



FBI Law Enforcement BULLETIN

December 2001
Volume 70
Number 12

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

Robert S. Mueller III
Director

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

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

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Periodicals postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

Editor

John E. Ott

Associate Editors

Glen Bartolomei
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Denise Bennett Smith

Assistant Art Director

Stephanie L. Lowe

Staff Assistant

Linda W. Szumilo

This publication is produced by members of the Law Enforcement Communication Unit, William T. Guyton, Chief.

Internet Address

leb@fbiacademy.edu

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Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

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Gangs in Middle America

Are They a Threat?

By DAVID M. ALLENDER

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In the past 30 years, changes have occurred in how the police and the public view, define, and discuss gangs.¹ In the late 1960s and early 1970s, police in large cities generally acknowledged the existence of gang activity within their jurisdictions. During the 1970s, the public was recovering from the Vietnam War and dealing with a wide variety of important social issues and changes. Gangs and crime did not demand the same attention as these other matters.

By the middle of the 1980s, however, the public became

increasingly concerned with safety issues. The interest continued into the 1990s, partially due to an aging population. In response to the electorates' concern, federal grant programs and monies proliferated. Several of these projects, such as Operation Weed and Seed and the Office of Community-Oriented Policing Services (COPS) antigang initiative,² had as a core ingredient the need to control or dismantle criminal street gangs. Increased attention and discussion also brought new legislation to deal with the gangs. Many states enacted statutes

to assist police and prosecutors and mandated that new police officers attending basic police academies receive at least a minimal amount of training in gang topics. Media interest mirrored audience appetite and boosted coverage of gang-related subject matter. Increased reporting of such incidents had the effect of making it appear that gang activity was on the rise. But, is this truly the case, especially in middle America? Are states, such as Indiana, "the crossroads of America,"³ at risk of becoming infected with the gang menace or has it occurred already?



Lieutenant Allender serves with the Indianapolis, Indiana, Police Department.

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An examination of gang history, gang migration, and gang structure, along with the efforts of law enforcement to combat and prevent gangs may provide some answers. In addition, a review of Indianapolis, Indiana’s experience with gangs illustrates how a “big small town” in the heart of the United States can become a new target for gangs from other areas of the country.⁴

GANG HISTORY

Historical literature makes frequent reference to groups that engaged in criminal activity. Ancient Egyptians talked about bands of robbers who preyed upon those transporting goods along the caravan routes. China had gangs who committed robberies and kidnappings for profit. Folklore romanticizes pirates on the high seas that made their living by murder, robbery, and kidnapping. According to Hollywood and some authors, large numbers of outlaw gangs populated the American West. As with the pirates, many of these outlaws became folk heroes. Endless examples

exist of gangs, bound together through the commission of criminal acts.

A well-documented gang case comes from the British who, from 1834 to 1848, were dealing with what they identified as a gang of robbers and murderers in Budhuk, India.⁵ Unable to deal with the gang because of its size and complexity, local authorities turned to the army for help. To gain control of the situation, the government passed legislation prohibiting gang membership, associating with known gang members, and deriving profit from a gang’s criminal activity. The military convinced the government to pass additional laws allowing a federalist approach, including permission to house prisoners in jails far from the gang’s home territory. Extensive use of informants, working for both pay and sentencing considerations, comprised a main component of the successful effort. Interestingly, police investigating gangs today deal with some of the problems troops encountered during this operation.

America’s first identified gang, however, was formed in 1820 in the Five Points District of New York City. Named the Forty Thieves, the gang operated along the waterfront, engaging in acts of murder, robbery, assault, and other violent acts. Composed of recently arrived Irish immigrants, the Forty Thieves recruited a group of young imitators, who called themselves the Forty Little Thieves. To complete the equation, a rival gang, the Kerryonians, organized to ensure that they got their share of the ill-gotten gains. This pattern repeated itself many times over the years.

The end of the Civil War saw large-scale criminal activity on the part of a few veterans who had trouble returning to a peaceful society. Some of these men formed gangs to increase the profits from their illegal actions, such as the infamous brothers Jessie and Frank James who recruited men, often boyhood friends or relatives, to assist them as they traveled to commit robberies. Media reports often attributed crimes to the James Gang that they could not possibly have committed due to the acts occurring great distances apart and on the same day. Although authorities knew where the James family lived, they were unsuccessful in apprehending the brothers. The gang finally met its ruin through a couple of events. The members ventured far from their familiar territory in Missouri to commit a robbery in Northfield, Minnesota. The robbery went awry and degenerated into a running gun battle leaving several residents and holdup men dead or wounded. Captured gang members received long prison sentences.

Unrelated to the robbery, but not long after, an associate murdered Jessie. Faced with the loss of so many of the gang's members, Frank surrendered to authorities. The governor of Missouri later pardoned Frank James, and he escaped punishment for his criminal acts.

Moving from the notorious and infamous to those with more in common with gangs today, a 1927 study of street gangs in Chicago⁶ identified 1,313 active gangs in the city at that time. The findings have a common thread that links these historical groups to present-day gang members. For example, many of those who formed or joined gangs felt disenfranchised by society. Many members of Forty Thieves, comprised of recently arrived immigrants, had problems adjusting to a new culture and experienced prejudice due to their immigrant status and ethnicity. In India, the gang's members had to live closely together to avoid arrest. In time, the rest of society would not accept anyone tied to the gang. Thus, they had to remain within the group to support themselves. Pirates often were seamen who had been shanghaied, escaped from authorities, or were estranged in some manner from a normal lifestyle. The James' brothers and their support system of friends and relatives felt strong resentment toward established authority because of their wartime experiences. More examples exist, but the feeling of estrangement exhibited by these groups represents an important theme. These same feelings often occur in modern gangs. The gang often exists prior to entering into any type of profit-making criminal activity. The opportunity

to make money from crime comes about *because* the gang exists. The gang, with the exception of some drug gangs, does not normally form to make money.

The world of outlaw motorcycle gangs illustrates how the gang came first and then the criminal actions. Veterans returning from World War II formed motorcycle clubs. While most were social groups, a few, such as the Hell's Angels, began to engage in criminal activities. As the Angels grew in power and influence, rival gangs, such as the Pagans, Banditos, and

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Not all street gangs exist to sell drugs or commit criminal acts.

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the Outlaws, formed in other parts of the nation. Because of their organization, the motorcycle gangs controlled certain types of criminal activity within their areas of dominance. Bikers, by their bylaws, actions, and appearance, seek to force their members to remain outside the mainstream of society. In doing so, the leadership bonds the membership closer together as the group mentality becomes one of “us versus them.”

Ethnic gangs represent another illustration of gangs forming before any criminal activity takes place. Hispanic gangs grew in strength and influence following the Zoot Suit Riots of 1943. In California,

white, off-duty military personnel attacked Hispanic males who they felt were benefitting from the war while evading the dangers of combat. The physical danger from the rioters, coupled with other acts of prejudice and discrimination, caused the Latino community to band together more tightly. The criminal element, usually present in every group of people, then took over some of the gangs to further unlawful enterprises.

Other ethnic groups, including Asians, Italians, Jews, Jamaicans, and many others, formed gangs because they too had to deal with prejudice and discrimination, which alienated them from mainstream society. The organizations they formed had varying degrees of sophistication. Many of the groups faded away as the ethnic groups assimilated into mainstream culture. A lawful alternative for those that continued to exist was the transition into social or fraternal organizations, promoting cultural identity and positive civic actions. A small percentage mutated into criminal enterprises, which the media and entertainment industry often have romanticized. The extreme example of this genre being the Italian Mafia, portrayed in a positive or humorous fashion in numerous movies, television programs, advertising commercials, and even news reports. The trend continues with the influx of Russian immigrants into the United States. A small percentage of these new arrivals are criminals and gang members, dubbed the “Russian Mafia” by the popular media. In short, the formula for creating and maintaining gangs is not a new concept and is ongoing.

The real problem facing law enforcement is identifying the amount of criminal gang activity present and limiting the damage these groups can do to society.

GANG MIGRATION

How does the idea of establishing a gang spread? Where do aspiring members get information on how to form and structure the gang? Must gang members follow certain rules? How does a potential leader pick and recruit followers? Are there role models in this subculture? To understand the gang subculture, law enforcement officers, school administrators, social workers, and parents must become familiar with the basic concepts that these questions address.

Who Joins a Gang?

Not all street gangs exist to sell drugs or commit criminal acts. Instead, young people normally seek gang involvement for some combination of the following five reasons:

- 1) Structure: Youths want to organize their lives but lack the maturity to do so on their own. The gang provides rules to live by and a code of conduct.
- 2) Nurturing: Gang members frequently talk of how they love one another. This remains true even among the most hardened street gangs. These young people are trying to fill a void in their lives by substituting the gang for the traditional family.
- 3) Sense of belonging: Because humans require social interaction, some young

people find that the gang fulfills the need to be accepted as an important part of a group.

4) Economic opportunity: Gang members motivated by this consideration alone probably would become involved in criminal activity anyway. Finding it hard to draw away from the lifestyle, but due to a lack of loyalty for the group, they often will provide authorities with information in exchange for some personal benefit.

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5) Excitement: This often represents a motivation for suburban and affluent youths. Gangs composed of these types of individuals usually have very fluid membership, with associates joining and leaving to be replaced by others with a passing interest.

Few young people that enter into the gang subculture do so for evil or criminal reasons. They are looking for something that they feel is lacking in their lives. For this reason, gangs can form in any city, town, neighborhood, or region. No hard-and-fast rule says that all gang

members do one thing or another. To understand the gang operating in any given area, law enforcement agencies must determine what motivates the gang's members and how the gang leadership maintains authority over, and loyalty from, its members.

