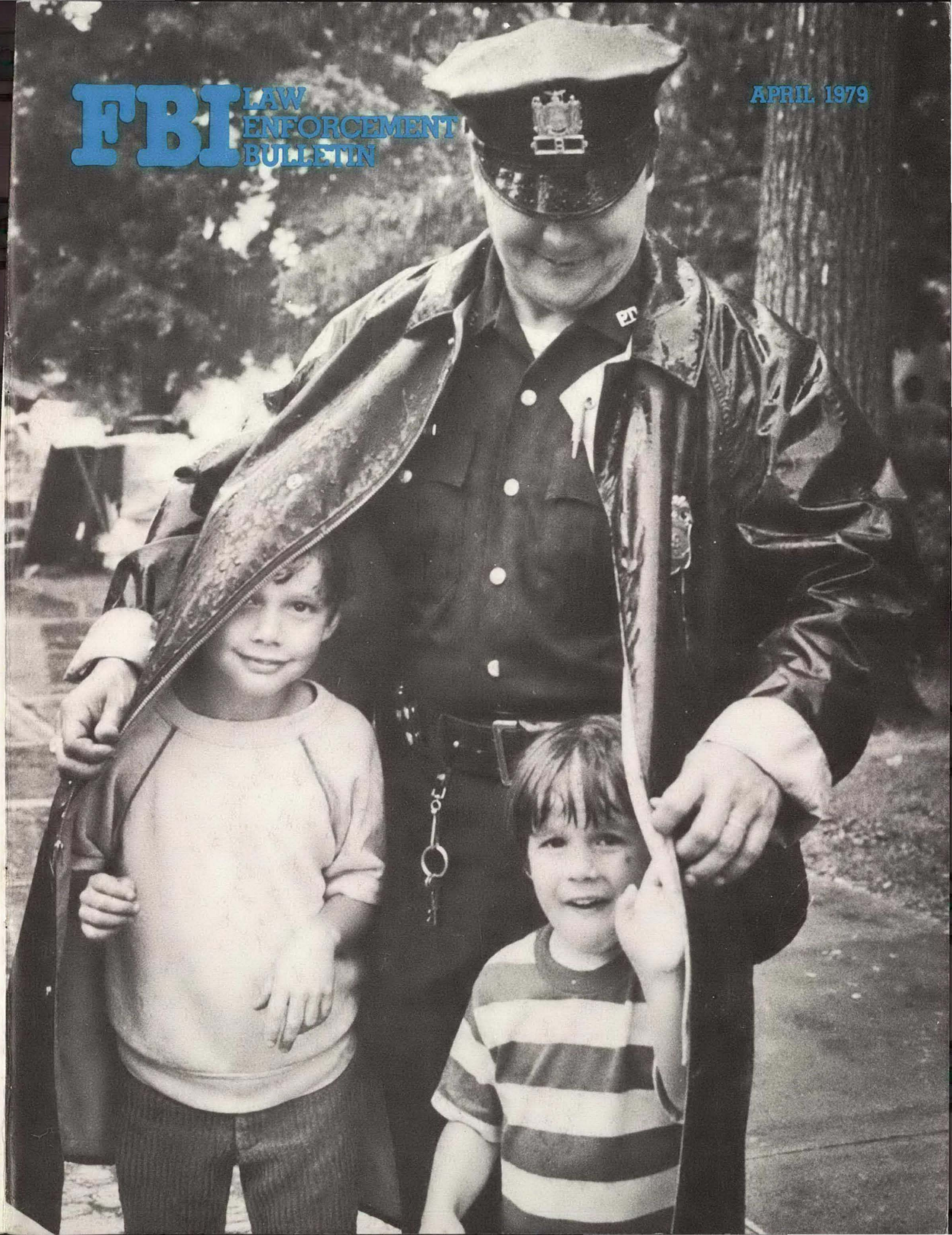
FBI LAW ENFORCEMENT BULLETIN

APRIL 1979



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APRIL 1979, VOLUME 48, NUMBER 4

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The Cover The protection of the law extends to youngsters caught in an April shower in Glens Falls, N.Y. Photo courtesy of Ronald W. Rumpf, Post Star, Glens Falls, N.Y.

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William H. Webster, Director

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Director's Message

The increase of political terrorism around the world in the last decade, coupled with new terrorist techniques that have been widely copied, poses new challenges to law enforcement. That these challenges are being met is a sign of the professionalism of today's criminal justice community.

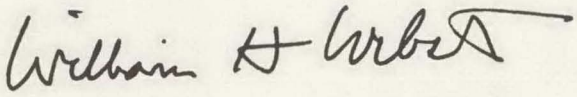
An article in this issue on hostage reaction in terrorist/hostage situations illustrates a professional approach to a new problem. The article is an analysis of the phenomenon now known as the Stockholm Syndrome. This is the regard hostages of either terrorists or ordinary criminals may develop for their captors. Understanding the basis for this hostage reaction, which may be accompanied by a distrust of police authorities charged with the task of effecting a rescue, takes research and a knowledge of psychology.

Knowledge of this possible reaction is vital to those negotiating with hostage takers, to those who might have to effect a rescue by force, and later, to prosecutors. This new challenge shows the need for continuing research on police problems, and this research today is often in the behavioral sciences—academic disciplines relatively new to law enforcement.

New problems, such as hostage situations, often call for new approaches. Research, a mark of professionalism, is needed. In this case it is being done—by many departments, including the FBI. And new approaches have to be tried and taught. We have trained hostage negotiators in each FBI field office, and they have successfully resolved many hostage situations. Local police officers have also trained at Quantico in this intricate combination of science and art.

Other law enforcement agencies have also done fine work in this field. The New York City Police Department did the pioneering work on hostage negotiation, using an academic approach that showed professionalism at its best. Research, testing, and application of proven and workable new approaches to both new and longstanding problems require new skills. It is gratifying to see that today's law enforcement community recognizes the need, and in so many areas is moving to meet the challenge.

Advancement of professionalism, for the FBI and all law enforcement, is our quest. Our society demands and deserves this quality. But professionalism is a never ending quest—that is its definition, and its value.



William H. Webster,
Director

Law Enforcement Policy and Ego Defenses of the Hostage

By THOMAS STRENTZ
Special Agent, Training Division
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The Bank Robbery

At 10:15 a.m. on Thursday, August 23, 1973, the quiet early routine of the Sveriges Kreditbank in Stockholm, Sweden, was destroyed by the chatter of a submachinegun. As clouds of plaster and glass settled around the 60 stunned occupants, a heavily armed, lone gunman called out in English, "The party has just begun." [1]

The "party" was to continue for 131 hours, permanently affecting the lives of four young hostages and giving birth to a psychological phenomenon subsequently called the Stockholm Syndrome.

During the 131 hours from 10:15 a.m. on August 23 until 9:00 p.m. on August 28, four employees of the Sveriges Kreditbank were held hostage. They were: Elisabeth, age 21, then an employee of 14 months working as a cashier in foreign exchange, now a nurse; Kristin, age 23, then a bank stenographer in the loan department, today a social worker; Brigitta, age 31, an employee of the bank; and Sven, age 25, a new employee, today employed by the national government.[2] They were held by a 32-year-old convicted thief, burglar, and prison escapee named Jan-Erik Olsson.[3] Their jail was an 11- x 47-foot carpeted bank vault which they came to share with another convicted criminal and former cellmate of Olsson, Clark Olofsson, age 26. Olofsson joined the group only after Olsson demanded his release from Norrkoping Penitentiary.[4]

This particular hostage situation gained long-lasting notoriety primarily because the electronic media exploited the fears of the victims, as well as the sequence of events. Contrary to what had been expected, it was found that victims feared the *police* more than they feared the robbers. In a telephone call to Prime Minister Olaf Palme, one of the hostages expressed these typical feelings of the group when she said, "The robbers are protecting us from the police." Upon release other hostages puzzled over their feelings, "Why don't we hate the robbers."[5]

For weeks after this incident, and while under the care of psychiatrists, some of the hostages experienced the paradox of nightmares over the possible escape of the jailed subjects and yet felt no hatred for these abductors. In fact, they felt the subjects had given them their lives back and were emotionally indebted to them for their generosity.

The Phenomenon

The Stockholm Syndrome seems to be an automatic, probably unconscious, emotional response to the trauma of becoming a victim. Though some victims may think it through, this is not a rational choice by a victim who decides consciously that the most advantageous behavior in this predicament is to befriend his captor. This syndrome has been observed around the world and includes a high level of stress as participants are cast together in a life-threatening environment where

each must achieve new levels of adaptation or regress to an earlier stage of ego development to stay alive. This phenomenon, this positive bond, affects the hostages and the hostage-taker. This positive emotional bond, born in, or perhaps because of, the stress of the siege environment, serves to unite its victims against "outsiders." A philosophy of "it's us against them" seems to develop. To date there is no evidence to indicate how long the syndrome lasts. Like the automatic reflex action of the knee, this bond seems to be beyond the control of the victim and the subject.

One definition of the Stockholm Syndrome takes into account three phases of the experience and describes it as:

The positive feelings of the captives toward their captor(s) that are accompanied by negative feelings toward the police. These feelings are frequently reciprocated by the captor(s). To achieve a successful resolution of a hostage situation, law enforcement must encourage and tolerate the first two phases so as to induce the third and thus preserve the lives of all participants.[6]

Though this relationship is new in the experience of law enforcement officers, the psychological community has long been aware of the use of an

emotional bond as a coping mechanism of the ego under stress.

Many years ago Sigmund Freud forged the theory of personality and conceived three major systems, calling them the id, the ego, and the superego.

The id is man's expression of instinctual drive without regard to reality or morality. It contains the drive for preservation and destruction, as well as the appetite for pleasure.[7]

In the well-adjusted person the ego is the executive of the personality, controlling and governing the id and the superego and maintaining commerce with the external world in the interest of the total personality and its far-flung needs. When the ego is performing its executive functions wisely, harmony and adjustment prevail. Instead of the pleasure principle, the ego is governed by the reality principle.[8]

The superego dictates to the ego how the demands of the id are to be satisfied. It is in effect the conscience and is usually developed by internalization of parental ideals and prohibitions formed during early childhood.[9]

Coping with reality is one function of the ego. The ego in the healthy personality is dynamic and resourceful. One of its functions is the use of defense mechanisms, a concept developed by Sigmund Freud in 1894 when he wrote "The Neuro-Psychoses of Defense." Freud conceived the defense mechanisms as the ego's struggle against painful or unendurable ideas or their effects.[10] Since Freud, the defense mechanisms have been discussed, explained, examined, and defined repeatedly. They vary in number depending upon the author. However, they all serve the same purpose—to protect the self from hurt and disorganization.[11]

When the self is threatened, the ego must cope with a great deal of stress. The ego enables the personality to continue to function even during the most painful experiences, such as being taken hostage by an armed, anxious stranger. The hostage wants to survive, and the healthy ego is seeking a means to achieve survival.[12] One avenue open is the use of defense mechanisms. The mechanism used most frequently by hostages interviewed by the author has been regression, which Norman Cameron defines as a return to a less mature, less realistic level of experience and behavior.[13] Several theories have been advanced in an attempt to explain the observable symptoms that law enforcement and members of the psychiatric community have come to call the Stockholm Syndrome.

"The Stockholm Syndrome seems to be an automatic, probably unconscious, emotional response to the trauma of becoming a victim."

In her book, *The Ego and Its Mechanisms of Defense,* Anna Freud discusses the phenomenon of identification with the aggressor. This version of identification is called upon by the ego to protect itself against authority figures who have generated anxiety.[14] The purpose of this type of identification is to enable the ego to avoid the wrath, the potential punishment, of the enemy. The hostage identifies out of fear rather than out of love.[15] It would appear that the healthy ego evaluates the situation and elects from its arsenal of defenses that mechanism which best served it in the past when faced with trauma. The normal developing personality makes effective use of the defense mechanism of identification, generally out of love, when modeling itself after a parent.

Identification often takes place in imitative learning, as when a boy identifies with his father and uses him as a model.[16] Some authors have called this type of identification introjection and use the Nazi concentration camps as an example of people radically altering their norms and values.[17]

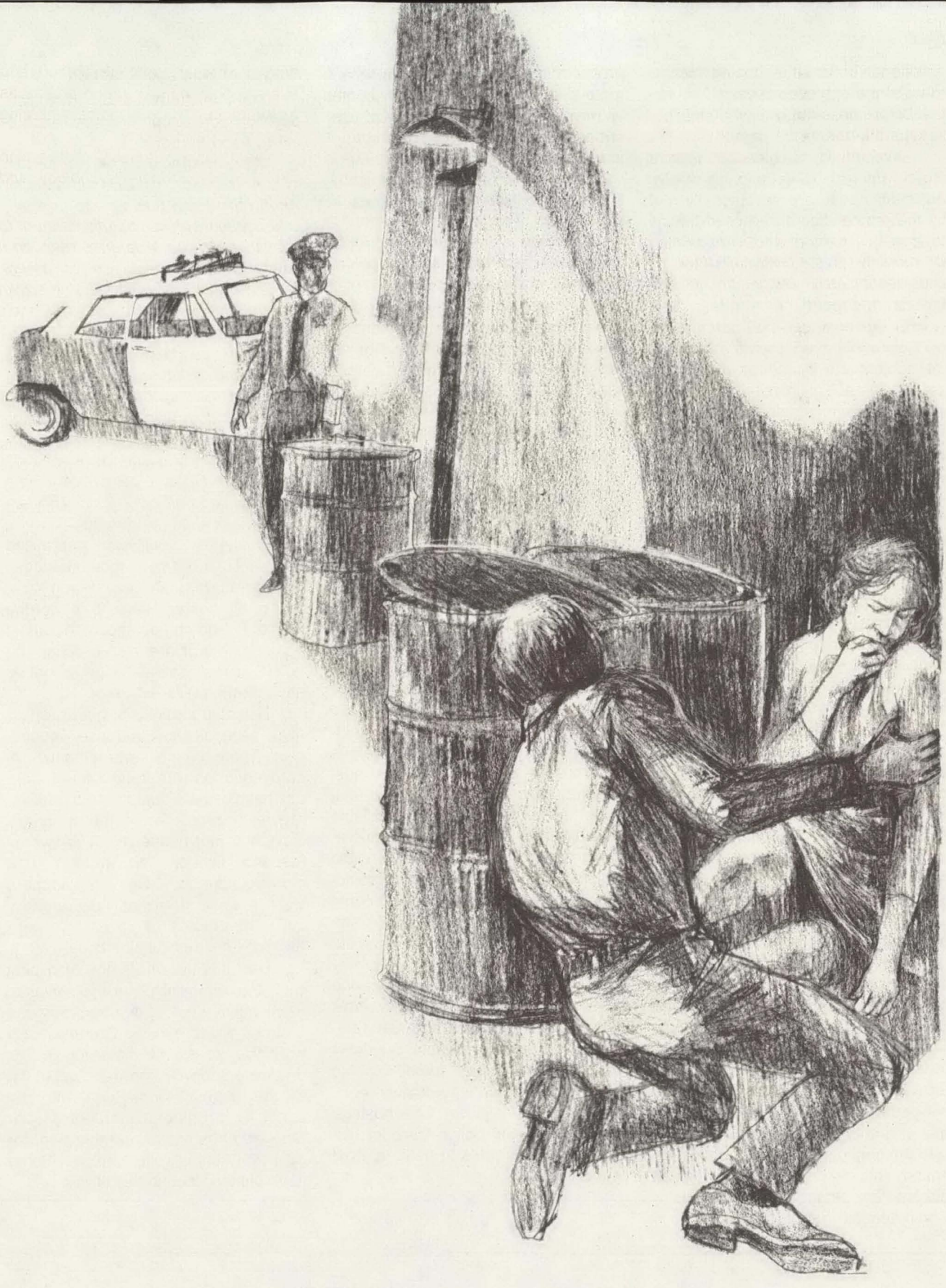
According to James C. Coleman in his book, *Abnormal Psychology and Modern Life,*

