

Targeting Liberties

by Paul Blackman and Dave Kopel

Imagine *Time* had not named FBI whistleblower Colleen Rowley a “person of the year” but gave the award to the FBI bureaucrats who obstructed Crowley’s investigation of Arab terrorists. That would be no more ridiculous than *Washingtonian*’s naming of Charles Moose as one of its “Washingtonians of the year.” Moose is the Montgomery County police chief who oversaw the miserably incompetent hunt for the D.C.-area sniper. Moose proved far more effective at fighting civil liberties than at fighting terrorism.

Claiming credit for catching the snipers, Chief Moose has signed a large contract to write a book, presumably to defend his actions in the sniper investigation and, perhaps, to blame his miscues on the other groups involved in the multijurisdictional investigation. The contract, however, apparently runs afoul of the rules established by the Montgomery County Ethics Commission, which prohibit “using the prestige of office for personal gain.”

He is also using the prestige of his office to start a consulting firm to offer, among other things, advice on crisis management and conflict resolution. Moose claimed he was planning to do consulting ever since he came to the county—with the county executives’ permission—but he did not actually incorporate his firm until several weeks after the snipers were caught and the chief was lionized.

Moose has also held a teaching position since 2000, without bothering to get the county’s official permission. And apparently, an annual salary of \$160,619 isn’t enough. He needs a bit extra for some Air National Guard work. In addition, he is receiving an advance on a book and plans to sell the rights to a movie. According to the *Washington Post*, among the ethics provisions he may have violated are

prohibitions against using a job title, uniform or the county insignia

in a private enterprise; restrictions on outside contracts and employment; and rules forbidding employees to use county resources or county time for personal profit.

In theory, Chief Moose is also precluded from disclosing confidential information, which might prove difficult if he plans to explain how the multijurisdictional investigation was carried out. It is also unclear how the timing of his book and movie might affect the coming trials of the accused and, if they are convicted, their appeals, which could easily last through 2004. The book is set to be published around the same time that their trials are scheduled to begin.

The chief is also lobbying for the curtailment of gunowners’ freedoms in the Free State. The laws he and the antigun lobby are promoting are presumably ones that they will claim would have made it easier to catch the snipers—laws that would have been irrelevant, since the suspected snipers’ gun came from Washington State.

These laws would expand the ballistic “fingerprint” system, which has helped to solve no crimes in New York and Maryland, where it currently covers handguns, and which has been acknowledged even by California’s antigun attorney general to be unfeasible. Another law would ban a long list of rifles and shotguns, including all Bushmaster semiautos (which the snipers used), as “assault weapons.” If such a law had been in place and the killers had been caught bringing their Bushmaster into Maryland, they would have been charged with a misdemeanor.

The snipers were finally captured because they were foolish enough to keep calling the police hot line until someone finally listened to their own tip that there was a link between the D.C.-area killings and an unsolved murder in Montgomery, Alabama. Still, they were only apprehended because the media defied Chief Moose’s blackout order and broadcast the license-plate number of the killers’ blue sedan.

Before that, the focus had been on white trucks, white vans, and white men, producing massive roadblocks, huge traffic delays, and the sort of racial profiling not allowed in the search for ordinary criminals or even Arab terrorists.

The first days of lethal shootings saw two reports of suspicious vehicles: a blue sedan and a white box truck. Police focused on the truck seen in Montgomery County instead of the sedan seen in D.C. The police stopped and searched white trucks for a day, forcing innocent drivers and passengers to kneel at gunpoint, hands locked behind their heads, while the police conducted warrantless searches of their vehicles. Almost no objections were raised. The police expected truck drivers to be eager to cooperate, knowing they were suspected of heinous shootings—assuming they were listening to the right radio station.

Police targeted white trucks and white vans because those vehicles were spotted driving away from places where a gunshot had been heard. Common sense would indicate that most drivers who hear gunshots nearby will drive away as fast as possible, to avoid becoming secondary targets of mass murderers. But Moose viewed such behavior with suspicion when the vehicles were white. The October 3 witness’s account of a dark Chevrolet Caprice leaving one of the crime scenes with its lights off was withheld from the media.

