

FBI Law Enforcement Bulletin

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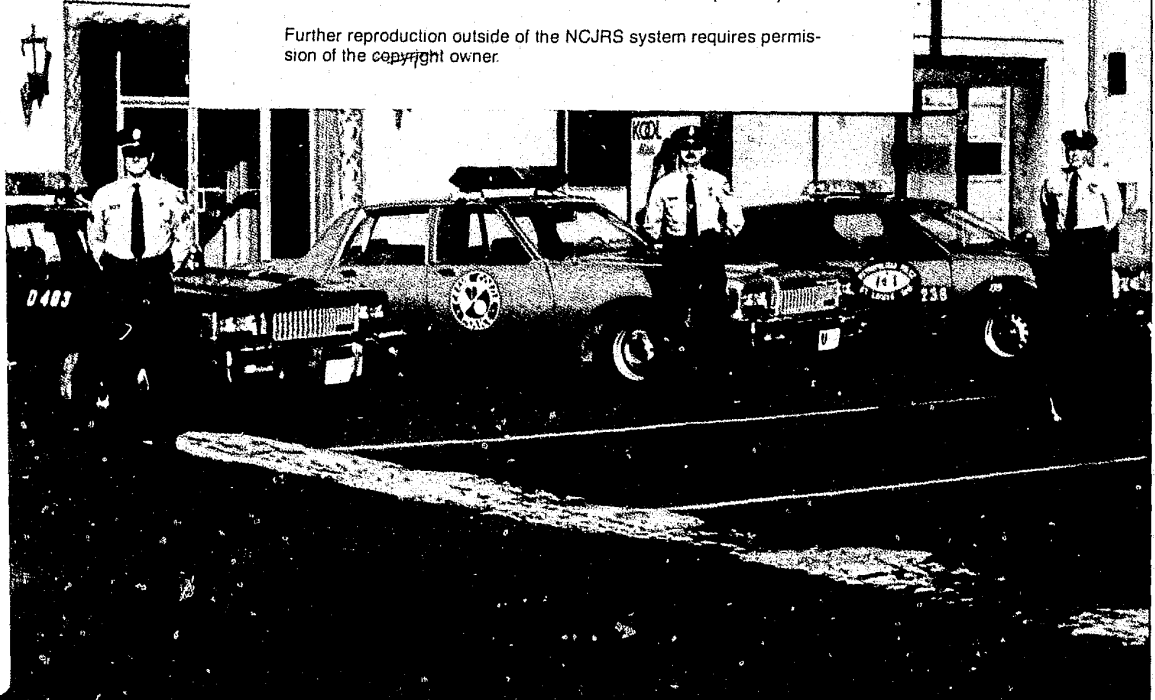
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St. Louis Police Training

FILE WITH EACH ARTICLE

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April 1987, Volume 56, Number 4

Thank You

The newsletter *Crime Control Digest* announced "Outstanding Law Enforcement Publications" in its March 9, 1987, issue, including the *FBI Law Enforcement Bulletin*. The Bulletin staff noted in a reply to this recognition that "the real credit should go to the contributors because it is their cooperation that makes the Bulletin a professional journal—their ideas advance the progress of law enforcement toward professionalism." To all the Bulletin contributors over the years, thank you.

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FBI

Law Enforcement Bulletin



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William H. Webster, Director

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The Cover:

The regionalization of police training is symbolic of the spirit of cooperation and commitment to excellence characteristic of the St. Louis Police Academy throughout its history. (See article p. 1.)

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1ST PAGE OF NEXT ARTICLE

Mandating Arrests for Domestic Violence

By
LT. HARV FERGUSON
Seattle Police Department
Seattle, WA

EDITOR'S NOTE:

This article explains a new law enacted in the State of Washington and details implementation of the law by the Seattle Police Department. Readers of the Bulletin are reminded that the issues discussed apply only to the State of Washington.

A neighbor of a young couple telephoned police to report a family disturbance. She told the 911 operator she could hear the man and woman shouting and objects being thrown. The responding officers arrived on the scene within minutes and found the couple still arguing. They separated the two and managed to calm the situation. They determined that the couple, though unmarried, had lived together for 2 years, separated for several months, and just recently, moved back in with each other. Within a few days, old problems had resurfaced and an argument developed. The woman became angry and began pulling the man's clothing from the closet. Enraged by this, he struck her across the face, causing the area around her eye to become red and swollen. He then went on a rampage shouting, knocking over a glass vase and house plants, and kicking the furniture.