Introduction is closely related to identification. As a defense reaction it involves the acceptance of others' VALUES AND NORMS as one's own even when they are contrary to one's previous assumptions.[18]

Coleman goes on to discuss the common occurrence of people adopting the values and beliefs of a new government to avoid social retaliation and punishment. This reaction seems to follow the principle, "If you can't beat 'em, join 'em."[19]

Though identification with the aggressor is an attractive explanation for the Stockholm Syndrome, and may indeed be a factor in some hostage situations, it is not a total explanation for the phenomenon. This reaction is commonly seen in children at about the age of 5 as they begin to develop a conscience and have resolved the Oedipal complex. They have given up the delusion of being an adult and now begin to work on the reality of growing up. This is usually done by identifying with the parent of the same sex and is generally healthy. However, when this parent is abusive, we see the identification serving the dual purpose of protection and as an ego ideal.

The Stockholm Syndrome is viewed by this author as regression to a more elementary level of development than is seen in the 5-year-old who identifies with a parent. The 5-year-old is able to feed himself, speak for himself, and has locomotion. The hostage is more like the infant who must cry for food, cannot speak, and may be bound. Like the infant, the hostage is in a state of extreme dependence and fright. He is terrified of the



outside world, like the child who learns to walk and achieves physical separation before he is ready for the emotional separation from the parent.

This infant is blessed with a mother figure who sees to his needs. As these needs are satisfactorily met by the mother figure, the child begins to love this person who is protecting him from the outside world. The adult is capable of caring and leading the infant out of dependence and fear. So it is with the hostage—his extreme dependence, his every breath a gift from the subject. He is now as dependent as he was as an infant—the controlling, all-powerful adult is again present—the outside world is threatening once again. The weapons the police have deployed against the subject are also, in the mind of the hostage, deployed against him. Once again he is dependent, perhaps on the brink of death. Once again there is a powerful authority figure who can help. So the behavior that worked for the dependent infant surfaces again as a coping device, a defense mechanism, to lead the way to survival.

Domestic Hostage Situations

Since 1973, local law enforcement has been faced with many hostage situations. The subject-hostage bond is not always formed, yet case studies show that it is frequently a factor. As such, the Stockholm Syndrome should be kept in mind by police when they face such a situation, plan an attack, debrief former hostages, and certainly when the subjects are prosecuted.

Hostage situations seem to be on the increase. Today more than ever, police are responding to armed robberies in progress in a fraction of the time it required a few years ago. This increased skill in incident response unfortunately promotes a perpetrator's need to take hostages. In the past, the armed robber was frequently gone before the employees felt safe enough to sound the alarm, but today silent alarms are triggered automatically. Computerized patrol practices place police units in areas where they are more likely, statistically, to encounter an armed robbery. An analysis of past armed robberies dictates placement of patrol units to counter future attempts. Progress in one phase of law enforcement has created new demands in another.

The vast majority of hostage incidents are accidental. In cases such as these, it is likely the robber did not plan to take hostages. However, the police arrived sooner than anticipated and as a new form of flight, a method of escape, the now-trapped armed robber takes a hostage so he can bargain his way out.

In his desperation the armed robber compounds his dilemma by adding kidnaping and assault charges. These considerations are initially minimal to him. His emotions are running high; he wants to buy time, and in this succeeds. Research has shown that the leader of the abductors usually has a prior felony arrest.[20] Therefore, though desperate, the hostage-taker is not ignorant or inexperienced in the ways of the criminal justice system and realizes the consequences of his new role.

The trapped subject is outgunned and outnumbered, and with each fleeting moment, his situation becomes less tenable. Perhaps he takes hostages as a desperate offensive act, one of the few offensive acts available to him in his increasingly defensive position. Whatever his motivation, the subject is now linked with other individuals, usually strangers, who will come to sympathize and in some cases empathize with him in a manner now recognized and understood.

The stranger—the victim—the law-abiding citizen—is forced into this life-and-death situation and is unprepared for this turn of events. Suddenly his routine world is turned upside down. The police, who should help, seem equally helpless. The hostage may feel that the police have let him down by allowing this to happen. It all seems so unreal.

Stages of Hostage Reaction

Many hostages seek immediate psychological refuge in denial. According to Anna Freud,

When we find denial, we know that it is a reaction to external danger; when repression takes place, the ego is struggling with instinctual stimuli.[21]

Hostages, in interviews with this author, frequently discuss their use of denial of reality. The findings of denial are not limited:

As I continued to talk to victims of violence, I became aware that the general reactions of these victims were similar to the psychological response of an individual who experiences sudden and unexpected loss. Loss of any kind, particularly if sudden and unexpected, produces a certain sequence of response in all individuals. The first response is shock and denial.[22]

Hostages have also repressed their feelings of fear. Frequently these feelings of fear are transferred from fear of the hostage-taker to fear of the police. Research has shown that most hostages die or are injured during the police assault phase.[23] This is not to say that the police kill them.

Denial is a primitive, but an effective, psychological defense mechanism. There are times when the mind is so overloaded with trauma that it cannot handle the situation.[24] To survive, the mind reacts as if the traumatic incident is not happening. The victims respond: "Oh no;" "No, not me;" "This must be a dream;" "This is not happening." [25] These are all individually effective methods of dealing with excessively stressful situations.

Denial is but one stage of coping with the impossible turn of events. Each victim who copes effectively has a strong will to survive. One may deal with the stress by believing he is dreaming and will soon wake up, and it will be all over. Some deal with the stress by sleeping; this author has interviewed hostages who have slept for over 48 hours while captive. Some have fainted, though this is rare.

Frequently hostages gradually accept their situation, but find a safety valve in the thought that their fate is not fixed. They view their situation as temporary, sure that the police will come to their rescue. This gradual change from denial to delusions of reprieve reflects a growing acceptance of the facts. Although the victim accepts that he is a hostage, he believes freedom will come soon.[26]

If freedom does not immediately relieve the stress, many hostages begin to engage in busy work, work they feel comfortable doing. Some knit, some methodically count and recount windows or other hostages, and some reflect upon their past life. This author has never interviewed a former hostage who had not taken stock of his life and vowed to change for the better, an attempt to take advantage of a second chance at life. The vast majority of hostages share this sequence of emotional events—denial, delusions of reprieve, busy work, and taking stock. The alliance that takes place between the hostage and the subject comes later.

Time

Time is a factor in the development of the Stockholm Syndrome. Its passage can produce a positive or negative bond, depending on the interaction of the subjects and hostages. If the hostage-takers do not abuse their victims, hours spent together will most likely produce "positive" results. Time alone will not do so, but it may be the catalyst in nonabusive situations.

In September 1976, when 5 Croatian hijackers took a Boeing 727 carrying 95 people on a transatlantic flight from New York to Paris, another incident of the Stockholm Syndrome occurred. Attitudes toward the hijackers and their crime reflected the varying exposures of those involved in the situation.[27] The hostages were released at intervals. The first group was released after a day. The debriefing of the victims in this situation has clearly indicated that the Stockholm Syndrome is not a magical phenomenon, but a logical outgrowth of positive human interaction.

TWA flight 355, originally scheduled to fly from New York City to Tucson, Ariz., via Chicago, on the evening of September 10, 1976, was diverted somewhere over western New York State to Montreal, Canada, where additional fuel was added. The hijackers then traveled to Gander, Newfoundland, where 34 passengers deplaned to lighten the aircraft for its flight to Europe, via Keflavik, Iceland, with the remaining 54 passengers and a crew of 7. The subjects, primarily Julianna Eden Busic, selected passengers to deplane. She based her decision on age and family responsibilities. The remaining passengers, plus the crew of seven, were those who were single, married with no children, or those who had volunteered to remain on board, such as Bishop O'Rourke. After flying over London, the aircraft landed in Paris where it was surrounded by the police and not allowed to depart. After 13 hours the subjects surrendered to French police. The episode lasted a total of 25 hours for most of the passengers and about 3 hours for those who deplaned at Gander.[28]

During the months of September and October of 1976, all but two of the hostages and all of the crew were interviewed. The initial hypothesis before the interviews was that those victims released after only a few hours would not express sympathy for the subjects, while those released later would react positively toward the subjects. In other words, time was viewed as the key factor.

The hypothesis was not proven. Instead, it seemed the victims' attitudes toward the subjects varied from subject to subject and from victim to victim, regardless of the amount of time they spent as captives. Although this seemed illogical, interviews with the victims revealed understandable reasons. It was learned that those victims who had negative contacts with the subjects did not evidence concern for them, regardless of time of release. Some of these victims had been physically abused by the subjects; they obviously did not like their abusers and advocated the maximum penalty be imposed.

Other victims slept on and off for 2 days. This could be a form of the defense mechanism of denial, a desperate ego-defensive means of coping with an otherwise intolerable event.[29] These victims had minimal contact with the subjects and also advocated a maximum penalty. They may not have had distinctly negative contact, but they experienced no positive association. Their only contact with the subjects was on three occasions, when hostage-taker Mark Vlasic awakened them in Paris as he ordered all of the passengers into the center of the aircraft where he threatened to detonate the explosives unless the French government allowed them to depart.

The other extreme was evidenced by victims, regardless of time of release, who felt great sympathy for their abductors. They had positive contact with the subjects, which included discussing the hijackers' cause and understanding their motivation and suffering. Some of these victims told the press that they were going to take vacation time to attend the trial. Others began a defense fund for their former captors. Some recommended defense counsel to the subjects, and others refused to be interviewed by law enforcement officers who took the subjects into custody.[30]

Perhaps one of the most self-revealing descriptions of the Stockholm Syndrome was offered by one of these hijack victims:

"After it was over and we were safe I recognized that they [the subjects] had put me through hell and had caused my parents and fiance a great deal of trauma. Yet, I was alive. I was alive because they had let me live. You know only a few people, if any, who hold your life in their hands and then give it back to you. After it was over, and we were safe and they were in handcuffs, I walked over to them and kissed each one and said, 'Thank you for giving me my life back.' I know how

foolish it sounds, but that is how I felt." [31]

Yet, this feeling of affection seems to be a mask for a great inner trauma. Most victims, including those who felt considerable affection for the subjects, reported nightmares. These dreams expressed the fear of the subjects escaping from custody and recapturing them.[32] Dr. Ochberg reports similar findings,[33] as did the psychiatrist in Stockholm in 1973.[34]

Again the hostages aboard the plane developed a personal relationship with the criminals. The feelings of one hostage were expressed when she said, "They didn't have anything [the bombs were fakes], but they were really great guys. I really want to go to their trial." [35] This is a very different view from that of New York City Police Commissioner Michael Codd, who said in an interview, "What we have here is the work of madmen—murderers." The interview of the commissioner followed an attempt to defuse a bomb left by the hijackers; the bomb killed one officer and seriously injured three others.[36]

The situation in 1973 in Stockholm is not unique. These same feelings were generated in the Croatian aircraft hijacking, and more recently the Japanese Red Army hijacking of JAL flight 472 in September/October 1977,[37] and also in the hostage situation that took place at the German Consulate in August of 1978.[38]

Isolation

But the Stockholm Syndrome relationship does not always develop. Sir Geoffry Jackson, the British Ambassador to Uruguay, was abducted and held by Tupamaro terrorists for 244 days. He remained in thought and actions the ambassador, the Queen's representative, and so impressed his captors with his dignity that they were forced to change regularly his guards and isolate him for fear he might convince them that his cause was just and theirs foolish.[39] Others, such as the American agronomist Dr. Claude Fly, held by the Tupamaros for 208 days in 1970, have also avoided identification with the abductor or his cause.[40] He accomplished this by writing a 600-page autobiography and by developing a 50-page "Christian checklist," in which he was able to create his own world and insulate himself against the hostile pressures around him.[41]

According to Brooks McClure,

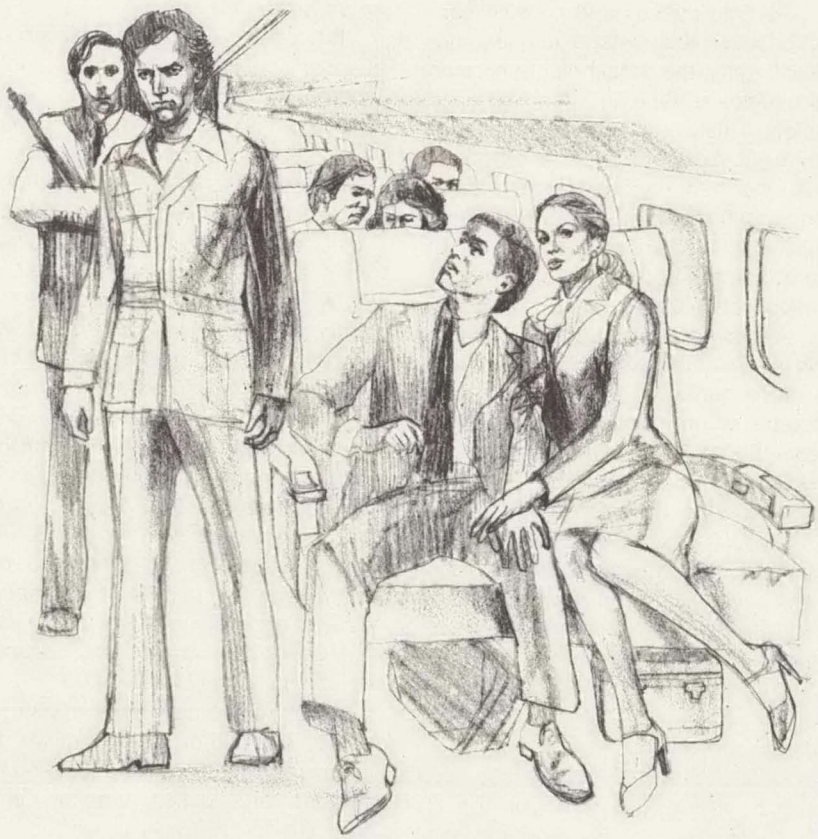
In the case of both Dr. Fly and Sir Geoffry Jackson, and other hostages as well, the terrorist organization found it necessary to remove the guards who were falling under their influence. [42]

In most situations, the Stockholm Syndrome is a two-way street.

