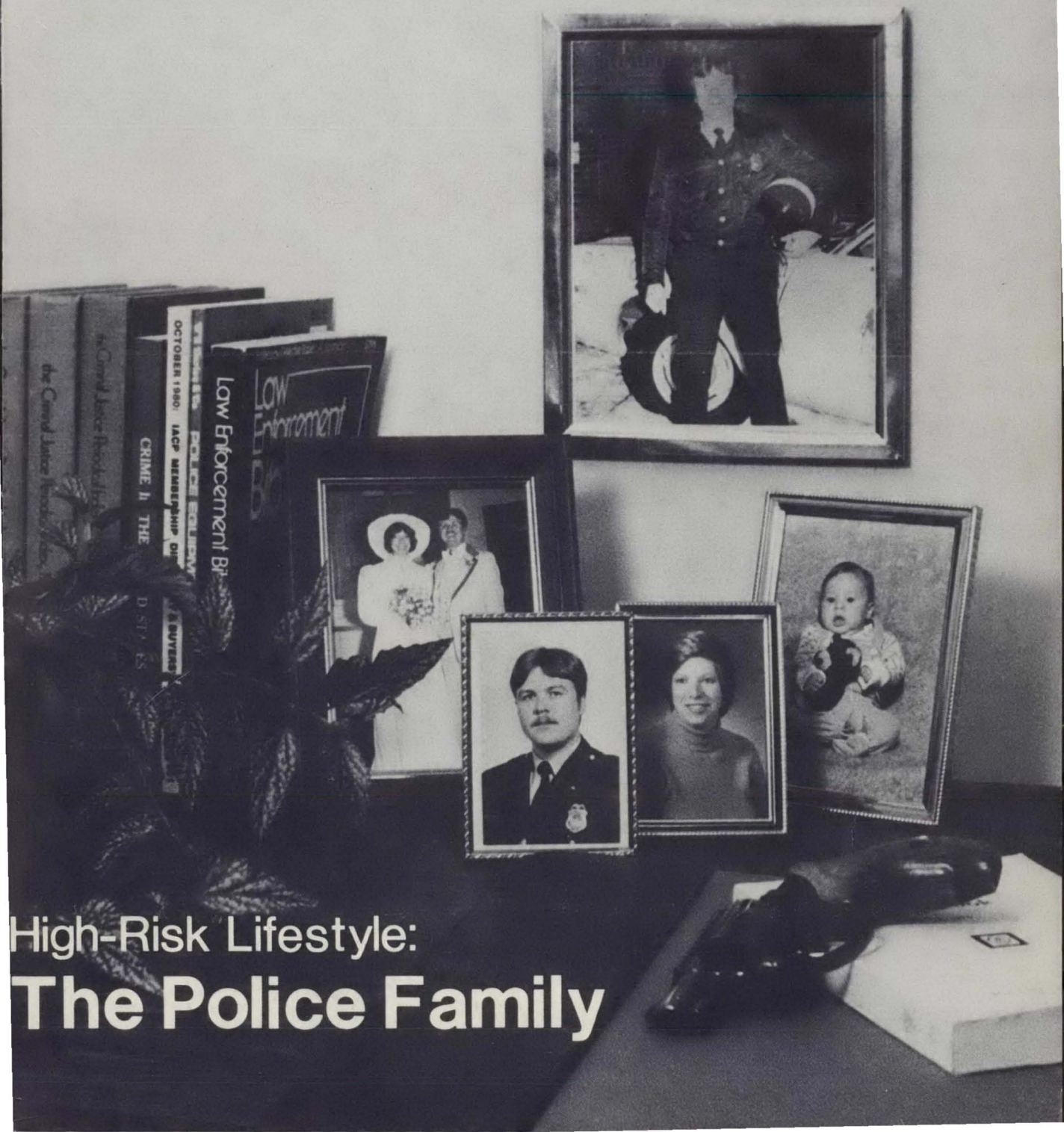
FBI LAW ENFORCEMENT BULLETIN

AUGUST 1981



High-Risk Lifestyle: The Police Family

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AUGUST 1981, VOLUME 50, NUMBER 8

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Trying to cope with a difficult lifestyle poses many problems for the law enforcement officer. See story page 7.

Federal Bureau of Investigation
United States Department of Justice
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William H. Webster, Director

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Director's Message

Throughout recorded history, there have been examples of how intelligence work has influenced not only warfare but economics. Foreign intelligence efforts within the United States center upon technological, political, and scientific intelligence.