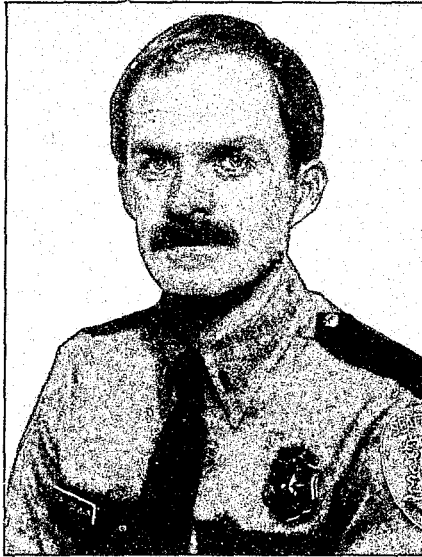
After some emotional discussion with the officers and with each other, the man and woman both seemed to agree that the situation was now settled. The woman said she did not wish to press charges and told the officers they could leave. The officers, anticipating hostility when they informed the couple what was about to occur, called for their supervisor. The supervisor arrived, reviewed the circumstances, and told the officers to arrest the man and take him to jail. He explained to the couple that the Domestic Violence Prevention Act, just implemented that day throughout the State of Washington, MANDATED a physical arrest for the assault. When the woman insisted that she would not press charges, the supervisor informed her that he had no choice in the matter; the arrest would have to be made whether she agreed to assist with the prosecution or not.

The above incident, though fictional, is typical of family disturbances to which officers across the Nation respond daily. On September 1, 1984, law enforcement officers in the State of Washington handled such calls somewhat differently than they might have the day before. For the first time, a new

law mandated an arrest for certain violations of its provisions. Although officers have always been "expected" to arrest for certain crimes, this law was the first in Washington to legally require an arrest, removing discretion to do so or not from the officer. Furthermore, civil liability was implied for an officer and police agency not making a mandated arrest.¹

Discretionary Versus Mandatory Arrests

Although the Domestic Violence Prevention Act (DVPA), now codified as chapter 26.50 of the Revised Code of Washington, contains a number of provisions affecting law enforcement, one of the most significant is the requirement for mandatory arrests. In essence, a police officer is now legally obligated to make a physical arrest when probable cause exists to believe that a person has assaulted a member of his or her family or household within the previous 4 hours. The same requirement for mandatory arrest exists for violations of certain restraining, protection, and "no contact" court orders related to domestic violence. While the law implies civil liability for not making a mandated arrest, officers making such an arrest are protected criminally and civilly, as long as the arrest is made in good faith and without malice.²



Lieutenant Ferguson



Patrick S. Fitzsimons
Chief of Police

Understandably, many law enforcement officers and administrators resented this loss of arrest discretion in handling family disturbances. Mandatory arrests, many believed, were counter to an enlightened and prevailing theory that regards "crisis intervention" as the best way to handle such situations. They argued that couples already faced with various emotional and financial problems, often compounded by alcohol and drug abuse, do not need legal problems as well. This would seem especially true, they reasoned, when officers are informed at the scene that the victim—almost always the woman—will not assist in the prosecution of the man. Crowded jails and court dockets would be made only worse by such "unnecessary" arrests.

Some members of the legal community were concerned as well, viewing mandatory arrests as both a form of preventive detention and post-conviction punishment, imposed not by the courts (with procedural protection) but by the police.

Handling Family Disturbances—A Changing Philosophy

For many years, the police generally believed that handling family disturbances was one of their more hazardous duties. Recent studies, however, have refuted this, reporting that family disturbances "... are one of the least frequent types of incidents involved in police homicides."³ Nevertheless, family disturbances often result in physical violence, and men who resort to violence against family members may have little reason not to do so against officers. Men whose lives are filled with complex problems are likely

to resent officers—understandably regarded as outsiders—interfering in what is considered a personal matter. Since many family disturbances involve alcohol or drugs and many homes contain weapons, the possibility of injury to officers is not to be taken lightly.