However, most victims of terrorist or criminal abductors are not individuals of the status of Dr. Fly or Ambassador Jackson, and as such do not retain an aura of aloofness during their captivity. As yet, there is no identified personality type more inclined to the Stockholm Syndrome. The victims do share some common experiences, though.

Positive Contact

The primary experience that victims of the syndrome share is positive contact with the subject. The positive contact is generated by *lack* of negative experiences, i.e., beatings, rapes, or physical abuse, rather than an actual positive act on the part of the abductors. The few injured hostages who have evidenced the syndrome have been able to rationalize their abuse. They have convinced themselves that the abductor's show of force was necessary to take control of the situation, that perhaps their resistance precipitated the abductor's force. Self-blame on the part of the victims is very evident in these situations.



Stockholm Syndrome victims share a second common experience. They sense and identify with the human quality of their captor. At times this quality is more imagined than real, as the victims of Fred Carrasco learned in Texas in August 1974.[43]

On the afternoon of July 24, 1974, at the Texas Penitentiary in Huntsville, Fred Carrasco and 2 associates took approximately 70 hostages in the prison library. In the course of the 11-day siege, most of the hostages were released. However, the drama was played out on the steps of the library between 9:30 and 10:00 on the night of August 3, 1974. It was during this time that Carrasco executed the remaining hostages.[44] This execution took place in spite of his letters of affection to other hostages who were released earlier due to medical problems.[45]

Some hostages expressed sympathy for Carrasco.[46] A Texas Ranger who was at the scene and subsequently spoke to victims stated to the author that there was evidence of the Stockholm Syndrome.[47] Though the hostages' emotions did not reflect the depth of those in Sweden a year before, the hostages admitted affectionate feelings toward a person they thought they should hate. They saw their captor as a human being with problems similar to their own. Law enforcement has long recognized that the trapped armed robber believes he is a victim of the police. We now realize that the hostage tends to share his opinion.

When a robber is caught in a bank by quick police response, his dilemma is clear. He wants out with the money and his life. The police are preventing his escape by their presence and are demanding his surrender. The hostage, an innocent customer or employee of the bank, is also inside. His dilemma is similar to that of the robber—he wants to get out and cannot. He has seen the arrogant robber slowly become "a person" with a problem just like his own. The police on the outside correctly perceive the freedom of the hostage as the prerogative of the robber. However, the hostages perceive that the police weapons are pointed at them; the threat of tear gas makes them uncomfortable. The police insistence of the surrender of the subject is also keeping them hostage. Hostages begin to develop the idea that, "If the police would go away, I could go home. If they would let him go, I would be free," [48] and so the bond begins.

"The primary experience that victims of the syndrome share is positive contact with the subject."

Hostage-Taker Reaction

As time passes and positive contact between the hostage and hostage-taker begins, the Stockholm Syndrome also begins to take its effect upon the subject. This was evident at Entebbe in July 1976. At least one of the terrorists, one who had engaged in conversations with the hostages from Air France flight 139, elected at the moment of the attack to shoot at the Israeli commandos rather than execute hostages.[49]

A moving account of this relationship is presented by Dr. Frank Ochberg as he recounts the experience of one hostage of the South Moluccans in December 1975. Mr. Gerard Vaders, a newspaper editor in his 50's, related his experience to Dr. Ochberg:

"On the second night they tied me again to be a living shield and left me in that position for seven hours. The one who was most psychopathic kept telling me, 'Your time has come. Say your prayers.' They had selected me for the third execution. . . . In the morning when I knew I was going to be executed, I asked to talk to Prins [another hostage] *to give him a message to take to my family. I wanted to explain my family situation. My foster child, whose parents had been killed, did not get along too well with my wife, and I had at that time a crisis in my marriage just behind me. . . . There were other things, too. Somewhere I had the feeling that I had failed as a human being. I explained all this and the terrorists insisted on listening."* [50]

When Mr. Vaders completed his conversation with Mr. Prins and announced his readiness to die, the South Moluccans said, *"No, someone else goes first."* [51]

Dr. Ochberg observed that Mr. Vaders was no faceless symbol anymore. He was human. In the presence of his executioners, he made the transition from a symbol to be executed to a human to be spared. Tragically, the Moluccans selected another passenger, Mr. Bierling, led him away, and executed him before they had the opportunity to know him.[52]

Mr. Vaders goes on to explain his intrapsychic experience, his Stockholm Syndrome:

"And you had to fight a certain feeling of compassion for the Moluccans. I know this is not natural, but in some way they come over human. They gave us cigarettes. They gave us blankets. But we also realize that they were killers. You try to suppress that in your consciousness. And I knew I was suppressing that. I also knew that they were victims, too. In the long run they would be as much victims as we. Even more. You saw their morale crumbling. You experienced the disintegration of their personalities. The growing of despair. Things dripping through their fingers. You couldn't help but feel a certain pity. For people at the beginning with egos like gods—impregnable, invincible—they end up small, desperate, feeling that all was in vain." [53]

Most people cannot inflict pain on another unless their victim remains dehumanized.[54] When the subject and his hostages are locked together in a

vault, a building, a train, or an airplane, a process of humanization apparently does take place. When a person, a hostage, can build empathy while maintaining dignity, he or she can lessen the aggression of a captor.[55] The exception to this is the subject who is antisocial, as Fred Carrasco demonstrated in August 1974. Fortunately, the Fred Carrascos of the world are in a minority, and in most situations the Stockholm Syndrome is a two-way street. With the passage of time and occurrence of positive experiences, the victims' chances of survival increase. However, isolation of the victims precludes the forming of this positive bond.

In some hostage situations, the victims have been locked in another room, or they have been in the same room but have been hooded or tied, gagged, and forced to face the wall away from the subject.[56] Consciously or unconsciously, the subject has dehumanized his hostage, thereby making it easier to kill him. As long as the hostage is isolated, time is not a factor. The Stockholm Syndrome will not be a force that may save the life of the victim.

Individualized Reactions

Additionally, it has been observed that even though some of the hostages responded positively toward their captors, they did not necessarily evidence Stockholm Syndrome reactions toward all of the subjects. It was learned, logically, that most of the victims reacted positively toward those subjects who had treated them, in the words of the victims, "fairly." Those hostages who gave glowing accounts of the gentlemenly conduct of some subjects did not generalize to all subjects. They evidenced dislike, even hatred, toward one hostage-taker who they called an animal.

A hypothetical question was posed to determine the depth of victims' feelings toward their captors. Each former hostage was asked what he would do in the following situation: A person immediately recognizable as a law enforcement officer, armed with a shoulder weapon, orders him to lie down. At that same instant, one of his former captors would order him to stand up. When asked what he would do, his response varied according to the identity of the captor giving the "order." If a captor who had treated him fairly, hypothetically yelled, "Stand up," he would stand up. Conversely, if he thought it was the command of the subject who had verbally abused him, he would obey the law enforcement officer. This would indicate that the strength of the syndrome is considerable. Even in the face of an armed officer of the law, he would offer himself as a human shield for his abductor. As absurd as this may seem, such behavior has been observed by law enforcement officers throughout the world.[57]

Whether the incident is a bank robbery in Stockholm, Sweden, a hijacking of an American aircraft over western New York, a kidnaping in South America, or an attempted prison break in Texas, there are behavioral similarities despite geographic and motivational differences. In each situation a relationship, a healthy relationship (healthy because those involved were alive to talk about it), seems to develop within people caught in circumstances beyond their control and not of their making, a relationship that reflects the use of ego defense mechanisms by the hostage. This relationship seems to help victims cope with excessive stress, and at the same time, enables them to survive—a little worse for wear, but alive. The Stockholm Syndrome is not a magical relationship of blanket affection for the subject. This bond, though strong, does have its limits—logical limits. If a person is nice to another, a positive feeling toward this person develops, even if this person is an armed robber, a hijacker of an aircraft, a kidnaper, or a prisoner attempting to escape.

The victim's need to survive is stronger than his impulse to hate the person who has created his dilemma. It is his ability to survive, to cope, that has enabled man to survive and claw his way to the top of the evolutionary ladder. His ego is functioning and has functioned well and has performed its primary task of enabling the self to survive. At an unconscious level, the ego has activated the proper defense mechanisms in the correct sequence—denial, regression, identification, or introjection to achieve survival. The Stockholm Syndrome is just another example of the ability of the ego, the healthy ego, to cope and adjust to difficult stress brought about by a traumatic situation.

The application for law enforcement is clear, though it does involve a trade-off. The priority in dealing with hostage situations is the survival of all participants—hostage, the crowd that has gathered, the police officers, and the subject. To accomplish this end, various police procedures have been instituted. Inner and outer perimeters are longstanding procedures designed to keep crowds at a safe distance. Police training, discipline, and proper equipment save officers' lives. The development of the Stockholm Syndrome may save the life of the hostage as well as the subject. The life of the subject is preserved, as it is highly unlikely that deadly force will be used by the police unless the subject makes a precipitous move. The life of the hostage may also be saved by the Stockholm Syndrome, the experience of positive contact, thus setting the stage for regression, identification, and/or introjection. The subject is less likely to injure a hostage he has come to know and on occasion to love.[58]

It is suggested that the Stockholm Syndrome can be fostered while negotiating with the subject: By asking him to allow the hostage to talk on the telephone; asking him to check on the health of a hostage; or discussing with

him the family responsibilities of the hostage. Any action the negotiator can take to emphasize the hostage's human qualities to the subject should be considered by the negotiator.

The police negotiator must pay a personal price for this induced relationship. Hostages will curse him as they did in Stockholm in August 1973. They will call the police cowards and actively side with the subject in trying to achieve a solution to their plight, a solution not necessarily in their best interests or in the best interest of the community.

Unfortunately, it may not end there. Victims of the Stockholm Syndrome may remain hostile toward the police after the siege has ended. The "original" victims in Stockholm still visit their abductors, and one former hostage is engaged to Olofsson.[59] Some American victims visit their former captors in jail.[60] Others have begun defense funds for them.[61] A hostile hostage is a price that law enforcement must pay for a living hostage. Antilaw enforcement feelings are not new to the police. But this may be the first time it has been suggested that law enforcement seek to encourage hostility, hostility from people whose lives law enforcement has mustered its resources to save. However, a human life is an irreplaceable treasure and worth some hostility. A poor or hostile witness for the prosecution is a small price to pay for this life. **FBI**

Footnotes

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Training and Law Enforcement
A Look into the 1980's

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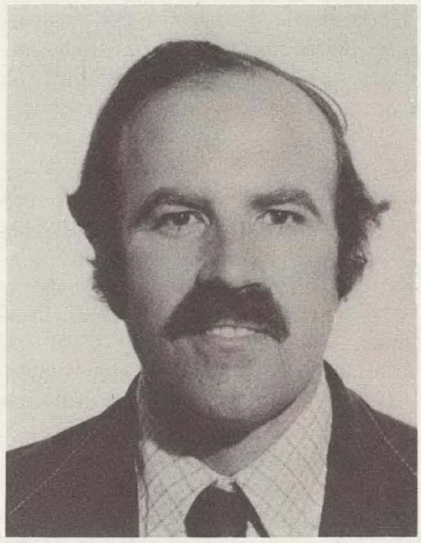
According to St. Augustine, time is a three-fold present—the present as we experience it, the past as a present memory, and the future as a present expectation. Thus, using this criterion, the future of law enforcement has already taken form, since the decisions shaping this future have been made.

Planning for the future does not require gazing into a crystal ball, but rather a careful examination of the past and present. By reviewing a number of trends in society and criminal justice, the resulting changes in police training can be anticipated. What is certain is that there is a need for change in police training, a change that will occur in the 1980's.

As can be expected, crime will continue to rise in the 1980's, but perhaps at a slower pace. And the citizens' cry for a "war on crime" will not be abandoned. "The public demand for control and prevention of violent crime will grow stronger."[1] This demand, coupled with emphasis on effective performance, will increase the pressure placed upon instructors, making it necessary for police training to become more crime specific.

Technology will be the single most significant influence on crime and the criminal justice system, as it has been in the past. Technological advances offer a variety of opportunities for committing crimes now unknown or uncommon. The movement toward electronic banking allows for new opportunities for criminal activity which need to be examined systematically by both law enforcement personnel and police trainers. In addition, detection and apprehension will become more difficult because of the widespread use of citizens' band radios by criminal groups.

