departments to provide valuable information, in a systematic approach, to the entire law enforcement community. He identifies outstanding demonstrated audit procedures and methods of improved audit effectiveness and integrates them throughout the book.

In the chapter titled "Variety Police Audits," the author makes a relevant point that law enforcement auditing is not tied just to financial records involving allocation and expenditures of the budget and grants. The audit must address the total aspects of all law enforcement operations that compose and interface with the book's identified elements that will ultimately provide local residents and merchants with a safer living and business environment.

The author ends each chapter with an abstract to help auditors prepare an executive summary for distribution throughout law enforcement oversight offices and their organization and improve overall audit performance. When police auditors and department managers apply the procedures described in *Police Auditing*, the benefits can lead beyond the basics of just reviewing and documenting and aid them in completing a variety of other department goals. Police executives, supervisors, accountants, audit team members, department trainers, citizen review board members, and academic personnel should add *Police Auditing* to their intended reading list.

Reviewed by  
Larry R. Moore  
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of Emergency Managers  
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# ***The Microscopic Slide A Potential DNA Reservoir***

By JOHN E. SMIALEK, M.D.,  
CHARLOTTE WORD, Ph.D., and  
ARTHUR E. WESTVEER, M.L.A.

**D**etectives of the Baltimore County, Maryland, Police Department began pursuing a lead in a sexual-assault homicide case, which had remained unsolved for 19 years. In an effort to identify DNA evidence from the victim, officers requested the microscopic slides, made during the autopsy, from the chief medical examiner's office. Because the process of extracting DNA results in the loss of cellular material on the slide, the medical examiner photographed and delivered the slides, through the proper chain of custody, to the Baltimore County Police Department, who, subsequently, delivered them to a nationally recognized DNA laboratory. In turn, the laboratory staff extracted sufficient DNA from the slides to produce a satisfactory DNA profile to assist in solving the case.

DNA, also known as a "genetic fingerprint," exists in biological materials (e.g., blood, semen, skin cells, bone, saliva, and

perspiration). Individuals leave DNA evidence on many items, such as cigarette butts, facial tissues, and eyeglasses. Law enforcement officers only need a few cells from an individual to recover DNA.

DNA testing has identified perpetrators years after they have committed a crime.<sup>1</sup> Evidence retained in adjudicated cases may exonerate an individual accused wrongly and identify the true perpetrator. DNA material from homicide

investigation scenes provides valuable evidence. Therefore, law enforcement officers must inform investigators when DNA material exists and obtain, secure, and preserve the DNA evidence properly.

## **Obtaining and Securing DNA Material**

Evidence obtained decades ago can contain forensically valuable DNA material. However, environmental factors that exist at a crime



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scene (e.g., heat, sunlight, moisture, bacteria, and mold<sup>2</sup>) can affect DNA and render it useless. If not properly obtained and secured, DNA evidence can degrade. Officers should ensure that DNA evidence remains dry and at room temperature and secured in paper bags or envelopes, sealed and labeled properly. Officers should never place DNA evidence in plastic containers, direct sunlight, or the trunk of a car.

When identifying, obtaining, and handling DNA evidence, officers must ensure that they do not contaminate the material. Contamination occurs when the evidence comes in contact with another individual's body fluids through actions, such as sneezing, coughing, or touching. Contamination becomes a critical issue because today, laboratories use the polymerase chain reaction (PCR)

technique to replicate DNA. This technique involves extracting DNA from a small evidence sample and then replicating it through a complex operation of repeated heating and cooling cycles and exposure to an enzyme. Because each cycle doubles the quantity of DNA, experts can replicate the original extraction several million times within a short period.<sup>3</sup> But, the PCR process cannot distinguish between DNA from a suspect and another source. Therefore, any substantial contamination to the DNA material will result in a confusing result.

Biological material may contain hazardous pathogens that can cause potentially lethal diseases. Law enforcement officers always should contact their laboratory personnel or evidence collection technicians when they have questions about obtaining or securing DNA evidence. After officers follow

careful procedures to obtain and secure DNA material, they must take appropriate steps to preserve and process DNA evidence correctly as well.

### **Preserving and Processing DNA Evidence**

Today, investigators can reexamine evidence from preserved DNA samples using newer and more sophisticated technologies unavailable when they obtained the evidence. For DNA evidence to meet legal and scientific requirements for admissibility in court, investigators must follow certain procedures to preserve the DNA evidence properly and to prevent decomposition and deterioration. First, as with any evidence, agencies must maintain a proper chain of custody when handling DNA material. When transferring DNA evidence by direct or indirect means,



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## Case Scenarios

### Case #1

In 1982, the Naval Criminal Investigative Service opened a homicide case that involved the rape and murder of a woman, placed in the trunk of a car and pushed into a bay. Investigators recovered little evidence from the scene except some DNA material. This case remained unsolved until 1995 when, with support from new analysis of the 14-year-old DNA, investigators reexamined the case and identified a suspect. Officers arrested and charged the suspect with the rape and murder of the female victim.