Through the 1960's, the usual method of handling "family beefs" (as they were frequently called) was simply to separate the parties involved. If the woman had a mother, sister, or friend with whom she and any children could stay for a day or two, they were transported there. If not, the man was usually taken to a motel or downtown mission or simply sent away with a warning not to return before the next day. As long as officers were not called back to the same family disturbance during their shift, no further police action was taken. Officers simply assumed that in the future, they would once again be dispatched to the same location to handle another family disturbance. Arrests were not made because the woman would not testify against the man when the matter came to trial, or so it was widely assumed. On occasion, officers would be dispatched to handle a serious assault or even a homicide at a location where they had previously handled a family disturbance.

Cycle of Violence

The wide-spread belief that the woman would not testify had some basis in fact. Many women did not appear in court, and some who did asked the judge to drop the charges. What was not generally understood at the time was that a "cycle of violence" exists within most domestic violence situations.⁴ By way of explanation, following an assault by her social partner, a woman would frequently ask officers to arrest him and would be willing to pros-

"The impetus behind mandatory arrests is the belief that the impact of arrest is needed to break the cycle of violence and that assaults behind closed doors are as wrong and unlawful as those committed in public."

ecute. The man, after being released from jail and perhaps feeling guilty for his actions, over the course of the next few weeks would be as accommodating as possible to the woman. She would begin to think that he had changed and would regret having had him arrested. Frequently, at about this same time, the court case would come to trial. The woman would decide not to testify because the man "was sorry for what he had done." After the charge was dismissed, the man, within a period of time, would resume his violent behavior and assault the woman again, completing the cycle of violence. The result, as the cycle continued, was not only to discourage arrest and prosecution but to increase the likelihood of further violence.

Crisis Intervention and Mandatory Reporting

In the 1970's, "crisis intervention" began to be taught in most police academies and soon became part of law enforcement inservice training throughout the Nation. This philosophy, still quite valid, holds that rather than continually responding to domestic situations having high probability of serious violence, and then doing little more than separating the parties, officers should act affirmatively to ameliorate such situations. Proponents contend that "the police are in a unique position of providing psychological first-aid and crisis intervention services. These services include, among others, the following: medical assistance, psychological support, control/direction, assessment/mediation, and referral/disposition."⁵ Arrest is viewed as only one—and not necessarily the best—way of managing such situations. Implicit in this view is the notion that domestic disputes are better resolved through social intervention than by legal action.

Of some interest in this regard is a recent study reporting that the most common reason officers give for deciding to arrest in domestic disturbances is not the violence directed against the woman, but that directed against the officers. On the other hand, the most common reason officers give for not arresting in such situations is the "refusal of the victim to press charges."⁶ The basis for this latter conclusion is now questionable, and at any rate, is being addressed by victim advocate programs and domestic violence training for police, at least in a number of States.

Beginning in 1979, the State of Washington made clear its objectives regarding domestic violence:

"It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated, [and] ... that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship."⁷

The concept of crisis intervention was taken a step further by passage of a law requiring mandatory reporting of all family disturbances handled by police. Officers are no longer permitted, after settling family disturbances, to simply make notations on their patrol log sheets as to what happened, but must fully investigate each incident and submit an offense report. Through this requirement, it is believed that those domestic situations likely to result in physical violence will be brought to the attention of crisis intervention professionals who can assist in resolving the conflict. In addition, the mandatory re-

porting law requires that law enforcement training "... stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim."⁸ The 1979 law stopped short, however, of mandating any arrests. Officers and their supervisors, guided by departmental policy and procedures, were expected to exercise discretion in deciding which situations should result in arrest and which should not. Officers needed only to "... notify the victim of the victim's right to initiate a criminal proceeding ... [and] the importance of preserving evidence."⁹

Mandating Arrests: The Domestic Violence Prevention Act

Commendable progress was made between 1979 and 1984 regarding the police response to domestic violence. It became apparent, however, that it was not enough, especially when increased public awareness revealed domestic violence to be a much larger and more serious problem than previously thought.

In 1984, Washington joined a small but growing number of States taking a very firm position regarding domestic violence. While crisis intervention is still regarded as a valid method of dealing with domestic problems that have not yet resulted in physical violence, those that have, reasoned members of the State legislature, require more-intrusive intervention by law enforcement to insure that the violence does not continue.