At present, the most visible criminal street gangs operate in the nation's inner cities. When depicted by either the news media or the entertainment industry, these groups have almost exclusively young black or Hispanic males as members, often portrayed as violent and prosperous because of their involvement in the drug trade. In reality, not all street gangs are involved heavily in drug trafficking; very few street gang members are prosperous; and no shortage of white male gang members exists in inner-city, suburban, or rural areas. Moreover, females often join the gang subculture for the same reasons males do. They may link themselves to a male-dominated gang, or, in some cases, form their own associations. The urban legend about prosperity has grown, however, and many young people see the street gang as a method of achieving both financial and social success. Unfortunately, a few gangsters involved with street gangs are successful, both financially and socially. They become role models to less fortunate young people who are shortsighted and fail to realize the danger and the damage criminal gang activity can do to them, their families, and their neighborhoods.

How Do Gangs Spread?

Criminal street gangs can spread by what some have labeled

Some Gang Web Sites

Gangs and Security Threat Group Awareness: <http://www.dc.state.fl.us/pub/gangs/index.html>

Created and maintained by the Florida Department of Corrections, this Web site contains information, photographs, and descriptions on a wide variety of gang types, including Chicago- and Los Angeles-based gangs, prison gangs, nation sets, and supremacy groups from many parts of the United States.

Gangs or Us: <http://www.gangsorus.com>

A comprehensive Web site that offers a broad range of information, including a state-by-state listing of all available gang laws, gang identities and behaviors applicable to all areas of the United States, and links to other sites that provide information to law enforcement, parents, and teachers.

Southeastern Connecticut Gang Activities Group (SEGAG): <http://www.segag.org>

A coalition of law enforcement and criminal justice agencies from southeastern Connecticut and New England, this group provides information on warning signs that parents and teachers often observe first, along with a large number of resources and other working groups that are part of nationwide efforts to contain gang violence.

the “imperialist method.” A large street gang will dispatch members to start a chapter in a new city or neighborhood to further some form of criminal activity. For example, in 1999, the Indianapolis Safe Streets Task Force concluded a multiyear investigation of a drug-dealing gang called the New Breed. This gang arrived as an established enterprise from Chicago and only allowed local residents to fill lower levels of the organization. Members would rotate between Chicago, Indianapolis, and at least six other cities. The group had a set of rules and a belief system, which they brought with them. At the conclusion of the investigation, 15 gang members were charged with federal drug trafficking offenses, based on crimes committed in Indianapolis. Numerous New Breed members operating in other cities were unaffected by this case.⁷ Two problems

arise from this type of gang movement. First, surviving gang members in other locations will, after modifying their methods, move to fill the void left by those arrested. Second, local residents who were either gang members or associates will recreate the operation to take advantage of the available profits. Presently, both of these situations may be occurring in Indianapolis.

Another way an established street gang can spread its influence can be referred to as “franchising.” Often done to realize a profit from criminal activity, this method calls for an existing gang to contact local residents and recruit them into the enterprise. If, for example, a Chicago-based gang, such as the Four Corner Hustlers, develops contacts that they trust in Indianapolis, they may work an arrangement to supply drugs in exchange for a substantial share of the profits. Both groups

benefit—the locals get a dependable supply of product, and, in this example, the Four Corner Hustlers realize a profit with minimal risk. Most prevalent in drug-dealing enterprises, franchising also can involve such crimes as theft, forgery, or fencing stolen goods.

A new street gang often will form because young people have an interest in the gang lifestyle and will look for sources of information. If possible, the curious will find someone who was, or claims to have been, a gang member in another location (e.g., a young person who recently moved into the area from a city, such as Chicago or Los Angeles). This person now becomes the resident “gang expert,” and the gang will shape its structure and rules by this person’s information. In addition, gang members and their associates watch movies and television programs depicting gang

life from which they convert information for their purposes. Conversations with former gang members revealed that they also viewed television news reports, read news stories, and watched reality-based television programs to see how gangs in other places operated. Finally, the Internet represents an important source for emerging gangs. Simply by searching the word *gang*, the inquirer can receive a wealth of Web sites, as well as several chat rooms for gang members. Such numerous and varied sources, many of which give conflicting information, account for the wide diversity in street gang structure and methods of operation.

GANG STRUCTURE

Just as there are numerous gangs for aspiring gangsters to imitate, uncounted sources of information exist on how to establish, structure, and rule a street gang. East Coast and Hispanic gangs generate some interest, but the dominant influences in the Midwest are from the West Coast, especially Los Angeles, and from the Chicago area. Observers also will encounter other types of criminal gangs throughout the area, including prison groups, outlaw motorcycle clubs, as well as Asian criminal enterprises and ethnic street gangs. Perhaps, the most recognizable of these latter sets are the outlaw bikers because of their attire, community activities, and Web sites. However, their sophistication and secretive nature concerning their operations and structure prevent the average street gang member from obtaining enough information to imitate them.

The Four Nations

In the 1980s, West Coast black gangs formed two loose confederations—the largest, the Crips, and their rivals, the Bloods. Contrary to what many believe, there is neither one Crip nor one Blood gang. Rather, numerous sets of each have joined together to either protect themselves or facilitate their criminal activities. These represent two of the Four Nations. The other two originate from Chicago. In the late 1970s, a very large criminal street gang, known as the Gangster Disciples, formed a coalition with several other street gangs to maximize

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The gang problem is not an exclusive law enforcement problem nor can police deal with it in a vacuum.

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drug profits and protect their members from violence perpetrated by rivals. The consolidation called itself the Folk Nation. Other gang sets in Chicago felt the need to form an alliance to ensure their share of the drug market. Led by the Vice Lords and the El Rukins, this band dubbed themselves the People Nation, thus creating the big four street gang nations, in no particular order of influence, the Crips, Bloods, Folks, and People.

The Indianapolis Connection

In Indianapolis, the West Coast message from the Crip and Blood Nations arrives through a variety of mediums. Evidence shows that a few California area gang members have migrated to Indianapolis. Authorities speculate that these gangsters came to the city to spread their illegal enterprises. However, officials have not documented this nor have they determined if the gangs sent these people to the Midwest or if the gangsters are acting from personal interests. The more common means of transmission for West Coast ideas and models come from the entertainment industry, including music artists who encourage violence and gang values; movies glorifying gangs and their lifestyle; and books, television programs, the Internet, and the news media all publicizing the gang subculture.

Many Indianapolis residents look to Chicago for important legitimate influences, such as business, cultural pursuits, and sports teams. Many people have friends and relatives living in the Chicago area and frequently travel between the cities. With these active methods of communication present, information concerning the gang subculture often occurs by word of mouth. The closeness enables Chicago gangs to exert a measure of control over some of those operating in Indianapolis. For these reasons, the Folk and People Nations dominate the Indianapolis gang landscape, confirmed by area street gang graffiti almost exclusively composed of Chicago-area gang names and symbols.

GANG PREVENTION AND INTERVENTION

Before addressing ways of handling the gang problem or preventing the formation of such groups, authorities need to determine the prevalence of gangs in America and whether their number is on the rise. However, for a variety of reasons, it is difficult, if not impossible, to prove that criminal street gang activity is on the increase in the United States. Confusion results from the lack of a clear definition of what constitutes a gang, past and present denial by both law enforcement and other officials about gang activity, no baseline data to determine what gangs did in the past, and a myriad of reporting problems. Several sources suggest that gang activity declined in the 1970s. The basis for this claim appears to rest with the lack of information published on gangs during that decade. Without a standardized reporting system, it proves impossible to accurately determine the level of gang activity. What is observable, however, is the growing public appetite for information on crime, in general, and gangs, in particular. For example, a 5-year study (1990 through 1994) conducted in Rochester, New York, attributed 86 percent of youth violence in that city to individuals involved with the gang subculture. The same study contended that gangs controlled the majority of drug trafficking within Rochester. Gary and other Indiana cities advance the same theory.⁸ Upon considering these responses, it becomes clear that gangs are a real problem, even though the actual extent remains unknown. The

question then becomes how can a gang be effectively dismantled or controlled? More important, parents, teachers, law enforcement officials, and social workers want to know how to discourage young people from joining a gang and how to disengage them from the gang subculture once they become involved.

Prevention Methods

An educated group, with diverse talents and responsibilities, working together constitutes the first ingredient to an effective gang prevention program. The gang problem is not an exclusive law enforcement problem nor can police deal with it in a vacuum. Important



factors that influence people to enter the gang subculture are not enforcement issues. Boredom, a need for attention, a desire for structure, and the yearning to feel important are not areas that police have the tools to deal with effectively. Society must provide young people with meaningful alternatives that will draw them away from the gang

lifestyle. These alternatives should vary and include educational programs, social interaction, recreational activities, and employment opportunities. Obviously, the provision of these services will take cooperation among families, local schools, government-funded social services, area businesses, religious organizations, and other neighborhood resources.

Unfortunately, most communities do not become interested in gang prevention until one or more gangs appear in the area. Because parents and teachers usually have the first interaction with new gang members and their sets, they need to educate themselves on what signs and behavior changes indicate gang membership. Police need to be aware of the indicators and the types of criminal activity of local gang sets. They must scrutinize incidents involving gangsters to see if arrests or enhanced charges based on criminal gang activity are appropriate. Officers need to alert prosecutors when a gang member is arrested or if a crime is gang related. Prosecutors then have the necessary tools that will enable them to effectively present the case to the court. Sentencing for those gangsters convicted of crimes can include orders forbidding association with other gang members, counseling designed to discourage gang participation, anger control classes, and, when appropriate, drug counseling.⁹

Intervention Strategies

Law enforcement agencies must structure their efforts to combat active criminal street gangs

based on the targeted gang set. No program imported from another agency will prove effective without modification. Each gang set has a different level of member dedication based on how strongly members have bought into the belief system that provides the basis for the gang. No two criminal street gangs commit exactly the same crimes. Police need to make cases based on the offenses in their jurisdiction and not try to follow another agency's success story too closely. Police administrators must keep in mind that the experts on area gangs are the uniform officers and detectives who deal with them on a day-to-day basis. To develop an effective plan, the intelligence possessed by departmental personnel represents a vital component. To learn how to apply the information already in their possession, managers need to study the psychology behind gang membership. Officers then should review a number of different successful programs to gain ideas on what might work for them.