### Case #2

The Richmond, Virginia, Police Department investigated a homicide with little evidence and few leads. However, investigators secured blood and semen samples from the scene. Officers identified a suspect, but DNA analysis exonerated him. Four years later, investigators examined these samples again and submitted them to their state's DNA indexing system. The DNA samples from the homicide matched samples from a 20-year-old man who had a criminal history of rape and murder. Officers charged the suspect with the 4-year-old homicide.

the material remains on surfaces by absorption or adherence.<sup>4</sup> Liquid biological evidence (e.g., blood, semen, and urine) absorbs into surfaces, and solid biological evidence (e.g., hair, bones, and teeth) adheres to surfaces. The proper way to preserve DNA evidence depends on the liquid or solid state and the condition of the evidence.<sup>5</sup>

Medical examiners and forensic pathologists permanently maintain microscopic slides that contain biological evidence from a swab of a body cavity taken at the time of an autopsy. Experts have extracted DNA material successfully from medical examiners' offices, hospitals, or rape kits.<sup>6</sup> The critical number of sperm on a slide for successful DNA testing appears to exist in the range of at least 100.<sup>7</sup> For example, after experts properly fix, process, and stain a specimen of sperm on a micro-

scopic slide, this evidence retains its DNA characteristics. But, the specimen must remain sequestered from exposure to environmental effects, which could result in decomposition and deterioration. If the material transferred to the slide contains a sufficient number of sperm, experts can use the PCR technique to identify the male's DNA profile, regardless of the time interval from when they made the slide.

Smear preparation of DNA material, which includes drying by air, immersing in several liquids, and mounting on various kinds of material, does not degrade the genetic material. Similarly, DNA tissues preserved in paraffin blocks, such as surgical specimens, often remain suitable for PCR testing. Research over the past 10 years has demonstrated that tissues stored in formalin/formaldehyde may be suitable for DNA testing using PCR.<sup>8</sup>

### Advancing Technology

Recent efforts at the local, state, and federal levels of government to employ advanced information system technologies emphasize the importance of preserving DNA samples. For example, the FBI created a National DNA Indexing System (NDIS) that uses computer applications and forensic science practices to match DNA samples across the country.<sup>9</sup> In this effort, scientists analyze DNA samples and store profiles of the biological evidence in a computer database. Public forensic laboratories throughout the United States use these profiles to exchange and compare DNA profiles electronically.<sup>10</sup> If an electronic match results, the FBI notifies the submitting jurisdiction and further investigation ensues. Additionally, the design of the FBI's Combined DNA Indexing System (CODIS) allows state and

local law enforcement crime laboratories to exchange and compare DNA profiles electronically as well. DNA samples in CODIS represent both DNA profiles from convicted felons and evidence from unsolved cases.

In many instances, administrative backlogs, such as processing and analyzing DNA and legal restrictions on the collection of DNA from offenders, have prevented these efforts from becoming more successful. The processing of suspected DNA evidence usually takes

from 3 to 7 days. However, this time frame depends on the volume of requests, the availability of trained personnel, and the number of laboratories equipped to conduct the test. Regardless of the backlogs, the advances in DNA analysis technology and information systems technology have combined to provide a powerful law enforcement tool in solving some crimes.

### Conclusion

Microscopic slides serve as valuable reservoirs of key evidence

that investigators can use in DNA testing years after the commission of a crime. Efforts by law enforcement officers and forensic pathologists to comb crime scenes for possible DNA material remain crucial to solving cases. Investigators must remember to obtain, secure, and preserve DNA material properly, or the evidence will not meet admissibility requirements in court. New technology in DNA analysis allows crime laboratories to exchange and compare DNA profiles, which can help solve crimes committed many

### Identifying DNA Evidence

Evidence	Possible Location of DNA on the Evidence	Source of DNA
baseball bat	handle, end	sweat, skin, blood, tissue
hat, bandanna, or mask	inside	sweat, hair, dandruff
eyeglasses	nose or ear pieces, lens	sweat, skin
toothpick	tips	saliva
tape or ligature	inside/outside surface	skin, sweat
bottle, can, or glass	sides, mouthpiece	saliva, sweat
“through and through” bullet	outside surface	blood, tissue
bite mark	individual’s skin or clothing	saliva
fingernail, partial fingernail	scrapings	blood, sweat, tissue
used cigarette	cigarette butt	saliva

*Source: U.S. Department of Justice, National Institute of Justice, National Commission on the Future of DNA Evidence, What Every Law Enforcement Officer Should Know About DNA Evidence, (Washington, DC, 1999).*



## Contamination Precautions

To prevent contamination of DNA evidence, officers should—

- wear gloves and change them often;
- use disposable instruments or clean them thoroughly before and after handling each sample;
- avoid touching the area where DNA evidence may exist;
- avoid talking, sneezing, and coughing over evidence;
- air-dry evidence thoroughly before packaging; and
- put evidence into new paper bags or envelopes, not into plastic bags, and never use staples.