Hostile intelligence gatherers have a strong interest in technological secrets, especially computers, microelectronics, fiber optics, and lasers. Much of this information, in an open society like ours, is available through public libraries, trade associations, and reports and studies of institutions, as it should be.

But technology transfer also involves *theft* of proprietary information developed at considerable cost, *illegal transhipment* of our technology, to Soviet-bloc countries *penetration* of computer systems, and *compromise* of employees.

We know that foreign intelligence operatives have been specifically tasked to steal this technology. A former intelligence officer of a Communist country has reported to us that his whole operation spent a year devising an approach to get coding keys used for access to a particular computer brain.

A Communist-bloc defector testified: ". . . the United States is the object of the greatest possible . . . scientific (and) technical intelligence (effort), to which the communist regimes . . . devote extraordinary attention."

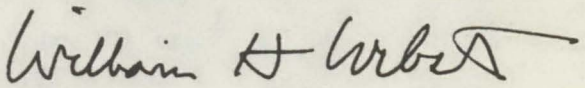
Not too long ago, representatives of an Eastern European intelligence service offered an American automotive engineer at a large U.S. firm approximately $200,000 to assist with the theft of a patented glass production process which had cost the company millions of dollars to put into production. This plot was detected, and the American arrested and convicted.

Recently, a foreign national was allegedly commissioned by his Soviet clients to acquire an American firm's highly sophisticated computer software technology. Unable to acquire the software legitimately, he attempted to pay a half million dollars to an undercover FBI Agent in order to get the information. He was arrested and later pled guilty to violating the Export Administration Act.

In addition to the 1900 Soviet-bloc officials in this country, some 65,000 Communist-bloc visitors come to the United States each year. Many join scientific and professional associations and attend trade conventions to learn what is there for all to read. There is nothing unlawful in this, nor would we ever want it to be illegal. The free exchange of such open information is a fundamental of our society. There is, however, a considerable threat posed when foreign agents either steal technical information or corrupt an employee to steal this data for money.

This problem must be viewed not only in terms of businesses' proprietary interests but also in terms of what it does to our technological superiority. This country does not have the kind of military superiority that we've enjoyed in the past, but we do have technological preeminence. The capabilities of American companies in manufacturing, processing, and science are part of our national security strength.

All of us in law enforcement must join together in the protection of our strengths in this vital area of our national defense. Technological resources are our essential equalizers in a world where the armed forces of hostile nations outnumber our own.



William H. Webster
Director
August 1, 1981

California's Automated Latent Print System

By KIRBY VICKERY
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Automated Latent Print System
Sacramento, Calif.

EDITOR'S NOTE

This system is the outgrowth of technology actually developed and funded by the FBI in its implementatio of automatic fingerprint reader system and algorithms to match computerize fingerprint characteristics for the FBI Automated Identification Division Sys tem (AIDS).