August Bequai maintains that computer crime is rising, a fact posing a formidable problem for law enforcement personnel. With the advancement of computer technology comes more intricate and sophisticated forms of white-collar crime. In addition to the destruction of computer installations, computers are being programed by criminal groups to steal information, services, and property. However, the greatest threat comes in the financial arena. By simple manipulation of computer systems, fictitious assets and earnings can be created with the push of a button. Presently, only a few police officers are adequately trained to investigate computer crimes. As these crimes become more widespread and



Dr. Milner

known, police instructors will be expected to develop training programs to prepare investigators to meet this challenge.[2]

In the same respect, consumer protection or "naderism" is likely to prosper rather than dissipate in the 1980's. Certain business practices, such as manufacturing and selling defective products and deceptive advertising, will become group crimes rather than the practice of individuals. Thus, crime control methods will be forced to shift their attention from individual responsibility to collective responsibility in order to deal effectively with large-scale crime. In so doing, the emphasis of police training will focus on group as well as individual control. Police in the future will of necessity be members of a team, with the training curricula emphasizing team-building skills.[3]

Feeling the imbalance between needs and resources, State legislatures and local governments are beginning to look more closely at expenditures. This present emphasis on accountability will intensify in the next decade. Police training programs, once regarded as a "feast or famine" proposition, will no longer be considered the "sacred cows" of law enforcement. Academies will be asked continuously to demonstrate their value, and training programs will be expected to have job-related performance standards and certification that graduates can perform at a certain desired level before graduation.

With the continuation and intensification of the energy crisis, and in light of rising gasoline costs and limited resources, government units will place a ceiling on fuel expenditures, resulting in the reevaluation and redesigning of patrol tactics. As a result, training personnel will be called upon to assist their departments in stretching the patrol dollar.

Certain population trends, such as suburbanization and changing population structure, will follow the general pattern of the earlier decade, placing another burden on police training. As shifts in the racial composition between inner cities and the suburbs take place, police officers will have to become more aware of behavioral dissimilarities. What should also be considered is the general age imbalance currently taking place. By the year 2000, the number of persons age 65 and over will exceed 28 million (11 percent of the population), pointing to an expected rise in crimes against the elderly during this period.

In addition to societal changes, there are indications that the police environment may experience dramatic alterations. Repeated studies have shown that police spend the majority of their time on service-related functions, with domestic disturbances being the most numerous. Those factors contributing to domestic agitation do not show signs of abatement, making it imperative for every police officer to be adequately trained to deal effectively with these occurrences.

"Technology will be the single most significant influence on crime and the criminal justice system, as it has been in the past."

Police training programs in the 1980's will be skills-oriented, although considerably different from those now offered. Contemporary police training is aimed primarily at preparing police officers to deal with administrative and technical matters. Recruits are thoroughly schooled to fill out forms, shoot straight, defend themselves, and judge behavior from a legalistic point of view. In the next decade, police training will place less emphasis on physical training and more on the complex problems of society, particularly those faced by the average police officer.

Kelling and Fogel maintain that officers can be trained in the academies to emphasize citizen contacts and the development of skill in handling these contacts.[4] Greater emphasis could be placed on handling service calls in ways other than rapid response, such as counseling and reassuring citizens who had been victimized.

Commenting on police training in the United States, the British police historian Charles Reith wrote, "It can be said of police training schools that the recruit is taught everything except the essential requirements of his calling, which is how to secure and maintain the approval and respect of the public whom he encounters daily in the course of his duties."[5] While this is partially true today, it will become less of a problem in the 1980's.

The training sections on psychology, sociology, and abnormal behavior will be reoriented to include realistic applications and associated performance standards. The "war game" training used extensively by the military will become common; staging of mock situations, together with associated police response, will simulate the pressures and problems of actual operational conditions. Recruits will find themselves thrust into street situations, such as landlord-tenant squabbles, during their training period.

In the next decade, more changes in police recruitment and promotional practices can be expected. Court-ordered removal of employment barriers will intensify, increasing the number of minorities and women admitted to police training classes. While there is little evidence to suggest that different kinds of people—black v. white, college educated v. high school graduate, men v. women—behave differently once they become officers, neither is there much evidence to the contrary. Assuming such differences exist, the selection of who is hired could make a significant difference in police training. In the same respect, this great diversity in recruits could lead to the emergence of personnel problems during their time at the academy. Since most instructional staffs and counselors drawn from police ranks are not competent in this area, training institutions will call upon professional counselors to provide these services.

As police functions become more complex, police instructors will incorporate into their curricula techniques emphasizing personal, group, and team decisionmaking. Less reliance will be placed on facts and memorization of general guidelines, and more attention devoted to discretion and good judgment. Trainees will be encouraged to think for themselves rather than let someone do it for them.

McCreedy has identified several indications of changing environments for police managers, one of which is the growing acceptance of police unionization.[6] If the trend in Europe is followed in the United States, police unionization will allow officers a greater role in the decisionmaking process. In Sweden, there are joint management boards with union representation. The German police have employee councils; police officers in France choose approximately half of the membership on promotion and disciplinary boards. Unions such as these, in addition to their concern for wages, working conditions, and fringe benefits, will also play an important role in professionalizing the occupation.

There are strong indications that the next decade will see police officers demanding the right to participate in organizational decisions. Police managers are beginning to realize that officers have valuable contributions to make and are urging their employees to provide input. Thus, the trend is toward a system of shared authority. To avoid learning the hard way, managers will expect training instructors to prepare officers for their new role as participating managers.

Presently, there is a growing trend to place civilians in key positions that have been traditionally occupied by sworn personnel, a move made by several progressive police departments in recent years. This will continue into the 1980's, which will be characterized by a substantial increase in the number of civilian employees in law enforcement agencies. Once again, training academies will be called upon to provide citizens specialized training needed to fulfill their roles in police departments.

There is reason to believe that agencies in the 1980's will pursue a dual-level process, as is done in the military services in the recruitment of officers and enlisted men. Lateral entry will become more common in order to attract talented persons needed for specialized law enforcement tasks, including administration and management. The European experience in this regard may become more common in the United States. Civilians literally run most police departments in Europe. Three hundred of the top police positions in Sweden are reserved for lawyers who are selected from the upper ranks; 10 percent of the detectives in Germany are recruited from the legal professions.

Many European countries require candidates for ranking police positions to meet certain educational and training standards prior to their consideration. In the United States, the typical pattern is for an officer to be promoted and then trained. If police agencies in the United States continue to follow the European pattern, as some have, police academies and law enforcement programs at universities and colleges will be expected to provide a variety of training opportunities which will help officers become eligible for promotion.

Another practice that will become more commonplace in the next decade is the licensing of police officers. This will require training academies to adjust their curricula so that their graduates can successfully pass the licensing examinations. Since police officers will be required to be up to date, law enforcement academies will also become involved in "recurrent education" and "lifelong education."[7] Inservice training will be a mandatory requirement.

During the past 10 years, educators and police administrators have given serious attention to the relationships between the educational system and the criminal justice system. Recently, an important question has been raised. "What have been the results of a decade of increased educational opportunities for law enforcement officers?" Lawrence Sherman, Graduate School of Criminal Justice at the State University of New York at Albany, made reference to this in a paper presented at the 1977 IACP convention in Los Angeles:

"Something is wrong in police education. What began as a dream for upgrading the police institution has become a very different reality. A decade of rapid expansion has provided more education to more police officers than ever before. But a growing body of evidence suggests that higher education has not provided police with the best that it has to offer. . . . Both higher education and the police have settled for second best."[8]

As more and more college-educated recruits enter the law enforcement profession, training academies and institutions of higher learning will team up to prepare a highly professional police officer. An accreditation process for criminal justice degree programs and also police training programs will become standard operating practices in the coming decade.

Police trainers in the 1980's will find their work to be both frustrating and challenging. They will be asked to prove the value of their training, while simultaneously answering the demands for a greater variety of training opportunities. As opposed to the traditional catchall, generalized training of today, training programs during the next decade will be more specific and job-related, resulting in significant changes in training and law enforcement.

FBI

Footnotes

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B-I-N-G-O

Gambling Devices

. . . or, when is a **pinball machine** *not* **a pinball machine?**

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The prevailing view today in most jurisdictions, including the Federal judicial system, is that pinball machines are legal. There exists one device, often mistaken for a pinball machine, which is almost universally regarded as a gambling device and which is subject to the Federal gambling device tax. This is the multiple-coin, electromechanical, bingo-type gambling machine, known as a "bingo" machine. Unfortunately, many officers are unfamiliar with bingo machines and do not recognize them for what they are. This article will alert officers to the manner in which bingo machines are used in a gambling enterprise and point out the identifying features which distinguish them from their innocent look-alikes—pinball machines.

Illegally operated gambling devices of all types had a gross "take" of approximately $2 billion in 1950.[1] Today, these devices are observed less frequently than at any time in the last 50 years. This decline is a result of the efforts of the law enforcement community, improved State and Federal legislation designed to prohibit gambling paraphernalia, and generally favorable court decisions. Still, the Gambling Unit of the FBI Laboratory continues to encounter regularly illegal operations involving the large-scale use of gambling devices. These devices consist, primarily, of slot machines (both the "one-arm bandit" and "upright" varieties) and bingo-type gambling machines. While the slot machines are quickly recognized for what they are, the same cannot be said for the latter. In *Moverly* v. *Deskin,* the court stated:

"In no field of reprehensible endeavor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter, but to do violence to the spirit and thwart the beneficent objects and purposes of the laws designed to suppress the vice of gambling."[2]

That was in 1913 when man was only just beginning to demonstrate his ingenuity in this field. However, it wasn't until the 1950's that bingo machines made their appearance on the gambling scene in the United States. To this day, these burrs under the saddle of law enforcement reign supreme as the most innocent-appearing devices, yet designed to relieve gamblers of their money. The reason is that bingo machines don't look like gambling devices—they look like pinball machines.

Pinball machines were first marketed about 1930. They were simply refined versions of bagatelle, a Victorian parlor game, in which steel balls were propelled with a stick similar to a pool cue onto a playfield where they could drop into numbered holes indicating a cumulative score. With the advent of electrification, they evolved into the still familiar amusement machines characterized by bright flashing lights and clanging bells, multicolored vertical backglass and horizontal playfield areas, and frenzied action during play as steel balls are bounced and thrown around the playfield accumulating points. In 1935, pinball machines began to be equipped with a new feature destined to become the heart of their gambling counterpart—the "free game," or "free replay." This feature served as an incentive to play the machines by holding out the possibility of one or more free games to players achieving predetermined minimum scores.

"Bingo machines . . . are almost universally recognized by the courts as gambling devices and are subject to the Federal gambling device tax."

Initially, some jurisdictions refused to recognize the free replay variety of pinball machine as a bonafide amusement device. The courts holding this view ruled that the free game constituted the third element in the "payment of a *price* [or consideration] for a *chance* to gain a *prize*" definition of gambling.[3] The basic question confronting the courts was whether the amusement represented by a free game on a pinball machine had value. One persuasive argument for the "free replay as a value" doctrine is found in the Ohio case, *Kraus* v. *Cleveland:*

Amusement is a thing of value. Were it not so, it would not be commercialized. . . . Since amusement has value, and added amusement has additional value, and since it is subject to be procured by chance without the payment of additional consideration therefor, there is involved in the game three elements of gambling, namely chance, price [consideration], and a prize."[4]

In a similar argument it was held that since the player of a pinball machine is initially willing to pay a specified price for a pinball game, it may be presumed that this amount is the value he places on the amusement of additional games. Thus, if he wins free replays, he has been awarded something of a fixed value.[5]

Many State and Federal courts, however, have reached contrary decisions in concluding that free replays have no intrinsic value. In *State* v. *One "Jack and Jill" Pinball Machine,* the court ruled that:

"To be allowed to do a useless thing free does not make that privilege property or 'a thing of value' because one has previously paid for doing another useless thing. There is a vast difference between cost and value. Permission to use a useless device is not property or 'a thing of value,' though the device used cost money to construct."[6]

Other courts have ruled that amusement devices giving free replays only are not illegal because amusement is not, per se, a "thing of value."[7]

As stated earlier, the prevailing view today in most jurisdictions, including the Federal judicial system, is that pinball machines are legal. Bingo machines, on the other hand, are almost universally recognized by the courts as gambling devices and are subject to the Federal gambling device tax.

The family of gambling devices referred to as bingo machines consists of about 70 individual models. While there are some variations from model to model as a result of improved technology (e.g., some of the newer models employ solid state circuitry) and model updating, there are no significant physical distinctions from a gambling standpoint. They are all designed to resemble pinball machines. The resemblance, however, is very superficial, and the differences in function and appearance are pronounced when examined in any but the most cursory manner. In fact, a person possessing either the sense of sight, touch, or hearing should encounter little difficulty

in unerringly detecting their differences for they do not look, feel, or sound the same.

The "games" played on bingo and pinball machines are very different. Success at pinball depends upon the ability of the player to accumulate a minimum score. This is accomplished by shooting steel balls onto an inclined playfield with a spring-loaded plunger and keeping the balls "alive" (in play) on the playfield for as long as possible while hitting "targets" or passing through "alleys" having large score values. The balls are kept alive longer through the skillful use of rubber bats, called "flippers," controlled by the player. The flippers, in addition to being used to keep the balls alive, may also be used to great advantage by the player in directing the balls to high score areas on the playboard.

The object of play on bingo machines is entirely different. Play of the bingo machines is roughly analogous to the more traditional form of bingo from which they derive their name. In regular bingo, each player plays one or more cards on which appear more-or-less random mixtures of 24 numbers and 1 free space. The numbers are arranged in five columns under the letters "B-I-N-G-O." The "card" on a bingo machine appears on the vertical backglass of the machine and normally consists of either a 4 by 5 or a 5 by 5 rectangular matrix of an apparently random arrangement of the numbers 1 to 20 or 1 to 25, respectively. (See fig. 1.) A few machines have departed slightly from this format by using numbers arranged in a circular pattern. Still others have contained as many as six individual cards on a single backglass. Other essential elements of these machines are the same as the single, rectangular card, bingo machine.

The numbers on bingo machine cards correspond to sequentially numbered holes arranged in a triangular pattern on the inclined playfield. (See fig. 2.) Balls propelled onto the playfield respond to gravity by rolling down the playfield until they come to rest in one of the numbered holes or fall through the ball-return hole, in which case they again become available to the player. It is noted that each of the numbered holes is guarded by a stationary bumper in such a manner that it is extremely improbable that a ball will come to rest in a hole without first striking at least one bumper.