Source: U.S. Department of Justice, National Institute of Justice, National Commission on the Future of DNA Evidence, *What Every Law Enforcement Officer Should Know About DNA Evidence*, (Washington, DC, 1999).

years prior to the DNA testing. Biological evidence within police departments, maintained with a proper chain of custody, can assist in the successful identification of the perpetrator, as well as in the exoneration of a wrongly convicted person. ♦

### Endnotes

<sup>1</sup> U.S. Department of Justice, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial, Research Report*, (Washington, DC, June 1996) and "Oops! We Forgot to Put it in the Refrigerator: DNA Identification and the State's Duty to Preserve Evidence," *The John Marshall Law Review*, 25:809-836, 1992.

<sup>2</sup> U.S. Department of Justice, National Institute of Justice, National Commission on the Future of DNA Evidence, *What Every Law Enforcement Officer Should Know About DNA Evidence*, (Washington, DC, 1999).

<sup>3</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Automated DNA Typing: Method of the Future*, February 1997; available from

<http://www.ncjrs.org/txtfiles/13102-9.txt>; accessed November 10, 1999.

<sup>4</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Handbook of Forensic Sciences: Evidence Examinations*, available from <http://www.fbi.gov/programs/lab/handbook/examsdna.htm>; accessed September 11, 2000. For questions concerning DNA evidence, contact the FBI Laboratory at 202-324-5436.

<sup>5</sup> Ibid.

<sup>6</sup> Based on a study by one of the authors who recorded several successful extractions of DNA material.

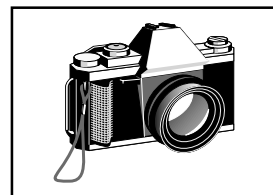
<sup>7</sup> Ibid.

<sup>8</sup> D. Shibata, T. Namiki, R. Huguchi, "Identification of a Mislabeled Fixed Specimen by DNA Analysis," *The Journal of Surgical Pathology* 14(1): 1076-1078, 1990.

<sup>9</sup> U.S. Department of Justice, Federal Bureau of Investigation, "The National DNA Indexing System," FBI National Press Release, (Washington, DC, October 13, 1998).

<sup>10</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Ensuring Public Safety and National Security Under the Rule of Law: A Report to the American People on the Work of the FBI, 1993-1998*, available from [www.fbi.gov/library/5-year/5-year\\_rpt.htm](http://www.fbi.gov/library/5-year/5-year_rpt.htm); accessed September 11, 2000.

## Wanted: Photographs



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

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

Brian Parnell, Art Director, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

# Focus on Cooperation

## Joint Employee Assistance Programs

By Mark Huguley, M.C.J.

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In 1997, when a young woman in Union, South Carolina, reported her two sons abducted, she simultaneously helped provide the genesis of a statewide chaplaincy and, later, a full-fledged employee assistance program. The mother received a life sentence for drowning her children to advance an extramarital affair gone bad. Numerous law enforcement officers from many jurisdictions worked on this case, which drew national attention. Union County sheriff's deputies, State Law Enforcement Division (SLED) agents, Department of Natural Resources (DNR) officers, highway patrol troopers, and other law enforcement personnel worked hard to investigate the crime, search for the children, and recover their bodies.

In the aftermath of this incident, a group of law enforcement leaders in Columbia, South Carolina, realized that such horrific trauma takes a serious toll on both veteran and rookie officers. A powerful statement supporting this conclusion came from one

of the DNR divers, who, though accustomed to the recovery of bodies in boating accidents, stated, "you think you get over it, but you just don't." These leaders formed a study group, which recommended the establishment of a statewide law enforcement chaplaincy with a professional staff.

### Establishing the Chaplaincy

Originally established as a volunteer program at SLED, the chaplaincy obtained victim assistance grant funding with a \$355,985 initial award.<sup>1</sup> The grant enabled the chaplaincy to hire three employees—two ordained clergy and one clinical social worker. When the program started, it primarily supported sworn staff members dealing with the effects of high stress critical incidents.

SLED, DNR, and the Departments of Public Safety (DPS) and Probation, Pardon and Parole (PPP) considered the work of the chaplaincy and decided to continue it as an expanded program to assist civilians, as well as sworn members of the four agencies. Each agency realized it did not have an employee assistance program (EAP) and interest evolved in that direction. Because March 31, 2000, marked the end of the grant, the agencies needed a new funding source. Managers of the four agencies decided their departments could support a program better collectively than on an individual basis.

Knowing that combined effort in a task force can maximize the resources of participating organizations, the agencies determined that sharing the operation of a joint employee assistance program would prove effective. Subsequently, SLED, DPS, DNR, and PPP committed to establishing and maintaining an employee assistance program to advance the welfare of their employees and to sharing the cost of providing this service.

### Adding Employee Assistance

Five organizations signed a memorandum of understanding (MOU) on January 21, 2000, to create the South Carolina Law Enforcement Assistance Program (SCLEAP). Four state agencies and the Law Enforcement Chaplaincy for South Carolina (LECSC) comprise the organization. The LECSC is registered with the IRS as a 501(c)(3) nonprofit entity, serves as a foundation, and performs related tasks for the



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SCLEAP. It has a governing board of leaders from local, state, and federal law enforcement, as well as private citizens who represent community leaders with diverse backgrounds. The chaplaincy board acts in an advisory capacity to SCLEAP and initiated the process leading to its creation.

