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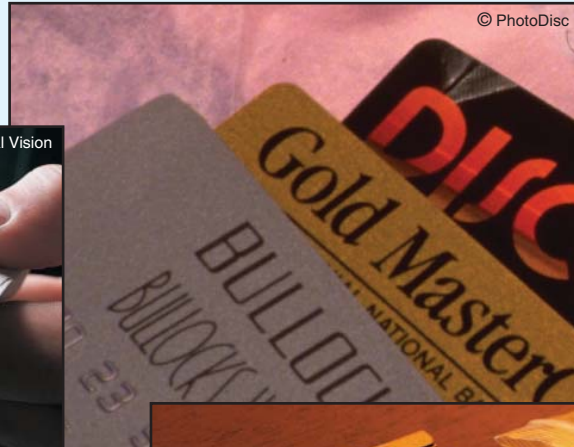
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Financing Terror

By DEAN T. OLSON, M.A.



“The frequency and seriousness of international terrorist acts are often proportionate to the financing that terrorist groups might get.”¹ Terrorist organizations must develop and maintain robust and low-key funding sources to survive. Domestic and international terrorist groups raise money in the United States to exploit the nation’s market-based economy

and democratic freedoms for profits that they send overseas or use locally to finance sleeper cells. Raising funds on American soil fulfills complementary goals by undermining the economy, introducing counterfeit and often unsafe or adulterated products and pharmaceuticals into the consumer market, and increasing the social costs of substance abuse by feeding the demand for illicit drugs.

The terrorists who attacked the World Trade Center in New York City in 1993 originally planned to use a larger bomb to bring down both towers by toppling one into the other.² They also wanted to amplify the carnage by augmenting their vehicle-borne improvised explosive device with a chemical or biological weapon to increase casualties and hamper rescue efforts. Their goal, however,

went awry because they ran out of money.

Similarly, lack of funds limited the plans of another group that conspired in 2003 to simultaneously bomb the Egyptian, American, and other Western embassies in Pakistan.³ Inadequate monetary resources forced the group to focus on attacking only the Egyptian embassy. "A short time before the bombing of the [Egyptian] embassy the assigned group... told us that they could strike both the Egyptian and American embassies if we gave them enough money. We had already provided them with all that we had and we couldn't collect more money."⁴

A major source of terrorist funding involves criminal activities. Groups use a wide variety of low-risk, high-reward crimes to finance their operations.

Those most likely encountered by local law enforcement involve six primary areas.

Illicit Drugs

"If we cannot kill them with guns, so we will kill them with drugs."⁵ Documented links exist between terrorist groups and drug trafficking, notably the smuggling of pseudoephedrine, a precursor used to manufacture methamphetamine. After purchasing the substance in multi-ton quantities, smugglers associated with one terrorist group moved truckloads of it into the United States to feed methamphetamine labs in California and neighboring southwestern states.

In three major drug investigations, DEA arrested more than 300 people and seized over \$16 million in currency and enough pseudoephedrine to

manufacture 370,000 pounds of methamphetamine. To put this quantity into context, the average annual seizure of methamphetamine throughout the United States in 2002 was 6,000 pounds.⁶

Fraud

Frauds perpetrated by terrorist groups include identity theft for profit and credit card, welfare, social security, insurance, food stamp, and coupon fraud. Industry experts estimate that \$3.5 billion in coupons are redeemed annually.⁷ About 10 percent, or \$3.5 million, is fraudulent.

In 1987, authorities disrupted a large coupon fraud ring involving more than 70 participants.⁸ The conspirators were accused of sending a portion of the proceeds to Palestine Liberation Organization (PLO) bank accounts in the Middle East and Europe. A Palestinian operating several grocery stores in the North Miami, Florida, area was the key player in a nationwide money laundering and financing operation for the PLO. The investigation discovered that 72 individuals from throughout the United States gathered in Hollywood, Florida, to further the fraudulent coupon distribution network. One person was identified as a cell leader of a terrorist network. Members of the group also were involved in hijacking



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Groups use a wide variety of low-risk, high-reward crimes to finance their operations.

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trucks and selling stolen food stamps and property.⁹

In 1994, New York City officials identified the head of a coupon fraud ring who had established a network of stores by targeting those owned and controlled by Middle Eastern businessmen willing to participate in schemes that defrauded American commercial enterprises.¹⁰ Most of the time, a small store that normally submitted \$200 to \$300 in coupons monthly would suddenly begin sending in tens of thousands of dollars worth of them after joining the network. The store owners never saw the coupons; they only received the redemption checks. In many cases, the owners borrowed money or agreed to lease stores for a monthly fee set by the network. They used coupons to pay the debt on these loans, which sometimes required 49 percent interest per month.¹¹

Stolen Baby Formula

In another scheme in the late 1990s, investigators in Texas discovered that organized shoplifting gangs paid drug addicts and indigent people \$1 per can to steal baby formula. The groups repackaged the products in counterfeit cardboard boxes before shipping the bootleg formula to unsuspecting stores across the United States. One of the largest rings at the time netted \$44 million in 18 months.¹²

As the terrorist attacks on September 11 unfolded, a Texas state trooper pulled over a rental van and found an enormous load of infant formula inside. Police later identified the driver as a member of a terrorist group and linked him to a nationwide theft ring that specialized in reselling stolen infant formula and wiring the proceeds to the Middle East.¹³ The investigation led to felony charges against more than 40 suspects, about half of them illegal immigrants.

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Documented links exist between terrorist groups and drug trafficking, notably the smuggling of pseudoephedrine....

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Police also seized \$2.7 million in stolen assets, including \$1 million worth of formula. This investigation was only the beginning. In the years after September 11, police discovered and disrupted several regional and national theft rings specializing in shoplifted baby formula. At least eight of the major cases involved individuals of Middle Eastern descent or who had ties to that region.¹⁴

Intellectual Property Theft

According to media reports, the terrorists who bombed the World Trade Center in 1993 allegedly financed their activities with counterfeit textile sales from a store in New York City.¹⁵ A raid on a souvenir shop led to the seizure of a suitcase full of counterfeit watches and the discovery of flight manuals for Boeing 767s, some containing handwritten notes in Arabic. A subsequent raid on a counterfeit handbag shop yielded faxes relating to the purchase of bridge inspection equipment. While investigating an assault on a member of an organized crime syndicate 2 weeks later, police found fake driver's licenses and lists of suspected terrorists, including the names of some workers from the handbag shop, in the man's apartment.¹⁶

Pirated software constitutes a tremendous source of funds for transnational criminal syndicates, as well as terrorist groups. It is not difficult to see why software piracy has become attractive. A drug dealer would pay about \$47,000 for a kilo of cocaine and then sell it on the street for approximately \$94,000, reaping a 100 percent profit. But, for the same outlay of \$47,000 and substantially less risk, an intellectual property thief could buy 1,500 bootleg copies of a popular software program and resell them for a profit of 900 percent.¹⁷ To put

Items Common to Illegal Hawala Operations

- Spiral notebooks, scraps of paper, or diaries listing information for numerous financial transactions, which generally include the date, payer name, amount received, exchange rate, and payment method or remittance code
- An unusually high number of phone lines at a residence or business; short incoming calls and lengthy overseas calls
- Fax transmittal logs/receipts, which may contain name of sender, beneficiary, or a code
- Wire transfer receipts/documents
- Phone records/documents; multiple calling cards
- Multiple financial ledgers (one for legitimate transfers, one for criminal activity, and one possibly for settling accounts)
- Bank account information, particularly multiple accounts, under same name
- Multiple identification (false ID for the subject or for several other individuals)
- Third-party checks
- Evidence of other fraud activity

these numbers into context, the September 11 attacks cost approximately \$500,000, or \$26,000 per terrorist. One successful large-scale intellectual property crime easily could fund multiple terrorist attacks on the scale of those of September 11, 2001.

Cigarette Smuggling

Exploiting a considerable tax differential, smugglers

bought van loads of cigarettes for cash in North Carolina and transported them to Michigan.¹⁸ According to prosecutors, each trip netted \$3,000 to \$10,000. In 1 year, the recipient of the profits, who had links to a terrorist group, had deposited over \$735,000 in bank accounts while paying for houses, luxury cars, and other goods with cash. The group sent items, such as night-vision goggles,

cameras and scopes, surveying equipment, global positioning systems, and mine and metal detection equipment, to other terrorists abroad.¹⁹ The ringleader was sentenced to 155 years in prison, and his second in command received a 70-year prison sentence.

Informal Value Transfer Systems

Informal value transfer and alternative remittance systems play a significant role in terrorism financing. One example, hawala, involves the transfer or remittance of money from one party to another, normally without the use of such formal financial institutions as banks or money exchanges. International financial institutions estimate annual hawala transfers at approximately \$2 trillion dollars, representing 2 percent of international financial transactions.²⁰

Because these systems operate below legal and financial radars, they are susceptible to abuse by criminal elements and terrorists.²¹ Moreover, few elements of this informal transfer system are recorded, making it difficult to obtain records of the transmitters and the beneficiaries or to capture the scale and magnitude of such transfers. Although operators keep ledgers, their records often are written in idiosyncratic shorthand and maintained only briefly.

Conclusion

From stolen baby formula to intellectual property theft, terrorist groups employ a variety of criminal schemes to raise funds. And, as with other homeland security matters, countering terrorist financing is fundamentally a local law enforcement responsibility. The more familiar officers are with the criminal enterprises used by these groups to raise money, the more effective they will be in finding ways to counter such activities.

Countermeasures must disrupt terrorist financing and starve such groups of the money necessary to sustain their organizations and to perpetrate attacks. Without the financial means to carry out their missions, terrorists will find it increasingly difficult to continue their wanton acts of death and destruction. ♦

Endnotes

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²¹ *Supra* note 1, 37.