The definition of domestic violence has been expanded from a small list of crimes to now include "... [p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members; or ... sexual assault of one family or household

member by another." Previously, the category of persons affected by the definition was limited to cohabitants living in a marital or semi-marital relationship. This has now been broadened to include "family or household members" and means "...spouses, former spouses, adult persons related by blood or marriage, persons residing together, or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time."¹⁰

Most importantly, the DVPA specifies that "a police officer SHALL ARREST and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that ... [t]he person within the preceding four hours has assaulted that person's spouse, former spouse, or other person with whom the person resides or has formerly resided."¹¹ The same requirement for mandatory physical arrest applies to violations of certain court orders related to domestic violence.

If the person who has committed the assault or violated the court order is not present upon the officers' arrival at the scene, the officers should make a good faith effort to locate the suspect within 4 hours following the assault, including notification of probable cause to arrest to other jurisdictions where the suspect may have fled. Should the wanted person flee to the private residence of another person, it might be necessary to obtain a search warrant to enter and make the arrest. Once the 4-hour period has passed, however, officers are not longer mandated to make the arrest and may use ordinary police discretion in deciding whether to arrest.

In addition, officers are now required to "...advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available."¹²

This is accomplished by having the investigating officers hand each victim an information sheet that lists instructions for filing a criminal complaint, obtaining an "order for protection," and giving the number of a statewide, 24-hour, toll-free domestic violence hotline that provides local information concerning shelters and alternatives to domestic violence. "Orders for protection" may be issued to restrain abusers from further acts of abuse, direct the abuser to leave a household, prevent the abuser from entering the victim's residence, school, or place of employment, award custody and visitation rights of minor children, and restrain the abuser from interfering with minor children.¹³

The impetus behind mandatory arrests is the belief that the impact of arrest is needed to break the cycle of violence and that assaults behind closed doors are as wrong and unlawful as those committed in public.¹⁴ Women who are unsure about assisting in the prosecution of their abusers receive counseling from victim advocates. Under certain circumstances, even women who refuse to prosecute may still have their abusers charged if other evidence exists to support a criminal complaint. For instance, if witnesses saw the abuser strike the woman, a conviction may result even without the testimony of the victim. Throughout the process, advocates provide close support for the women, many of whom would otherwise be economically and emotionally dependent on their

abusers. Financial and emotional support needed to assist women in regaining independence is frequently available on a short-term basis through various shelters and social service agencies.

Results

Predictably, shock waves from the implementation of mandatory arrests were quickly felt. Domestic violence arrests in Seattle for the first 6 months of 1985 showed a 520-percent increase over the same period in 1984 (before implementation of the DVPA) and successful prosecutions increased by 300 percent.¹⁵ The Seattle Police Department reported that "the total increased cost for domestic violence arrests during the first four months (after passage of the DVPA) was \$265,594." Estimates submitted in 1984 for 1985 indicated that "the Department will incur costs of \$645,000 ... directly attributable to the mandatory arrest provision of the Domestic Violence Prevention Act. In terms of manpower, nine more officers will be needed to meet the increased workload."¹⁶

Not only police departments but jails, courts, and social service agencies felt the strain of increased demands on personnel and resources. It also became apparent soon after implementation of the DVPA that a number of arrests, for various reasons, were being made unnecessarily. Frequently, when both a man and woman struck each other during an altercation, both were arrested and taken to jail, even though in the vast majority of such situations the man was the primary and overwhelming aggressor. One such incident, which became known as the "chicken-spitting case," illustrates the point. The situation involved a couple who began to argue while at the dinner table. The woman, upset over a telephone call that the man had received,

“... the mandatory arrest provision is now limited to persons 18 years and older....”

spat a piece of chicken at him and attempted to slap him with her open hand. He blocked the slap and pushed her over a chair, knocking her to the floor. He next stood over her and with his fist struck her on the face with such force that she required medical treatment at a hospital. Following investigation by the police, both the man and woman were arrested and booked in jail.¹⁷ In the officers' view, both persons had committed assaults, and the new law not only mandated both arrests but might result in civil liability for the officers if they failed to make both arrests.