The concept for the SCLEAP initiative is simple. Multiple agencies with a mutual need to provide employees with special support associated with stressful duty enter into a jointly funded program. In the South Carolina program, participating agencies pay an equal share to support the staff and provide operating funds.

### Implementing Duties

The SCLEAP staff has facilitated critical incident debriefings, responded to critical incidents in support of officers and victims, provided pastoral care to officers and family members, and referred officers to other professional resources. In an incident involving a workplace shooting, law enforcement chaplains provided critical incident care follow-up and referrals for approximately 300 witnesses. This police-sponsored intervention greatly facilitated relations between police and victims/witnesses.

Winthrop University in Rock Hill, South Carolina, held the first interagency postcritical incident seminar (PCIS) in conjunction with LECSC. The FBI designed the PCIS model to assist agents with handling the effects of critical incident stress.<sup>2</sup> The chaplaincy borrowed this concept and applied it on an interagency basis with both state and local officers meeting with trained law enforcement peer supporters, mental health professionals, and chaplains. Participants received information on trauma, patterns of resolution, and field-tested coping strategies to promote recovery and resilience.

SCLEAP regularly supports DNR law enforcement officers while they conduct search and rescue or search and recovery missions. In this capacity, DNR officers usually encounter family members of the victim who come to the scene and inadvertently

hamper operations. Chaplains intercede to comfort and control the relatives, allowing officers to do their work.

Similarly, SCLEAP chaplains work with the SLED special weapons and tactics (SWAT) team to counsel hostages and to calm family members, as well as witnesses to serious incidents. Chaplains don armor vests and respond to SWAT calls that involve barricaded suspects, subjects who are mentally disturbed, or multiple victims. The chaplains help reassure neighbors or other individuals who show

concern about or become suspicious of police tactical operations. Additionally, SCLEAP chaplains respond to incidents of trooper-involved shootings, certain vehicular pursuits, and related incidents. Due to the size of the highway patrol and its parent agency, DPS, response on behalf of DPS is becoming frequent. Likewise, support for the PPP will grow as that agency begins to use SCLEAP services.

Additionally, plans exist for chaplains to support officers sent to natural disasters. During hurricanes or other disasters where officers leave for extended duty, they may have concerns or worries regarding the welfare and safety of family left at home. The chaplains will check on officers' families who experience difficulties and, where possible, facilitate support to these families and report to the officers in the disaster area.

### Providing Services

All services begun under the chaplaincy have continued under the MOU with additional ones added. The SCLEAP provides a full-time professional staff, whose members have master's degrees or above, on a 24-hour, 7-day basis to assist all employees and their families. Also, the SCLEAP staff coordinates a trained critical incident stress debriefing and peer support team from partner agencies. The SCLEAP staff furnishes a confidential system of care and referral for employees and family members to therapeutic resources in areas of need, such as alcohol and

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other drug problems, mental health issues, and family and marital counseling. They visit sick or injured personnel and provide notification, in accordance with procedures of each agency, to families of personnel who have received serious injuries or who have died in the course of employment. Also, they act as a liaison between partner agencies and civic and religious leaders, while providing support and assistance for victim advocacy services and community relations.

While the MOU provides the framework for the program, partner agencies designate members to serve on a governing committee. The partner agencies agreed that, to ensure efficient administration, one agency should serve as the host agency and govern the program as an official function of that agency. The SCLEAP staff must meet all applicable state personnel rules and regulations. The designated representatives assemble at least annually to decide the course of operations and whether they should make any changes.

The location of SCLEAP's office space represents an important aspect of the program. Some employees are more

likely to seek assistance without their peers' knowledge, therefore agencies intentionally found office space in an area away from the four agencies. Moreover, individuals involved with this program believe some employees more willingly will accept or seek assistance offered by members of the clergy, rather than mental health professionals. Chaplains refer employees to other counseling as appropriate, and sometimes they convince a reluctant employee to get help that they would not seek otherwise.

Another vital part of the success of the program hinges on the ability of the staff to be perceived as "one of their own" by each participating agency although actually serving all partner agencies. The

SCLEAP staff works carefully to understand and respect the common law enforcement experience and the individuality of each agency. While part of a universal brotherhood, a sense of uniqueness remains important to the partner agencies.

### Conclusion

The South Carolina Law Enforcement Assistance Program and its chaplain staff provides support and assistance to member agency personnel, but does not proselytize or spread a religious message or personal agenda. The program provides alternative services for employees and facilitates the exercise of First Amendment rights under proper conditions. When member agencies call for support, it must be for

secular reasons, and when an employee calls for assistance, it must be for whatever the employee needs and requests. The setting in which the activity takes place and the person on whose behalf the request for service is made represent key issues.

Multiagency operations make the most efficient use of existing resources. This approach proves as useful for employee assistance programs as it does for law

enforcement operations. The success of the joint program depends on staff members who understand the culture of the law enforcement organizations and the personnel they serve. ♦



### Endnotes

<sup>1</sup> This sum includes \$100,000 that funded the production of a national teleconference on law enforcement trauma entitled "The Rusting Badge."

<sup>2</sup> Vincent J. McNally and Roger M. Solomon, "The FBI's Critical Incident Stress Management Program," *FBI Law Enforcement Bulletin*, February 1999, 20-25.