The first step in planning a response is to determine if there is a problem. A group of young people who decide to call themselves a gang and then engage in disruptive behavior in the classroom, but stop short of criminal activity, are not yet a police problem. Due to recent events around the country, however, some school officials may panic and request police intervention. The law enforcement agency must identify what they are dealing with.

One popular method employed by many agencies is the SARA technique: scanning, analysis, response, and assessment. After

identifying the problem (scanning), the planners must decide what combination of ideas will be most effective (analysis). Implementation of the plan follows (response). The last step (assessment) is not designed to be the final ingredient in the plan. The planners must review what approaches were used, what worked, what did not work, and then decide if the problem was resolved. If the problem was not resolved, the planners go back to the original step and start over. Agencies can complete this process as many times as necessary until the gang ceases to be a problem.

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In addition to law enforcement intervention, the entire social structure must deal with the underlying issues. A working partnership must form to handle the problems faced by the youthful offenders who make up the gang. Many informational sources exist that can provide guidance on where and how to deal with the criminal street gang member. The working group would do well to investigate as many sources as possible, including the Internet, government reports, news stories, and other publications. A number of

training programs geared to meet the needs of different audiences are available. Funding sources can sometimes be found to provide training for educators and officers. For example, Indiana schools have a small amount budgeted for training to help stop school violence, and some law enforcement grants provide training for officers involved with gang investigations.

CONCLUSION

No city, town, or neighborhood is totally immune from the threat of gangs. The first step in prevention is for those in authority to study the underlying reasons for gang formation—structure, nurturing, need to belong, economic opportunity, and excitement. If communities meet these needs, gangs will have a hard time establishing a foothold. However, once gang involvement is suspected, authorities must take time to study the situation to determine the extent and type of problem they need to deal with. A variety of social and law enforcement agencies need to become involved in the discussion process from the beginning. Police and community members need to arrive at a consensus of how serious the gang problem is and then work together to combat any criminal activity.

The police must act as the point group to bring an operating criminal street gang under control. Officers must target the gang in a variety of ways, including the criminal activities normally associated with the gang. Less apparent, but just as important, is the need to deal with other criminal and antisocial actions on the part of gang members. Officers also should develop

strong working relationships with prosecutors and probation officers so that, when arrested, gang members receive special attention and appropriate sentences. Finally, a standardized reporting system to capture the true extent of gang activity in America remains a goal that all concerned citizens should work toward. Protecting this nation's youth from the dangers of gang involvement requires the effort of all facets of the society. If America's heartland is facing the threat of gangs, the entire country is at risk. ♦

Endnotes

¹ The author based this article on his experience investigating gang-related cases and on information he and his fellow officers have gathered for presentations to the law enforcement community and the general public, contained in a department training guide.

² Weed and Seed has existed since 1991 as a comprehensive effort between law enforcement and health and human services to prevent and deter crime in high-risk areas. COPS began as a 6-year, \$9 billion federal initiative designed to spur the hiring of more police and promote community policing.

³ The state motto of Indiana.

⁴ Indianapolis, the capital of Indiana, has a population of approximately 750,000 and hosts the annual Indianapolis 500 auto race, considered the largest 1-day event in the world.

⁵ Lieutenant Colonel W.H. Sleeman, *Report on Budhuk Alia Bagree Decoits and Other Gang Robbers by Hereditary Profession and on the Measures Adopted by the Government of India for Their Suppression* (Calcutta, India: J.C. Sherriff, Bengal Military Orphan Press, 1849).

⁶ Frederic M. Thrasher, *The Gang: The Full Original Edition* (Peotone, IL: New Chicago School Press, 2000).

⁷ David M. Allender, "Safe Streets Task Force: Cooperation Gets Results," *FBI Law Enforcement Bulletin*, March 2000, 1-6.

⁸ U.S. Department of Justice, National Drug Intelligence Center, *National Street Gang Survey Report* (Johnstown, PA, 1998).

⁹ Lisa A. Regini, "Combating Gangs: The Need for Innovation," *FBI Law Enforcement Bulletin*, February 1998, 25-31.

Crime Data

Serious Crime Figures Remain Relatively Unchanged

According to preliminary statistics released by the FBI's Uniform Crime Reporting (UCR) Program, the Crime Index, composed of murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft, was relatively unchanged from 1999 figures.

Compared with data from the previous year, these preliminary figures indicate that violent crime totals remained relatively unchanged with an increase of 0.1 percent, and property crime totals showed virtually no change.

In the violent crime category, murder declined 1.1 percent and robbery registered a 0.7 percent decrease. Forcible rape and aggravated assault figures indicated an increase of 0.7 percent and 0.4 percent, respectively. In the property crime category, burglary decreased 2.1 percent from 1999 figures. Motor vehicle theft increased by 2.7 percent, and larceny-theft increased 0.1 percent when compared to 1999 data. Arson registered a decline of 0.6 percent.

Regionally, law enforcement agencies in the Northeast and Midwest reported decreases in the

Crime Index total with declines of 2.4 percent and 1.1 percent, respectively. In the West, a 1.1 percent increase was registered and a 1 percent increase was noted in the South. A comparison of 2000 and 1999 data showed that violent crime fell 1.7 percent in the Northeast and 0.7 percent in the Midwest. A 1.2 percent increase in violent crime was recorded in the West and an increase of 0.7 percent in the South. In both the South and the West, a 1 percent increase in property crimes was noted.

Among cities, those with populations of 50,000 to 99,999 registered the largest decrease, 1.1 percent, in Index crime. Cities with populations of 25,000 to 49,999 and 100,000 to 249,999 recorded the greatest increase, 0.5 percent. Compared with the 1999 figures, data for 2000 showed that the Crime Index increased 0.7 percent in suburban counties and decreased 0.8 percent in rural counties.

For the complete preliminary annual *Uniform Crime Report* press release, access the FBI's Web site at <http://www.fbi.gov>.

Focus on Technology

FBI Laboratory Publications

By Colleen Wade, M.L.S.



The FBI Laboratory's Forensic Science Information Resource System staff writes, edits, and publishes information to foster communication between international forensic scientists; to provide forensic science information to law enforcement, crime scene investigators, legislators, and the general public; and to promote the work of the personnel in the FBI Laboratory.

Three of the publications include the *Handbook of Forensic Services*, *Forensic Science Communications*, and the *FBI Laboratory 2000*. These publications may be viewed on the FBI Web site (<http://www.fbi.gov>). Between April 1, 2001, and June 30, 2001, *Forensic Science Communications* received 13,176 visits while the *Handbook of Forensic Services* incurred 27,675 visits. The *FBI Laboratory 2000* has had 7,670 visits since it was uploaded on May 29, 2001.

Handbook of Forensic Services

The *Handbook of Forensic Services* (formerly the *Handbook of Forensic Sciences*) was rewritten and published in 1999. The purpose of the *Handbook* is to provide guidance and procedures for safe and efficient methods of collecting and preserving evidence and to describe the forensic examinations performed by the FBI Laboratory.

The *Handbook* is divided into five sections.

- 1) "Introduction" details the availability of the laboratory services, which include forensic examinations of evidence and expert witness testimonies.
- 2) "Evidence Submission" lists the procedures required to request evidence examinations and to package and ship evidence to the laboratory.
- 3) "Examinations" describes the types of evidence examinations provided and specific evidence collection and preservation techniques.
- 4) "Crime Scene Safety" provides familiarity of the hazards, safety precautions, and safe work practices. This section also provides training on applying these principles.
- 5) "Crime Scene Search" outlines the steps necessary to process a crime scene.

The *Handbook* is available in—

- a pocket-sized paper format;
- a CD-ROM format; and
- an on-line format that may be viewed on the FBI Web site at <http://www.fbi.gov/programs/lab/handbook/intro.htm>.

Copies of the paper and CD-ROM versions of the *Handbook of Forensic Services* may be purchased by referencing number S/N 027-001-00080-7 and contacting the Superintendent of Documents at—

U.S. Government Printing Office
P.O. Box 371954
Pittsburgh, PA 15250-7954
Telephone: 202-512-1800; Fax: 202-512-2250
Web site: <http://www.bookstore.gpo.gov>

Forensic Science Communications

Forensic Science Communications (FSC) is an on-line, peer-reviewed forensic science journal published quarterly by FBI Laboratory personnel. This journal is a means of communication between forensic scientists, permitting information of value and interest to be rapidly disseminated among scientists and other interested persons.

FSC may be viewed free on-line at <http://www.fbi.gov/programs/lab/fsc/current/teaser.htm>. To



The FBI Laboratory is scheduled to move into this new, 463,000-square-foot facility at the FBI Academy in Quantico, Virginia, in June 2002.

receive notification when quarterly issues of *FSC* are posted, contact the staff by e-mail at labfsc@fbi.gov.

The July 2001 issue of *FSC* contains four research articles, guidelines for two scientific working groups, an update of FBI forensic training, lists of meetings and employment opportunities, and a links feature. Instructions for submitting manuscripts may be viewed at <http://www.fbi.gov/hq/lab/fsc/current/instaus/htm>.

Submissions to *FSC* may be in the following forms:

- “Letter to the Editor”: A brief communication presenting new technical information, discussing a previously published paper, or requesting information.
- “Review Article”: A basic introduction and overview of new scientific methods and areas of forensic research or interest.
- “Research Paper or Feature Article”: An in-depth discussion of current methods and specific aspects of various procedures or instrumentation.
- “Technical Article”: A step-by-step description of specific analytical procedures, detailing the materials and methods used and evaluating the results.
- “Technical Note or Case Report”: A new application of an existing technique or instructive findings in an unusual case.
- “Book Review”: A summary and analysis of a book or publication.