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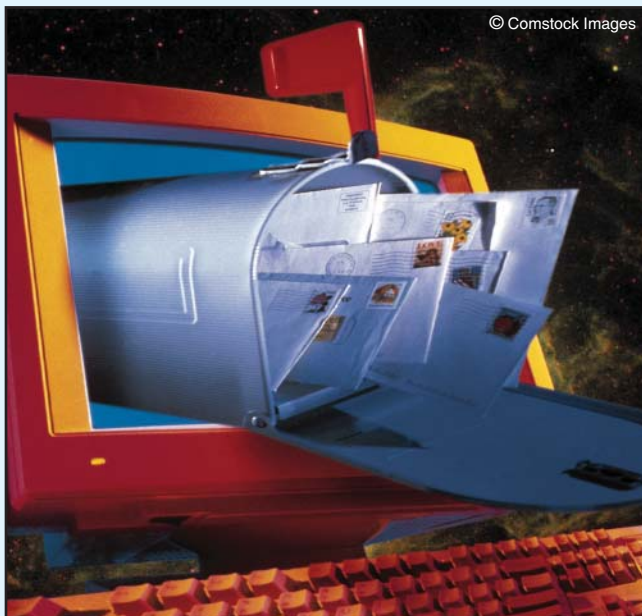
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The FBI's Communicated Threat Assessment Database History, Design, and Implementation

By James R. Fitzgerald



In January 1999, a gunshot pierced the window of a Pennsylvania house and killed the female resident. Her estranged husband, a wealthy doctor, was the prime suspect, but investigators did not have enough evidence to convict him. Early in the investigation, his attorney received two separate anonymous letters attempting to exculpate the husband. The investigators requested an authorial attribution analysis (i.e., an attempt to determine common authorship between two or more sets of communications) of the two anonymous letters and numerous ones written by the husband. Comparing these with the more than 1,000 letters contained at that time in the FBI's Communicated Threat Assessment Database (CTAD) strengthened the distinctive quality of the two sets of

letters and their author. Investigators determined that the husband had sent the recent ones in an attempt to misdirect the investigation. During the interim, he had moved to Washington, and, in December 2002, authorities arrested him and returned him to Pennsylvania for trial. In 2004, FBI personnel provided expert testimony at the husband's trial as to the results of their analyses and the findings derived from CTAD. After a first-degree murder conviction, the judge sentenced him to life without parole.

Overview

The FBI's Behavioral Analysis Unit-1 (BAU-1) of the Critical Incident Response Group is a component of the National Center for the Analysis of Violent Crime at the FBI Academy and focuses its efforts on counterterrorism, threat assessment, and other forensic linguistics services. BAU-1 personnel offer services, including behaviorally oriented investigative assistance in counterterrorism matters, threat assessment/textual analysis, WMD, extortions, product tampering, arson and bombing matters, and stalking cases, to the FBI; other international, federal, state, and local law enforcement and intelligence agencies; and the military. In conjunction with these responsibilities, the unit implemented CTAD to serve as the primary repository for all communicated threats and other criminally oriented communications (COCs) within the FBI. It assists with categorizing, analyzing, assessing, and maintaining all communications falling into these two areas.

Some communicated threats and COCs are sent to their respective recipients for personal reasons, whereas others relate directly to criminal enterprises, such as extortion, kidnapping, and other crimes. Some fall under the domain of national security and have intelligence potential contained therein. For example, a communication to a corporation or a government entity could be an attempt to threaten, or actually violate, the security of the company or the United States.

All communicated threats and COCs received at the FBI are entered into CTAD, categorized accordingly, analyzed, and assessed for their respective threat potential. Then, BAU-1 agents search for similarities with other existing communications within the database, make a possible determination of authorship, and notify the submitting agency of their findings.

History

An increase from only several dozen per year in the mid-1990s to approximately 400 in 2005 alone aptly illustrates the significant rise in the number of threatening communications and COCs received by BAU-1 during the past several years. The advent of e-mail, with its ease of use and accessibility, has played an important role in this growth. Also, the terrorist attacks of September 11, 2001, and the anthrax mailings shortly thereafter, among other cases, have demonstrated the need for the FBI to monitor all of these communications. The agency, therefore, determined that a database would aid in coordinating this expanding number of communications and the requests for BAU-1 personnel to assess and analyze them.

During the early stages of planning, unit members envisioned a corpus with a word capacity exceeding 100 million, an extensive search potential, detailed categorization and classification parameters, and report-writing capabilities. Most important, they wanted a linguistically oriented database, as well as a behaviorally oriented one. If language in a particular communication suggested potentially deadly action, behavioral markers within the text would be identified, cross-checked with other communications, and evaluated. Such a design would combine both linguistic- and behavioral-based concepts in an attempt to not

only assess the possibility of a threatened action being undertaken but also assist in the identification of the anonymous author.

Design

Currently, CTAD contains almost 2,500 communicated threats or other COCs that vary in length from several sentences to 20 or more pages. The database divides these into 24 categories of either a general nature, such as terrorism, or a more specific genre, such as WMD, sexual, or militia. The overall theme of a communication denotes the primary category selected, while other ancillary factors, such as the mechanism of a threatened action itself, can place it into a secondary one. For example, the author of an anonymous communication may claim allegiance to a known terrorist group and threaten a city with a radiological device. In that case, the primary category would be terrorism with WMD as the secondary one.

CTAD is divided into four sections. The first, Administrative, includes file numbers, keywords, case title, FBI division information, investigator details, and similar data. The second section, Case Facts, contains information related to the case, including the form of the threat, authorship (if so indicated), means of delivery, target, demands, details about the victim/recipient, media coverage, and other relevant details. The third, Linguistic Profile, requires advanced training and experience in the fields of criminal behavior and forensic linguistics. This section incorporates assessments based on a behavioral and linguistic analysis of the communication, including indications of capabilities, commitment, deception, biographical information (e.g., sex, age, race/ethnicity, education, and native language), and, if necessary, the level of threat (e.g., low, moderate,

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The search component constitutes one of CTAD's most important elements.

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Terms Defined

- Communicated threat: verbalized, written, or electronically transmitted message that states or suggests potential harm to the recipient, someone or something associated with the recipient, or specified or nonspecified other individuals.¹
- Threat assessment: detailed examination of the elemental parts of a verbal or written threat to estimate in terms of high, medium, or low probability the genuineness and overall viability of the expression of intent to do harm.²
- Criminally oriented communication (COC): verbalized, written, or electronically transmitted message, usually anonymous, not necessarily threatening a specific action or event but relating to an existing or potential crime.
- Post-offense manipulation of investigation communication (POMIC):³ communications received by the media or criminal justice entities after the commission of a crime, often a high-profile case. Invariably anonymous, POMICs assert that the person publicly accused, under investigation, in custody, or standing trial for a certain crime is innocent. The author usually claims responsibility for the crime or knows the “real” offender who always remains unnamed. Such communications attempt (usually unsuccessfully) to convince the public, the media, the investigators, or the jury that the accused, the arrested, or the defendant did not commit the crime. As in the case study at the beginning of this article, investigations of POMICs usually reveal that the person accused of the original crime or someone close to that individual authored the letter. In some jurisdictions, writing a COC may constitute obstruction of justice. However, even without separate charges based on POMICs, their presence may serve to strengthen the prosecution of the original crime.

or high). The last section is Case Facts Confirmed and is completed only when the author of a threatening communication or COC has been identified, making biographical and descriptive data available. This section assists in the identification of anonymous writers of other threatening communications and COCs in CTAD, which may not have been previously linked.

The search component constitutes one of CTAD’s most important elements. BAU-1 personnel can restrict searches to the database itself or other directories within the system. When working on specific authorial attribution projects, employees can create separate directories of the known and the questioned documents and search only

those two. Unit members also can search the 24 categories within CTAD for like communications. For example, they could search all sexual communications for all available years or for only one. Other search tools include location, such as readily accessing all communications from a specific FBI office. In addition, personnel can conduct searches relating to the age, sex, and ethnicity of authors. BAU-1 plans to add more advanced search capabilities in the future.

Implementation

When a new threatening communication case arrives at BAU-1 via an FBI office or a local or state law enforcement agency, an analyst accesses

CTAD and obtains all relevant information related to it, including how many threats have been received in the last year in that specific category and whether any similarities exist between the linguistic features in the current communication and others in the database. At this point, based on the receipt of all of the relevant information available at that time, agents can complete their assessment and analysis and provide the most salient opinion as to the potential of the threatened action being carried out and the personality characteristics of the author.

A recent case offers an example of how CTAD can aid investigators. For several years, agents in the FBI's Cleveland office have been investigating a series of threatening and racially insensitive anonymous letters received by numerous people, including college and professional athletes and other celebrities, throughout the United States. Using the database, BAU-1 personnel linked all of the letters to the same author. Subsequently, agents in the Las Vegas office began investigating the receipt of a threatening and racially insensitive anonymous letter to a particular victim. Through a linguistic- and behavioral-based search of the letter, BAU-1 members determined that it originated from the author of the letters in the Cleveland case. While the author remains unidentified, CTAD's advanced search capabilities have ensured that agents will work the case as one investigation, thereby improving the chance of a successful resolution.

Future plans include continually upgrading CTAD in an effort to make it as effective a tool as possible, including an online capability throughout the FBI. Moreover, CTAD offers endless research potential in terms of undertaking studies to

determine the type of anonymous individual who composes and sends threatening communications and COCs. From a sociolinguistic perspective, researchers could examine features, such as age, sex, ethnic background, and education level, in these types of communications and determine commonalities among the authors. Follow-up interviews of identified authors may reveal a great deal about them, including those who were "only" threatening, those who really meant what they wrote, and those who actually carried out a threatened action.

Conclusion

The Communicated Threat Assessment Database is a new item within the FBI's arsenal of tools in its effort to combat crime and terrorism. While it has historical precedence in both the government and

academic communities, CTAD is unique in its design and purpose.