Chief Moose’s press conferences repeatedly led to more shootings. When he announced that children were safe in schools, the killers shot a boy heading to school. When Moose said that geographic profiling might help to find the killer, the killers took their shooting spree to suburban Virginia.

Roadblocks became the standard response to each shooting, with special attention focused on white vans and trucks, as well as vehicles with white male drivers or passengers. This was not based on a shred of evidence but on the prejudices of government profilers.

It is questionable whether roadblocks staged as public-relations gimmicks are constitutional when they are imposed, for example, 80 miles away from the crime scene. (One roadblock was set up at the D.C.-Maryland border after a shooting near Richmond, Virginia.) Such p.r. stunts did nothing other than to impress people with the apparent seriousness of the show of force.

Even more wrongheaded was the less-publicized effort to find the shooter by test-firing guns belonging to law-abiding

citizens. The Bureau of Alcohol, Tobacco, and Firearms (BATF) demanded that licensed gun dealers in suburban Maryland and Virginia give them lists of those who had purchased self-loading rifles, particularly the Colt AR-15, since the Colt is a popular .223-caliber rifle—the same size as that used by the snipers. Then BATF and local authorities contacted the gun owners and asked them to submit their rifles for ballistic testing. Most cooperated; the guns were taken and eventually returned.

Long before local authorities began harassing Colt owners, the authorities knew that the gun being used in the murders was a Bushmaster, so there was no reason to waste law-enforcement resources collecting and testing Colt rifles. Nor was there a legitimate reason to collect Kalashnikov rifles during the days following a phony tip that the killer used such a rifle. (The “witness” established his *bona fides* by claiming that the shooter was light of skin and van.)

The Brady Campaign and the BATF insist that the snipers’ murder spree proves the need for a massive database of ballistic images of guns belonging to law-abiding citizens. How would such a system have helped to catch the snipers?

Carefully examining bullets at the various murder scenes, forensic scientists were able to determine that the bullets came from the same gun, and that the gun was a Bushmaster rifle. No database was needed to make this determination; rather, the firearms examiners conducted the same microscopic examinations used by forensic scientists to make determinations about ballistic images.

The BATF claims that it currently takes bullets from crime scenes and matches them to guns and bullets used in other crimes. Yet the ballistic image of a bullet used in a robbery-murder in Montgomery, Alabama, was never matched with the snipers’ bullets until the killers repeatedly phoned the police to brag about the connection.

Now, Maryland authorities have announced that they are using the clearly irrelevant gun leads they gathered during the October scare—during which folks were happily informing police that their neighbors were armed—to determine whether they can find technical violations of the state’s onerous gun laws (see www.bloomfieldpress.com/links/linksmd.htm).

How many additional murders took place because of the bigoted hunt for the phantom white-male mass killer? How

many more murders would have been perpetrated if the media had obeyed Chief Moose’s demand not to broadcast the license plates of the murderers’ automobile? As commander of the investigation, Chief Moose oversaw the violation of the Second and Fourth Amendment rights of huge numbers of citizens. Those violations, in retrospect, look more like part of a demonstration of force for its own sake than of a serious investigation.

Criminologist Susan Paisner, in a November 24, 2002, op-ed in the *Washington Post*, detailed numerous other gross incompetencies of the investigation and concluded that

In the end, if one of the suspects hadn’t cracked the case wide open by bragging about the Montgomery, Ala., shootings, they both might still be out there instead of in jail awaiting trial. The truth is, the two were caught despite the chief’s and the task force’s efforts, not because of them.

Unfortunately, the *Washingtonian* award appears to be an accurate reflection of public sentiment toward Chief Moose. He was probably the least controversial

choice the magazine made. Praise from the public and the media has been all but universal. The politicization of policing over the past few decades has made p.r. gimmickry the model for evaluating not just politicians but criminal investigations. And, apparently, a nation willing to sacrifice liberty for the pretense of security, demonstrated by the lack of public outcry over the U.S. Patriot Act and the establishment of the Department of Homeland Security in the wake of terrorist attacks, will also give up liberties for more ordinary slayings.

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coauthored *No More Wacos: What's Wrong with Federal Law Enforcement and How to Fix It*.