- “Meetings and Job Opportunities Sections”: Information about professional meetings and job opportunities in forensic science may be submitted to the staff by e-mail at labfsc@fbi.gov for posting in *FSC*.

Manuscripts and other information relating to the journal may be sent to:

Dr. Dwight E. Adams, Editor
Forensic Science Communications
Federal Bureau of Investigation
J. Edgar Hoover Building, Room 3865
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001
Fax: 202-324-4323
E-mail: labfsc@fbi.gov

FBI Laboratory 2000

The FBI Laboratory’s report for the year 2000 highlights several laboratory initiatives and outlines a vision to guide future efforts to provide the broadest range of scientific and technical services to the law enforcement community. As with any summary, however, this report presents merely a glimpse of the laboratory’s full range of capabilities and the accomplishments of its dedicated staff. The *FBI Laboratory 2000* may be viewed on-line at <http://www.fbi.gov/hq/lab/labannual00.pdf>. ♦

Ms. Wade works as a managing editor for the Forensic Science Training Unit of the Laboratory Division at FBI Headquarters in Washington, D.C.

Notable Speech

Responding to Terrorism

By FBI Director Robert S. Mueller III

As Mayor Marc Morial indicated, I started as FBI director on September 4. More than one person has come up to me and said, “You had a relatively short honeymoon.” That would be accurate.

Before I go further, I thank you for your leadership—Mayor Morial of New Orleans, Louisiana; Mayor Menino of Boston, Massachusetts; Mayor Garner of Hempstead, New York; and Executive Director Cochran of the U.S. Conference of Mayors—for having the foresight and the wisdom to call this important meeting and for giving me the opportunity to join with you today.

I thank all of you for the outstanding leadership that you are providing to your cities and to our country. At this pivotal—I think it is fair to say—moment in history, you have been towers of strength in your communities. Particularly, I thank you for the extraordinary support, cooperation, and guidance that you have provided to the FBI during these past 6 weeks.

This morning, I want to let you know how deeply committed the FBI is to working with you to ensure the safety and security of your communities now and in the future. The FBI is pouring its heart and soul into the investigation of the September 11 attacks. Every resource that can be deployed is being deployed. Every person who can be utilized is being utilized. We now have well over 7,000 FBI personnel involved, and that’s about 1 in 4 of our employees. We are examining every scrap of evidence. In fact, we have gathered, sometimes working on hands and knees in the rubble and mud of crash sites, more than 3,700 separate pieces of evidence. This is easily the largest and most comprehensive investigation in our history.

Beyond the investigation itself, our overriding priority right now is prevention, making sure that terrorists do not succeed in striking America and America’s cities again. Now, it may well be overly optimistic to think that every single attack can be prevented. But, we can certainly give it everything we have got, and that is exactly what we are doing.

We at the FBI are not new to prevention. With your help, over the last few years, we have had

successes. An example, perhaps, would be 2 years ago when we foiled a plot to blow up a gas tank in Sacramento, perhaps saving as many as 12,000 lives. But, historically, we have been better at tracking down terrorists after the fact than at stopping them in their tracks before they strike. We have, in the past, not always aligned our resources, our strategies, and our skills specifically toward prevention, to the degree that they are now so aligned.

A few weeks ago, we established at FBI headquarters a terrorist prevention task force made up of representatives of a dozen different agencies. Its goal is to identify and stop future terrorists acts with proactive investigations and to attempt to predict and to prevent future scenarios. The work of this group, for example, led us to heighten sensitivities on crop dusters in the latter part of September. We have had in the past and do today have 35 joint terrorist task forces located in your cities and in other cities across the country. Those task forces are working hard to gather intelligence and pursue any hint of a lead that might help us identify terrorists or their associates. We also have beefed up our resources overseas, where many of the leads have taken us and where we’re getting some outstanding cooperation from Great Britain, Germany, France, Spain, and a number of other countries.

We also are working with you and other colleagues at the federal, state, and local level to shore up

Director Mueller delivered this speech at the Mayors Emergency, Safety, and Security Summit, U.S. Conference of Mayors in Washington, D.C., on October 24, 2001.



security at critical public events and to protect critical infrastructures, like water and transportation systems. We are assessing threats in real time and providing warnings to your cities and to the nation. I must tell you that the threat level remains very high. More attempts and possible attacks are a distinct possibility. This possibility requires all of us to continue walking the fine line of staying alert on the one hand, without causing undue harm on the other hand.

Clearly, we are deeply concerned about the growing wave of anthrax attacks and related incidents. At this point, it is not clear if the few confirmed anthrax exposures were motivated by organized terrorism, but these attacks were clearly meant to terrorize a country already on the edge. We are responding swiftly to each and every incident. By way of background, we usually are involved in 250 assessments and responses relating to weapons of mass destruction a year. We have had more than 3,300 in just the past 3 weeks alone, including 2,500 involving suspected anthrax incidents. Even though most turn out to be false alarms or hoaxes, we are taking each report seriously, as I know each of you in your cities are doing also. And, those who are pulling pranks and hoaxes won't find our severe response to those all that funny.

Our work in these investigations, of course, has been supported at every turn by you and your colleagues across the nation, as well as by a host of federal, state, and even international partners. From the first moment that I joined the FBI several weeks ago, one of my highest priorities has been to improve our working relationship with you, with elected leaders, and with law enforcement partners around the world. And, the events of September 11 have only strengthened my resolve in that regard. From my experience, I am now even more convinced that no one institution is strong enough to tackle the challenge of terrorism alone. No one agency or entity at any level, whether it be federal, state or local, has the length or the breadth of talent and expertise. We must

work together. Law enforcement, quite simply, is only as good as its relationships.

These past 6 weeks have given me a good opportunity to see how well our FBI supports you and your cities, and I have seen encouraging signs. I know that many of our special agents in charge, or SACs, are reaching out and keeping you involved and informed. But at the same time, I heard that there are some areas where lines of communication are not as open as they should be, where we are keeping you at arm's length, and where we are not affording you the level of support you deserve.

As soon as I heard of these issues, I reached out to key law enforcement leaders and asked them to educate me on their issues and their concerns. I asked them to give it to me straight, and they did.

Building on these initial conversations, I held a series of meetings last week with representatives of the major city chiefs, the Interna-

tional Association of Chiefs of Police, and the National Sheriff's Association, and along with the attorney general, had met with a number of other similar law enforcement associations. The meetings were helpful, open, candid, and, I think, productive.

What we heard will likely be familiar to many of you. We heard that the FBI is not always calling on your local police professionals to track down leads; that we are sometimes not following up quickly enough on leads that come to us that involve your cities; that you need information digitally, if at all possible; that the FBI is not giving you specific enough information on threats; and that we are even withholding information.

Let me clarify the last point, the point about specific information on threats and withholding information. The FBI is not withholding significant information due to security concerns. The fact is much of the information we have can be released to law enforcement. But, the fact is also that often, on most occasions, our information is simply not as specific or developed as we would all like it to be.

“...I want to let you know how deeply committed the FBI is to working with you to ensure the safety and security of your communities....”

One issue that has come up is our ability to distribute to your law enforcement agencies what we call the watch list. The issue was raised as to why it could not be put into NCIC and distributed to you digitally. We now have done that. We have added that watch list to the National Crime Information Center list, or NCIC. But, by the same token, we often do not have much more than names or aliases. As we get confirmed photos or other information, we will add them to the system.

There is another point I do have to emphasize, and that is, when it comes to the electronic arena, the FBI often is far behind you and your colleagues. Overhauling our electronic infrastructure is a major priority for us, one that we are addressing now.

Beyond these few clarifications, I must say that many of the concerns that I have heard were valid, and we are stepping forward to address them. I have asked the special agents in charge in cities where we do not already have a joint terrorism task force to get one up and running quickly. While these task forces are not a panacea, they do break down stereotypes and communications barriers, more effectively coordinate leads, and help get the right resources in the right places.

In short, they are an excellent tool for melding us together in ways that make information sharing a non-issue. I have also asked the SACs to coordinate leads with local law enforcement wherever and whenever possible. I have invited law enforcement leaders to identify individuals, two or more, who can work with us in our Strategic Command Center at FBI headquarters on the national investigation. And, I have asked that representatives be added to our prevention task force. I also am exploring with the leaders of law enforcement the possibility of establishing a working group composed of officials from the FBI and local law enforcement that could identify other specific issues and find workable solutions.

These are some initial first steps and more will follow. Some issues may need to be addressed through legislation. As we move through this process, I only ask that you please bring any problems or issues to our attention. I want to know what you're experiencing, how the FBI is treating you, and you can be assured that we will, and I will, respond.

In the coming months, we will continue our work to strengthen and modernize the FBI. We had some changing to do before September 11, and that need has only intensified since the tragedy of that date. We at the FBI, as well as state and local law enforcement, clearly have got to become more proactive and more prevention oriented. We need to be able to look down the road 5 or 10 years and gauge what is coming and start adapting now. We have got to look closely at our skill sets to see if they are tracking where we need to be to cope with the 21st century and crime in the 21st century. We have got to rebuild our electronic infrastructure and digitize our information systems. And, of course, we have got to

continue building a stronger, more seamless, and more supportive relationship with you and with law enforcement and with emergency responders nationwide.

These are my priorities for the coming months, and I welcome any advice and insight you might have. I welcome and appreciate your continuing support. As difficult and as trying as these times are, I have a great deal of confidence and optimism about the future. We will get through this challenge as we've gotten through every other. We will get through it by leaning on each other, by falling back on our bedrock values, and by tapping into the deep reservoir of determination, strength, and courage that exists throughout America. Together, I am confident that we can keep our cities safe and strong and continue to make our country a shining example of freedom for the world. I thank you and bless you and the cities for which you are responsible.◆

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Together, I am confident that we can keep our cities safe and strong and continue to make our country a shining example of freedom for the world.
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Controversial Issues in Policing by James D. Sewell, Allyn & Bacon, Needham Heights, Massachusetts, 1999.