The database will continue to enhance the threat assessment and textual analysis process within the FBI. Its creators hope that as CTAD and its corpus and capabilities grow, so too will the services provided to those requesting assistance with these critical matters. ♦

Endnotes

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³ BAU-1 personnel coined this term.

Special Agent Fitzgerald serves in the Critical Incident Response Group, Behavioral Analysis Unit-1, at the FBI Academy.

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Future plans include continually upgrading CTAD in an effort to make it as effective a tool as possible....

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Dealing with Hawala

Informal Financial Centers in the Ethnic Community

By JAMES CASEY, M.A.

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In the immediate aftermath of September 11, 2001, many experienced intelligence officers did not understand the concept of hawala, and few knew what it actually represented in the context of money laundering and terrorism financing. Then, as today, hawala constitutes an important economic aspect of life in America's Middle Eastern and Southeast Asian communities.¹ Law enforcement officers

who work in these locations or investigate white-collar crime or terrorism financing should know about and understand how to deal with hawala and other nontraditional financial centers.

How Hawala Works

Hawala comprises one type of the informal value transfer system (IVTS) used mostly by members of an ethnic community to send money around the world. Other forms of IVTS,

which also can be elements of hawala, include physically transporting (smuggling) currency and stored-value transfers (chits). Hawala does not involve the immediate movement of any negotiable instrument nor are actual funds immediately transmitted anywhere. An ancient system that actually predates banking, it works in an analogous manner to a more formal system of "wiring" money.² When individuals wire money,

they contact a legitimate money-wiring service and provide an amount of funds they wish to send to another party plus a fee. If they send money overseas, they generally pay a recognized margin or exchange rate at which they purchase funds in that country's currency. Of course, funds are not actually "wired" to the other person, and nobody physically sends money anywhere at that time. Instead, one vendor accepts the cash from the sender, and another gives the same amount to the recipient. Then, the two vendors settle at a later time.

In more legitimate operations, these settling transactions almost always involve the transfer of funds from one account to another at banking institutions. With hawala, however, either a transfer of funds to a bank or a number of less formal settling transactions may occur. Hawaladars (i.e., operators) may travel overseas on a regular basis to settle accounts in person with their contacts. They may have other business interests with these intermediaries that involve inventory and merchandise, which they can manipulate to reflect the hawala transactions. For example, hawaladars can trade premium goods, such as phone cards, at a discount to represent the value of earlier transactions.

Just like legitimate money-wiring operations, hawala often

is contained within another community business, such as an ethnic market or travel agency, or run by freelancers who operate autonomously in the community. The global scope of IVTS and hawala is impossible to calculate. An International Monetary Fund/World Bank estimate puts worldwide IVTS transfers on the order of tens of billions of dollars annually.³

Money Laundering

Hawala is not necessarily synonymous with money laundering or even white-collar crime or terrorism financing. Money laundering, by its very nature, involves attempting to make "dirty" money, often via drug activity or organized crime wherein criminals generate sums of wealth (usually cash)

that cannot be easily explained or managed, "clean." So, they transfer the money in and out of different accounts, banks, and various legitimate and partially legitimate businesses. This supposedly creates ambiguity as to its origin and lends legitimacy to otherwise criminal proceeds. It is significant to recall that money laundering, per se, generally is not, in and of itself, a criminal act.⁴ Most money-laundering statutes require evidence of a specific underlying enterprise, such as drug trafficking or other criminal activity, to successfully prosecute the money-laundering offense.

Terrorism Financing

An interesting paradox surrounds the financing of terrorism. First, cash proves as important, if not more so, to

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Special Agent Casey heads the Eurasia Section in the FBI's Counterintelligence Division.

successful terrorist operations as it does to any other prosperous venture, legal or otherwise. But, at the opposite end of the equation, terrorist operations are *not* prohibitively expensive. After all, a teenage terrorist who straps on explosives and detonates himself in a Tel Aviv restaurant killing dozens costs little, yet his actions prove effective.

Ahmed Ressam, an Algerian loosely affiliated with al Qaeda, had lived illegally in Canada for several years when he tried to enter the United States with explosives in the trunk of his car. He was destined for Los Angeles International Airport where he intended to set off an explosion as part of a larger New Year's millennium terrorism plot. His overseas handlers had instructed him to finance himself by burglarizing hotel rooms, stealing credit cards, and committing other petty offenses.⁵ Timothy McVeigh and Terry Nichols used the proceeds from several home burglaries and gun show sales to buy farm-grade fertilizer they mixed with fuel oil to bomb the Murrah Federal Building in Oklahoma City.

According to the 9/11 Commission, the entire cost of the September 11 plot was between \$400,000 and \$500,000. Considering that close to two dozen individuals (the 19 hijackers plus overseas support elements)

were likely involved over an 18-month to 2-year period, the funds needed for significant international travel, terrorist-camp training, flight school, and living expenses only approximated \$12,000 per person, per year.

The 9/11 Commission also found no evidence of any foreign government knowingly helping to finance the operation; instead, most of the funds were derived from donations to charity. While some media sources have claimed Saudi Arabia was

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Just like legitimate money-wiring operations, hawala often is contained within another community business....
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responsible for providing a large amount of terrorism funding in general and particularly for the September 11 plot, a specific dollar-for-dollar nexus does not exist. While the royal family in Saudi Arabia maintains a complex relationship with both its citizens and conservative religious clerics and charities in the country, proving the government provided funds to these

religious leaders and charities knowing that the money would eventually finance terrorism never has been established.⁶ Moreover, while the 9/11 Commission found that al Qaeda used hawala to move money in and out of Afghanistan, it also determined that the group did not employ hawala in any way to fund the 19 hijackers or the events surrounding the September 11 attacks.⁷

Hawala in the Community

People use hawala for any number of reasons; many of these are legitimate, while others are not. Investigators must understand that in the Middle Eastern community, the importance of family and other trusted relationships cannot be overemphasized. Often, a member of the community refers to another as belonging to a particular family when, in fact, the relationship is so distant that it is legally insignificant. These family and clan relationships perhaps are more significant than in any other ethnic community in the United States. At the same time, many members have relatives in their home countries they support financially.

Within these Middle Eastern and Southeast Asian communities, members trust local businessmen, including the hawaldar, a great deal. That trust is one element that invites the use

of hawala. A fictional example of a member of the community employed in violation of his tourist or student visa can help illustrate the system. The young man does not have a social security number and wishes to send money to his homeland, a country where currently it is unlawful to do so, to support relatives. He has four immediate incentives to use a local hawaladar, rather than a traditional bank or money-wiring service.

- 1) He is violating the terms of his visa by working in the United States.
- 2) He does not have a social security number and may be working without paying taxes.
- 3) Treasury regulations do not allow him to legally send money to his country.
- 4) A hawaladar probably is more economical than other more legitimate means of moving money because of lower finance charges and exchange rates.

Passed in 2001, the United and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act⁸ called on the U.S. Department of the Treasury to determine whether Congress should stiffen laws relating to IVTS in the United States. The report to Congress concluded

that although law enforcement had tools at its disposal for dealing with IVTS (hawala), further education was a key element. “The U.S. approach of regulating informal value transfer activity is preferable to outlawing the activity altogether, a course chosen by some nations. Attempting to outlaw the IVTS ultimately deprives law enforcement of potentially valuable information and drives



the informal remittance providers further ‘underground.’ Outlawing the activity also deprives the mostly law-abiding IVTS customers of the primary channel through which they transfer funds.”⁹

Techniques for Law Enforcement

As with any crime problem, a keen understanding of who is who in the community

constitutes one of the keys to successfully dealing with hawala. Officers and investigators need to use their sources of information to determine which merchants and individuals in the community act as IVTS brokers. When suspicion arises that these entities are employing IVTS to facilitate drug trafficking, terrorism financing, or money laundering, law enforcement can exploit a host of local, state, and federal offenses these enterprises are committing.

Regardless of how well-meaning or “community oriented” hawaladars are, they violate technical infractions each time they engage in a financial transaction. The federal Bank Secrecy Act (BSA)¹⁰ requires any person or group acting as a money-services business (MSB) to adhere to numerous reporting and record-keeping requirements, most or all of which hawaladars routinely ignore. Additionally, these businesses, by law, must register with the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN), which, again, they usually disregard. Furthermore, MSBs are required by law to produce suspicious activity reports (SARs) for transactions over \$2,000 that appear, or should appear to them, to involve illegal activity. Finally (although not all-inclusively), investigators

should note that Title 18 of the U.S. Code makes it a crime to operate an MSB in the absence of compliance with applicable state licensing requirements.¹¹ Undoubtedly, these enterprises also do not appropriately follow these regulations.

A misperception exists that hawaladars do not keep records; this is false. Many keep extensive documentation because the settling of accounts often takes place well into the future. What investigators need to look for are unconventional records or ones kept in a language other than English. Also, because hawaladars barter in other than cash products, investigators should check for large transactions involving food stamps, lottery tickets, and phone cards, all of which can be alternate forms of currency in the community.¹² Of course, phone records and those from Internet service providers, as well as legitimate bank documents, can be valuable because they show who the hawaladar has dealt with. Investigators should focus on contacts and transactions that involve Great Britain,¹³ Switzerland, and Dubai as these comprise major financial centers with strict financial secrecy laws.¹⁴ Moreover, even when hawaladars are not knowingly involved in serious illegal activity, their nonconforming business practices put them in

positions where they could assist law enforcement with the real criminal element in a community, especially those dealing in narcotics, laundering money, or financing terrorism.

Conclusion

The hawala concept is not prohibitively complicated. Its deviance from conventional banking and financial institutions, together with its place in the Middle Eastern and

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Southeast Asian communities, can pose a challenge for investigators experienced in more traditional financial crimes, including money laundering and terrorism financing. However, employing some specific techniques, coupled with a solid community intelligence base, should assist them with hawala and nontraditional financial centers. ♦

Endnotes

¹ These locales often include individuals of Indonesian, Indian, Palestinian, and Egyptian nationalities.