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*Major Huguley serves with the South Carolina Law Enforcement Division in Columbia.*

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## *The SEARCH National Technical Assistance and Training Program*

SEARCH, The National Consortium for Justice Information and Statistics, has a National Technical Assistance and Training Program that offers on-site, no-cost technical assistance. Available to law enforcement personnel, prosecutors, public defenders, jail administrators, court officials, correctional officers, probation and parole officers, and associated agencies, the technical assistance activities, services, and products help these entities determine system needs, establish system requirements, and design or procure cost-effective, integrated information and workload management systems. Projects include working with law enforcement agencies to implement mobile computing, computer-aided dispatch, mugshot and fingerprint identification, and records management system technologies; assisting prosecutors, public defenders, and court officials with case management information systems; working with jails, corrections, and probation and parole agencies to implement offender tracking programs; and, most important, helping each agency work toward integrating its information management system technologies.

SEARCH offers training courses to local, state, and federal agencies on such topics as seizure and examination of microcomputers, investigation of computer crime, Internet crime investigation, investigation of on-line child exploitation, basic local area network investigations, and child pornography and the Internet. On-site training occurs at SEARCH's National Criminal Justice Computer Laboratory and Training Center in Sacramento, California. SEARCH also provides outreach training at regional training facilities nationwide.

Other technical assistance and training resources include technical bulletin series, Internet services, and conferences, workshops, and symposia. For further information, contact SEARCH at 916-392-2550 or access its Web site at <http://www.search.org>.

## *Training Programs*

The Bureau of Justice Assistance now has the latest federally funded training programs on-line at [www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA). This centralized and fully searchable database can help criminal justice professionals—

- identify their training needs quickly and easily;
- locate course descriptions for more than 650 training programs available from providers throughout the nation; and
- find the most updated contact information on training programs for all state and local law enforcement agencies worldwide; information that may no longer exist in print.

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## *National Night Out*

*National Night Out: A Community-Police Partnership Program*, a Bureau of Justice Assistance Fact Sheet, describes the program's scope, objectives, and services. Launched in 1984 by the National Association of Town Watch, National Night Out has gone from 2.5 million participants in 400 communities in 23 states that first year to 32 million people representing 9,500 communities in all 50 states, the District of Columbia, the 5 U.S. territories, numerous Canadian cities, and U.S. military bases worldwide in 1999. National Night Out provides information, educational material, and technical assistance for developing effective year-long community-police partnerships that can reduce crime, violence, and substance abuse. To obtain a copy of the Fact Sheet, contact the Bureau of Justice Assistance Clearinghouse at 800-688-4252 or access its Web site at <http://www.ojp.usdoj.gov/BJA>. For additional information about National Night Out, contact the National Association of Town Watch at 800-648-3688 or access its Web site at <http://www.natw.org>.

## **Clarification**

**I**t has come to the attention of the *Bulletin* staff that the article, "The Community Outreach Program: Putting a Face on Law Enforcement," which appeared in the September 2000, issue contained erroneous information regarding a 1989 shooting incident in Alexandria, Virginia. In the article, the incident is described as "a drug bust that had gone wrong, ending in a shootout between the police and the drug suspects that left two residents dead." The incident, in fact, began when a drug seller took a drug purchaser hostage, pointing a weapon at the victim's head. During a confrontation with members of the Alexandria, Virginia,

Police Department's Special Operations Team (SOT), the suspect was killed by members of the SOT after he killed one officer and seriously wounded another. The second officer died shortly after the incident. No other individuals, including the hostage, were injured. Also, although a number of FBI special agents were at the scene of the incident, the FBI SWAT team was on standby during the incident and had not been sent to the scene. The authors of the article and editors of the *Bulletin* take full responsibility for this error and regret any confusion this error may have caused *Bulletin* readers and members of the Alexandria, Virginia, Police Department.

# Supreme Court Cases 1999–2000 Term

By SOPHIA Y. KIL



**D**uring the 1999-2000 term, the U.S. Supreme Court ruled on three Fourth Amendment cases relating to criminal procedure and a Fifth Amendment case involving the constitutionality of the *Miranda* rule. Law enforcement officers and their agencies may find these cases particularly important and interesting. Specifically, the Court ruled on 1) whether a law enforcement officer conducts a Fourth Amendment search when physically manipulating a bus passenger's carry-on luggage; 2) whether a law enforcement

officer's initial stop is supported by reasonable suspicion when the suspect is both present in an area of expected criminal activity and flees upon seeing the police; 3) whether an anonymous tip that a person is carrying a gun, without more information, justifies a police officer's stop and frisk of that person; and 4) whether the *Miranda* rule is a constitutionally based rule.

## ***Bond v. United States*, 120 S. Ct. 1462 (2000)**

The Supreme Court held that a law enforcement officer's physical

manipulation of a bus passenger's carry-on luggage was a search and therefore governed by the Fourth Amendment. Steven Dewayne Bond was a passenger with carry-on luggage on a bus. When the bus stopped at a Border Patrol checkpoint, a Border Patrol agent boarded the bus to check the passengers' immigration status. In an effort to locate illegal drugs, the agent began to squeeze the soft luggage, which some passengers had placed in the overhead storage space above their seats. The agent squeezed the canvas bag above

Bond's seat and noticed that it contained a "brick-like" object. Bond admitted that the bag was his and consented to its search. When the agent looked inside the bag, he discovered a "brick" of methamphetamine.

