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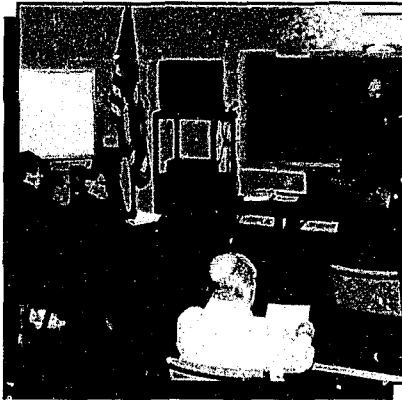
Law Enforcement Bulletin



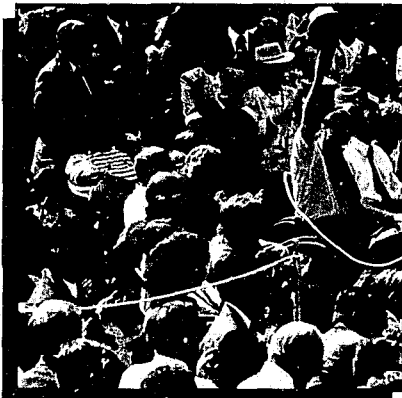
The Americans with Disabilities Act



Features



Page 10

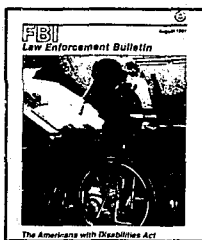


Page 25

- 1 The Will to Survive**
By Stephen R. Band and I. John Vasquez 131507
- 5 What They Didn't Teach in Management School**
By James D. Sewell
- 10 Citizen Police Academies**
By Martin Alan Greenberg 131508
- 14 Civil Rights Cases and Police Misconduct**
By John Epke and Linda Davis 131509
- 19 Abuse of Anabolic Steroids**
By Charles Swanson, Larry Gaines, and Barbara Gore
- 25 The Americans with Disabilities Act** 131510
By Jeffrey Higginbotham

Departments

- 8 Police Practices**
- 18 Unusual Weapon**
- 24 Book Review**



The Cover: *The Americans with Disabilities Act prohibits employers from discriminating against qualified individuals who are disabled. See article p. 25.*

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William S. Sessions, Director

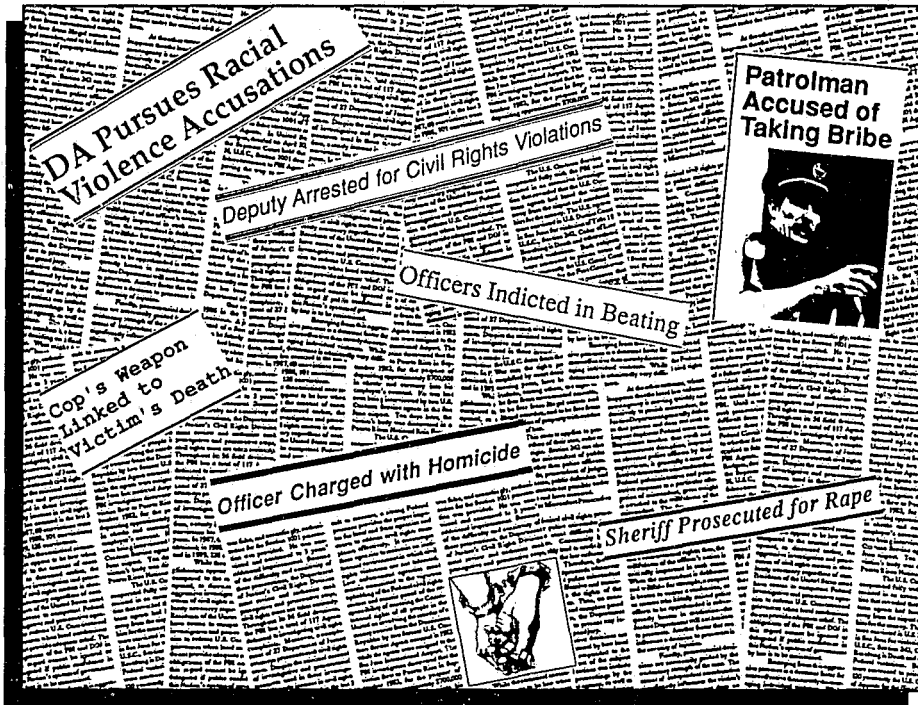
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Civil Rights Cases and Police Misconduct



By
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 and
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On January 11, 1982, a 24-year-old female was found shot to death just off an interstate highway near Barstow, California. A California Highway patrolman reported the discovery of her body. Based on evidence observed at the crime scene, homicide investigators from the San Bernardino County Sheriff's Office concluded that the victim had been stopped either by a law enforcement officer or someone impersonating an officer.