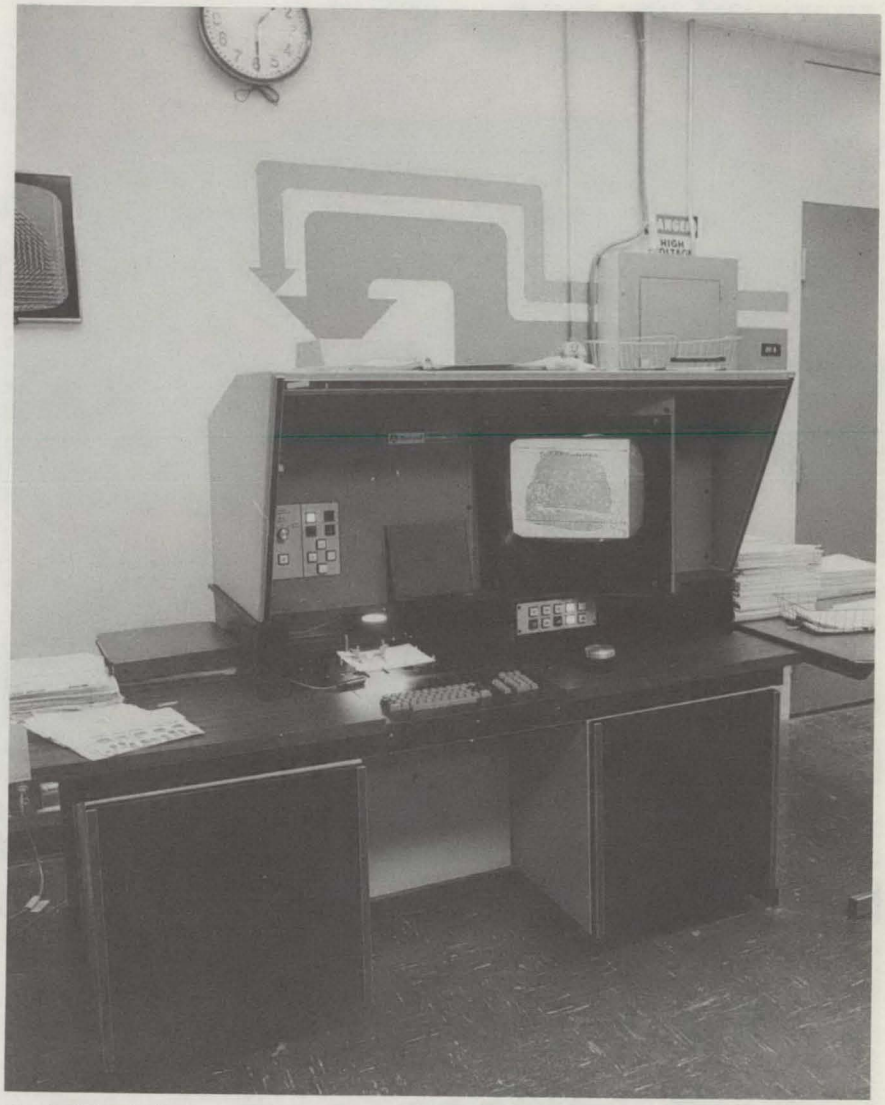
A latent print identification is one of the finest forms of physical evidence that can be presented in a court of law. Until now, practical limitations of fingerprint classification and searching have minimized the investigative application of latent fingerprints. By harnessing the speed and accuracy of the computer, the Automated Latent Print System (ALPS) now promises to be a valuable investigative tool for law enforcement personnel.

The impact of ALPS was illustrated during the initial months of operation when a brutal rape occurred in a small California city. Latent prints taken from the crime scene were matched against possible suspects, with no results. After several months of unsuccessful investigations, an ALPS search identified the subject as an individual who had been released from prison 2 weeks prior to the perpetration of the crime. The ALPS "hit" led to the arrest, prosecution, and return of this person to a State prison.

Background

In the past, latent prints have been considered practically worthless without known suspects to identify or eliminate. Since the files of the California Department of Justice (DOJ) contain approximately 6 million fingerprint cards, a manual search of a single latent print is nearly impossible. With the advent of ALPS, the department can now identify unknown suspects from latent fingerprints through a technique called a "cold search." At the local level, this can result in the solution of otherwise unsolvable crimes, reduction in investigative time, and often, recovery of stolen property.

In 1975, a "pilot" automated latent print operation was undertaken with prototype equipment. The success of this pilot program, indicated by nine cold-search identifications, proved the operational theory to be sound. Nine "core" counties were selected for the pilot program on the basis of their prior use of the manual latent program and ability and willingness to develop a list of data base candidates. A 10th core county was added in October 1980.



Read-edit terminal

In June 1979, the department purchased a data bank that has a maximum data base capability of 500,000 10-print sets. Between January and December 1980, 70 cold-search identifications were made. This success was particularly significant since the project, in terms of data base size and system application, was in its infancy. These identifications led to arrests and successful prosecutions in felony cases, including homicide, armed robbery, grand theft, and burglary. In some instances, several case clearances have resulted from a single ALPS hit.

The data base consisted of 65,000 subjects in January 1980, and grew to approximately 116,000 subjects by December 1980. Service is extended to law enforcement agencies in the 10 core counties for all felony cases and statewide for selected crimes which correlate to the data base. It is projected that the data base will ultimately include 500,000 subjects.

Latent encoding terminal

Objective

The objective of the Automated Latent Print System is to provide California law enforcement agencies with a latent print cold-search capability. The sophistication of electronic data processing hardware has only recently reached the point where an electronic mass scan of subject (data base) fingerprints can be made. Therefore, this is a new service provided to law enforcement agencies in California—a service that will impact crime clearance rate and offer a new investigative tool to California law enforcement.