Bond was indicted for federal drug charges. Bond moved to suppress the drugs, arguing that the agent conducted an illegal search when he squeezed the bag. The District Court denied his motion to suppress and convicted Bond. The Court of Appeals affirmed the denial of the motion to suppress, holding that the agent's manipulation of the bag was not a search within the meaning of the Fourth Amendment. The Supreme Court reversed, holding that the agent's manipulation of the bag was a search and that it violated the Fourth Amendment.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." What constitutes an unreasonable search that violates the Fourth Amendment? The Court's analysis involves two considerations: 1) Did the police conduct at issue constitute a "search" within the meaning of the Fourth Amendment? and 2) If the conduct constituted a search within the meaning of the Fourth Amendment, then was the search "reasonable"?

Under the first consideration, the Court defines a search as a government infringement of a person's reasonable expectation of privacy.<sup>1</sup> A reasonable expectation of privacy exists when the person's

subjective expectation of privacy is objectively reasonable.<sup>2</sup> According to the Court, Bond had a subjective expectation of privacy in his bag<sup>3</sup> because he used an opaque bag and placed it directly above his seat. Bond's expectation of privacy was objectively reasonable because although a bus passenger expects other passengers or bus employees to handle or move his bag when he places it in an overhead storage area, he does not expect that they will feel the bag in an exploratory manner. In this case, the agent's manipulation of Bond's bag was an infringement of Bond's reasonable expectation of privacy because he felt Bond's bag in an exploratory manner when he squeezed it. Thus, the agent's manipulation of the bag constituted a search.

Under the second consideration, any government search conducted without a warrant is *per se* unreasonable, unless the search falls under a few recognized exceptions to the warrant requirement (e.g., consent searches, emergency searches, motor vehicle searches, inventory searches, and searches incident to arrest).<sup>4</sup> In this case, the agent's search was unreasonable because he conducted the search without a warrant and the search did not fall under any of the recognized exceptions. Although Bond consented to a search of his bag, his consent was not at issue. The agent's squeezing of Bond's bag was at issue—Bond argued that the agent's squeezing of his bag was an illegal search and the government did not assert Bond's consent as a basis for admitting the evidence.



*Ms. Kil, a third-year law student, recently served as an honors intern in the Legal Instruction Unit at the FBI Academy.*

### ***Illinois v. Wardlow,*** **120 S. Ct. 673 (2000)**

The Supreme Court held that a police officer's initial stop of a suspect was supported by reasonable suspicion because the suspect was both present in an area of expected criminal activity and fled upon seeing the police.

Two police officers were investigating drug transactions while driving in an area known for heavy drug trafficking. As they were driving, they noticed Wardlow holding a bag. When Wardlow saw the two officers, he fled. The officers pursued and stopped him. One of the officers conducted a protective pat down search for weapons because, in his experience, it was common for weapons to be in the vicinity of drug transactions. During the pat down, one of the officers squeezed Wardlow's bag and felt a heavy, hard object in the shape of a gun. When the officer opened the bag, he discovered a handgun with



ammunition. The officers subsequently arrested Wardlow.

Wardlow moved to suppress the gun. The Illinois trial court denied Wardlow's motion to suppress, finding that the officers performed a lawful stop and frisk. At the bench trial, Wardlow was convicted for unlawful use of a weapon by a felon. The Illinois Appellate Court reversed Wardlow's conviction, finding that the officer did not have reasonable suspicion sufficient to justify an investigative stop under *Terry v. Ohio*.<sup>5</sup> The Illinois Supreme Court affirmed. The U.S. Supreme Court granted *certiorari* solely on the question of whether the initial stop was reasonable and reversed, holding that the initial stop was supported by reasonable suspicion.

Under *Terry*, an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.<sup>6</sup> When

reviewing an officer's decision to stop an individual, the Court does not expect scientific certainty. The determination of reasonable suspicion must be based on common sense judgments and inferences about human behavior.<sup>7</sup> However, several factors can be used to determine whether an officer has reasonable suspicion to make a *Terry* stop, including 1) whether the stop occurred in a "high crime area";<sup>8</sup> 2) a suspect's nervous, evasive behavior;<sup>9</sup> and 3) a suspect's unprovoked flight upon noticing the police.<sup>10</sup>

Each factor alone may not be enough to support a reasonable suspicion that criminal activity is afoot. For example, an individual's presence in a high crime area, standing alone, is not enough to support a reasonable suspicion that he is committing a crime. And although headlong flight is not necessarily indicative of ongoing criminal activity, it is suggestive of such because it is an act of evasion. However, these factors, taken together, may be

sufficient to establish reasonable suspicion. In this case, the Court concluded that the officer was justified in suspecting that Wardlow was involved in criminal activity and investigating further because Wardlow was both present in an area of expected criminal activity and fled upon seeing the police.