The homicide investigators decided to examine all duty weapons of officers who had been in the area around the time of the shooting.

When the officer who had discovered the body was contacted, he advised that his home had been burglarized and that his service revolver was missing. A subsequent search located the service revolver, which was missing its barrel and cylinder, in his locked pick-up truck. On January 18, 1982, formal charges were filed in San Bernardino Superior Court, charging the officer with homicide. Two efforts by the State of California to prosecute the officer resulted in hung juries.

At the conclusion of the second trial, the FBI initiated a civil rights investigation of the officer. He was subsequently indicted by a

Federal grand jury, and on May 10, 1984, he was found guilty for violation of Title 18, U.S. Code, Section 242, Deprivation of Rights Under Color of Law. The officer was later sentenced to 90 years in prison, with a minimum of 30 years to be served before he would be considered for parole.

This particular civil rights case raises many questions. For example, why was this case, and similar cases, not immediately investigated by the FBI and prosecuted federally? Why are some cases of this nature never prosecuted federally? These questions and others concerning civil rights investigations will be examined.

This article explains the general steps taken to investigate the three priority areas of civil rights cases. However, it places particular attention to the investigation and prosecution of violations involving police misconduct.

INVESTIGATION OF CIVIL RIGHTS CASES

The two major entities involved in civil rights cases are the Civil Rights Division (CRD) of the U.S. Department of Justice (DOJ) and the FBI's Civil Rights Unit (CRU). The Civil Rights Division's mission within the Department of Justice is to enforce Federal criminal civil rights statutes and to make prosecutive decisions about civil rights cases. The FBI's mission in civil rights is to investigate these cases and to present them to the Department of Justice for review.

In late 1988, working in concert with the Department of Justice, the FBI established three civil rights program priorities—racial violence, misconduct of law enforcement officers, and involuntary servitude and slavery. While all three areas are deemed priorities, it should be noted that approximately 85% of the complaints received and reviewed by DOJ concern police misconduct allegations.

Civil Rights Complaints

The criminal section of the CRD reviews a large volume of criminal civil rights complaints received by DOJ each year. In fact, DOJ records indicate that there are as many as 8,000 complaints and inquiries annually in the form of citizen correspondence, phone calls, or personal visits to DOJ, the local U.S. Attor-



Special Agent Epke



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ney's Office, or most commonly, to the FBI. However, only about one-third of these complaints are of sufficient substance to warrant investigation. These investigations are conducted by the FBI.

After FBI Agents gather relevant information, they present the facts for review to a CRD attorney and a local Assistant U.S. Attorney, who decide either to close the investigation or to recommend a grand jury presentation. There are at least two levels of review—first by the Deputy Chief of the Criminal Section and then by the Section Chief—before any particular case is approved for grand jury presentation. The Department of Justice is very selective about the cases it pursues. Of the approximately 3,000 investigations conducted each year, it authorizes only about 50 cases for grand jury presentation and possible indictment.

Grand Jury Presentation

There are several reasons why the Department of Justice insists on grand jury presentation. Because criminal civil rights prosecutions are generally so sensitive, it is important to establish the credibility of each witness under oath. To test the believability of the alleged victim's allegations before the grand jury is, thus, important to assess the strength of the evidence.

In addition, it is much preferred to have members of the community assess the government's evidence before the accused stands trial. This provides the Justice Department with a better understanding of community attitudes that so frequently play a significant role in the ultimate resolution of such cases. Indeed, grand jury presentations are not merely one-sided summaries of the incident at issue. Not only the victim, but all other signifi-

cant witnesses, are subpoenaed to testify. The subject of the investigation is also invited to appear.