In a comprehensive and straightforward approach, *Controversial Issues in Policing* presents debates on 15 critical issues facing every U.S. law enforcement agency. These debates come from professional practitioners and academicians, who are among the world's most prestigious, knowledgeable, and experienced contributors, serving in direct and associated law enforcement positions with different backgrounds and perspectives on the issues that personnel encounter.

On presenting the issues and professional assessments, each debate consists of an introductory note by the editor followed by an initial debate discussion, with a "yes and no" response on the issue, and two subsequent rejoinders to the previous practitioner and academician writing the debate response. The rejoinders are supported by penetrating questions—some answered, some left for agencies to answer—and a conclusion section on each critical debate. All of the issues contain key information, and many apply directly to law enforcement.

The author divides the book into four main parts. The first part addresses issues of law enforcement agencies and their legal framework, involving the Fourth Amendment and the Exclusion Rule, civil and criminal forfeiture of property, and a police officer bill of rights. Part two places emphasis on police executive contracts and whether law enforcement officers need a college degree. The third part entails the issues of ethical problems in policing, the paramilitary structure, and police agencies and pursuits. The last part deals with community-oriented policing, citizen review boards, and the media. Two prominent

issues include police pursuits, where a major department reduced its pursuits by 82 percent after adopting a "violent felony only" pursuit policy, and a critical review of law enforcement's paramilitary structure.

Readers will find the book thought provoking, with evolution and devolution on the information in the debates that prove appropriate to today's law enforcement society. Members of the law enforcement community and other sectors of the criminal justice system should keep an open mind as to what the contributing experts present through the debates and their rejoinders of the issues. These readers should seize the opportunity to review and use, as appropriate, the key information presented in the debates and rejoinders to assist in initially developing, or strengthening existing, departmental policies, procedures, and practices to help in overall improvement.

Controversial Issues in Policing presents "hot-button" issues that will appeal to a diverse audience, including most levels of the criminal justice community. Interested readers could range from street officers and their ranking personnel, attorneys, legislators, and members of various national associations to graduate and undergraduate university programs and training curriculum developers at local, state, and federal law enforcement academies. Overall, the book contains a multitude of professional information on critical issues in policing.

Reviewed by
Larry R. Moore
Certified Emergency Manager
International Association
of Emergency Managers
Knoxville, Tennessee

Military Support of Domestic Law Enforcement Operations

Working Within Posse Comitatus

By DAVID G. BOLGIANO, J.D.



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Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than 2 years, or both.

—Posse Comitatus Act of 1878¹

Military support of domestic law enforcement, especially in the counter-drug arena,² has steadily increased over the past 20 years despite the ominous-sounding penalties of the *Posse Comitatus* Act of 1878 that created a general prohibition against using military personnel in civilian law enforcement. In light of the recent terrorist attacks on America, this support undoubtedly will increase. Local, state, and federal law enforcement communities should be aware of the most common types of military support available to them. They also should

be familiar with some of the legal restrictions imposed on this support by, most notably, the *Posse Comitatus* Act (PCA).

There are specific circumstances when the military may be called upon to directly perform domestic law enforcement duties. Generally, this occurs when the military responds under any of the various civil disturbance statutes invoked by the president to support a request from a state, enforce federal authority, or protect constitutional rights.³ The PCA does not apply to the use of the military to quell disruptions to the public order during

such civil disturbances. Additionally, the military will be called upon to provide personnel and equipment for certain special support activities,⁴ such as domestic terrorist events involving weapons of mass destruction. This article does not address the laws implicated under such limited and special circumstances, but reviews potential legal issues arising out of law enforcement's interface with the military in more common day-to-day missions.

Law enforcement agencies most likely will encounter military support in counterdrug operations, training, disaster assistance, or search and rescue missions. Some activities, such as counterdrug operations, are planned. Others arise out of some exigency. If time and circumstances permit, however, it is highly recommended that the law enforcement agencies involved develop a memorandum of understanding (MOU) between themselves and the supporting military department. At a minimum, this document should state what support is being provided, who pays for the support, and the nature and duration of the support.⁵

The MOU, as well as the operational deployments themselves, should be guided by the legal parameters surrounding such activities. The first step in defining such parameters is to review the scope and nature of the PCA.

UNDERSTANDING THE POSSE COMITATUS ACT

To Whom the PCA Applies

By enacting the PCA, Congress sought to terminate the prevalent

use of federal soldiers in civilian law enforcement roles in the South during the Reconstruction Period following the American Civil War. Today, the PCA is viewed as a prophylaxis against direct military involvement with civilian law enforcement activities. In other words, police officers protect the public safety by investigating criminal activity while the military fights the U.S. battles against hostile enemies.

The PCA, however, does not prohibit all military participation with civilian law enforcement. The key to understanding the PCA is to recognize to whom it applies and what military missions it impacts. Law enforcement authorities seeking assistance from the military should understand the PCA and applicable case law, as well as the implementing regulations published by the secretary of defense and the secretaries of the military departments.

Often times, for instance, when the military support comes from National Guard units acting in their Title 32 (state) capacity,⁶ the PCA does not apply, and there is no need to perform a PCA analysis. This is why the National Command Authority (NCA) directed National Guard assets in their Title 32 status, rather than active forces, to provide supplemental security at civilian airports in response to the recent terrorist attacks. Reservists, on the other hand, are always subject to PCA restrictions when performing their military duty. The first hurdle, therefore, is determining whether or not the PCA applies to the type or category of military force lending support. If the military support an agency receives comes from military units to which the PCA applies, the agency should take steps to ensure that the MOU acknowledges this fact and contains provisions to preclude potential PCA violations. In weighing the application

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Mr. Bolgiano, the senior attorney in the Office of Chief Counsel of the DEA, also serves as a deputy staff judge advocate of the 175th Wing, Maryland Air National Guard.

of the PCA, civilian leaders, working in conjunction with their military counterparts, should consider certain factors.

The PCA applies to—

- active duty personnel in the Army, Air Force,⁷ Navy and Marines;⁸
- armed forces reservists on active duty, active duty for training, or inactive duty for training;
- National Guard personnel in federal service (Title 10 status); and
- civilian employees of the Department of Defense (DoD) when under direct command and control of a military officer.⁹

The PCA does not apply to—

- members of a military service when off duty and acting in a private capacity. (Members are not acting in a private capacity when assistance to law enforcement officials is rendered under the direction or control of DoD authorities;¹⁰)
- members of the National Guard when not in federal service;
- members of a reserve component when not on active duty, active duty for training, or inactive duty for training; and
- members of the Coast Guard during peacetime.¹¹ (Hence, the requirement for the U.S. Navy in the performance of its counterdrug missions to have Coast Guard law enforcement detachments board suspect vessels and effect arrests.¹²)

If it is determined that the PCA applies to the category of military unit providing support to a law enforcement agency, the next issue is to understand the limitations on the type and circumstance of the mission. In other words, what military operations are covered or proscribed by the PCA?

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...National Guard personnel serve in a support role to the law enforcement agency.

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What PCA and DoD Implementation Regulations Proscribe

PCA and DoD implementation regulations proscribe direct law enforcement assistance, including—

- interdiction of a vehicle, vessel, aircraft, or other similar activity;
- a search or seizure;
- an arrest, apprehension, stop and frisk, or similar activity; and
- use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.¹³

There are three separate tests that courts apply to determine whether the use of military personnel has violated the PCA. The first test is whether the action of the

military personnel is “active” or “passive.”¹⁴ An example of active participation is a military member assuming an undercover role or effecting an arrest. Passive participation is exemplified by the military’s conduct of area surveillance or the providing of transportation or training. The more active the military members’ participation becomes, the more likely such participation violates the PCA. The second test is whether use of the armed forces pervades the activities of civilian law enforcement officials.¹⁵ In other words, are the military members expected to perform traditional police investigative or enforcement roles? If so, then the PCA may preclude such activity. The final analysis is whether military personnel subject citizens to the exercise of military power that is regulatory, proscriptive, or compulsory (a power compulsory in nature is one that exerts some coercive force).¹⁶ For instance, if the use of the military would subject civilians to military judicial and administrative sanctions, such use probably violates the PCA.

When the PCA Does Not Apply

The PCA does not apply when actions further a military or foreign affairs function of the United States. This sometimes is known as the “Military Purpose Doctrine.” The primary purpose must be to further the military interest. The civilians may receive an incidental benefit. Such military purposes include the following:

- Investigations and other actions related to enforcement of the Uniform Code of Military Justice (UCMJ).¹⁷

- Investigations and other actions that are likely to result in administrative proceedings by DoD, regardless of whether there is a related civil or criminal proceeding.
- Investigations and other actions related to the commander's inherent authority to maintain law and order on a military installation or facility.¹⁸ Civilians may be detained for an on-base violation long enough to determine whether the civilian authorities are interested in assuming the prosecution.¹⁹
- Protection of classified military information or equipment.
- Protection of DoD personnel, DoD equipment, and official guests of the DoD.
- Such other actions that are undertaken primarily for a military or foreign affairs purpose.

Where the PCA Applies

The PCA only applies within the territorial limits of the United States. A 1989 Department of Justice (DOJ) Office of Legal Counsel opinion concluded that the PCA does not have extraterritorial application.²⁰ Some courts also have adopted the view that the PCA imposes no restriction on use of U.S. armed forces abroad, noting that Congress only intended to preclude military intervention in domestic affairs.²¹ Note, however, that DoD policy²² applies the PCA to all U.S. forces wherever they may be. In the case of compelling and

extraordinary circumstances, however, the secretary of defense may consider exceptions with regard to actions outside the territorial jurisdiction of the United States.