Instituting this system at the State level ensures the ultimate extension of the service to all California law enforcement agencies and provides a statewide repository of offenders. Additionally, because offenders cross jurisdictional lines to perpetrate crimes, individual law enforcement agencies do not have the necessary resources to coordinate a program of this type. Establishing a statewide data base also enhances the probability of apprehending the "professional criminal."

Data Base Selection and Criteria

The nine core counties selected to participate submitted fingerprints of known offenders in seven major crime areas: Homicide, robbery, rape, assault, burglary, larceny, and motor vehicle theft. In addition, the California DOJ added from its own files, fingerprints of registered sex offenders, known terrorists, forgery rings, prison gang members, and outlaw motorcycle gangs.

Prison gang members were selected for inclusion because of the high potential for serious crimes in institutions and because of the increasing incidence of criminal activity by gang members outside the institutions. Finally, outlaw motorcycle gangs were included because of their frequent involvement in criminal activity. The prints of approximately 20,000 persons released from the California Youth Authority and the California Department of Corrections in 1978 and 1979 have also been entered.

The intent is to ultimately expand the data base to the maximum machine capacity of 500,000 subjects. This figure was derived through extrapolation of data previously gathered concerning the DOJ fingerprint identification file. While the file is comprised of almost 6 million individuals, approximately 50 percent are applicants who are not considered suitable for inclu-

sion in an investigatory file such as ALPS. Of the remaining 3 million subjects, over half are misdemeanants, most of whom are not eligible for entry into the system. Finally, the age of over half of the remaining 1.5 million files indicates that the subjects are no longer criminally active. Based upon these assumptions, it was determined that a file of 500,000 would provide a significantly representative segment of the active criminal population in the State of California. The success or failure of this system will be largely dependent upon the quality of the data base; therefore, we are concurrently developing criteria governing both eligibility and purging procedures.

During the development of criteria for inclusion of prints in the data base, the question arose concerning whether the prints of juveniles could be included in the California file. Legal research determined that prints of juvenile offenders may be entered into the data base if there is an arrest, a criminal identification (CII) number, and a disposition. An adult offender, in contrast, has to have only an arrest record and a CII number. One of the key elements in this decision was that ALPS makes subject identifications—it does not disseminate criminal history information. However, since juveniles commit a significant portion of all felony crimes—including over 50 percent of all burglaries—their inclusion is believed to be essential.

"The objective of the Automated Latent Print System is to provide California law enforcement agencies with a latent print cold-search capability."

As the system expands, service will be provided to additional counties. This will be accomplished through the "ripple" effect (adding counties immediately adjacent to core counties). Eventually, all counties, representing over 591 agencies, will be provided with ALPS service. System features include the capability for local agencies to request direct entry of specific subjects into the data base. This is particularly important since it allows each local jurisdiction the freedom to identify their active offenders for inclusion.

Program Operation

In initiating this program, it was essential to elicit local agency interest and cooperation. Contacts were made at administrative and working levels to explain the program and gain confidence and support. Training on system usage and application was extensive.

Agencies are now encouraged to submit latent prints from felony cases. To qualify for an ALPS search, a latent print must be of a quality surpassing that required for a manual identification. Procedurally, the agency is required to submit latent prints with at least 12 points of minutiae; however, in exceptional cases, such as homicides and other major cases, latent prints may be accepted with fewer than 12 points.

Prior to submitting the case, agencies are asked to eliminate prints of victims and any others not relevant to the case. This reduces the possibility of excessively large numbers of latent prints being submitted on a specific case, the majority of which may have little relevance. The agency then mails a photograph, not the original, of the latent prints to the DOJ. It is important that the photograph be taken at a one-to-one ratio. This is a critical requirement since any enlargement or reduction in the latent image distorts the relationship of the comparison points.

Use of photographs removes the DOJ from the chain of custody of evidence and negates the necessity for special handling required in processing and returning the evidence. It also allows the photograph to be kept by the DOJ for subsequent searches as significant data base additions occur.

Under current procedures, three priorities have been established for searching latents. First priority is given to cases where the submitting agency, believing the case to be of critical importance, hand delivers the prints. This is generally done for significant cases, such as homicide, or when the agency itself has established a high priority. The number two priority is assigned to crimes against persons; the number three priority is assigned to crimes against property.