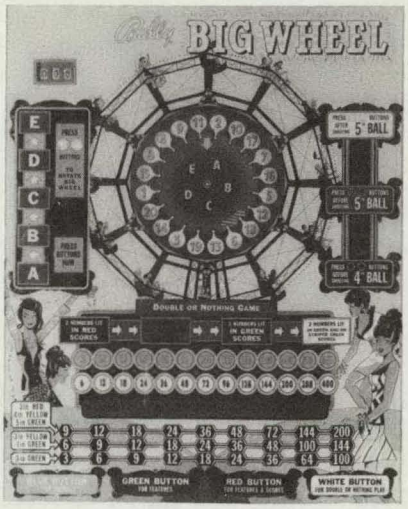
The bingo machine player's objective is to shoot five balls into numbered holes to light corresponding numbers on the backglass card. After shooting five balls, a player may, on some bingo machine models, obtain up to three extra balls by depositing additional coins. To be a winner, the player must light three or more adjacent numbers in a row, column, or major diagonal (for "in-line" bingo machines), or he must light three or more numbers in one of four different color zones (for "in-color" bingo machine models). In-line models generally employ the 5 by 5 cards, while in-color models use a 4 by 5 card.

In addition to the card, the backglasses of bingo machines generally contain at least three other areas—scores (commonly referred to as "odds"), features, and a replay register. The scores correspond to the number of so-called replays or free games a player may win for particular arrangements of lighted numbers on the card. On one popular variety of machine, a player can win from 4 to 600 replays for a winning combination, depending on how far he has advanced his scores. For example, in the first step of scores, a player might receive 4 re-

Figure 1

Bingo machine with typical vertical backglass and 4 x 5 bingo card located top center.

This device employs a number matrix having a circular pattern with three color zones. Play of this machine is essentially the same as one having a 4 x 5 number matrix.



plays for 3 in a line or 3 in a color zone, 16 replays for 4 in a line or color zone, and 75 replays for 5 lighted numbers in a line or color zone. Players who are able to advance the scores to the final step would be eligible to receive 192, 480, or 600 replays for 3, 4, or 5 lighted numbers in a line or color zone, respectively. The following is typical of an 8-step score chart showing the number of replays a player would win for 3, 4, or 5 lighted numbers in a line or color zone.

SCORE ADVANCEMENT STEPS

Balls in a Line/ color	1	2	8	4	5	6	7	8
3	4	6	8	16	32	64	120	192
4	16	20	24	50	96	144	240	480
5	75	75	96	96	200	300	450	600

Bingo machine features consist of additional modes of winning and certain game advantages which increase the player's chances of success. Numerous features have appeared on the backglasses of bingo machines over the years. A frequently encountered example is the "four-corners" feature, whereby a player lighting all the numbers in the corners of his card scores the same as he would score for 5 in a line or 5 in a color zone. Another popular feature is one which allows the player to shift some or all of the numbers appearing on his card to different positions, e.g., exchanging positions of the numbers in columns 1 and 2, and columns 4 and 5, and moving the numbers in column 3 up or down a space. This feature, of course, greatly increases the number of winning alinements available to the player.

Replay registers of bingo machines are visible through apertures in their backglasses. These are normally

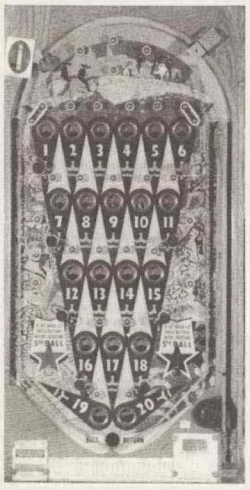
". . . bingo machines are usually equipped with a built-in governor which automatically adjusts the chances of obtaining greater scores and features."

4-digit meters, although some older models have 3-digit meters. The purpose of these replay registers is to record the scores (credits) players are awarded for successful play. These scores may be used for additional activations of the machine or as an indication of the amount of payoff to which the player is entitled. The size of the payoff is determined by multiplying the cost for a single activation of the machine, say 25 cents, by the number appearing in the replay register (if any) at the time the player decides to stop playing, say 100. In this example the payoff would be $\$.25 \times 100 = \$25.00$.

One of the most distinguishing characteristics of bingo machines is that they are multiple-coin gambling devices. Although a player is entitled to play a complete game by the deposit of a single coin or use of a single available replay, this type of play is rare. Indeed, most players use many coins and/or replays prior to shooting the first ball, and there is generally no limit on the number of coins which may be used. A few models do have a limit. For example, one model introduced within recent years had a limit of six coins per game. Each coin activated the electrical circuits for one additional card. As in regular bingo, the more cards available to a player, the better his chances of winning.

The purpose of multiple-coin play, in addition to increasing machine profits, is to give the player a chance for higher scores and to qualify for additional features. The initial coin or replay which is played into the machine activates the machine and establishes the electrical circuits necessary to provide the player the minimum guaranteed scores for successful play. Thereafter each coin or replay again activates the machine, setting in motion certain internal, chance-selection circuits which may or may not advance the player's scores or provide additional features. The player has absolutely no control over whether he receives or does not receive the additional game advantages he seeks. The result is that the player may, and usually does, engage in a number of individual gambling events before the first ball is shot.

Figure 2



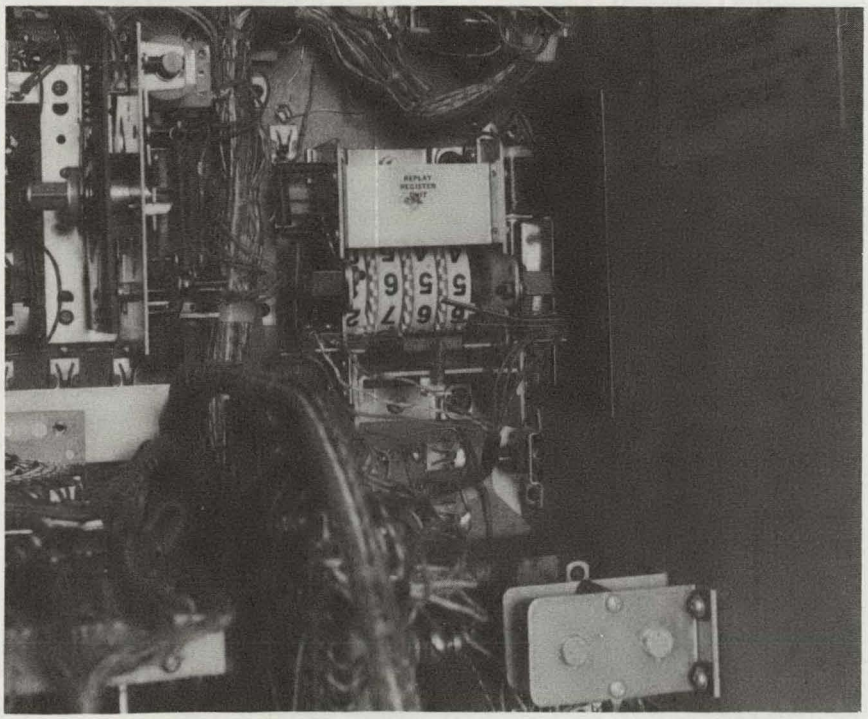
Triangular arrangement of sequentially numbered holes on an inclined playfield.

It is interesting to note that bingo machines are usually equipped with a built-in governor which automatically adjusts the chances of obtaining greater scores and features. Such a governor was described in *United States* v. *18 Gambling Devices:*

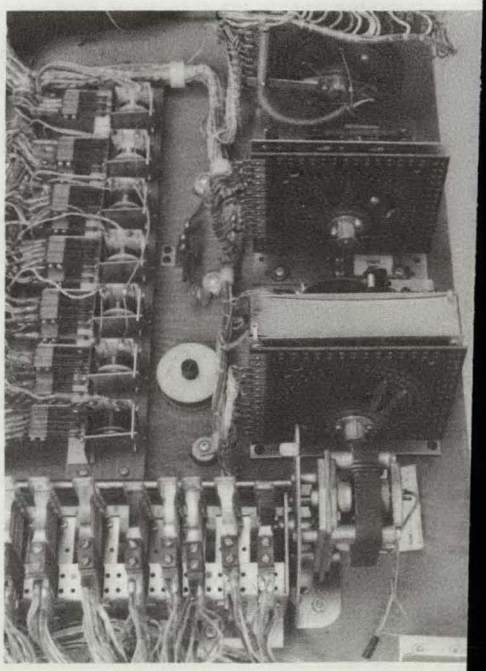
"The machines have a governor built into them called the reflex unit which adjusts the chances of obtaining advanced scores and/or features, depending upon the previous history of the machine. When replays are won and recorded on the replay register the reflex unit operates in such a manner that circuits are removed. The reflex unit operates in a manner to restore circuits upon each activation of the machine by either coin or replay." [8]

It has been argued, by persons claiming that bingo machines are not gambling devices, that the purpose of governors is to adjust the difficulty of the machine to coincide with the ability of the player, thereby presenting a greater challenge. This greater challenge, so the argument goes, is supposed to enhance player enjoyment and create a desire to play the machine more. Nonsense!! The governor is not functioning during actual play of the game, when a change in difficulty of the basic game could change the challenge to the player. It is operative only during the period when the player is pumping coins and/or replay credits into the machine in an effort to increase his scores or get additional features. The basic play of the machine, i.e., the shooting and play of the steel balls, is not affected at all by the governor. From the standpoint of gambling technology, the governor serves a very useful purpose. By altering the probability of obtaining additional scores and features, the governor is effectively able to control the profit level of the machine. If a player has been winning, the governor will cause the machine to "tighten up" and become less likely to award large payoffs. After the machine has recovered from any losses on its part, the governor will "loosen up" and allow the player a better possibility of winning. It should be kept in mind that in order to be profitable, a gambling device must offer the appearance of being a good investment. This is accomplished by actually paying off on a significant percentage of machine plays. Generally, a machine will return about 70 to 80 percent of the money paid into it. This percentage range will entice additional machine play, increasing overall profits. A machine which never pays off or pays off only sparingly will quickly put itself out of

"One of the most distinguishing characteristics of bingo machines is that they are multiple-coin gambling devices."



Internal view of a bingo machine shows a 4-digit "credit" (replay) register. Amusement pinballs normally have a single-digit register, two digits at most.



The governor (reflex) unit automatically adjusts the payoff rate of bingo machines. Spare gears above unit can be used to change the chances a player has of receiving a payoff.

Figure 3 **Distinguishing Features of Pinball Machines and Bingo Machines**

Characteristic	Pinball Machines	Bingo-type Gambling Devices
Motive for play	Amusement	Primarily gambling
Object of play	Accumulate as many points as possible—keep balls in play for as long as possible	To obtain certain arrangements of lighted numbers on "bingo" card(s)
Number of coins required to play	One per game	At least one, but many more are generally used each game to build up "scores" and "features" (These are multiple-coin devices)
Number of players per game	Normally one, but some have provision for competition between two to four players	One
Size of machine	Relatively smaller	Relatively larger
Features	May offer more points to player who hits lighted target, bumper, alley, etc.	Will have features such as moveable numbers in card, "4-corners," "double or nothing," "4 star numbers score red 5-in-line," etc.
Flippers	Yes	No
Possibility for player to control ball during play	Considerable, with skillful use of flippers	Very limited
Playing Surface	Has large illuminated plastic "thumper bumpers" and "kickers" which propel the balls electrically when the balls strike them, drop-through holes, kick-out holes, wire and plastic rollovers, metal and plastic targets, etc.	Primarily consists of 20 or 25 holes in triangular pattern and many stationary "bumpers"
Sound of machine during play	Very noisy—bells, buzzers, and chimes sound as balls are propelled about the playing surface	Relatively quiet
Number of "free plays" (credits) which may be won	Generally 26 or less—most have maximum of 5 or 10	As many as 600
"Free-play" (credit)	One or two digits	Three or four digits
Internal circuitry	Relatively simple	Relatively complex
Governor (reflex) unit	None	Most have
"Free-play" (credit) clearing circuit	None	Will have capability to clear all free plays appearing on the register through use of a "knock-off" circuit

business. The governor, by controlling the availability of scores and features, maintains the delicate balance essential for the machine to be profitable.

Figure 3 shows the primary distinguishing characteristics of pinball and bingo-type gambling devices. There are some characteristics, mostly dealing with the internal circuitry, which are not listed. Also, there are some exceptions to the listed characteristics insofar as some individual machine models are concerned. The list will, however, enable an officer to identify quickly the vast majority of bingo machines encountered.

In the event that devices of a type similar to the machines described herein are found operating in a community, the FBI Laboratory is prepared to assist local authorities. The Laboratory has experts in the field of gambling who are available for consultation regarding all types of illegal gambling devices, including the bingo machines discussed in this article. If large quantities of bulky devices are seized, a field examination of the evidence may be requested by corresponding with the Laboratory. Expert witness testimony regarding gambling devices and how they are used in illegal gambling is also available from the FBI Laboratory if required.

FBI

Footnotes

[1] Rufus King, Gambling and Organized Crime, Public Affairs Press, Washington, D.C. (1969).

[2] *Moberly* v. *Deskin,* 169 Mo. App. 678, 155 S.W. 844 (1913).

[3] *Westerhaus Co.* v. *City of Cincinnati,* 165 Ohio St. 327, 135 N.W. 2d 318 (1956).

[4] *Kraus* v. *Cleveland,* 135 Ohio St. 46, 19 N.W. 2d 159 (1939).

[5] *State* v. *Wiley,* 232 Iowa 443, 3 N.W. 2d 620 (1942).

[6] *State* v. *One "Jack and Jill" Pinball Machine,* 224 S.W. 2d 861 (Mo. Ct. App. 1949).

[7] *Washington Coin Machine Association* v. *Callahan,* 142 F. 2d 97 (C.A.D.C., 1944).

[8] *United States* v. *18 Gambling Devices,* 347 F. Supp. 660 (1972).

Field Training Officer (FTO): The Fairfax County Experience

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Captain Hartman

Col. Richard A. King
Chief of Police
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History

Until December 1975, the Fairfax County Police Department approached field training in a traditional manner, i.e., recruit officers were normally assigned with "senior" officers. Inherent in this approach is the assumption that senior officers are always competent trainers. When one examines this precept, however, it becomes evident that this is not true in every case.

Through the employment of the "senior officer" approach, the Fairfax County field training program for its 702 sworn officers lacked continuity with the academy recruit training. Moreover, no two recruit officers were receiving training in the same areas at the same point in time nor was there documentation of the training received.

Field training was further complicated by the department's participation in the Northern Virginia Criminal Justice Academy, a regional training facility—a situation where the department did not have the final authority in most issues.