At the conclusion of the grand jury proceedings, the Justice Department decides whether to request an indictment. Here again, the Department proceeds with caution. While a criminal indictment can be returned on a showing of probable cause, requests for indictments by a grand jury are not made unless there is sufficient evidence to establish the defendant's guilt beyond a reasonable doubt.

POLICE MISCONDUCT STATUTE

As mentioned, most of the complaints received and reviewed by the DOJ's Civil Rights Division and the FBI's Civil Rights Unit involve allegations of police misconduct, generally allegations of physical abuse. Title 18, U.S.C., Section 242 makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive any inhabitant of those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

Section 242 of Title 18 of the U.S.C. dates from the post-Civil War era; the rights protected, as amplified by court decisions in the ensuing years, have been held to include, among others, the right to be free from unwarranted assaults, to be free from illegal arrests and illegal searches, and to be free from deprivation of property without due process of law. This statute applies to persons regardless of their race, color, or national origin.

Section 242 can also apply to the misconduct of public officials other than police officers. For example, prosecutions of judges, bail bondsmen, public defenders, and even prosecutors are possible under the statute and have occurred.

“
**...the aggressive
investigation and
prosecution of civil
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necessary....**
”

Police Misconduct Prosecutive Decisions

Criminal civil rights prosecutions for police misconduct are among the most difficult under Federal law. Community biases understandably tend to credit (rather than discredit) the law enforcement representative. Therefore, the Justice Department proceeds whenever possible against police misconduct that is clearly offensive and unmistakably violates the rights of the individual victim. Thus, on occasion, after a full and complete grand jury presentation, the Department has decided not to present any indictment to the grand jury.

Prosecutive decisions are also strongly influenced by how local authorities have responded to the alleged misconduct of the subject officers. Local actions can include administrative proceedings by the law enforcement agency, as well as

State prosecutions. The Justice Department often monitors the local response before deciding on a final course of action. What might fall short of “adequate” local action will depend, obviously, on the facts of each particular case. To illustrate, a suspension of a few days for a brutal beating could well be considered insufficient to vindicate the Federal interest under the criminal civil rights laws.

At the other extreme, where it appears that the local law enforcement agency is moving quickly and decisively to punish misconduct, the Justice Department generally defers to that process and does not seek to impose duplicate Federal measures. Experience teaches that swift and commensurate discipline, imposed on aberrant police officers by their supervisors, is generally a more effective deterrent to misconduct than Federal prosecution.

Misconduct Case Factors

In addition to considering the local administrative and prosecutive response to a particular allegation of misconduct, great weight is attached to the willfulness of the misconduct. The Supreme Court has ruled that in any prosecution under Title 18, U.S.C., Section 242, the Government must prove the defendant's *specific intent* to engage in misconduct that violates the victim's constitutional rights; thus, the willfulness of the officer's action is critically important in such cases.

When the misconduct is deliberate and willful—for example, a suspect is beaten to coerce a confession, or an arrestee who initially resisted police efforts to be appre-

hended is subsequently beaten in retaliation—the Justice Department will not hesitate to prosecute. Another factor that can influence a decision to prosecute is the severity of injuries.

Finally, prosecutorial decisions are necessarily guided by the evidentiary strength of the case. The extent of independent corroboration significantly influences the victim's claim. The department does not undertake to prosecute police officers on the strength of the victim's statement alone. Corroboration may consist of physical evidence, but more likely than not, witnesses provide corroboration by their testimony. However, the testimony of all witnesses is not equal, and the Department places greater weight on corroboration provided by the testimony of a fellow officer than on testimony provided by the victim's mother or friends.

False Misconduct Charges

An issue frequently raised in police misconduct cases is the past inability to prosecute persons who make false complaints to the FBI. Until a few years ago, such prosecutions were extremely difficult from a legal standpoint, because there was conflict in the Federal Circuit Courts of Appeals as to whether Section 1001 of Title 18 applied to false statements made to FBI Agents. In *United States v. Rodgers*, decided on April 30, 1984, the Supreme Court held that Title 18, U.S.C., Section 1001 does cover false statements to FBI Agents, thus paving the way to prosecute such statements.