² Patrick M. Jost and Harjit Singh Sandhu, Interpol General Secretariat, *The Hawala Alternative Remittance System and Its Role in Money Laundering* (Lyon, January 2000).

³ Secretary of the U.S. Department of the Treasury, *Report to the Congress in Accordance with Section 359 of the USA PATRIOT ACT*.

⁴ While transferring money between different accounts and banks may not constitute money laundering per se, investigators are encouraged to look carefully at all federal, state, and municipal laws and regulations and consult with financial crimes prosecutors as activities, such as “structuring” and improper record keeping, in fact, may constitute specific criminal conduct sufficient to establish money-laundering charges.

⁵ National Commission on Terror Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC, 2004), 175.

⁶ *Ibid.*, 170-171.

⁷ *Ibid.*, 499 (note 131 to chapter 5).

⁸ PL 107-56, October 26, 2001, 115 Stat 272.

⁹ *Supra* note 3.

¹⁰ See 31 USC 5311.

¹¹ *Supra* note 3.

¹² Recently, some companies have begun issuing traditional credit cards that can be legally obtained anonymously. Customers prepay a fixed amount for the cards then use them at retailers (currently, online auctions), which accept the card anonymously as payment.

¹³ For additional information, see Marc D. Ferbrache, “Offshore Financial Centers: The Channel Islands and the Isle of Man,” *FBI Law Enforcement Bulletin*, February 2001, 10-15.

¹⁴ *Supra* note 2.

New Federal Rule of Criminal Procedure Addresses Warrants for Tracking Devices

On December 1, 2006, Federal Rule of Criminal Procedure 41 was substantially revised. The modifications set forth the procedure for federal law enforcement officers and agents to obtain, process, and return warrants to install and use tracking devices to include global positioning system (GPS) technology.¹ The new rule does not address whether law enforcement officers need a warrant to install or monitor a tracking device. Whether a warrant is required to install a tracking device, or track a vehicle or other object, revolves around expectations of privacy. If an intrusion into an area where there is a privacy expectation is necessary to install the device,² or the vehicle or object will be tracked in an area where one has a privacy expectation, a warrant is required. If there is no such intrusion or tracking the device will not infringe on privacy, a warrant is not required. Agents and officers are encouraged to read the text of the change at http://www.uscourts.gov/rules/supct1105/CR_Clean.pdf. Highlights of due changes include the following:

- **Rule 41(b)(4) Authority to Issue the Warrant:** A magistrate judge in the district where the device will be installed may issue a warrant to install a tracking device. The issuing magistrate judge may authorize tracking in the district where the device will be installed, as well as any other district in which it may travel.
- **Rule 41(e)(2)(B) Contents of the Warrant:** The warrant must contain the identity of the person or property to be tracked and that of the magistrate judge to whom the return on the warrant will be made. It also must denote a reasonable period of time that the device

may be used, not to exceed 45 days. Other extensions for not more than 45 days may be granted for good cause shown.³ The warrant must include a command that the device be installed within 10 days or less from the time the warrant is issued and during the daytime unless the magistrate, for good cause shown, authorizes another time, along with a command that there will be a return on the warrant.

- **Rule 41(f)(2) Return on Warrant:** Within 10 days after use of the device has ended, the officer executing the warrant must make the return to the magistrate judge specified in the warrant. The return must contain the exact dates and times of both installing the device and the period in which it was used. The return must be served on the person who was tracked or whose property was tracked within 10 days after use of the device has ended.⁴
- **Rule 41(f)(3) Delays in the Return:** Upon request of the government, the magistrate judge may delay providing the notice required by the return. ♦

Endnotes

¹ Title 18, Section 3117, U.S. Code defines a tracking device as an electronic or mechanical device that permits the tracking of the movement of a person or object.

² An intrusion may be necessary to reach the vehicle, as when it is parked within curtilage, or to complete an internal GPS installation that would require access to the vehicle's passenger compartment or internal wiring.

³ If the results of the tracking device thus far disclose evidence of criminal activity, that fact always should be mentioned in the request for an extension.

⁴ Any delay in the required notification must be one "authorized by statute." See 18 U.S.C. § 3103a (2006).

Keith Hodges, a senior instructor in the Legal Division at the Federal Law Enforcement Training Center in Glynco, Georgia, prepared this Legal Brief.

Leadership Spotlight

Let Actions, Not Words, Be Your Legacy

It's no use saying, "We are doing our best." You have got to succeed in doing what is necessary.

—Sir Winston Churchill

Great leaders often utter profound statements, some of which have endured for centuries and echoed upon many ears. Great quotes differ from infamous ramblings in that leaders' actions support what they have said. Words without action ring hollow.

As leadership challenges and opportunities are presented, recognized, and addressed, true leaders will beset themselves with pure intentions, commendable conduct, and fitting deeds. Words assist in the motivational and inspirational process of achieving a vision, but the leader's noble actions actually will accomplish it.

Communication undoubtedly is a critical skill when leading others and will impact the success or failure of leadership opportunities. But, it cannot be the only mechanism a leader uses to propel a vision from an idea to a fulfilled accomplishment.

When words are the only basis on which individuals try to inspire and motivate those under their command, their legacies as leaders will be failed ones. The words used in an attempt to prophesy a vision will endure as an example of a missed or failed leadership

opportunity. Unfulfilled campaign promises for social reform or tax reductions exemplify the failures of some politicians' attempts to masquerade as leaders when all they truly possess are words unsupported by action. Unsupported words solidify an individual's legacy as a mock leader.

To make positive and meaningful contributions to any community, including the criminal justice profession, people must lead by the example of their actions.

ACTION

Leaders' words should compliment their actions. The popular phrase "If you talk the talk, walk the walk"

validates the notion that people want the assurance that their leaders are dedicated to supporting their promulgations, rather than just speaking about them. Followers always will be wary of leaders whose words differ from their deeds. Action, or inaction, will speak louder than words in the development of a leader's legacy. ♦

Brian Parsi Boetig, a special agent in the FBI's San Francisco office and an adjunct faculty member of the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.



Diamond and Jewelry Industry Crime

By KELLY ROSS

The criminal world is changing. Technology, international commerce, and globalization have allowed lawless individuals to broaden the scope of their activities and the sophistication of their operations. Unfettered by internal policy or bureaucracy, they can morph from one criminal enterprise into another faster than law enforcement can keep pace. The activities normally associated with criminals have expanded beyond national borders and—adding to the usual drugs, weapons, contraband, and sex trade—have become modalities

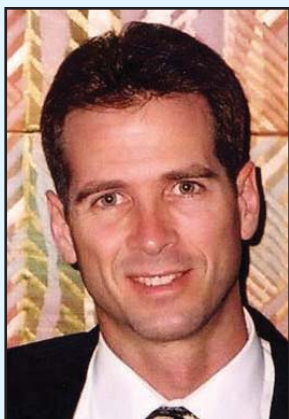
to serve the criminal finances generated. In this respect, diamonds and similar commodities, such as gemstones, jewelry, and gold, regularly appear as facilities to gather, store, and move proceeds of crime undetected by authorities. Street-level illegal activity in diamonds and jewelry has increased, and the criminal and terrorist use of diamonds and gemstones has become the subject of many books and intelligence reports.

This growing problem presents new challenges to all law enforcement agencies. Understanding the criminal use of

diamonds and jewelry, recognizing the issues facing law enforcement, and seeking proactive countermeasures represent the first steps to finding a solution.

Understanding the Criminal Use of Diamonds and Jewelry

No doubt, the relative high values, ease of concealment, and untraceable attributes of diamonds, gemstones, and jewelry prove quite appealing to criminals. Street-level perpetrators involved in residential and retail jewelry store burglaries and robberies favor these items.



Constable Ross coordinates the Diamond Program, Customs and Excise Unit, Royal Canadian Mounted Police.

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No doubt, the relative high values, ease of concealment, and untraceable attributes of diamonds, gemstones, and jewelry prove quite appealing to criminals.
”

Moreover, increasing evidence points to the gravitation of the more sophisticated offender, organized crime member, and terrorist toward the use of diamonds, gemstones, and jewelry for criminal financing or as a facility for money laundering, international movement, or storage of crime proceeds.¹ The tracking of currency nationally and internationally through government agencies corrals criminals into the use of alternate currencies, such as diamonds, gemstones, and gold. Law enforcement authorities have identified gemstone and jewelry smuggling operations run by organized crime, and jewelry store thefts linked to organized crime are not uncommon.² Further evidence has shown a strong link between street-level criminal activity regarding diamonds and jewelry and organized crime.

Statistics reflect this criminal use of jewelry and precious metals. From 1999 to 2003, jewelry was among the fastest growing categories of stolen property in the United States and now ranks second only to automobiles by value.³ This is not surprising as the United States, with approximately 5 percent of the world's population, consumes 48 percent of the annual world production of diamond jewelry, totaling approximately 30 billion U.S. dollars.⁴ Similar per capita spending on diamond jewelry could be expected in Canada. Within this North American “diamond culture,” an enormous number of jewelry outlets, manufacturers, and suppliers exist to quench the thirst for diamond jewelry. This results in a greater opportunity for criminals to acquire such items and corresponding occasions to insert them back

into the legitimate jewelry market. In terms of criminal exploitation of diamonds and jewelry, no other continent has such favorable conditions for product acquisition and for converting the proceeds of crime.