Goals

As the newly assigned training division commander, I recognized the need to formalize the department's field training into a structured program and to aline it with the regional academy's curriculum and schedule. Such a program would also lend itself to documenting many of the State-mandated training requirements for police recruits. Basically, the following goals were established:

1. To closely aline departmental field training efforts with the regional training academy.
2. To provide documentation of field training received by each recruit officer—needed for *complete* training records and for backup relative to State-mandated activities.
3. To provide a well-structured and formalized program, permitting all recruits to be trained similarly and for management to know what field training has occurred, rather than a fragmented approach.
4. To provide each recruit officer with a trained field training officer, not just an experienced officer to ride along with, and
5. To provide field training officers also capable of serving as squad trainers.

Introduction

There are two units within a police department to which field training officers could be assigned—training and patrol. A look around the country shows some departments using one or the other. Our department made the decision that field training officers should be a part of patrol. Although the training division is charged with the overall responsibility for training in the department, patrol also shares this responsibility. [1]

One of the first steps taken was the development of a Field Training Guide. Recruit officers are issued this guide which remains with them until their basic training—both field training and police academy training—has been completed. Before the guide is returned to the training division for analysis and file, it is reviewed and endorsed by the appropriate station commander.

The Field Training Guide serves a number of purposes and has proven to be the vehicle that has helped us accomplish our goals. This guide contains the department's fundamental principles and concepts from basic information regarding the police department and the criminal justice system to specific duties. Examples of the contents are as follows:

1. Department history and organizational structure,
2. Operation of police vehicles,
3. Radio procedures,
4. Patrol procedures,
5. Elements of the most common criminal offenses,
6. Report procedures, and
7. Interview with a judge.

Each item must be explained and demonstrated by the field training officer, and when appropriate, performed by the recruit. It is then signed by the field training officer. In cases where someone else handles the "instruction," e.g., court liaison officer, that person executes the form. The guide also has a section for a narrative evaluation by the field training officer and the squad supervisor. (Figure 1 is a page from the Field Training Guide.)

A field training officer program is not a substitute for firstline supervision. It does not relieve the sergeant of his training responsibilities; it simply assists him. Firstline supervisors have a multitude of responsibilities—training is only one. On many occasions, training usually takes a back seat to many of their duties, unless a serious problem arises.

It has been found that most recruit officers frequently encounter problems. They often take their problems to either the first senior officer (with whom they have ridden) or to an officer they are personally attracted to—neither of whom may deal with the issue effectively. Human nature prevents most newcomers from taking their problems or questions to their supervisor, particularly if they feel comfortable asking another member of the squad. However, when considering a career employee (not to mention the initial investment of $25,000 in a probationary officer), management must take appropriate steps to guide and direct the new employee as closely and competently as possible. Proper guidance is desirable not only from the perspective of the employer, but also the employee. Since the sergeant cannot devote all his time to training and directing the recruit officer, a competent substitute must be provided. A trained FTO can fill this void.

A well-designed FTO program is flexible and can be adapted to various types of police academy formats, e.g., preacademy training, postacademy training, modular academy schedule, and straight-term academy schedule. In Fairfax County, we learned the value of a flexible program as our field training has been impacted by two recent changes. One change involved a schedule alteration by the academy when it changed from a multiple modular system, i.e., three academy training

Figure 1

	Explained	Demonstrated	Performed	Remarks
H. Property Case, Lost/Found				
I. Juvenile Cases				
J. Property Check, Home/Business				
K. Service (Serial Number Verification)				
COURT SYSTEM				
A. Function and Division of Courts				
1. General District—Traffic				
2. General District—Criminal				
3. Juvenile/Domestic Relations Court				
4. General District Circuit Court				
5. Special Magistrates Function				
A. Obtaining Warrants				
ARREST PROCEDURES				
A. Stop and Frisk				
B. Arrest with a Warrant				
C. Arrest without a Warrant				
D. Felony Arrest				
E. Misdemeanor Arrest				
F. Timing of the Arrest				
G. Use of Force in Arrest				
1. What is Reasonable Force				

modules interspersed with two practicums, to one consisting of two modules and only one practicum. The other alteration experienced was one relating to public safety demands that has caused us to discard preacademy field training and place recruits in the academy within a week of their employment.

An important feature of a viable FTO program is the camaraderie that is fostered among the field trainers themselves. This camaraderie, coupled with support and encouragement from superiors, makes for a strong force at a critical level within an organization. As pointed out by Abraham Maslow, the noted psychologist, mankind has a need to self-actualize. [2] Officers assigned as field trainers usually enter the needs hierarchy at the "social" level, having already satisfied their physiological and safety needs. The importance of "ego" and "self-actualization" cannot be overemphasized. The Fairfax County FTO program capitalizes on these needs.

FTO Selection

The actual selection of individuals for FTO training and assignment was left to the discretion of the district station commanders. They were, however, provided with the following criteria in making their selections. The candidate should have:

1. The desire and willingness to be a trainer. (A police officer unwillingly serving as an FTO will have a negative effect on the person(s) being trained. In terms of delivering inservice training such a person would, at best, be ineffective; in terms of recruit training such an attitude would be disastrous.)
2. The ability to function as a trainer. (Not all officers have the necessary qualities to be good trainers.)
3. The proper police experience. (Experience not only in the context of years of service, but also in duty assignments and quality of overall performance.)
4. The endorsements of their firstline supervisors. (This criterion allows the sergeant to participate in the decisionmaking process. It provides the station commander with alternative approaches to actual selection of FTO's.)

Training the FTO

The key to a successful FTO program is twofold: (1) The prospective field training officer must want to serve in that capacity, and (2) the field training officer must first be trained himself, prior to training others.

When the Fairfax County program was initiated, the candidates were given 24 hours of training. It soon became apparent that more time was required to prepare properly the officers. Consequently, Fairfax County police field training officers now receive 40 hours of basic training, as outlined below:

4 hours—Overview of the Field Training Officer Program and the Role of the Field Training Officer

2 hours—Foundations for Learning

1 hour—The Learning Process

1 hour—The Field Training Officer's Role as a Change Agent

3 hours—A Psychological Profile of the Recruit Officer

4 hours—Practical Approaches to Recruit Problem Solving

3 hours—Panel Discussion with Present Field Training Officers (this block of instruction is used once the program is underway)

4 hours—The Field Training Officer and His Relationship with the Regional Academy

1 hour—The Training Division as a Resource

10 hours—The Field Training Officer as a Squad Trainer

10 hours—Preparation for Training Sessions

10 hours—Use and Construction of Training Aids and Equipment

10 hours—The Presentation of a Squad Training Course

10 hours—Practical Exercise in Squad Training (video taped) [3]

7 hours—Critique Time—Spaced throughout the course

In addition to the basic training, FTO's receive additional periodic, inservice instruction. Also, each trainer is provided with a Field Training Officer Resource Handbook. This handbook is correlated with the Field Training Guide and contains related documents on each topic. For example, included in the section on the operation of police vehicles is a copy of the department's general order governing their use. Along with the section addressing the elements of the most common criminal offenses encountered by patrol officers are copies of the State and county code sections, and of course, the elements themselves. The resource book also contains sections which can be used by the recruit officer in report writing, such as frequently misspelled words and words that are easily interchanged (e.g., council-counsel, brake-break, etc.).

Feedback

An important ingredient of any plan is feedback. The Fairfax County FTO program uses both formal and informal means to gather feedback. The same mechanisms also provide information pertaining directly to the actual field and squad training being delivered.

One such mechanism employed is an evaluation form. Each FTO is required to submit a weekly evaluation of his recruit's progress. This form consists of 48 items covering 10 categories. (Figure 2 is the second page of the 3-page form.)

After the field training officer has conducted intrasquad training, he must submit a written report to the training division. The following must be included in the report:

1. Date and location of the training,
2. Attendees,
3. Training topic,
4. Course outline/lesson plan, and
5. Instructional aids used.

Many of the reports submitted are used by other FTO's at different district stations. Some are expanded into more lengthy training courses.

Goals, Accomplishments, and Related Problems

The first problem faced in implementing the program was to convince some of the district station commanders that the traditional "senior officers" approach was not as viable as a structured program. Once the program received a vote of confidence from patrol commanders, it proceeded without real difficulty. As a matter of fact, there were only two occurrences of a district station commander arbitrarily assigning officers as FTO's.

Although firstline supervisors were involved in the selection process for field training officers, many of the original FTO's were apprehensive about their acceptance since they would be viewed as infringing on their supervisor's turf. This was not the case! The FTO's were welcomed by their firstline supervisors.

The most difficult goal was the development and maintenance of a close liaison with the regional police academy. This was accomplished when the department, in cooperation with the Northern Virginia Criminal Justice Academy, developed a field training officer program, coordinated by a representative from the academy, for other participating agencies.

The only other significant problem to be resolved involved controlling the original direction, intent, and logistics of the program. This problem was solved when the program was accepted by the department's personnel.

Summary

All goals were met as outlined for the program. Presently, each patrol squad has two field training officers. When they are not involved in recruit training, they each serve as squad trainers. During rollcall and at other previously designated times, they assist with the training of their peers. Yet, both work as regular patrol officers. Stated in another fashion, there is no role definition problem; FTO's are working patrol officers who share in the department's training efforts.

Figure 2

Weekly Observation Report No. _____ Page 2

VI. *Judgment*							
20. Common Sense	1	2	3	4	5	NO	NRT
21. Stress Conditions	1	2	3	4	5	NO	NRT
22. Non-Stress Conditions	1	2	3	4	5	NO	NRT
23. Tact & Discretion	1	2	3	4	5	NO	NRT
VII. *Personal Contact*							
24. Physical Skills	1	2	3	4	5	NO	NRT
25. Self-Control	1	2	3	4	5	NO	NRT
26. Control of Conflict:							
Voice Command	1	2	3	4	5	NO	NRT
Ability to Communicate	1	2	3	4	5	NO	NRT
27. Department Personnel	1	2	3	4	5	NO	NRT
28. Field Training Officer	1	2	3	4	5	NO	NRT
29. General Public	1	2	3	4	5	NO	NRT
30. Minorities	1	2	3	4	5	NO	NRT
31. Officers in Squad	1	2	3	4	5	NO	NRT
32. Supervisory & Command Personnel	1	2	3	4	5	NO	NRT
33. Youth	1	2	3	4	5	NO	NRT
VIII. *Radio*							
34. Listens & Comprehends Transmission	1	2	3	4	5	NO	NRT
35. Articulation of Transmission	1	2	3	4	5	NO	NRT
36. Compliance with Proper Procedures	1	2	3	4	5	NO	NRT
IX. *Driving Skills*							
37. Normal Conditions	1	2	3	4	5	NO	NRT
38. Stress Conditions	1	2	3	4	5	NO	NRT
39. Parking	1	2	3	4	5	NO	NRT
40. Exercise of Speed Control	1	2	3	4	5	NO	NRT
41. Violator Contact	1	2	3	4	5	NO	NRT
42. Safety Consciousness	1	2	3	4	5	NO	NRT
X. *Safety*							
43. Prisoner	1	2	3	4	5	NO	NRT
44. Arrest	1	2	3	4	5	NO	NRT
45. Search	1	2	3	4	5	NO	NRT
46. Transport	1	2	3	4	5	NO	NRT
47. Processing	1	2	3	4	5	NO	NRT
48. Vehicle Approach	1	2	3	4	5	NO	NRT

The regional academy staff is augmented by FTO's as temporary instructors. They relate well with the students and bring a sense of the real world to the classroom environment that is often lost by permanently assigned instructors.

The Fairfax County experience must be considered a success. This well-articulated program, joined with a commitment on the part of management, has vastly improved the level of field training experienced in Fairfax County. In fact, it has changed little from its inception 3 years ago. The basic format remains constant; however, it has adapted itself to academy curriculum alterations, academy schedule changes, and variations in departmental hiring practices. **FBI**

Footnotes

[1] Even though the Fairfax County Police Department is the major contributor to the Northern Virginia Criminal Justice Academy, it also has a training division. The training division is responsible for a number of inservice training courses, administration of the department's training funds for outside schools, liaison with the regional academy and the local portion of recruit training. The training division also serves as a coordination and resource center relative to training for the entire department.

[2] Abraham Maslow's theory, "Hierarchy of Needs."

[3] Several of these presentations were of superb quality and have been used as actual training presentations throughout the department.

Title VII of the Civil Rights Act of 1964

An Overview of Supreme Court Litigation (Part I)

By DANIEL L. SCHOFIELD

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Title VII of the Civil Rights Act of 1964 [1] is generally worded legislation designed to eliminate discrimination based on race, color, religion, sex, or national origin. Title VII prohibits a broad range of employment practices that discriminate, and offers a remedial structure for aggrieved individuals.

The U.S. Supreme Court has been faced with a number of issues concerning the interpretation and application of title VII. This litigation indicates that the ongoing process of insuring the absence of discrimination in employment involves the balancing of complex and often competing interests.

This article will focus in general on the following fundamental questions raised in that litigation:

1. What is the plaintiff's burden of proof in establishing a prima facie case of employment discrimination, and what constitutes an effective rebuttal by the employer?

2. What constitutes the proper validation of employment standards?

3. What is the permissible scope of relief that can be granted to remedy a finding of employment discrimination?

Specific Supreme Court opinions dealing with these issues will be examined in an effort to develop conclusions about the Supreme Court's approach to title VII and the continuing problems of insuring the absence of discrimination in employment. It should be noted that this article is not intended to be a comprehensive analysis of title VII, but rather a survey of Supreme Court cases dealing with some fundamental issues raised by that legislation.

BURDENS OF PROOF IN TITLE VII LITIGATION

Introduction

While title VII prohibits discrimination based on race, color, religion, sex, or national origin, the task of defining when in fact an employer has discriminated in violation of this provision has been difficult. The Supreme Court has identified two types of disparities in the treatment of employees that constitute discrimination under title VII. The first and more obvious is where an employer simply treats some people less favorably than others. The second, which is more subtle and troublesome, is where an employment practice neutral on its face falls more harshly on one group than another. These two theories of discrimination, often characterized as "disparate treatment" and "disparate impact," have generated substantial litigation concerning the establishment of a prima facie case and the burdens of rebuttal. Accordingly, these two forms of discrimination will be examined separately in the following discussion.