When submitting the prints to the DOJ, the agency uses a transmittal form developed specifically for ALPS cases. This form provides information that is important to the analyst in processing the case. Examples of this include physical descriptors, crime information, urgency, and other pertinent factors. After a quick screening for acceptability and priority, minutiae from the fingerprints are coded and entered into the system by latent analysts. In a matter of minutes, the system compares relative positioning of the characteristics on the latent print and other search factors, such as descriptor data, to the data base fingerprints and produces a candidate list in rank order of probable matches.

The actual comparison process of the candidate list involves a very time-consuming comparison by a latent print analyst of the hard copy arrest prints of top candidates on the list with the latent prints. The fingerprints of candidates selected by the computer may be very similar, making this process extremely sensitive and difficult. Also time-consuming is the actual location and retrieval of candidate records. Micrographics retrieval of the data base cards is currently being investigated in order to reduce this problem.

Latent analysts are encouraged to use their professional expertise and experience in terms of using descriptors and the application of search techniques based on the latent prints submitted. The analysts are given some latitude in the number of candidates to be manually compared; however, in crimes against persons, the top 15 candidates are usually checked. The reliability of the search may vary depending upon the quality of a given fingerprint. The importance or seriousness of the offense would also have a bearing upon the length of the candidate list.

". . . the Automated Latent Print System is an important technological advance for the law enforcement community."

A "hit" (identification) results when the latent print and data base prints are successfully matched. A "hit" or "no hit" report is then sent to the submitting law enforcement agency.

An after-action report is sent to agencies approximately 3 months after an identification is made. The letter seeks information concerning the clearance and/or disposition of the case, property recovered, and any other information that will assist in future decisions relative to data base composition and the nature of ALPS service.

The final step in any investigative process, of course, is testimony. Again, local law enforcement agencies are encouraged to provide their own testimony when expertise is available. It is important to recognize that in the use of an Automated Latent Print System, the final identification is always manually made. When local capability is not available, the Department of Justice stands ready to assist local law enforcement agencies with testimony. Testimony relative to ALPS hits has been accepted in California in all cases which have gone to trial to date.

Conclusion

In the 1 year of operation, ALPS has contributed to the solution of over 70 felony cases which, otherwise, would not have been solved. The resulting support and enthusiasm from California law enforcement agencies have been very rewarding. Developing and implementing this program has been a long and arduous task and much remains to be done. The full impact and advantages of this technological innovation will not be tabulated until the much larger data base is developed and has been in operation for a longer period of time. Furthermore, improvements in technology and processes will expand the usefulness of the program. There is, however, little doubt that the Automated Latent Print System is an important technological advance for the law enforcement community. **FBI**