Recognizing the Issues Facing Law Enforcement

Identifying the stolen products, something the police and the public both have difficulties with, contributes to the problem. Another limiting factor involves the lack of knowledge and awareness of diamonds, gemstones, and the jewelry industry at all levels. This translates into a poor understanding of the criminal activity that surrounds these products, specifically the “what, why, and how” of the criminal use of diamonds and jewelry. Many officers who have purchased diamond jewelry would have difficulty describing it in any detail more than its approximate carat weight. They probably could not relate the characteristics that determine a diamond's value: the four C's of carat, color, clarity, and cut. This would be similar to investigating the theft of a \$7,000 motorcycle without a description of its make, color, engine size, or accessories. Lacking accurate identifiable characteristics of the vehicle, officers would have little chance of recovering it. Diamonds and jewelry, even under the best

circumstances, are extremely difficult to track and rank among the lowest of police recovery rates.⁵

Additionally, the dearth of diamond-specific laws does not help matters. In Canada, diamonds, gemstones, and jewelry are indirectly controlled by several acts of parliament. The most common of these include the Criminal Code, the Customs Act, the Competition Act, the Export and Import of Rough Diamonds Act, and the Cultural Property Export and Import Act. The only one of these laws specific to diamonds is the Export and Import of Rough Diamonds Act (EIRDA). The remainder control diamonds and gemstones indirectly in the same way they do other material items. For instance, the Criminal Code contains several sections, such as theft, robbery, and fraud, that could be used relative to criminal activity that surrounds diamonds and gemstones. EIRDA controls the export and import of rough diamonds from and to Canada in compliance with the international Kimberley Process protocols.⁶ Several other countries, including the United States, have joined this endeavor and also have enacted their own similar legislation. The spirit of EIRDA is genuine in its efforts to control international sales of conflict diamonds; however, at present, the basic training and

awareness of law enforcement may not be sufficient, nationally or globally, to meet the demands of this worldwide initiative. Further, those criminals who have operated in an unscrupulous manner prior to the 2001 launch of the Kimberley Process would have no reason to change their modus operandi. If they have successfully moved rough diamonds surreptitiously without detection prior to the Kimberley Process initiative, they probably will continue.

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The tracking of currency nationally and internationally... corrals criminals into the use of alternate currencies, such as diamonds, gemstones, and gold.
”

Finally, the emergence of the diamond production industry in Canada and the corresponding new opportunities for criminals have become the harbinger of new policing challenges. At present, the annual production of rough diamonds from Canada is valued at 1.24 billion U.S. dollars.⁷ Yet, even a small percentage of mine-site loss due to criminal activity

could translate into large dollar values. If Canadian mines experienced the estimated 12 percent losses per year that occur in South African diamond mining operations, the results would amount to a 180-million Canadian dollar loss to the industry and a 25-million Canadian dollar loss of government royalties.⁸ Canadian diamond production, estimated as the world's third largest by value, is expected to expand at the production level and at several of the intervening steps from the mine to market.⁹ Slowly but surely, the Canadian diamond industry will become more stratified, with new cutting and sorting facilities and distribution networks that will afford both new and, perhaps, the greatest opportunities for organized criminal exploitation.¹⁰

Seeking Proactive Countermeasures

Uncovering these criminal networks can prove difficult; however, implementing proactive countermeasures against those who exploit the lack of knowledge of frontline officers regarding diamonds and jewelry could pay dividends. Such action could assist with tackling issues of tax evasion through undervaluation, money laundering through overvaluation, and gemstone smuggling through misdescription, all mechanisms employed by transnational

The Four Cs of Gemstones

- Carat: One-fifth of a gram
- Color: Clear, medium-tone, very intense, and saturated
- Clarity: Clear, transparent with no visible flaws
- Cut: Reflects light back evenly across the surface area

Source: <http://www.jewelrycentral.com>.

organized criminals, that well-informed frontline officers could truncate or disrupt.

Training these officers to identify and describe jewelry and to ask the reporting public appropriate questions to elicit accurate descriptions of stolen pieces can provide a step in the right direction. This becomes especially important in those jurisdictions, such as the province of Saskatchewan, where legislation exists that requires pawn shops to accurately record and report electronically all transactions to police.¹¹ In these instances, the precise descriptions of stolen jewelry obtained by officers could be more accurately searched and compared with entries found on the police electronic database of all pawn shop records. This proves important because criminals often use pawn shops to insert illicit jewelry back into the legitimate market. Moreover, encouraging the public to catalogue their jewelry with full descriptions and photos and to simply hide their valuable pieces can go a

long way toward helping reduce the problem. These constitute only a few of the points where law enforcement, the jewelry industry, and perhaps even the insurance community can take proactive countermeasures.

Conclusion

Criminals who engage in money laundering and criminal financing through the use of diamonds and jewelry will seek out and exploit the weaknesses within any regulatory system.¹² Recognizing this, police have begun to act against this growing criminal threat, creating policy and dedicating more resources to the issue. As recently as August 2004, with the release of the latest Criminal Intelligence Service Canada report on organized crime, the Canadian Association of Chiefs of Police unveiled the criminal threat to the diamond industry.¹³ Along with this acknowledgment, the report also called for the public's assistance in combating organized criminal activity, asserting that the police can no

longer do this alone. The movement on the issue of diamond and jewelry crime comes just in time. As the illegal activity surrounding diamonds and jewelry increases on several fronts, including street-level and organized crime, and converges with the criminal element seeking to exploit the growing Canadian diamond industry, law enforcement finds itself with an even greater challenge.

Acquiring new tools in terms of knowledge and skills to effectively enforce existing laws with respect to diamonds and jewelry will serve to address current weaknesses. However, to increase effectiveness, law enforcement needs to tap into the insight and expertise of the jewelry business to achieve a greater understanding of the criminal use of diamonds and jewelry and the depth of criminal involvement within the industry. Neither the police nor the jewelry trade acting independently can eliminate the criminal use of diamonds and like commodities. What law enforcement requires beyond the basic tools and training is the full assistance and cooperation of all stakeholders in partnership to prevent crime and to uncover and dismantle existing criminal activity. ♦

Endnotes

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¹² W.J. Fox, "Dubai Conference Address" at the World Diamond Council, third annual meeting, March 30, 2004; retrieved on November 18, 2004, from <http://www.fincen.gov/dubaiconference-address.pdf>.

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Technology Update

LEO's New National Dental Image Repository

Law Enforcement Online (LEO) proudly announces the creation of the National Dental Image Repository (NDIR), which contains supplemental dental images related to the records of missing, unidentified, and wanted persons housed in the National Crime Information Center (NCIC). The NDIR provides law enforcement organizations with an avenue for posting their supplemental dental images in a Web environment that will allow direct access to the digital images of the dental records. This new effort eliminates the need to contact each originating agency to retrieve



and review physical copies of the records when attempting to make an identification.

The Washington State Patrol has submitted numerous supplemental dental image packages to the NDIR in conjunction with their NCIC records relative to missing, unidentified, and wanted persons. The FBI's Criminal Justice Identification Services Division (CJIS) actively seeks other agencies willing to post their supplemental dental images in the NDIR. For additional information, LEO members can visit the CJIS Special Interest Group (SIG) to view the NDIR site.

Bulletin Reports

Offenders

Violent Felons in Large Urban Counties presents data collected from a representative sample of felony cases that resulted in a felony conviction for a violent offense in 40 of the 75 largest counties in the United States. The study tracks cases for up to 1 year from the date of filing through final disposition. Defendants convicted of murder, rape, robbery, assault, or other violent felonies are described in terms of demographic characteristics (gender, race, and age), prior arrests and convictions, criminal justice status at the time of arrest, type of pretrial release or detention, form of adjudication, and sentence received. Highlights include the following: approximately 36 percent of violent felons had an active criminal justice status at the time of their arrest, including 18 percent on probation, 12 percent on release pending disposition of a prior case, and 75 percent on parole; a majority, 56 percent, of violent felons had a prior conviction record, including 38 percent with a prior felony conviction and 15 percent with a previous violent felony conviction; and most, 81 percent, of violent felons were sentenced to incarceration (50 percent to prison and 31 percent to jail), and 19 percent received a probation term without incarceration. This report is available online at <http://www.ojp.usdoj.gov/bjs/abstract/vfluc.htm> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Community Relations

The Office of Community Oriented Policing Services introduces *Crime Prevention Publicity Campaigns*. This guide shows how police agencies can help remove crime opportunities by teaching and encouraging the public to adopt better self-protection measures or by warning offenders of increased police vigilance or improved police practices. When designed properly, publicity campaigns can offer departments another problem-solving tool in the fight against crime. This publication is available online at <http://www.cops.usdoj.gov/mime/open.pdf?Item=1740> or by calling the National Criminal Justice Reference Service at 800-851-3420.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 201, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Juvenile Justice

The rapid case processing of nondetained youths is important for disrupting the potential development of habitual delinquent behavior. Research cited in *Importance of Timely Case Processing in Nondetained Juvenile Delinquency Cases*, presented by the Office of Juvenile Justice and Delinquency Prevention, revealed that many subsequent referrals of juveniles for delinquent behavior occur before the juvenile justice system has dealt with the initial or preceding referral. This suggests the need to reduce key case processing time frames. Using relevant baseline information, a court can set strategic planning targets, case processing time goals, and other performance criteria that can increase the speed of case handling and improve outcomes.

The Juvenile Delinquency Guidelines (JDG), recently prepared by the National Council of Juvenile and Family Court Judges, emphasize timely response at all stages of case processing, including those stages that precede or do not include formal court involvement. The guidelines address the stages of arrest/referral, intake screening, informal processing, formal processing, and disposition. Based on the JDG recommendations, this bulletin discusses how to handle caseload backlogs and how to define “timely” case processing and identify and obtain the data required to measure it. A model for setting case processing time standards is presented, followed by descriptions of some realistic and affordable options for juvenile courts to consider in expediting the processing of nondetained juveniles. The options pertain to youth courts; accountability boards, community justice committees, and community courts; timely intervention for status offenders; school-based intake probation officers; fast-track diversion; juvenile assessment centers; mental health system liaisons; and expedited dockets. The bulletin concludes with descriptions of seven basic steps for improving timely court processing of nondetained delinquency cases. This report is available by contacting the National Criminal Justice Reference Service at 800-851-3420.