***Florida v. J.L.*,  
120 S. Ct. 1375 (2000)**

The Supreme Court held that an anonymous tip that a person is carrying a gun, without more information, does not justify a police officer's stop and frisk of that person.<sup>11</sup> An anonymous caller reported to the police that a young black man standing at a particular bus stop and wearing a plaid shirt was carrying a gun. According to the record, there was no audio recording of the tip and nothing was known about the informant. Officers went to the bus stop and saw three black men. One of the men, J.L., was wearing a plaid shirt. Aside from the tip, the officers had no reason to suspect the three of illegal conduct. The officers did

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not see a firearm or observe any unusual movements. One of the officers frisked J.L. and seized a gun from his pocket.

J.L., who was 15 years old at the time of the frisk, was charged under state law with carrying a concealed firearm without a license and possessing a firearm while under the age of 18. J.L. moved to suppress the gun as the fruit of an unlawful search. The trial court granted his motion. The appellate court reversed. The Supreme Court of Florida quashed that decision, holding the search invalid under the Fourth Amendment. The U.S. Supreme Court affirmed.

If an officer is relying on an anonymous tip to make a *Terry* stop, then the tip must be sufficiently reliable to provide the officer with reasonable suspicion to make the stop. Generally, an anonymous tip alone is not sufficiently reliable because it “seldom demonstrates the informant’s basis of knowledge or veracity.”<sup>12</sup> For example, an anonymous tip that a suspect is carrying cocaine and predicts her movements, standing alone, would not justify a *Terry* stop.

However, an anonymous tip that is suitably corroborated may be sufficiently reliable to provide the officer with reasonable suspicion to make a *Terry* stop.<sup>13</sup> The Court considers two factors: 1) what the officers knew—either by their own observations, their experience, or prior knowledge of the suspect or area—before they conducted their stop;<sup>14</sup> and 2) whether the anonymous tip showed that the informant had predicted accurately the suspect’s movements<sup>15</sup> or had

knowledge of concealed criminal activity.<sup>16</sup> A tip that merely identifies a specific person is not reliable enough to show knowledge of concealed criminal activity.<sup>17</sup>

Will an anonymous tip, standing alone, ever provide enough reasonable suspicion to make a *Terry* stop? In a concurring opinion, two of the justices noted that an anonymous tip with certain features or in certain situations may make it more reliable, justifying police action. Such features or situations could include 1) caller identification of anonymous tips; 2) voice recording of anonymous telephone tips; 3) an unnamed person giving the information, face to face, to the police; and 4) an unnamed caller with a voice that sounds the same each time he tells the police on two successive nights about criminal activity, which, in fact, occurs each night—a similar call on the third night should not be treated like an unreliable anonymous tip.<sup>18</sup> The first three factors relate to the informant’s credibility since the police officer is able to locate the informant, while the last one relates to the predictability of the situation.

In this case, the tip was not sufficiently reliable to justify a *Terry* stop. First, the officers’ suspicions that J.L. was carrying a weapon did not stem from any of their own observations, but solely from a call by an unknown, unaccountable informant. Second, the informant’s call did not provide any information predicting J.L.’s movements, leaving the police without a way to test the informant’s knowledge or credibility. In addition, the informant did not disclose any basis for his knowledge of concealed criminal

activity, but merely identified J.L.’s appearance and location.



***Dickerson v. United States*,  
120 S. Ct. 2326 (2000)**

The Supreme Court held that the decision of *Miranda v. Arizona*<sup>19</sup> is a constitutional decision of the Court that may not be overruled by any Act of Congress (i.e., 18 U.S.C. § 3501) and reaffirmed that *Miranda* governs the admissibility of statements made during custodial interrogation in both state and federal courts.

Charles Thomas Dickerson was charged with conspiracy to commit bank robbery and other offenses. Before trial, Dickerson moved to suppress a statement he had made to the FBI on grounds that he had not received *Miranda* warnings before being interrogated. The District Court granted his motion to suppress. The government appealed. The Court of Appeals reversed the suppression order, holding that since *Miranda* was not a constitutional holding, Congress could supersede *Miranda* by enacting 18 U.S.C. § 3501. The Supreme Court reversed.





In order to protect an individual against compelled self-incrimination during police custodial interrogations, *Miranda* established four warnings, or *Miranda* rights. A suspect must be told that he “(1) has the right to remain silent; 2) that anything he says can be used against him in a court of law; 3) that he has the right to the presence of an attorney; and 4) that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.”<sup>20</sup> Whether a suspect’s statement during his custodial interrogation will be admissible in evidence depends on whether the police provided him with these four warnings and obtained an appropriate waiver.

Two years after *Miranda*, Congress enacted 18 U.S.C. § 3501, providing that a confession shall be admissible in federal court if it is voluntarily given.<sup>21</sup> The Court determined that Congress intended to overrule *Miranda* because § 3501 requires merely voluntariness—not the four warnings—as the determining factor as to whether a statement will be admissible.