COUNTERDRUG OPERATIONS

Both active component and National Guard personnel support counterdrug operations. This effort is coordinated through the Office of the Defense Coordinator for Drug Enforcement Policy and Support (DEP&S), located within the Office

© Wilmore, Kentucky, Police Department



of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict.²³ Law enforcement agencies are especially interested in counterdrug support because interagency reimbursement generally is not required.

Available support differs between the active component and the National Guard, as do the rules governing their use. Generally, local and state jurisdictions will have most of their interface with National Guard assets, while federal agencies primarily will be the link to ac-

tive component assets. As a general rule, using National Guard assets provides law enforcement agencies with greater flexibility. This is true for a number of reasons. Even though federally funded, National Guard units performing such missions are not in Title 10 (federal) status, and are not subject to PCA.²⁴ National Guard personnel conducting counterdrug missions are protected under the Federal Torts Claim Act²⁵ even though they are not in a federal status. By internal policy, however, National Guard personnel still are precluded, except in exigent circumstances, from direct participation in arresting suspects, conducting searches, or becoming involved in the chain of custody of evidence.²⁶ The following is a list of some, but not all, of the missions the secretary of defense has approved for federal funding to provide counterdrug support to the National Guard:

- Linguist support provides nonevidentiary transcription/translation of audio/video tapes, seized documents, and other information media (active/real-time conversation monitoring or direct participation in interrogations is not allowed).
- Communications support provides personnel to establish, operate, and maintain communications stations, bases, and equipment in support of law enforcement agency counterdrug operations.
- Domestic cannabis suppression/eradication operations support.

- Transportation support provides transportation (aerial, maritime, or ground) of law enforcement personnel/equipment, persons in law enforcement custody, seized property or contraband as part of on-going, time-sensitive counterdrug operations, when security or other special circumstances reasonably necessitate National Guard support.

- Surface reconnaissance includes reconnoitering or performing area observation by land or water to detect and report illegal drug activities that include cultivated marijuana, suspected isolated drug trafficking airstrips, drug drop zones, illegal drug laboratories, and suspicious aircraft, watercraft or motor vehicles.

- Aerial reconnaissance conducts reconnaissance/observation of airspace, maritime or surface areas (land and internal waterways of the United States and its territories) for illegal drug activities, which include, but are not limited to, cultivation of marijuana or delivery of illegal drugs.

- Educational institution demand reduction support supports community based activities that focus on educational institutions, or otherwise have an educational institution as the primary sponsor, and are primarily designed to educate, train, or otherwise prevent drug abuse.

- Leadership development supports camps, retreats, seminars, and programs not primarily associated with educational institutions that focus on developing drug abuse prevention leadership skills in youth and adults.

“ Law enforcement personnel always should be present whenever the possibility of an enforcement action may arise. ”

It must be emphasized that National Guard personnel serve in a support role to the law enforcement agency. Any operational plan or MOU never should directly involve National Guard personnel in traditional law enforcement duties, such as arrests, raids, or search and seizures.

Because states have different legal standards governing the use of force, it is important to incorporate the correct rules into any MOU. Understanding what rules apply is critical. More important, these rules should be incorporated into training regimens for the officers, agents, and military personnel actually deploying. Once involved in an operation, the operators will not have

time to “consult the rules” before making an immediate, sometimes life or death, decision.

The question of whether or not National Guard personnel should be armed also is a question to be resolved prior to the beginning of an operation. The adjutant general (TAG) of each state has the authority, after conducting a mission risk assessment, to allow support personnel to be armed. In addition to the military’s rules and criteria governing this decision,²⁷ law enforcement agencies must ensure that their leaders are fully briefed on the capabilities, training, and limitations of the military personnel in this regard. The MOU should clarify these issues both to enhance interoperability and to ensure all personnel understand the restrictions placed on the military members. Plainly stated, military members are not to be used as extra muscle for raids or as primary backup for any mission. A military member’s inherent right of self-defense in exigent circumstances should not be interpreted as providing that same member with law enforcement capacity.

Active component military forces generally support federal law enforcement agencies, although the provisions of the National Defense Authorization Act that provide the primary authority for DoD support to counterdrug operations also lends support to local and state agencies. Military assets for the support of counterdrug activities of any federal, state, or local agency are available by request, and such missions are also coordinated through DEP&S.

Active component support includes transportation of personnel; establishment and support of bases of operations within or outside the United States; counterdrug training; command and control assets; the detection, monitoring, and communications of movement of air and sea traffic within 25 miles of, but outside, the geographic boundaries of the United States; and aerial and ground reconnaissance.²⁸ Again, the military should not be involved in direct enforcement duties. Law enforcement personnel always should be present whenever the possibility of an enforcement action may arise.

GENERAL SUPPORT

Military assistance other than counterdrug support includes, but is not limited to, military training, disaster assistance, and search and rescue operations. Although certain restrictions apply to each type of assistance, the following discussion sets forth the dominant areas of concern.

Training

In order to avoid potential violations of the PCA, the DoD prohibits its personnel from providing advanced military training to civilian law enforcement agencies. Such training includes high-intensity training that focuses on tactics, techniques, or procedures required to apprehend, arrest, detain, or seize a criminal suspect when the potential for a violent confrontation exists.²⁹ Again, the focus is on direct law enforcement-type duties. Specifically prohibited is any type of sniper training, close quarters battle/close quarters combat (CQB/

CQC) training, and military operations in urban terrain (MOUT) exercises. There are limited exceptions to this rule,³⁰ primarily for counterdrug and special operations forces.

Civilian law enforcement agencies may, however, use military ranges for firearms training.³¹ Additionally, military personnel are allowed to train federal, state and local law enforcement personnel in the operation and maintenance of equipment, including equipment provided to civilian law enforcement by the military.³²

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Intelligence Gathering

In addition to the general proscriptions of the PCA, DoD service regulations implementing Executive Order 12333 prohibit military intelligence personnel from collecting, retaining, or disseminating information about the domestic activities of U.S. citizens, resident aliens, or domestic associations or corporations.³³ The FBI, as opposed to the military or CIA, is the lead federal agency responsible for the

collection, analysis, and dissemination of domestic counterintelligence operations. Extreme care must be exercised whenever intelligence information is collected, compiled, or disseminated by military personnel.

In addition to the overarching policy concerns protected by these rules, the fact remains that the military generally is not concerned about the preservation of evidence: victory in warfare is its primary concern, not the successful criminal prosecution of miscreants.

Despite the general proscription against using military intelligence in domestic support operations, Title 10, Section 371, U.S. Code does allow for the transfer of information acquired in the normal course of military operations to civilian law enforcement agencies. In other words, if military personnel observe suspicious activity during their normal duties, they may, as any concerned citizen, pass such information on to the appropriate law enforcement agency. In fact, the military is encouraged to provide law enforcement officials any information collected during the normal course of military operations that may be relevant to a criminal violation. Moreover, law enforcement officials may accompany regularly scheduled military training flights as observers. Further, military intelligence organizations can provide law enforcement agencies with maps, terrain analysis, and damage assessment. These are distinctions with an important difference. The willful use of the military to gather intelligence information within U.S. borders is impermissible, and

great care must be exercised in the planning of joint military-civilian law enforcement operations to ensure that this does not occur.

Disaster Assistance

The president may determine that a natural catastrophe such as a hurricane, earthquake, flood, drought, or fire, may warrant disaster assistance. Under the Stafford Act, the president may direct federal agencies, including the DoD, to provide personnel, equipment, supplies, facilities, and technical advice in support of disaster relief.³⁴ The military may be called upon under three differing scenarios: 1) a presidential declaration of a major disaster; 2) a presidential order to perform emergency work essential for the preservation of life and property; and 3) a presidential declaration of an emergency. The first two scenarios may occur upon request of the governor of an affected state when a disaster is of such severity and magnitude that it is beyond the capabilities of the state and local governments. Upon the request of the governor of Florida, this authority was invoked in 1992 as the result of the damage caused by Hurricane Andrew. Federal assistance can unilaterally be invoked by a presidential declaration of an emergency. No state request is required. Under such circumstances, the president may determine that the emergency involves a subject area in which the United States exercises exclusive or predominant responsibility and authority. This authority was invoked in response to

Hurricane Floyd and the Oklahoma City bombing. The Federal Emergency Management Agency (FEMA) becomes the lead federal agency under such circumstances.

FEMA has established a federal response plan for the effective delivery of federal assistance as the result of any disaster or emergency declared under the Stafford Act. Local and state law enforcement agencies' requests for assistance are coordinated through a state coordinating officer to FEMA. FEMA, or its designee, will determine how to fulfill the request. It is important to recognize and to follow the established chain of command to ensure



the manageable and timely processing of requests for assistance.

Obviously, there are some situations that may require the immediate response of a military commander. A military unit may provide immediate response when imminently serious conditions resulting from any civil emergency or attack exist that require action to save lives, prevent human suffering, or mitigate great property damage.³⁵ This authority, however, is short-lived. Generally, it is applied

only to incidents near a military installation and when time does not permit approval from higher authorities. In light of the ever-increasing advancements in communication technology, such exigencies have become rare occurrences.

The use of force during disaster relief operations can become a sensitive issue. Disaster relief operations, by their very nature, generally do not implicate serious force protection issues. Nevertheless, it must be emphasized that the active duty military forces rely upon federal, local, and state law enforcement or the National Guard for force protection. Local and state law enforcement has primary responsibility for maintaining law and order.

Search and Rescue Operations

The military traditionally has supported civilian search and rescue (SAR) activities. In addition to the U.S. Coast Guard, U.S. Air Force and U.S. Army aviation assets most often provide support. Such support includes the aerial drop of medicine, emergency supplies, and livestock feed; aeromedical evacuation of the sick, injured, and stranded; and the transport and guidance of rescue parties.