Officer Census Report

Federal Law Enforcement Officers, 2004 reports the results of a biennial census of federal agencies employing personnel with arrest and firearms authority. Using agency classifications, the report presents the number of officers by agency and state, as of September 2004, working in the areas of police response and patrol, criminal investigation and enforcement, inspections, security and protection, court operations, and corrections. Highlights include the following: federal officers’ duties involved criminal investigation (38 percent), police response and patrol (21 percent), corrections and detention (16 percent), court operations (5 percent), and security and protection (4 percent); women accounted for 16 percent of federal officers; and one-third of federal officers were members of a racial or ethnic minority. This publication is available online at <http://www.ojp.usdoj.gov/bjs/abstract/fleo04.htm> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

ViCAP Alert

Missing Person



On November 8, 1980, Nancy Marlene Snow, a 44-year-old white female, disappeared from Annapolis, Maryland. Snow recently had returned from St. Louis, Missouri, where she had worked for the Republican National Committee. A male friend Snow had house-sit in her absence reported that Snow met with individuals in a local bar upon her return to Annapolis. Snow allegedly planned to take a boat trip to the Caribbean with them (possibly departing from Ft. Lauderdale, Florida). One individual Snow supposedly met was identified only as Captain Jay or Captain J. The house-sitter stated that in the early morning hours of November 8, he walked Snow from her residence to a nearby intersection where she entered a vehicle with unidentified occupants. This was the last time Snow reportedly was seen.

Description of Victim

Name: Nancy Marlene Snow

DOB: 7/13/1936

Race: White

Gender: Female

Height: 5'6"

Weight: 120 pounds

Hair: Graying dark brown

Eyes: Blue

Scars/Marks: Deformed second toes on each foot, prior right femur and possible tibia/fibula fractures, hysterectomy

Dental: Front tooth gap, extensive silver and white fillings, all molars missing except #17 (lower left rear) and #32 (lower right rear, with silver filling)

NCIC #: M827828917

Alert to Law Enforcement

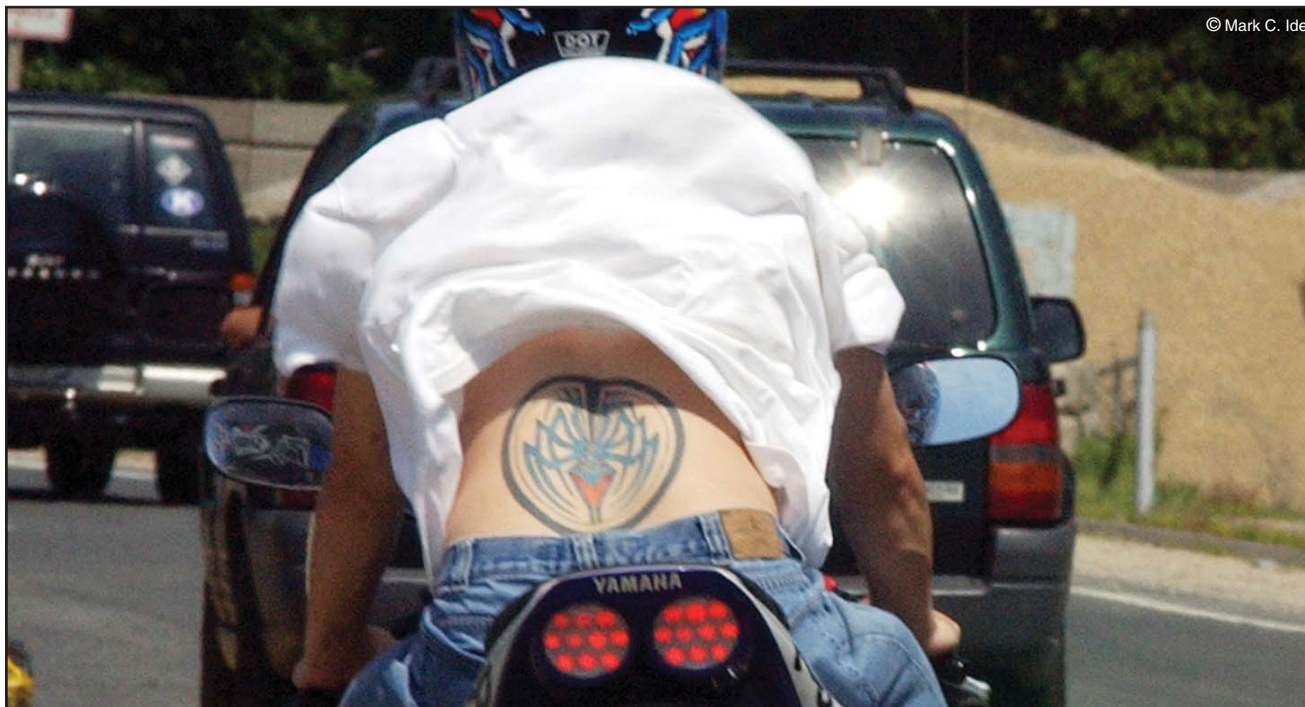
Law enforcement agencies should bring this information to the attention of all homicide, missing persons, special victims, and crime analysis units. Any agency with information on Nancy Snow or possible matches to unidentified remains is asked to contact Chief Investigator David Cordle of the Anne Arundel County State Attorney's Office at 410-222-1740, ext. 3863, or sacord62@aacounty.org, or contact Crime Analyst Stacy McCoy of the FBI's Violent Criminal Apprehension Program (ViCAP) Unit at 703-632-4163 or smccoy1@leo.gov. ♦

Snow routinely wore this gold necklace that has a Brazilian feqa, an ivory good luck charm shaped as a wrist with a hand in a clenched fist. Snow also may have been wearing a plain gold necklace or a gold bangle-style bracelet at the time of her disappearance.



Regulating Matters of Appearance Tattoos and Other Body Art

By LISA A. BAKER, J.D.



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The often-used phrase “the more things change, the more things stay the same” aptly describes an issue that has faced law enforcement managers for generations—what may be done to regulate the appearance of police officers in their command. In 1976, the U.S. Supreme Court addressed the issue of policies concerning hair length for police officers, ruling that such policies did not violate constitutional rights of officers.¹ Today, not only are hair length and

style an issue but individual expression in other forms, such as tattoos and body piercings, can present similar challenges. This article explores the legal issues related to regulating the appearance of police officers by analyzing the 30-year-old case, *Kelley v. Johnson*² and its continued relevance for law enforcement managers in light of the more recent phenomena of “body art.”

In *Kelley v. Johnson*,³ the Supreme Court upheld the constitutionality of regulations

describing the length and style of hair appropriate for police officers. In so doing, the Supreme Court declared that police administrators should be afforded great deference in enacting regulations governing the appearance and professionalism of officers under their command. In assessing the constitutionality of such regulations, the Supreme Court held that such regulations should be examined to determine if a “rational connection” between a legitimate government objective

and the regulation exists.⁴ The Court concluded that the hair length and style regulation at issue accomplished at least two governmental objectives. First, the regulation enhanced recognizability of officers to the public, and second, it fostered a sense of esprit de corps and solidarity within the officer population, thus improving the overall effectiveness of the department.⁵

As stated by the Supreme Court in *Kelley v. Johnson*:

The overwhelming majority of state and local police of the present day are uniformed. This fact itself testifies to the recognition by those who direct those operations, and by the people of the States and localities who directly or indirectly choose such persons, that similarity of appearance in

police officers is desirable. The choice may be based on a desire to make police officers readily recognizable to the members of the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself. Either one is a sufficiently rational justification for (grooming and appearance) regulations.⁶

This deferential standard is exemplified in *Rathert v. Village of Peotone*.⁷ In this case, the Seventh Circuit Court of Appeals upheld a department's decision to prohibit male officers from wearing ear studs on and off duty. In *Rathert*, two male officers brought a lawsuit under Title 42, Section 1983, U.S. Code (§1983), alleging a violation of their constitutional rights to liberty, due process,

and freedom of association after they were disciplined for refusing to remove their ear studs at the direction of the chief. While the department did not have a policy specifically addressing ear jewelry, the chief claimed that the ear studs violated departmental standards requiring the officers to remain neat and well-groomed. According to the Peotone police manual, officers were required to respond when called upon whether or not they were on active duty and be available 24 hours a day.⁸

In rejecting the officers' contentions that their due process rights were violated, the Seventh Circuit Court of Appeals ruled that while the "choice of appearance is an element of liberty,"⁹ the chief articulated a sufficient rational basis for prohibiting the wearing of ear studs by male officers on and off duty. Referring to the Supreme Court's decision in *Kelley*, the Seventh Circuit Court of Appeals noted that either of the justifications articulated by the Peotone chief, recognizability as police officers or promoting uniformity and esprit de corps, supported the conclusion that the prohibition on ear studs furthered a legitimate government interest.¹⁰

The circuit court similarly rejected the officers' contentions that their First Amendment rights of association and expression were violated. The officers



**“
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great deference in
enacting regulations
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and professionalism
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their command.
”**

Special Agent Baker is chief of the Legal Instruction Unit at the FBI Academy.

failed to identify any political, religious, cultural, or other reason for wearing their ear studs. As stated by the court:

Plaintiffs' justification for wearing the ear studs is merely that they "want to" and "for fashion." Those reasons would be enough for members of the public to wear ear studs, but not for police officers who work for the public.¹¹

Of course, the unique factual context of this case is worth noting. The Village of Peotone at the time was a small community with a population of less than 5,000; the village employed a small police force and, as testified to by the chief, members of the community would recognize police officers whether they were on or off duty.¹² Nonetheless, it is illustrative of the great deference afforded law enforcement managers in addressing issues relating to appearance and professionalism.