The Court held *Miranda* to be a constitutional decision—that is, a decision which interprets and applies the Constitution—that cannot be overruled by an Act of Congress, such as 18 U.S.C. § 3501. While conceding that Congress may modify or set aside the Court’s rules of evidence and procedure that are not required by the Constitution, the Court emphasized that Congress may not overrule the Court’s decisions that interpret and apply the Constitution.

The Court cited various other reasons for reaching its conclusion that *Miranda* is a constitutionally based rule. Among them, the Court noted that *Miranda* had become part of our national culture because the warnings were embedded in routine police practice. Furthermore, § 3501 is more difficult than *Miranda* for law enforcement officers to conform to and for courts to apply in a consistent manner.<sup>22</sup>

By holding *Miranda* to be a constitutional decision, the Court reaffirmed that *Miranda* governs the admissibility of statements made during custodial interrogation

in both state and federal courts. If the Court had upheld § 3501, then *Miranda* would have been inapplicable in federal courts, but would have still applied in state courts. In light of the *Dickerson* decision, a violation of *Miranda* is now clearly a violation of the Constitution, which can result in suppression of statements in both federal and state courts. ♦

#### Endnotes

<sup>1</sup> *Katz v. United States*, 389 U.S. 347, 360 (1967) (J. Harlan, concurring).

<sup>2</sup> *Bond v. United States*, 120 S. Ct. 1462, 1466 (2000), citing *Katz*, 389 U.S. at 361 (J. Harlan, concurring).

<sup>3</sup> *Bond*, 120 S. Ct. at 1464. The Court noted that a traveler’s personal luggage is an “effect” protected by the Fourth Amendment.

<sup>4</sup> *Katz*, 389 U.S. at 357.

<sup>5</sup> 392 U.S. 1 (1968).

<sup>6</sup> *Illinois v. Wardlow*, 120 S. Ct. 673 (2000), citing *Terry*, 392 U.S. at 30.

<sup>7</sup> *Wardlow*, 120 S. Ct. at 676.

<sup>8</sup> *Id.* at 673, quoting *Adams v. Williams*, 407 U.S. 143, 144 (1972).

<sup>9</sup> *Wardlow*, 120 S. Ct. at 673.

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

<sup>11</sup> An officer’s authority to make the initial stop was at issue, not the officer’s authority under *Terry* to conduct a frisk of a person who already has been stopped legitimately. Obviously, if the initial stop is unreasonable, then any resulting frisk would likewise be unlawful.

<sup>12</sup> *Florida v. J.L.*, 120 S. Ct. 1375, 1378 (2000), quoting *Alabama v. White*, 496 U.S. 325, 329 (1990).

<sup>13</sup> *Id.* at 327.

<sup>14</sup> *J.L.*, 120 S. Ct. at 1379.

<sup>15</sup> *Id.* at 1378, citing *White*, 496 U.S. at 332.

<sup>16</sup> *J.L.*, 120 S. Ct. at 1379.

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

<sup>18</sup> *Id.* at 1381.

<sup>19</sup> 384 U.S. 436 (1966).

<sup>20</sup> *Id.* at 479.

<sup>21</sup> 18 U.S.C. § 3501(a).

<sup>22</sup> *Dickerson*, 120 S. Ct. at 2336.

# The Bulletin Notes

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



Officer Stehr



Officer Seney

While on patrol, Officers Jeffrey E. Stehr and T. Chuck Seney of the North Greenbush, New York, Police Department responded to an emergency medical service call. A 77-year-old female, who had complained of breathing difficulties, fell unconscious while talking to the 911 dispatcher. When Officers Stehr and Seney arrived on the scene, they found the woman unconscious, unresponsive, not breathing, and without a pulse. They initiated CPR and maintained the victim until emergency medical personnel arrived. The quick response by Officers Stehr and Seney saved the woman's life.



Officer Hummel

Officer William Hummel of the Pinellas Park, Florida, Police Department was off duty on his way to work when he observed a crash scene between two large trucks. One of the drivers was injured seriously and his legs were pinned under the dash as he lay over the engine area. Officer Hummel stopped immediately to render aid and discovered that fuel had begun leaking, and a fire had erupted. He obtained fire extinguishers from nearby businesses and drivers of other vehicles and attempted to control the fire. Officer Hummel climbed onto the burning truck to spray the flames and protect the driver. Although the vehicles involved were leaning and had unstable truck beds, Officer Hummel put his own safety aside to save the driver's life by removing him from the burning truck.



Officer Mick

Marine Patrol Officer Gary Mick of the Metro-Dade, Florida, Police Department was dispatched alone to an ocean rescue of a capsized sailboat during a severe weather watch with 10- to 13-foot seas, 30 mile per hour winds gusting to 40 miles per hour, and heavy rain. Officer Mick almost was thrown overboard due to the extremely stormy seas, but, in spite of the hazardous conditions, he successfully rescued two individuals from the water. During the rescue operation, Officer Mick single-handedly maneuvered his boat into the wind while battling ocean waves breaking in over the gunwale. While doing this, he also had to remove a dive door, attach a line to a boat cleat, and toss the line to the nearest victim. Officer Mick's courage and determination saved the lives of the two victims who had been in the water for over an hour, were extremely fatigued, and suffered from hypothermia.

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