Local military commanders may provide SAR assistance when immediate action is required to save human lives, to prevent human suffering, or to mitigate major destruction of property. This authority, however, is limited to the immediate exigency. Direct requests for SAR assistance from civilian authorities should be directed to the Air Force

Rescue Coordination Center (AFRCC).

CONCLUSION

The *Posse Comitatus* Act does not preclude all joint military/law enforcement agency operations. To the contrary, where allowable, such operations are fruitful, providing relevant training and assistance to all participants. Most important, such operations help serve the public, especially at times when the public needs additional governmental support. ♦

Endnotes

¹ 18 U.S.C. § 1385.

² In 1999, Congress appropriated \$725 million for Department of Defense support of counterdrug operations. This figure rose to \$869 million in 2001. See National Defense Appropriations Act of 2001, Pub. L. No. 106-259, 114 Stat. 656, 672 (2000).

³ Title 10, Chapter 15 of the United States Code, entitled "Insurrection," allows the use of federal forces to restore order during time of civil disturbance. See *Domestic Operational Law (DOPLAW) Handbook for Judge Advocates*, pp.52-56, Center for Law and Military Operations, U.S. Army The Judge Advocate General's School, Charlottesville, VA, April 15, 2001.

⁴ Counterterrorism (See Presidential Decision Directive 39, U.S. Policy on Counterterrorism (June 21, 1995)(classified SECRET), support to U.S. Secret Service (See U.S. Department of Defense Directive 3025.13), or special events like the Olympics, Presidential Inaugural events, or wildfire suppression.

⁵ Too often, poorly written and incomplete MOUs from previous missions have made their way around the e-mail circuit. Please use caution when using another's MOU.

⁶ National Guard units, when not performing a Title 10 (Federal) mission, are under the control of the individual states and the governors. This is commonly referred to as Title 32 status.

⁷ Most courts interpreting the *Posse Comitatus Act* have refused to extend its terms to the Navy and Marine Corps. See

United States v. Mendoza-Cecelia, 736 F.2d 1467 (11th Cir. 1992); *United States v. Yunis*, 924 F.2d 1086 (D.C. Cir. 1991); *United States v. Roberts*, 779 F.2d 565 (9th Cir. 1986), cert. denied, 479 U.S. 839 (1986).

⁸ 10 U.S.C. § 375 directed the Secretary of Defense to promulgate regulations forbidding direct participation "by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity." This was done so in Department of Defense Directive 5525.5. Therefore, the proscription has been extended by regulation to the Navy and Marine Corps.

⁹ Department of Defense Directive 5525.5, Encl. 4. See also Army Regulation 500-51, para. 3-2; SECNAVINST 5820.7B, para. 9b(3).

“

The military traditionally has supported civilian search and rescue (SAR) activities.

”

¹⁰ *Id.*; see also SECNAVINST 5820.7B, para. 9b(4); Air Force Instruction 10-801.

¹¹ 14 U.S.C. § 2. *Jackson v. Alaska*, 572 P.2d 87 (Alaska 1977).

¹² This requirement also is mandated by 10 U.S.C. § 379.

¹³ Department of Defense Directive 5525.5, Encl. 4, para. A.3.

¹⁴ *United States v. Red Feather*, 392 F. Supp. 916, 921 (W.D.S.D. 1975); *United States v. Yunis*, 681 F. Supp. 891, 892 (D.D.C. 1988); *United States v. Rasheed*, 802 F. Supp. 312 (D. Hawaii 1992).

¹⁵ *Hayes v. Hawes*, 921 F.2d 100 (7th Cir. 1990); *United States v. Bacon*, 851 F.2d 1312 (11th Cir. 1988); *United States v. Hartley*, 796 F.2d 112 (5th Cir. 1986); *United States v. Hartley*, 678 F.2d 961, 978 (11th Cir. 1982), cert. denied, 459 U.S. 1170 (1983); *United States v. Hitchcock*, 103 F. Supp. 1226 (D.Hawaii 1996).

¹⁶ *United States v. Kahn*, 35 F.3d 426 (9th Cir. 1994); *United States v. Casper*, 541 F.2d 1274 (8th Cir. 1976), cert. denied, 30 U.S. 970

(1977); *United States v. McArthur*, 419 F. Supp. 186 (D.N.D. 1975); *United States v. Yunis*, 681 F. Supp. 891, 895-6 (D.D.C. 1988).

¹⁷ *United States v. Thompson*, 33 M.J. 218 (CMA 1991), cert. denied, 502 U.S. 1074 (1992).

¹⁸ *Eggleston v. Department of Revenue*, 895 P.2d 1169 (Colo. Ct. App 1995); *Harker v. State*, 663 P.2d 932 (Alaska 1983); *Anchorage v. King*, 754 P.2d 283 (Alaska Ct. App. 1988).

¹⁹ *Applewhite v. United States*, 995 F.2d 997 (10th Cir. 1993), cert. denied, 510 U.S. 1190 (1994).

²⁰ Memorandum, Off. Legal Counsel for General Brent Scowcroft, 3 Nov. 1989. This opinion also states the restrictions of 10 U.S.C. §§ 371 - 381, specifically 10 U.S.C. § 375, also were not intended to have extraterritorial effect.

²¹ *United States v. Cotton*, 471 F.2d 744 (9th Cir. 1973); *Chandler v. United States*, 171 F.2d 921 (1st Cir. 1948), cert. denied, 336 U.S. 918 (1949); *D'Aquino v. United States*, 192 F.2d 338 (9th Cir. 1951), cert. denied, 343 U.S. 935 (1952). (Note: both Chandler and D'Aquino involved law enforcement in an area of military occupation.) But see *United States v. Kahn*, 35 F.3d 426, 431 n. 6 (9th Cir. 1994) (In a case involving the applicability of the PCA to Navy activities in support of maritime interdiction of a drug-smuggling ship, the government maintained the PCA had no extraterritorial effect. While the court stated that issue had not been definitively resolved, it did state that 10 U.S.C. §§ 371-381 did "impose limits on the use of American armed forces abroad.")

²² Department of Defense Directive 5525.5.

²³ DOPLAW Handbook, *supra* note 4, p.

31.

²⁴ *Gilbert v. United States*, 165 F.3d 470, 473-74 (6th Cir. 1999); *United States v. Benish*, 5 F.3d 20, 25-26 (3rd Cir. 1993).

²⁵ 28 U.S.C. §§ 2671-2680.

²⁶ National Guard Bureau Regulation 500-2, *National Guard Counterdrug Support*, para. 2-1e (March 31, 2000) defines "exigent circumstances" as situations where immediate action is necessary to protect police officers, National Guard personnel, or other persons from death or serious injury; to prevent the loss or destruction of evidence; or to prevent the escape of a suspect already in custody.

²⁷ *Id.*, para. 3-6, sets forth the training and other regulatory requirements applicable to armed National Guard members on counterdrug missions.

²⁸ This authority, while not specifically codified, can be found in Section 1004 of the

National Defense Authorization Act in all years from 1991 to 2002. *See also* 10 U.S.C.A. § 374.

²⁹ Memorandum, Deputy Secretary of Defense, DoD Training Support to U.S. Civilian Law Enforcement Agencies, (June 29, 1996).

³⁰ The U.S. Army Military Police School is authorized to continue training civilian law enforcement personnel in the Counterdrug Special Reaction Team Course, the Counterdrug Tactical Police Operations Course, and the Counterdrug Marksman/Observer Course. On an exceptional basis, the Commander-in-Chief, U.S. Special Operations Command may approve such training by special operations forces. *Id.*

³¹ 10 U.S.C. § 4309.

³² 10 U.S.C. § 373.

³³ Executive Order (EO) 12333, *United States Intelligence Activities* (December 4, 1981); Department of Defense Directive 5240.1R, Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons (December, 1982).

NOTE: These proscriptions do not apply when the military is performing authorized direct law enforcement activities in support of civil disturbances. *See* U.S. Department of Defense Directive 5200.27, Acquisition of Information Concerning Persons and Organizations Not Affiliated With the Department of Defense (January 7, 1980) and U.S. Department of Defense Civil Disturbance Plan (Garden Plot) (February 15, 1991).

³⁴ 42 U.S.C. §§ 5121-5202 (2000).

³⁵ United States Department of Defense Directive 3025.1, Military Support to Civil Authorities, para. 4.5 (January 15, 1993).

This article provides a general overview of the important law surrounding law enforcement's interaction with the military. It is not intended to be a legal authority or reference for law enforcement managers, but rather a review that encourages responsible synergy between civilian law enforcement agencies and the military. Finally, law enforcement managers should always consult with their legal advisors prior to implementing an MOU or any operation with the military.