The deferential standard typified above remains good law. However, the practical impact of the Supreme Court's decision in *Kelley* remains in a constant state of flux given the changing ways and demographics of society. Remaining constant are concerns about appearance, uniformity, and professionalism within police agencies. The changing ways of society in the form of

individualized expression and the ever-increasing diversity within communities may clash with a law enforcement manager's belief regarding the appropriate image for police officers. In addition, some cases may raise constitutional issues relating to religion and claims of religious discrimination complicating the implementation and enforcement of grooming regulations.

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...appearance standards still are permissible and enforceable provided they further legitimate governmental interests...
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Personal Freedom, Public Service, and the Constitution

Since 1985, the Hartford, Connecticut, Police Department has had a grooming and appearance regulation that vests the chief with authority "to order personnel to cover tattoos that are deemed offensive and/or presenting an unprofessional appearance."¹³ In October 2002, a Hartford police officer wrote a letter to the president of the Hartford Police Union, copies of which he sent to the chief and other officials, expressing

concern over spider web tattoos displayed on the forearms of a few officers, commenting that it is well-known that "the tattoo symbolizes race hatred of non-whites and Jews."¹⁴ The chief looked into the matter, including reviewing research material from the Anti-Defamation League relating to hate-based organizations, and determined that there was sufficient information to support the conclusion that the spider web tattoo was an extremist hate symbol. Subsequently, the chief disseminated an internal memorandum that identified the spider web tattoo as offensive or unprofessional and ordered all officers to cover the tattoo while on duty or in a Hartford Police Department uniform.¹⁵ The plaintiffs complied with the chief's directive but brought a §1983 lawsuit alleging a violation of their constitutional rights, specifically their right of expression under the First Amendment and equal protection, given that other officers had visible tattoos but were not required to cover them.

First Amendment Freedom of Expression Challenge

With respect to the First Amendment claim, the plaintiffs eventually withdrew their argument that the tattoo was intended to convey a message and, thus, was expressive conduct.¹⁶ The court noted that even if the officers did not withdraw

this argument, they would have faced significant legal obstacles if they attempted to blanket their tattoos with protection under the First Amendment. The court commented that tattoos are generally regarded as personal self-expression and not the type of speech or expressive conduct that would warrant First Amendment protection.¹⁷

*Riggs v. City of Fort Worth*¹⁸ raises similar concerns with respect to tattoos and the First Amendment. In this case, a police officer who worked bike patrol was ordered to wear long sleeves and pants to cover his extensive tattoos after the chief concluded that they detracted from a professional image. The dress code set forth in the department's general order handbook did not contain a provision specifically addressing tattoos. The police officer was reassigned from bike patrol, which he contended amounted to a demotion, after suffering from heat exhaustion, which he attributed to the need to wear heavier clothing to cover his tattoos. He argued that his tattoos should be protected under the First Amendment given that at least a few of them, such as his tattoo of Celtic tribal designs, were an expression of his ethnic heritage.¹⁹ The court rejected his assertion that this elevated the tattoo to something beyond a form of self-expression, but continued by stating:

Even assuming that tattoos were found to be speech protected by the First Amendment, it would appear that [the Chief's] uniform policy as applied to the Plaintiff would survive even the stricter standard for reviewing restrictions on government employee speech promulgated by the Supreme Court....²⁰

“

The officers failed to identify any political, religious, cultural, or other reason for wearing their ear studs.

”

Accordingly, even if the tattoos were cast in a light that favored treating them as speech within the meaning of the First Amendment, the court concluded that they would not be deemed speech amounting to a public concern as required to be established by a public employee.²¹ Rather, the tattoos would be regarded as a personal form of self-expression.

Equal Protection Challenge

Personal appearance policies allowing for the exercise of discretion on the part of the decision maker open the door

to complaints that the discretion was exercised in a discriminatory manner. The decision thus may be challenged on the basis that the individual impacted by the decision was denied equal protection as guaranteed by the Fourteenth Amendment to the Constitution.²² To make out an equal protection claim, the individuals claiming discrimination must show that 1) they are members of a protected class; 2) they were similarly situated to members of the unprotected class; and 3) they were treated differently than the members of the unprotected class.²³ In addition, even if all three of these can be established, the individuals claiming discrimination must also demonstrate that the difference in treatment was based on some protected criteria, such as race, ethnicity, gender, or religion.²⁴

In *Riggs*, for example, the plaintiff asserted that he was denied equal protection given that other officers with visible tattoos were not ordered to cover their tattoos. The officer in *Riggs* further argued that as his tattoos were a form of expression tied to his ethnicity, they should be regarded as a form of expressive conduct afforded greater protection under the Constitution. Accordingly, he argued, the department must demonstrate that there is a compelling reason for treating

him differently than other officers with visible tattoos.²⁵ The federal district court judge denied his equal protection claim, concluding that because the tattoos were merely personal expressions and not speech or expressive conduct within the ambit of the First Amendment, the department only must demonstrate that its decision with respect to the plaintiff was rationally related to a legitimate government interest, as opposed to surviving a higher level of judicial scrutiny, compelling interest. In other words, the department only must articulate some minimal level of justification for treating the plaintiff differently than other members of the police force with visible tattoos.²⁶

Similarly, in *Inturri v. City of Hartford*, the officers ordered to cover their tattoos argued unfair treatment in violation of the equal protection clause. The officers conceded that they were not members of a protected class for purposes of challenging the department's decision. However, they asserted that a higher level of judicial scrutiny beyond rational basis—an intermediate level of judicial scrutiny—should be applied given that their right of personal appearance is implicit within fundamental constitutional rights.²⁷ Under this level of judicial scrutiny, the government as an employer would

have to show that its decision is substantially related to an important government interest.²⁸ The court rejected this argument, citing the long line of case law originating with *Kelley v. Johnson*,²⁹ upholding the right of public employers, particularly law enforcement employers, to regulate the appearance of its employees based only on a legitimate, nonarbitrary reason



for the regulation. In defense of its decision, the Hartford police chief in *Inturri* identified legitimate, rational reasons for his concern that the spider web tattoos negatively could impact police relations among the officers within the department, as well as impact relations with the public, especially minority groups.³⁰

Implicating Religious Practices and Beliefs

The deference afforded law enforcement managers to regulate appearance is impacted by

protections afforded religious practices and beliefs under the First Amendment and Title VII of the Civil Rights Act of 1964, prohibiting discrimination on the basis of religion.³¹ Attacks on the enforcement of a grooming or appearance regulation on the grounds that it impacts freedom of religion may trigger the application of a higher level of judicial scrutiny than that applied normally (rational basis). Application of a higher level of judiciary scrutiny requires the employer seeking to defend the decision to enforce the regulation to demonstrate that the regulation furthers a compelling governmental interest and that the accommodation of the religious expression would pose an undue hardship for the employer.

For example, in *Francis v. Keane*,³² correctional officers challenged discipline levied against them after they refused to cut their hair pursuant to the agency's grooming policy. The officers asserted that the discipline violated their rights under the First Amendment as they wore their hair in modified dreadlocks because of their Rastafarian beliefs. The court denied the department's motion for summary judgment, allowing the case to move forward. In denying the government's motion, the court concluded that the employer failed to articulate a sufficient reason for

its enforcement of the grooming regulation, only providing generalized claims about the need for the appearance and grooming regulation and did not “demonstrate, with any specificity, how it is that requiring plaintiffs to cut their hair advances asserted interests in safety, discipline and esprit de corps.”³³ Because of the First Amendment implications in this case, the government was required to demonstrate a more persuasive case for the enforcement of the grooming regulation.³⁴

In *Cloutier v. Costco Wholesale Corp.*,³⁵ the Federal Appeals Court for the First Circuit Court of Appeals granted Costco’s motion for summary judgment after concluding that it sufficiently demonstrated that requiring it to accommodate its former employee’s request for an exemption from its policy prohibiting employees from wearing facial jewelry when in positions in which they are required to interact with the public would pose an undue hardship to Costco. The plaintiff in this case worked for Costco for a period of time uneventfully until Costco began enforcing its no-facial-jewelry policy and she was told to remove her facial jewelry. She refused, indicating to management that she was a member of the Church of Body Modification and her piercings are a part of her religion. The

plaintiff was eventually fired for refusing, at a minimum, to cover her piercings or remove them. After mediation before the Equal Employment Opportunity Commission (EEOC) led to a finding that Costco had engaged in unlawful religious discrimination, the plaintiff filed suit, alleging a violation of Title VII of the Civil Rights Act.³⁶

In granting Costco’s motion for summary judgment, the court initially expressed

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...individuals claiming discrimination must also demonstrate that the difference in treatment was based on some protected criteria, such as race, ethnicity, gender, or religion.
”

some skepticism as to whether the plaintiff’s assertion regarding her facial jewelry was a “bona fide religious practice or belief” as required of her to move forward with her claim of discrimination.³⁷ Ultimately, the court decided to avoid ruling on whether this was a bona fide religion and assume it was protected under Title VII, concluding that even if the plaintiff

did meet her burden of proof on this issue, Costco would still prevail.³⁸ The court determined that by offering her the option of covering her piercings with a Band-Aid, Costco had met its burden of offering her a reasonable accommodation and Title VII did not require Costco to grant the plaintiff her preferred accommodation, a full exemption from the no-facial-jewelry policy, as this accommodation would pose an undue hardship to Costco.³⁹ The court acknowledged that Costco had a legitimate interest in presenting a workforce to the public that was professional in appearance and further stated, “[i]t is axiomatic that, for better or for worse, employees reflect on their employers....[the plaintiff’s] facial jewelry influenced Costco’s public image, and, in Costco’s calculation, detracted from its professionalism.”⁴⁰

Conclusion

The composition of today’s police departments are arguably more diverse than at any other point in history. Additionally, while society has historically undergone phases with respect to individual style and appearance, it is perhaps more mainstream than at any other point in history to use “body art” to express oneself. In the middle of this cultural tide are law enforcement administrators who seek to retain some semblance

of uniformity and professionalism in appearance in what remain largely paramilitary organizations. How this balance is struck includes not just legal considerations but other considerations as well, such as the need to continue diversifying the workforce, morale within the department, and a recognition of the changing attitudes toward individual expression. That being said, the legal principles first announced by the U.S. Supreme Court in 1976 remain intact. Grooming and appearance standards still are permissible and enforceable provided they further legitimate governmental interests and appropriately balance the rights of individuals with departmental interests when such policies impact religious practices and beliefs. ♦

Endnotes

¹ *Kelley v. Johnson*, 425 U.S. 238 (1976).