There is, however, difficulty in prosecuting these cases—they are

hard to prove beyond a reasonable doubt. Frequently, the evidence in these cases constitutes a disagreement between the declarant and the FBI Agent taking the statement, with the declarant insisting the false statement was not made, or if made, was the result of having been misunderstood by the Agent. Nonetheless, where compelling corroboration exists that a false statement was intentionally made, criminal prosecution has been authorized by the Department of Justice.

One such case was tried in 1986 in the Western District of Louisiana. A jail inmate was convicted of a Section 1001 violation when he falsely reported to the FBI that he had been

assaulted and kicked by a deputy sheriff, when in fact, he had received his injuries during a fight with another inmate. In this case, there was clear and convincing evidence that his report to the FBI was false, and accordingly, authorization for the Section 1001 prosecution was provided. He was convicted and sentenced to 3 years' additional imprisonment. Because of the difficulty and sensitivity of these prosecutions, the Department of Justice's Civil Rights Division must review and authorize each prosecution.

SUMMARY

As seen in this review of investigative and prosecutive steps,

Case Overview

A significant civil rights violation involving the murder of a money courier from the Dominican Republic by two former U.S. Customs Service Agents occurred in 1982 while the agents were assigned to the San Juan International Airport. The investigation discovered that the victim flew to Puerto Rico in September 1982, for the purpose of depositing approximately \$700,000 in checks and currency into his employer's account. He was last seen being interviewed by two U.S. Customs Service agents in the San Juan airport. Ten days later, the victim's body was discovered in a Puerto Rican National Rain Forest.

The U.S. Customs Service cooperated fully with the FBI and assisted in an extensive investiga-

tion that revealed that the U.S. Customs agents had lured the victim away from the airport and murdered him for the money. The U.S. agents were convicted in U.S. District Court in San Juan for violation of Title 18 U.S.C., Section 242, Color of Law Resulting in Death and other related Federal violations. Both subjects were sentenced to prison terms of 120 years, with a minimum of 35 years to be served before being eligible for parole.*

** On appeal, the Title 18, U.S.C., Section 242 conviction was vacated based on the ruling that the victim was not an inhabitant of Puerto Rico. On resentencing, which took place on January 29, 1991, both subjects were sentenced to 50 years in prison. The other Federal crimes for which the subjects were sentenced include Title 18, U.S.C., Sections 1001, 1503, 1623, 1951, 2314, and 2315.*

civil rights cases are taken seriously. Throughout its 56 field divisions, the FBI has a total of 117 Agents dedicated to investigating civil rights complaints. Moreover, a complement of 27 Department of Justice attorneys prosecute such civil rights cases. Despite the minimal amount of investigative and prosecutorial resources used in these investigations, a steady increase in civil rights convictions has occurred in the last 3 years. In 1987, 69 convictions were obtained; in 1988, 101 convictions; and in 1989, 128 convictions.

While the statistical accomplishments appear to be low when

compared to the number of cases opened, as discussed earlier, the aggressive investigation and prosecution of civil rights matters is absolutely necessary, regardless of cost. Residents of the United States must have access to competent Federal investigative and prosecutive agencies to redress U.S. Constitutional grievances when local mechanisms do not provide adequate relief. The obligations of the FBI and DOJ in this regard cannot be ignored or delegated if public confidence in this Nation's system of government by law is to be maintained.

Emerging from this aggressive presence is a deterrent factor far more

effective than merely discouraging individual violators. While deterrence is admittedly very difficult to measure, a strong Federal presence provides the proper impetus for local and State agencies and courts to address civil rights complaints effectively. It encourages these agencies to maintain an institutional environment in which civil rights violations are not tolerated. Law enforcement agencies must remain committed to the vigorous upholding of the Federal civil rights statutes and remain proud of the responsibility of ensuring the constitutional rights of *all* people in the United States.

LEB

Unusual Weapon

Butterfly Knife

Personnel of the Harbor Police, San Diego, California, Unified Port District confiscated this unusual weapon during a traffic stop of an individual suspected of driving while intoxicated. The knife, measuring approximately 8 inches in length, has a blade almost 3 inches long. When worn in a shirt or jacket pocket, it has the appearance of a set of fountain pens.

In addition, during a test conducted at a local airport security checkpoint, the knife failed to activate metal detectors. It is sold commercially in the United States, and security personnel should be aware of its potential threat.