Strong supporters of the DVPA were disturbed over the number of mutual assault arrests and charged that officers were deliberately overreacting to the new law. They pointed out that the language of the new Washington law had been modeled after the Oregon Abuse Prevention Act and that the problem of double arrests had not occurred there. Legal researchers were able to determine that a difference in definitions of assault was the primary source of this problem. Whereas in Oregon, some injury must result to constitute an assault, in Washington only an “offensive touching” is required.

The double arrest problem was compounded by two other factors. First, in some departments, the training given officers concerning the new law stressed the liability for not making arrests and the protection in doing so. Without intending to, instructors may have engendered a “when in doubt—arrest” attitude among some officers, which may or may not have been envisioned by proponents of the new law and drafters of the legislation. Secondly, it is likely that a few officers, resenting their loss of discretion and the implicit disdain for their training and experience, went overboard in enforcing

the law in an attempt to hoist its proponents on their own petards. One such officer explained his feelings this way: “Police were dealing with domestic violence long before it became popular. If the people who wrote the language in this law really think that every ‘offensive’ touching should result in arrest, and that officers should be held liable for not doing so, then we’ll let them see what results.”

In response to these problems, the Seattle Police Department published guidelines to insure that officers were able to distinguish criminal assaults mandating arrests from those physical actions reasonably believed to constitute self-defense, lack of capacity, force authorized by law, and de-minimis offenses.¹⁸ In addition, legal advisers from the Seattle Police Department, attorneys from the city’s law department, and drafters of the original legislation worked together to suggest modifications to the DVPA that would eliminate the problems encountered shortly after its implementation.

Amendments to the Law

In 1985, the State legislature passed several amendments to the DVPA. As a result, the 4-hour mandatory arrest provision is now limited to felony assaults, assaults resulting in injury (whether visible or not), and serious threats where a suspect by physical action causes another to reasonably fear death or imminent serious bodily injury. Arrests for noninjury assaults and nonserious threats are discretionary and no longer mandatory. When officers encounter mutual assault situations, they need arrest only the “primary physical aggressor,” who may not necessarily be the “first” aggressor. In addition, the mandatory arrest provision is now limited to persons 18 years and older, settling some disagreement as to whether the original legislation re-

quired police to arrest, for instance, two brothers in their early teens who became involved in a shoving match.¹⁹

Conclusion

Joanne Tulonen, former director of the Family Violence Project, sums up her view of the impact of the DVPA as follows: “It is a law that sends a clear message that violence directed towards those you love is not appropriate ... *Most importantly, it is a law that is clearly working.*”²⁰

It is likely that even those who originally disagreed with the DVPA law would now agree with the above statement. In particular, the amended law is working reasonably well for the police, who do best at providing what Egon Bittner, well-known author and police observer, refers to as “provisional solutions to long-range problems.”²¹ In an example having to do with suicide prevention, Mr. Bittner distinguishes the work of the police from that of clinical psychologists and psychiatrists: “Whereas the police have the serious, important, and complex task of stopping all incipient suicides, psychologists and psychiatrists have the equally serious, important, and complex task of eliminating the causes leading to suicide. One disarms the suicidal person at the moment of crisis; the other works over the long term to eliminate the reasons that the suicidal person arms him or herself in the first place.”²² In many respects this same reasoning can be applied to domestic violence.

The police are the most appropriate (and the only!) agency capable of responding to and handling family violence at the time it occurs; the long-term task of resolving or eliminating the

Book Review

sources of conflict leading to domestic violence are better left to crisis intervention specialists. Mandatory arrests are proving to be an effective provisional solution to a long-range problem. [FB]

Footnotes

¹For a court decision where such civil liability has already been determined, see *Nearing v. Weaver*, 295 Oregon 702, 670 P. 2d 137 (1983).

²Revised Code of Washington (RCW), 1985 ed., secs. 10.31.100(7), 10.99.070, and 26.50.140.

³Gail A. Goolkasian, "Confronting Domestic Violence: A Guide for Criminal Justice Agencies," U.S. Department of Justice, National Institute of Justice publication (quoting FBI statistics), May 1986, p. 6.

⁴For an in-depth analysis of this cycle of violence theory, see Lenore B. Walker, *The Battered Woman* (New York: Harper and Row Publishers, Inc., 1979).