² *Id.*

³ *Id.*

⁴ *Id.* at 247. “The hair length regulation...must be...considered in the context of the county’s chosen mode of organization for its police force.... Choice of organization, dress, and equipment for law enforcement personnel is a decision entitled to the same sort of presumption of legislative validity as are state choices assigned to protect other aims within the cognizance of the State’s police power.” *Id.* at 246-247.

⁵ *Id.* at 248.

⁶ *Id.*

⁷ 903 F.2d 510 (7th Cir. 1990), *cert. denied*, 111 S. Ct. 297 (1990).

⁸ *Id.* at 513.

⁹ *Peotone* at 515, *quoted in Pence v. Rosenquist*, 573 F.2d 395, 399 (7th Cir. 1978).

¹⁰ *Peotone* at 516.

¹¹ *Id.* at 517.

¹² *Id.* at 514.

¹³ *Inturri v. City of Hartford*, 365 F. Supp. 2d 240 (D.Conn. 2005), *aff’d*, 165 Fed.Appx.66 (2d Cir. 2006) (not published), *quoting* Hartford Police Department General Order 6-15, Section III. C.5. This order was revised in 1999 to read “Tattoos that are visible to the public and deemed offensive and immoral, or presenting an unprofessional appearance, as deemed by the Chief of Police, shall require the officer to cover said tattoo with a bandaging type of material or a long sleeve shirt in accordance with the Uniform of the Day Standards.” *Inturri* at 244.

¹⁴ *Inturri* at 215.

¹⁵ *Id.* at 245.

¹⁶ *Id.* at 248.

¹⁷ *Riggs v. City of Fort Worth*, 229 F. Supp. 2d 572 (N.D.Texas 2002); *Stephenson v. Davenport Community School District*, 110 F.3d 1303 (8th Cir. 1997).

¹⁸ 229 F. Supp. 2d 572 (N.D.Tex. 2002).

¹⁹ *Riggs* at 581, FN 11.

²⁰ *Id.* The court refers to the balancing of interests test promulgated in *Pickering v. Board of Education*, 391 U.S. 563 (1968) and the threshold requirement that for public employee speech or expressive conduct to be protected, it must touch on a matter of “public concern” announced in *Connick v. Myers*, 461 U.S. 138 (1983), for support for its conclusion that the First Amendment does not support the police officer’s argument that his tattoos should be protected under the First Amendment. The Supreme Court’s more recent clarification of what amounts to speech on a matter of public concern further bolsters the court’s conclusion. *See City of San Diego v. Roe*, 125 S. Ct. 521 (2004).

²¹ In *Riggs*, the court also cited in support of its conclusion the decision in *Daniels v. City of Arlington*, 246 F.3d 500 (5th Cir. 2001). In *Daniels*, a police officer was fired after he refused an order to remove

a cross pin from his uniform lapel. The court rejected the officer’s contention that the wearing of the pin constituted speech on a matter of public concern, instead, concluding that it was merely a “symbolic conveyance of his religious beliefs” and “intensely personal in nature.” *Riggs*, *infra* 16, *quoted in Daniels* at 503-504.

²² The Fourteenth Amendment to the Constitution reads, in part, that “no state shall...deny to any person within its jurisdiction the equal protection of the laws.”

²³ *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 438 (1985) (Equal protection is “essentially a direction that all persons similarly situated should be treated alike.”); *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

²⁴ *Id.*

²⁵ *Riggs* at 579.

²⁶ *Id.* at 582. In a declaration provided by the chief, the chief stated, “No other Fort Worth police officer has been brought to my attention with such tattoos so as to rise to the level of unprofessional appearance as does Officer Riggs.” *Id.* at 582, *quoted in Mendoza Aff.* at 3.

²⁷ *Inturri* at 250, *citing Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972).

²⁸ *Riggs* at 249, *citing Wengler v. Drugists Mut. Ins. Co.*, 446 U.S. 142 (1980); *United States v. Virginia*, 518 U.S. 515 (1996).

²⁹ 425 U.S. 238 (1976); *infra* at 17.

³⁰ *Inturri* at 252.

³¹ 31.42 U.S.C. §2000e-2(a).

³² 888 F.Supp. 568 (S.D.N.Y. 1995).

³³ *Id.* at 578.

³⁴ *See also, Fraternal Order of Police Newark Lodge 12 v. City of Newark*, 170 F.3d 359 (3rd Cir. 1999) (Circuit court enjoined the department from enforcing the department’s no-beard rule against two Muslim officers who argued that they were unlawfully discriminated against given that the department recognized a medical exemption from the no-beard rule but failed to articulate a sufficiently compelling reason as to why it could not recognize a religious exemption. The court stated “[t]he medical exemption raises

concern because it indicates that the Department has made a value judgment that secular [i.e., medical] motivations for wearing a beard are important enough to overcome its general interest in uniformity but that religious motivations are not.... We are at a loss to understand why religious exemptions threaten important city interests [such as ready identification of police officers, safety, morale and esprit de corps], but medical exemptions do not.” *Id.* at 366-367). But *see, Hussein v. The*

Waldorf-Astoria, 134 F.Supp.2d 591 (S. D.N.Y. 2001) (clean-shavenness was demonstrated to be a legitimate occupational qualification and as long as the employer’s requirement is not directed at religion, enforcing the policy is not an unlawful discriminatory practice).

³⁵ 390 F.3d 126 (1st Cir. 2004).

³⁶ *Id.* at 130.

³⁷ *See Cloutier v. Costco Wholesale*, 311 F.Supp.2d 190, 199 (D.Mass.2004).

³⁸ 390 F.3d at 130.

³⁹ *Id.*

⁴⁰ *Id.* at 135.

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

Crime Data

Law Enforcement Officers Killed and Assaulted, 2005

According to the FBI’s Uniform Crime Reporting (UCR) Program, 55 law enforcement officers were feloniously killed in the line of duty last year, 67 died in accidents while performing their official functions, and 57,546 suffered assaults while on duty. The 55 felonious line-of-duty deaths, a decrease of 2 from 2004, took place during 53 separate incidents and occurred in 24 states and Puerto Rico. The average victim was 37 years old with 10 years of law enforcement service. Fifty-four of the slain officers were male, 47 were Caucasian, and 8 were African-American.

Fifteen were murdered during traffic pursuits or stops; 8 while handling arrest situations; 8 during ambush incidents; 7 while answering disturbance calls; 7 during investigations of suspicious persons; 4 while pursuing investigative activities, such as surveillance; 3 while in tactical situations (e.g., high-risk entry); 2 while handling mentally deranged persons; and 1 while maintaining custody of a prisoner for transport. Offenders used firearms to kill 50 of the 55 officers. Of the 50 victims, 42 were slain with handguns, 5 with shotguns, and 3 with rifles. Fifteen of the 55 slain officers fired their own weapons during the fatal incidents, and 6 attempted to use their weapons. Five officers were killed when hit by vehicles that the offenders used as weapons.

Sixty-seven law enforcement officers died in accidents while performing their duties. Automobile incidents claimed the highest number (39).

U.S. law enforcement agencies reported that 57,546 officers were assaulted while on duty. The largest percentage (30.5 percent) occurred during disturbance calls (e.g., family quarrels or bar fights). The smallest percentage (0.3 percent) of officers were assaulted during ambush situations. Assaultants used personal weapons (e.g., hands, fists, or feet) in 80 percent of the incidents, firearms in 3.7 percent, and knives or cutting instruments in 1.8 percent. In 14.4 percent of the assaults, perpetrators used other types of weapons.

The complete annual report, *Law Enforcement Officers Killed and Assaulted, 2005*, is available online at <http://www.fbi.gov>.

The Bulletin Notes

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



Officer Schneider



Officer McCarthy



Officer Kincheloe

Officers Steve Schneider, Joe McCarthy, and Steve Kincheloe of the Boise, Idaho, Police Department responded to a problem subject in an apartment complex. After knocking on the person's door and announcing their presence, the officers heard the female suspect laughing. Shortly thereafter, they heard screams and the smoke alarm coming from inside the residence. Officer Kincheloe

kicked the door open and saw that the woman was on fire from the shoulders up. The three officers entered the apartment and Officer Kincheloe used a shirt to extinguish the flame. By this time, the residence was on fire. The officers carried the suspect to safety and Officers Schneider and McCarthy reentered the apartment to attempt to extinguish the flames and prevent them from spreading throughout the complex. The bravery and quick actions of Officers McCarthy, Kincheloe, and Schneider saved this woman's life.



Officer Cyr



Officer Mendenhall



Corporal Velasco

Officers Brett Cyr and Earl Mendenhall, followed by Corporal Adolph Velasco III, of the Texas City, Texas, Police Department were the first to respond to a residential fire. The three officers discovered that a small care home for elderly persons was engulfed in flames and had black smoke pouring out of it. Upon arrival, the officers determined that two individuals had escaped and

that others remained inside. Immediately, they began attempting to rescue the victims. The officers entered by crawling through the back door, avoiding the heavy smoke as much as possible. With limited visibility, they located one of the residents and carried her outside to safety. Fortunately, three residents survived; sadly, two perished despite the officers' valiant efforts. Officers Cyr and Mendenhall and Corporal Velasco demonstrated tremendous courage and selflessness during this ordeal.