Disparate Treatment

In *McDonnell Douglas Corp.* v. *Green,*[2] a unanimous Supreme Court ruled that in order to establish a prima facie case of disparate treatment, a plaintiff need only establish that he belongs to a minority group, and applied for a job for which he was qualified, and that following his rejection, the employer continued to seek other individuals possessing comparable skills.[3] Once this prima facie case is established, the burden of proof shifts to the employer to demonstrate that there was a reasonable nondiscriminatory basis for the decision not to hire the plaintiff. The plaintiff is then given an opportunity to refute the employer's claim by a showing that the employer's reason is in fact a pretext, and that other similarly situated employees were not rejected.

In two recent opinions, *Furnco Construction Corp.* v. *Waters* [4] and *Board of Trustees of Keene College* v. *Sweeny,*[5] the Court arguably lessened

a bit the burden on employers in overcoming a prima facie showing of disparate treatment under the *McDonnell Douglas* standard. In that regard, the Court indicated that title VII does not impose a burden on employers to demonstrate that their hiring practices permitted consideration of the largest number of minority applicants. Moreover, in articulating some legitimate nondiscriminatory reason for an employee's rejection, the employer must be allowed to introduce statistical data bearing on motive and any prior efforts aimed at achieving a balanced work force.

Disparate Treatment—Sex Discrimination

The Supreme Court has decided several cases involving claims of disparate treatment and sex discrimination. In *General Electric Co.* v. *Gilbert,*[6] a six-member majority ruled that the exclusion of pregnancy-related benefits from a comprehensive disability plan did not constitute sex discrimination in violation of title VII. Justice Rehnquist writing for the majority ruled that the disability plan did not exclude anyone because of gender, but rather only removed or failed to include one physical condition from the list of compensable disabilities.

One year later, in *Nashville Gas Co.* v. *Satty,*[7] a unanimous Court concluded it was a violation of title VII for employers to force women to forfeit accumulated job seniority when they are absent from work on account of pregnancy. Finding a distinction between benefits and burdens, Justice Rehnquist noted that this was not a case of merely refusing to extend to women a benefit that men cannot and do not receive as in *Gilbert,* but rather a case of imposing on women a substantial burden that men do not suffer.[8]

Another issue raised in *Nashville Gas Co.* concerned the question of whether employers can deny sick leave pay to pregnant employees. In that regard, the Court found the exclusion of sick pay to be indistinguishable from the exclusion of pregnancy benefits in *Gilbert,* and ruled that such underinclusiveness is not a per se violation of title VII.[9] However, the Court made clear that the female plaintiffs in either case could prevail by demonstrating the exclusion constituted a pretext designed to discriminate against women.

In *City of Los Angeles* v. *Manhart,*[10] the Court was confronted with a business practice which required women to make larger contributions to a pension fund than men, even though the amount of each pension check would be the same for both men and women. The employer attempted to justify this practice on the ground that women statistically live longer than men, and accordingly would as a class ultimately receive more benefits.

"In essence, the Court settled for application of the rational basis test in instances where a test neutral on its face has a disproportionate impact and is challenged on equal protection grounds."

A majority of seven decided this business practice constituted illegal disparate treatment. They determined that Congress intended title VII to focus on fairness to individuals and prohibit employment decisions predicated on mere stereotyped assumptions.[11] Accordingly, while women as a class do in fact live longer than men, not all individual women will, and therefore the pension structure constitutes illegal sex discrimination. The Court distinguished the facts in *Manhart* from those in *Gilbert* by noting that in *Gilbert* the respective groups consisted of pregnant females v. members of both sexes, while in *Manhart* the respective groups consisted of all females v. all males. Therefore, *Gilbert* involved discrimination based upon a special physical disability, while *Manhart* involved illegal discrimination based on sex.[12] As further justification for the decision, the Court noted that whenever insurance risks are grouped, the better risks always subsidize the poor risks.[13]

In *Dothard* v. *Rawlinson,*[14] the Court was confronted with Section 703(e) of the Civil Rights Act,[15] which permits employment decisions based on religion, sex, or national origin, when those decisions are premised on a bona fide occupational qualification. However, seven justices seemed to agree that title VII prohibits stereotyped characterizations of the sexes, and that the bona fide occupational qualification provision should be narrowly construed.[16] Nevertheless, the majority concluded that the policy of permitting only men to work as prison guards in all male maximum security prisons in Alabama was permissible in view of the brutal atmosphere that characterized the Alabama prison system. The opinion stresses that an employer has the burden of establishing a factual basis for believing that all or substantially all women would be unable to perform safely and efficiently before a bona fide occupational qualification will be approved.[17]

It could be argued that *Dothard* effectively lowered the burden of proof required of employers to qualify for a bona fide occupational qualification. The *Dothard* majority may have been influenced by an approach developed in several lower court decisions dealing with the establishment of employment qualifications for positions involving a high risk of harm to the public, such as airline pilots and bus drivers.[18] Those decisions indicate that although an employer has the burden of providing a factual basis for the establishment of a bona fide occupational qualification, the employer should not be expected to experiment with the lives of others in order to acquire this factual basis.

Disparate Impact

The second theory of discrimination under title VII does not involve disparate treatment, but rather employment practices that are neutral on their face, but will nevertheless fall more harshly on one identifiable group than on another. This so-called disparate impact theory is more subtle and difficult to detect than the more obvious instances of disparate treatment.

The Supreme Court has decided three cases concerning the use of employment tests which involved the disparate impact theory. Accordingly, disparate impact will be discussed in the following section of this article dealing with the validation of employment standards.

WHAT CONSTITUTES THE PROPER VALIDATION OF EMPLOYMENT STANDARDS

Introduction

The difficulties inherent in fashioning rules regarding the validation of standards has been apparent in litigation involving the use of employment tests. The use of tests as measuring devices to determine suitability for employment has generated substantial controversy centering on the efforts of experts to develop valid tests, the courts interpretation and application of title VII, and differing views over what standards should be applied by the courts in determining the validity of a particular test.

In a fundamental sense, the litigation in this area clearly reflects a tension between the legitimate goals of eliminating discrimination in employment, while at the same time insuring that the validation standards required of employers desiring to use such tests are fair and workable. Underlying that tension is the fundamental question of how far the courts can realistically be expected to push for complete egalitarianism in employment.

For example, imagine a continuum representing at one end purposeful discrimination in the use of an ability test and at the other complete equality where the test either selects applicants in the same proportion as they exist in the pool of applicants or is ruled invalid. Located somewhere between those extremes is the test that is administered fairly without any intent to discriminate, but nonetheless results in a disproportionate number of an identified group being eliminated from consideration. In assessing the validity of such tests having an adverse impact, most courts have required employers to demonstrate empirically the test's validity (i.e., job-relatedness).

"...the Court seemed to approach the question of validity as a factual determination to be made on the particular facts of each case, rather than one requiring rigid application of EEOC guidelines as controlling precedent."

Therefore, it seems of critical importance that this burden of requiring validity be carefully framed in order to accommodate the legitimate use of ability tests with the mandate to eliminate discrimination. Setting the standard of job-relatedness too low could increase the potential of discrimination through the subtle means of improper testing. Conversely, too high a standard may place an unrealistic burden on employers resulting in the diminished use of legitimate tests and a modern version of "killing the innocent messenger who brings the bad news."

The legislative history of title VII reflects a deep concern by some legislators that ability tests could be used by employers to further discrimination.[19] Consequently, the provision in title VII allowing for the use of professionally developed ability tests represents a political compromise between those lawmakers fearful of discrimination and others who felt that without such tests, employers would be deprived of a valuable measuring device to insure qualified and competent employees.[20]

The Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (hereinafter EEOC) was created by Congress to interpret and administer the provisions of title VII. Accordingly, EEOC has promulgated guidelines [21] defining the provision in title VII allowing for the use of "professionally developed ability tests." [22] These guidelines set forth specific validation procedures to be used by an employer in establishing the job-relatedness of a test that has been determined to have a disparate impact.

Those guidelines provide that once a statistical showing indicates a particular test [23] has adversely affected a class protected by title VII, the burden shifts to the employer to produce empirical data demonstrating the test's validity.[24] In essence, that means the test must be predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the particular job in question. The guidelines then set forth specific procedures employers must follow in attempting to establish test validity.[25]

Employment Testing Litigation In the Supreme Court

Properly construed, the determination whether a particular test challenged under title VII is "job-related" requires answers to two questions:

1. Has the employer selected an attribute or skill to be measured which is reasonably related to likely success (or lack of success) on the job? and

2. If so, is the test at issue properly designed and used to measure the particular attribute selected by the employer?

While appearing to be quite reasonable and fair as appropriate burdens to place on employers desiring to use tests having a disparate impact, difficulty has arisen over the "methods" employers are permitted to use to demonstrate a particular test has met those requirements.

The first employment testing case to reach the U.S. Supreme Court was *Griggs* v. *Duke Power Co.*[26] In *Griggs,* the employer used two verbal aptitude tests to select employees for the operating divisions of a steam generating plant. The only evidence offered by the employer to prove that the tests were work-related was a vague managerial judgment that greater verbal ability "generally would improve the overall quality of the work force."[27] The *Griggs* Court ruled the tests invalid because they had not been validated according to EEOC guidelines, which prohibit the use of "an employment practice which operates to exclude Negroes and which cannot be shown to be related to job performance."[28] Since there was no showing of any relationship of verbal ability to job performance, the Court needed to examine the job-relatedness requirement no further to rule the test invalid. Chief Justice Burger stressed the importance of job-relatedness by noting that "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as built-in 'headwinds' for minority groups and are unrelated to measuring job capability."[29]

In the next testing case to reach the Supreme Court, *Albermarle Paper Co.* v. *Moody,*[30] the validation methods used by the employer were ruled invalid because they were not in accordance with EEOC guidelines. No attempt was made by the employer to analyze the jobs in question in terms of the particular skills that were required.

In both *Griggs* and *Albermarle,* the Court noted that EEOC guidelines were entitled to great deference, although the latter decision in *Albermarle* cautioned that there was a limit to their persuasive authority in that they were not administrative regulations promulgated pursuant to formal procedures established by Congress.[31]

An analysis of the facts in both *Griggs* and *Albermarle* clearly indicates the correctness of those decisions on the merits. However, the great deference given by the Supreme Court to EEOC guidelines pertaining to the acceptable methods of demonstrating a particular test's validity caused the Court some difficulty the following term in the case of *Washington* v. *Davis.*[32]

In that case, the Supreme Court was asked to decide whether a particular test violated due process standards of the U.S. Constitution.[33] At issue was the validity of a qualifying test[34] designed to measure verbal ability which was administered to applicants for positions as police officers in the District of Columbia Metropolitan Police Department. While there was no claim or indication of any intentional discrimination in the use of the test,[35] the record did show that the test excluded a disproportionately high number of Negro applicants, and had not been validated according to EEOC guidelines to establish reliability in measuring overall job performance.[36]

In reversing the court of appeals, which had ruled the test invalid,[37] Mr. Justice White expressed the view of seven members of the Court that the test did not violate the due process clause of the fifth amendment or its equal protection component. The opinion stressed the need for a showing of racially discriminatory purpose or motive in establishing a claim of invidious discrimination.[3] Noting that disproportionate impact is a relevant factor in determining whether a particular test invidiously discriminates, the Court nevertheless indicated that an employer should be able to rebut a claim of discrimination by showing the test was administered fairly with no intent to discriminate.

The opinion acknowledged that various courts of appeals had ruled that disproportionate impact alone is sufficient to establish a violation of the equal protection clause and trigger the need for a strict scrutiny review of the alleged governmental justifications, and stated that those cases were wrong insofar as not requiring proof of discriminatory racial purpose.[39] In essence, the Court settled for application of the rational basis test in instances where a test neutral on its face has a disproportionate impact and is challenged on equal protection grounds.[40] The governmental interest rationally served by the test in *Washington* v. *Davis* was the desire to upgrade modestly the communicative abilities of employees for jobs requiring special ability to communicate orally and in writing.[41]

While seven justices ruled the test was valid under the Constitution, six members also concluded (in what is likely to be the most significant portion of the opinion for future employment testing litigation) that the test was valid under title VII standards.[42] The Court reasoned the intent of Congress reflected in title VII was to place a higher burden on employers than exists under the Constitution.[43] This statutorily imposed burden requires an employer desiring to use a test having a disproportionate impact to demonstrate not only a rational basis, but also the test's job-related validity.[44]

Nonetheless, in deciding the test at issue in *Washington* v. *Davis* was valid even under title VII standards, the Court acknowledged the existence of various methods which can be used to establish a test's job-relatedness (i.e., criterion, construct, and content), and indicated they all may be appropriately utilized.[45] Characterizing this approach

as the ". . . much more sensible construction of the job-relatedness requirement," [46] the Court seemed to approach the question of validity as a factual determination to be made on the particular facts of each case, rather than one requiring rigid application of EEOC guidelines as controlling precedent. Accordingly, the *Davis* majority concluded the test was valid because it measured skills shown to be reasonably related to successful training school performance. [47]

It should be noted that a strict application of EEOC guidelines to the facts in *Washington* v. *Davis* would in all likelihood have resulted in the test being declared invalid, in that it was not validated to predict overall on-the-job performance as required by those guidelines. It therefore seems important to examine the reasons for the apparent shift by the Court in that case on the question of job-relatedness, and the deference likely to be afforded the EEOC's interpretations of test validity in future litigation. Included in this inquiry is the underlying question of how strong a commitment the Burger Court is prepared to make for equal opportunity in employment, and how expedient its approach will be in implementing that goal. One should also consider how seriously the Supreme Court views the problem of overcrowded Federal court dockets and what effect, if any, that reality might have in future employment testing litigation.

Validity of Employment Standards—Conclusion

Most litigation relating to standards turns on the employer's ability to prove job-relatedness, since the plaintiff's burden of establishing a prima facie case is relatively easy (i.e., just produce data showing the standard has a disparate impact out of the pool of applicants). In view of the obvious difficulties a single applicant would encounter attempting to demonstrate the invalidity of a standard, or a particular employer's bad faith, it seems appropriate that employers bear the burden of establishing validity. [48] Moreover, if the ultimate goal is to eliminate discrimination in employment selection, it seems desirable to maintain continuing pressure on employers sufficient to insure that standards are not used as subtle vehicles of discrimination.