⁵Ronald Dolon, James Hendricks, and M. Steven Meagher, "Police Practices and Attitudes Toward Domestic Violence," *Journal of Police Science and Administration*, vol. 14, No. 3, September 1986, p. 187.

⁶*Ibid.*, pp. 189-190.

⁷RCW 10.99.010.

⁸RCW 10.99.030(1).

⁹RCW 10.99.030(3a).

¹⁰RCW 10.99.020(1) and 26.50.010(1-2).

¹¹RCW 10.31.100(2a-b), 1984 ed.

¹²RCW 10.99.030(4).

¹³RCW 10.99.030(4).

¹⁴The leading study in this regard suggests that arrests, regardless of court actions, may have a deterrent effect and favors a "presumption" but not "requirement" of arrests in all misdemeanor domestic assault cases. See Lawrence W. Sherman and Richard A. Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault," *American Sociological Review*, April 1984, pp. 261-272. A topic for further research in this regard would be to determine if mandatory arrests are actually reducing family violence, and if so, whether it is because men are being less violent, women are reluctant to call the police, knowing that an arrest will result, or for other reasons.

¹⁵Joanne Tulonen, *Impact of the Domestic Violence Prevention Act*, Seattle City Attorney's Office, August 15, 1985, pp. 2 and 7. The increase in successful prosecutions was not due solely to the increase in the number of arrests but also because prosecution was out of the hands of the victims; almost all arrests resulted in at least one court appearance.

¹⁶Seattle Police Department 1984 Annual Report, p. 32.

¹⁷Seattle Police Department incident 84-371832.

¹⁸Seattle Police Department General Information Bulletin 84-191, p. 2.

¹⁹RCW 10.31.100(2-b).

²⁰Supra note 15, p. 3.

²¹Egon Bittner, "Emerging Police Issues," *Local Government Police Management*, 2d ed., ed. Bernard L. Garrire (Washington, D.C., 1982), p. 7.

²²*Ibid.*

Scientific Evidence in Criminal Cases, by Andre A. Moenssens, Fred E. Inbau, and James E. Starrs, 3d ed., The Foundation Press, Mineola, NY, \$32.95, 805 pp.

Written primarily for prosecutors and defense attorneys in criminal trials to "obtain a concise understanding of the scope of expert investigations," this work is also addressed to all students in the criminal justice area. While this book is not a technical treatise for the specialist, it does give the expert an overview of the law in given scientific specialities.

Scientific Evidence begins with a discussion of the nature and purpose of expert testimony. The authors note that in today's world, "increasing specialization is being held out as a desirable means of solving difficult problems." Together "with the limitations which have been placed on traditional methods of interrogating criminal suspects," this means of problem solving necessitates the understanding of scientific evidence. This work covers chemical tests for intoxication; arson and explosive matters; firearms identification; forensic pathology; toxicology, chemistry, and serology; fingerprint identification; microanalysis; neutron activation analysis; questioned documents; photography (including video tape); spectrographic voice recognition; scientific detection of speeding; polygraph; "truth serum" and hypnosis; forensic dental identification; and casts, models, and maps.

Each chapter begins with a general discussion of the area covered, for example, "alcohol in the human

body" and the various tests used in a given area. The evidentiary effects of the evidence gained by the various tests are discussed, with case citations, and each chapter ends with a bibliography of additional references, including some from this bulletin. Other references to the FBI and the FBI Laboratory are made throughout this work.

The authors are all professors of law (at the University of Richmond, Northwestern University, and George Washington University, respectively) and are all consultants in forensic science. Inbau, of course, was the first director of the Chicago Police Laboratory, which grew out of the Northwestern Crime Laboratory, this country's first. The authors note the need for this new edition of this work based on recent developments in forensics, such as bitemark evidence. Substitution of a new chapter on arson and explosives for the previous one on psychiatry helps maintain the book's emphasis on the physical sciences "rather than attempting the gargantuan leap into behavioral sciences." Also planned are annual supplements to keep this work current.

With an extremely detailed table of contents, a useful index, accurate analysis of scientific evidence available at this time, and legal import of this evidence, this volume is a most useful summary of forensics. It should be available not only to prosecutors and defense counsels but to law enforcement expert examiners; they will be aware of what counsel may raise in questioning.

SA Thomas J. Deakin, J.D.