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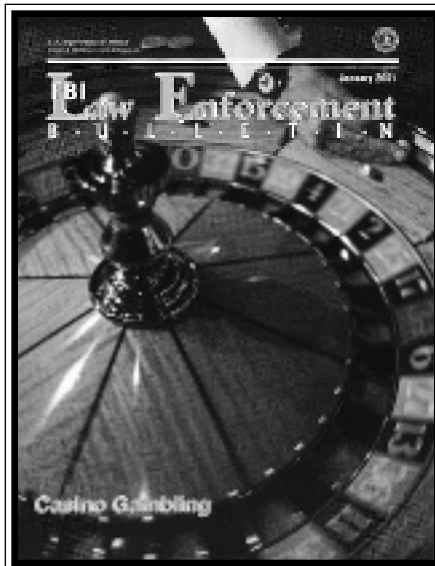
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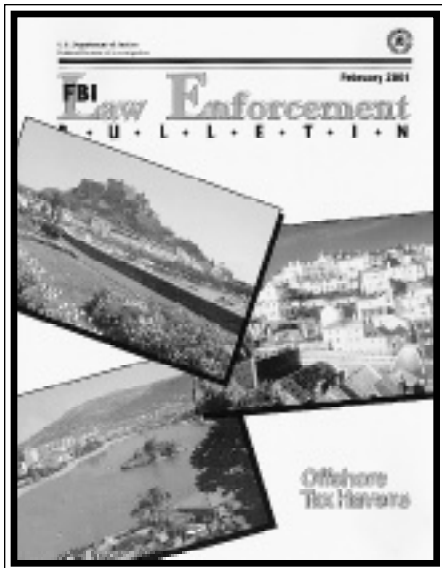
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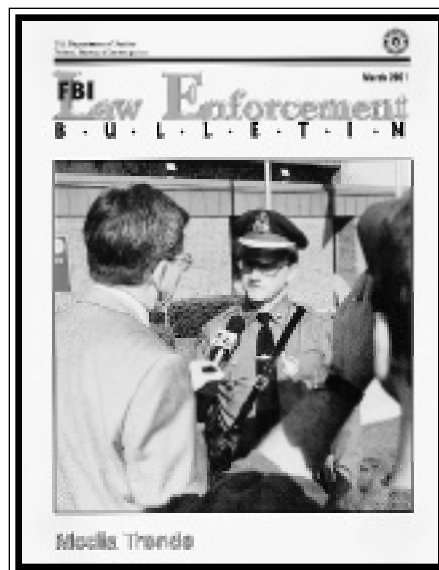
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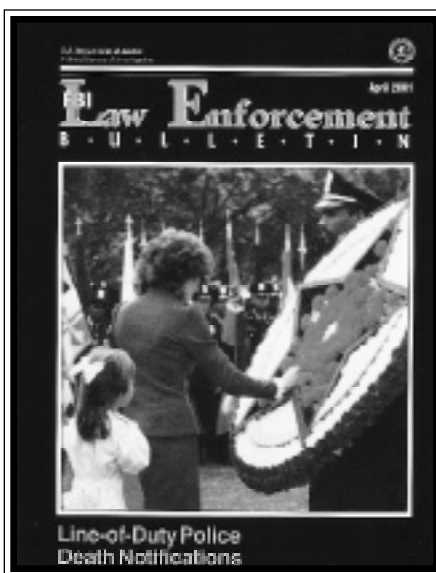
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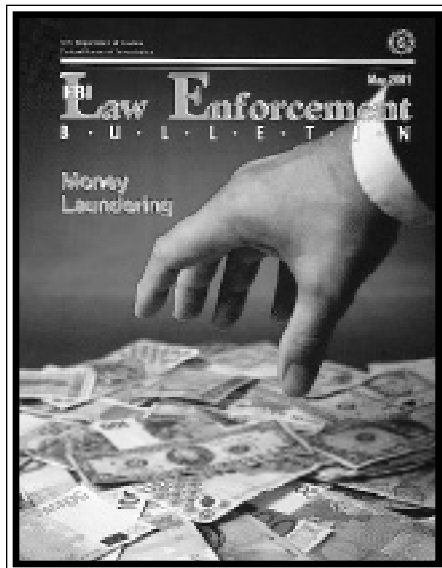


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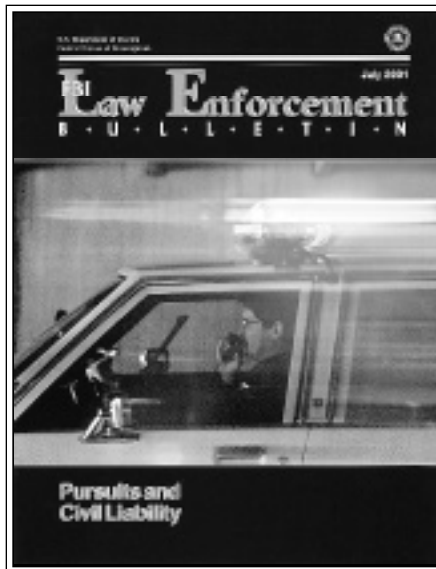


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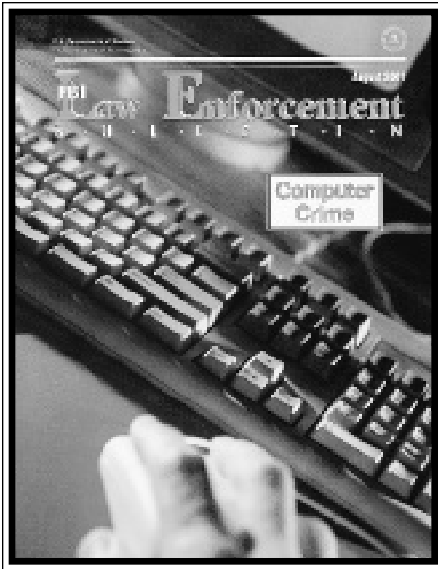
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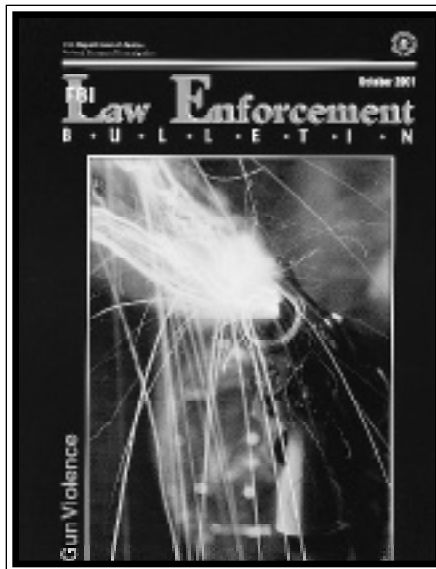
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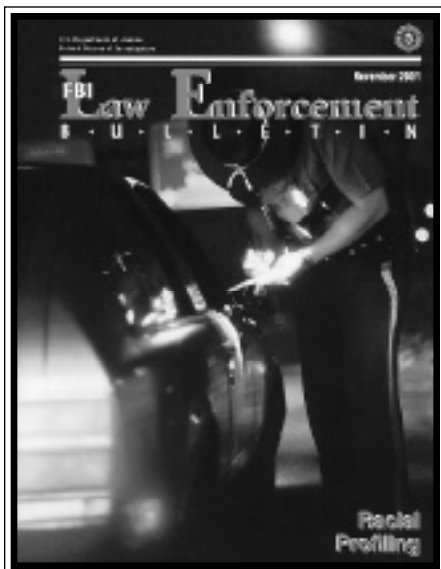
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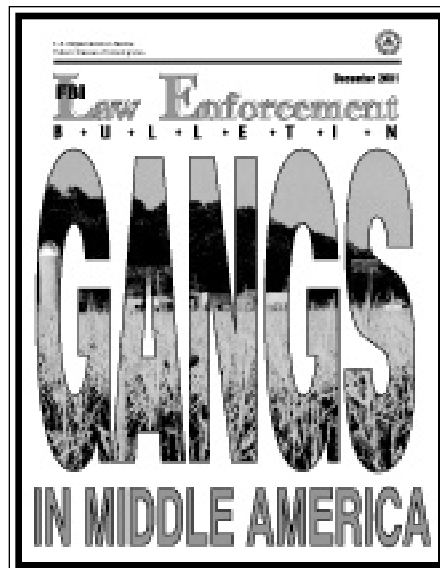
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The Bulletin Notes

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



Sergeant Logsdon

Sergeant David Logsdon of the Astoria, Oregon, Police Department responded to a report of a suicidal distraught woman. When Sergeant Logsdon arrived, he saw that the woman was threatening to kill herself with a handgun. Sergeant Logsdon was able to distract and disarm the woman, but not before she discharged three rounds into the floor. Sergeant Logsdon's courageous actions not only prevented any injuries but ultimately saved the woman's life.



Officer Morgan

While on routine patrol in Baldwin, New York, Officer Michael Morgan of the Nassau County Police Department observed a man standing on an elevated railroad track adjoining the station platform. Officer Morgan radioed for assistance and requested that the railroad authorities be notified to warn any oncoming trains. As he made his way to the station, Officer Morgan was approached by a woman who told him that it was her 20-year-old nephew on the tracks and that he had been drinking and was distraught. As the man began running farther down the elevated track, Officer Morgan feared that the man would jump. Disregarding his own safety, he pursued the man on the tracks and attempted to control him. As they struggled, Officer Morgan suddenly realized that a train was rapidly approaching, so he grabbed the man and rolled them both into a small crawl space under the platform just as the train roared past. Shortly thereafter, he gained control of the man, handcuffed him, and removed him to safety. Officer Morgan's selfless acts of bravery prevented a potential tragedy.



Officer Kies

When Officer Christopher Kies of the City of Lompoc, California, Police Department responded to an attempted suicide call, he found the dwelling engulfed in flames and a suicidal man, who had doused himself with gasoline, standing in the front yard. When the man saw the police arriving, he began to walk into the burning residence. Disregarding his own safety, Officer Kies managed to pull the man to safety just as they crossed the threshold, preventing the man's gasoline-soaked clothes from igniting. Officer Kies' courageous and heroic actions thwarted the man's suicide attempt.

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

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

Periodicals
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Official Business
Penalty for Private Use \$300

Patch Call



The Nebraska City, Nebraska, Police Department's patch depicts Arbor Lodge, the home of J. Sterling Morton, who founded Arbor Day, which is the celebration of tree planting. Arbor Day is observed on the last Friday in April. While most holidays honor the past, Arbor Day proposes for the future.



The patch of the Jacksonville, North Carolina, Police Department features the original city hall and police department law enforcement complex. The globe and anchor of the U.S. Marine Corps is prominently displayed on the patch and reflects the close relationship with Camp Lejeune, the world's largest amphibious base and home of the 2nd Marine Division.