However, assuring the reasonableness of this burden of establishing validity is a complex task and constitutes a significant challenge. Failure to meet this challenge could result either in increased discrimination, or the diminished use of legitimate standards by employers who give in to the seemingly insurmountable burden of establishing the validity of any selection standard, and accordingly settle for less competent employees.

"...the implementation of the job-relatedness concept inherent in title VII should be considered in a framework that utilizes technical evidence of test validity in an appropriate balance with analytical judgment about fairness and rationality."

In *Dothard* v. *Rawlinson,* [49] the Supreme Court ruled that an employer who uses facially neutral height and weight standards that have a disparate impact on females must demonstrate the job-relatedness of those standards. Moreover, the Court ruled that in establishing a prima facie case of disparate impact, a plaintiff may rely on general population demographic data that conceivably reflects those individuals who were discouraged from ever making application in the first place by the improper standards. [50]

However, Justice Rehnquist in a concurring opinion noted that the decision in *Dothard* should not preclude the use of height and weight standards in law enforcement-type jobs. [51] Rehnquist said that a defendant in a title VII case should be permitted to discredit a plaintiff's statistical showing of disparate impact by any reasonable means to the satisfaction of the district court. He noted that Alabama only offered strength as a job-related reason for the height and weight requirements, not the appearance of strength. In that regard Rehnquist said that even if not perfectly correlated, title VII would not preclude a State from saying that anyone under 5'2" or 120 pounds, no matter how strong in fact, does not have a sufficient appearance of strength to be a prison guard. [52]

Mr. Justice Stevens apparently adopted a similar commonsense approach to the job-relatedness standard in his concurring opinion in *Washington* v. *Davis.* [53] He determined the test valid not because of the employer's past good faith efforts to recruit blacks, but because the test: (1) Served the neutral and legitimate purpose of requiring all applicants to meet a uniform minimum standard of literacy for a job requiring a measure of such ability; (2) the passing grade was not set at an arbitrarily high level; and (3) the same test was used throughout the Federal system which presumptively established its neutrality in purpose and effect. [54]

The foregoing cases indicate that rigid application of EEOC guidelines as controlling precedent in the courts may contribute to the demise of otherwise legitimate and useful standards. Consequently, the Supreme Court seemed to suggest in *Davis* that the implementation of the job-relatedness concept inherent in title VII should be considered in a framework that utilizes technical evidence of test validity in an appropriate balance with analytical judgments about fairness and rationality. That approach would lead to the approval of standards that appraise potential candidates in terms of "employment-related characteristics" instead of the more narrowly defined "overall job performance standard."

Since the threshhold question of whether an employer has identified a sufficiently important work-related attribute is largely independent of technical questions of validity, courts could effectively resolve that issue through the direct testimony of managers, supervisors, or other qualified witnesses and experts. Furthermore, such an approach would enable Federal judges to render fair and accurate decisions based upon such testimony, rather than being inflexibly bound to highly technical testimony pertaining to the compliance or noncompliance with specific and rigid validation procedures. **FBI**

(Continued Next Month)

Footnotes

[1] 42 U.S.C. secs. 2000e–2000e–17 (Supp. I, 1972), amending 42 U.S.C. secs. 2000e–2000e–17 (1970).

[2] 411 U.S. 792 (1973).

[3] This qualification was modified somewhat by the decision in *McDonald* v. *Sante Fe Trail Transfer Co.,* 49 L. Ed. 2d 493 (1976) where a unanimous Supreme Court ruled that title VII prohibits discrimination against any race, including white employees.

[4] 57 L. Ed. 2d 957 (1978).

[5] 47 LW 3330 (11/13/78).

[6] 429 U.S. 125 (1976).

[7] 54 L. Ed. 2d 356 (1977).

[8] *Id.* at 364.

[9] *Id.* at 365; Both *Gilbert* and *Nashville Gas* were modified by P.L. 95–555 which amended section 701 to preclude the exclusion of pregnancy-related benefits.

[10] 55 L. Ed. 2d 657 (1978).

[11] *Id.* at 666.

[12] *Id.* at 669.

[13] *Id.* at 666.

[14] 433 U.S. 321 (1977).

[15] 42 U.S.C. sec. 2000e–2(e) (1970 ed. and supp. V).

[16] 433 U.S. at 334.

[17] In a dissenting opinion, Justice Marshall criticized the majority for focusing on this speculative threat to prison safety and asserted that the majority had failed to present convincing evidence that women guards as a group would be subject to unreasonable danger because of their sex. *Id.* It should be noted that in a prior case, Justice Marshall argued in dissent that a bona fide occupational qualification should not only apply to job situations that require specific physical characteristics necessarily possessed by only one sex, such as where authenticity or genuineness is called for as in actresses or fashion models. *Phillips* v. *Martin Marietta Corp.,* 400 U.S. at 616 (1971) (Marshall dissenting).

[18] See, *Hodgson* v. *Greyhound Lines Inc.,* 499 F.2d 859 (7th Cir. 1974), cert. denied, 419 U.S. 1122 (1975); *Spurlock* v. *United States Airlines, Inc.,* 475 F.2d 216 (10th Cir. 1973). *Weeks* v. *Southern Bell Telephone and Telegraph Co.,* 408 F.2d 228 (1969).

[19] See, 1964 U.S. Code Cong. and Adm. News, p. 2355.

[20] *Id.*

[21] 29 CFR sec. 1607 (1975).

[22] Under the act, it is stated that it shall not be an unlawful employment practice to "act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin." 42 U.S.C. sec. 2000e–2(h) (1970).

[23] The term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. 29 CFR sec. 1607.2 (1975).

[24] *Id.* at sec. 1607.3.

[25] *Id.* at sec. 1607.5; criterion-related validation is an inquiry, undertaken after a test has been formulated, as to whether it is possible to infer from a test score an individual's most probable standing on some other variable called a criterion. It is an attempt to ascertain the extent to which test performance correlates with performance in some external endeavor. The process of criterion-related validation consists of gathering data on both test performance and criterion performance (such as an on-the-job performance rating), and by a process of statistical analysis, ascertaining whether the correlation between the two may be regarded as significant. Two generally recognized subcategories of criterion-related validation are predictive and concurrent validation. "Predictive validation" generally involves a comparison of the performance of the subjects of the study, first on the test and later on the criterion. "Concurrent validity" involves the correlation of the performance of the subjects of the study on the test, and more or less simultaneously, on the criterion. American Psychological Association Standards for Educational and Psychological Tests (1974). These standards are a revision of the Standards for Educational and Psychological Tests and Manuals (1966), referred in the EEOC guidelines at 29 CFR sec. 1607.5(a). See also, L. Cronbach, Essentials of Psychological Testing 122–127 (3d ed. 1971); construct validity focuses on a broader, more enduring, and more abstract kind of behavioral description than either content or criterion-related validity. It is an attempt to ascertain the extent to which a test may be said to measure a theoretical construct or trait. Thus, unlike content validity, which attempts to construct a test as a representative sample of some defined concrete area, of criterion-related validity which is the examination of correlations between test scores and specific external behaviors, construct validity is more concerned with ultimate traits, such as intelligence, mechanical comprehension, verbal fluency, neuroticism, and anxiety reflected in scores on particular tests. See, Cronbach at 122–25.

[26] 401 U.S. 424 (1971).

[27] *Id.* at 431.

[28] *Id.*

[29] *Id.* at 432.

[30] 422 U.S. 405 (1975).

[31] *Id.* at 431.

[32] 426 U.S. 229 (1976).

[33] Title VII was not available to the plaintiffs in that their complaint was instituted prior to the 1972 amendment expanding title VII protection to governmental agencies.

[34] The test (referred to as "Test 21") was developed by the Civil Service Commission, not the police department, and was designed to test verbal ability, vocabulary, reading, and comprehension. A minimum score of 40 out of 80 was set. *Davis* v. *Washington,* 348 F. Supp. 15, 16 (D.C., 1972).

[35] Evidence tendered to the district court indicated that since August 1969, 44 percent of new police force recruits had been black, which approximated the proportion of blacks on the total force and was roughly equivalent to 20- to 29-year-old blacks in the 50-mile radius in which the recruiting efforts of the police department had been concentrated. It was also undisputed that the department had systematically and affirmatively sought to enroll black officers many of whom passed the test but failed to report for duty. *Id.,* at 17.

[36] *Id.*

[37] The court of appeals ruled that the burden of proving job-relatedness rested with the employer and that under title VII and EEOC standards, lack of discriminatory intent is irrelevant and a showing that the test was predictive of performance in recruit school is insufficient. *Davis* v. *Washington,* 512 F.2d 956, 960 (1975).

[38] 426 U.S. at 239.

[39] *Id.* at 244.

[40] *Id.* at 245, 246.

[41] *Id.*

[42] Justice Stewart did not join part III of the majority opinion pertaining to the validity of the test under title VII standards. *Id.* at 248.

[43] The Court stated that the process of validating tests under title VII involves a more probing judicial review of, and less deference to, the seemingly reasonable acts of administrators than is appropriate under the Constitution. *Id.* at 247.

[44] *Id.*

[45] *Id.* n. 13.

[46] *Id.* at 251.

[47] *Id.* at 252.

[48] Mr. Justice Stevens points out in his concurring opinion in *Washington* v. *Davis* that it would be unrealistic to require the victim of alleged discrimination to uncover the actual subjective intent of the decisionmaker. In that regard, he suggests that disproportionate impact may be a highly significant factor in demonstrating discriminatory purpose and that ". . . the line between discriminatory purpose and discriminatory impact is not nearly as bright, and perhaps not quite as critical" as the majority opinion indicated. 426 U.S. at 253, 254.

[49] 433 U.S. 321 (1977).

[50] *Id.* at 330.

[51] *Id.* at 337 (Rehnquist concurring).

[52] *Id.* at 340.

[53] 426 U.S. at 252 (Stevens concurring).

[54] *Id.* at 254, 255.

WANTED BY THE FBI

Photograph taken 1977.

Leo Joseph Koury

Leo Joseph Koury, also known as Mike Decker and Leo J. Koury.

Wanted For:

Racketeer-influenced and corrupt organizations—murder, extortion, attempted murder.

The Crime

Leo Joseph Koury, a known organized crime figure who operated several Virginia restaurants frequented by the gay community, is being sought in connection with the shooting murders of two individuals and attempted contract murders of three others. He is also being sought for conspiracy to kidnap an individual for a substantial ransom payment.

A Federal warrant was issued for his arrest on October 30, 1978, at Richmond, Va.

Description

Age	44, born July 14, 1934, Pittsburgh, Pa.
Height	5'11".
Weight	240 pounds.
Build	Heavy.
Hair	Black.
Eyes	Brown.
Complexion	Dark.
Race	White.
Nationality	American.
Occupations	Restaurant operator, baseball umpire.
Remarks	Reported to be a diabetic requiring insulin shots.
Social Security No. used	224-38-4566.
FBI No.	738 312 B.

Caution

Koury should be considered armed and dangerous.

Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

Classification Data:

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Fingerprint Classification:
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Left ring fingerprint.

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FBI LAW ENFORCEMENT BULLETIN

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Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City State Zip

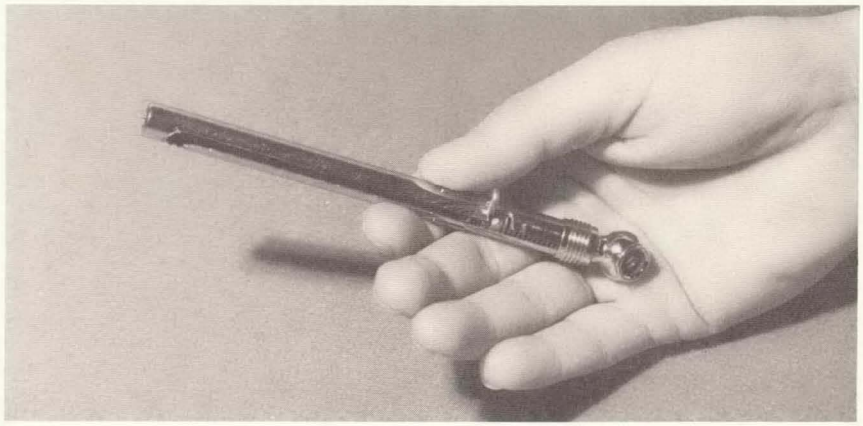
Health Hazard

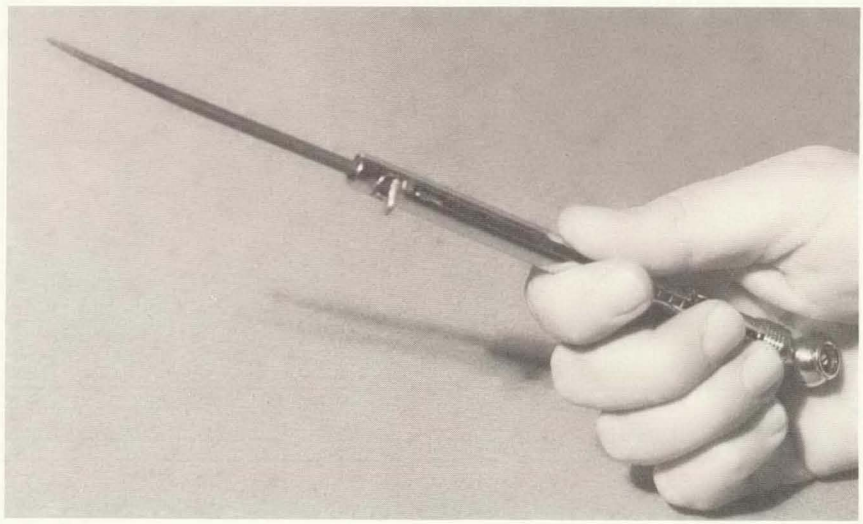
This homemade weapon recently came to the attention of the Cahokia, Ill., Police Department.

Although it appears to be an innocuous tire pressure gage, it is in fact the hollow, metal shell of a tire pressure gage infixed with a spring-loaded ice pick shaft.

The pointed shaft, when retracted, is concealed and under spring-tension. But, when a simple thumb-actuated release mechanism disengages it, the ice pick shaft is impelled forward instantaneously and locked in its fully extended position.

Law enforcement personnel should be cognizant of this easily concealable and potentially dangerous weapon.





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Interesting Pattern

This interesting and unusual pattern presents no problem as to classification. It is classified as a double loop whorl with an inner tracing. The location of the two separate loop formations is most unusual.