High-Risk Lifestyle: The Police Family

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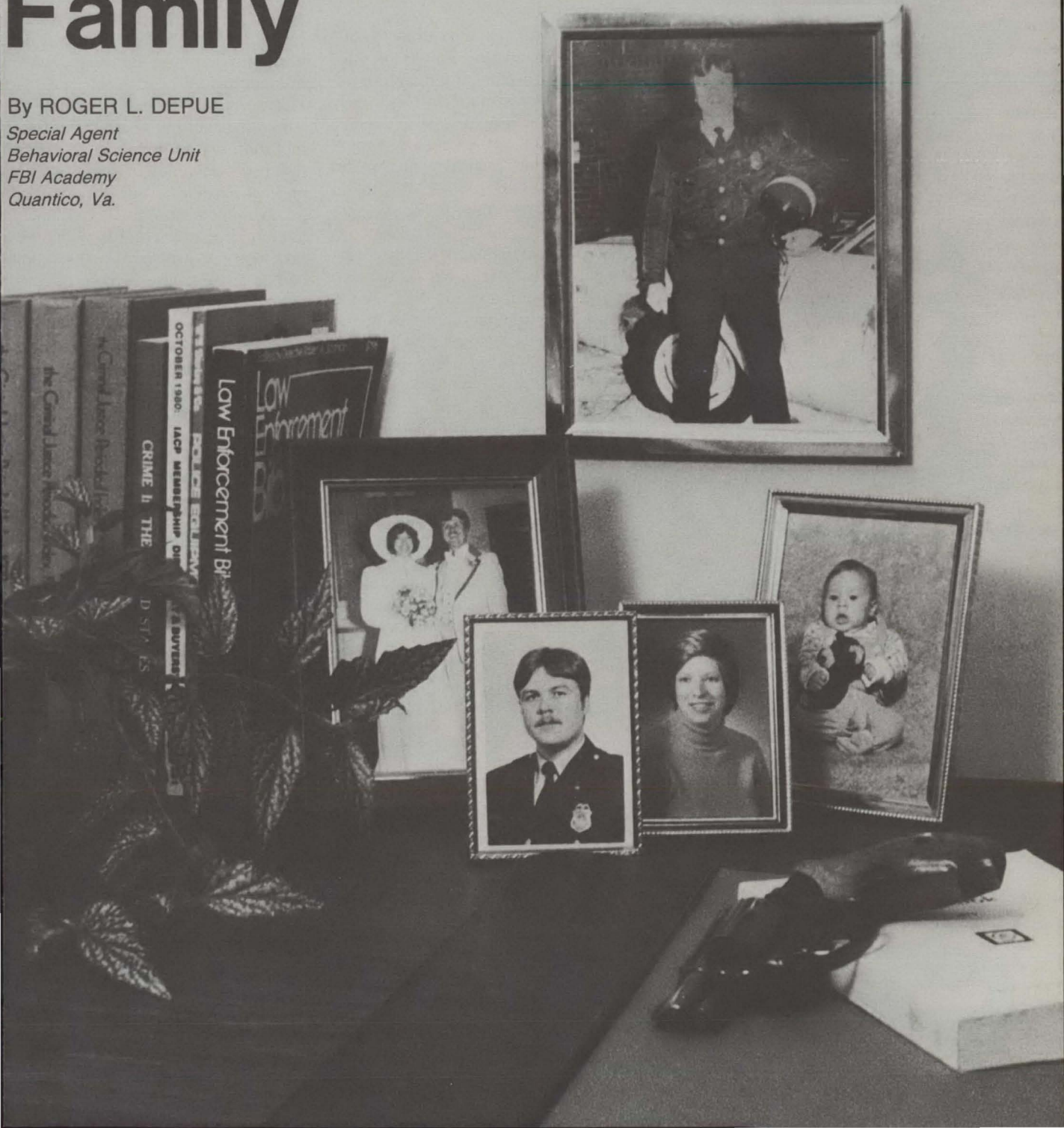


As I erased the chalkboard after the class, I noticed he was waiting to speak to me. I finished my chore and turned to face a well-built young man about 25 years of age. A fine looking law enforcement trainee, I thought.

"Yes, what can I do for you?" I said.

He smiled briefly and then his face turned serious as he said, "How am I going to tell my wife that this job comes first?"

"Pardon me?" I said.

"How am I going to tell my wife that this job must take precedence over everything else?" he continued. "I mean, how did you tell your wife?"

I paused, my eyes searching his face and finding only sincerity in it. I answered, "I've never had to tell her that."

Law enforcement work is a special kind of job. Sometimes it can be regarded as too special and it interferes with other important areas of human development and life satisfaction. One area often negatively affected by the police occupational lifestyle is the formation of a family life that is satisfying to all its members.

We will examine human development from three perspectives—individual, occupational, and familial—briefly review the literature regarding personal human development, introduce the concept of developmental tasks, and then turn to occupational development. The police occupation will be examined as it affects the personality of the police officer moving through the law enforcement career from police trainee to veteran officer. Finally, literature regarding the developmental process of family living will be examined.

The three areas of human development mentioned previously are important to life satisfaction but they can, and often do, conflict with one another. Overemphasis in one area can cause faulty development to occur in other areas. A balance must be established and maintained between each of the three areas in order to achieve a rewarding and satisfying life.

There has been a great deal written about the high incidence of marital discord and divorce among law enforcement officers. Marriage to a police officer involves coping with a difficult lifestyle. Police occupational development often seems to have an adverse impact on familial development. This unfortunate situation may be averted through knowledge of human development and the cultivation of interpersonal awareness and communication skills which tend to facilitate healthy development.

Background

A study of human nature reveals that man attempts to adapt to the environment by developing patterns of behavior that allow much of one's daily activities to become almost automatic. These patterns of behavior become the daily routine. To the extent that the environment changes, the old patterns of behavior are no longer appropriate for successful adaptation and new responses are experimented with. Eventually, new patterns of behavior which are more appropriate to living in the changed environment are developed and the daily routine changes.

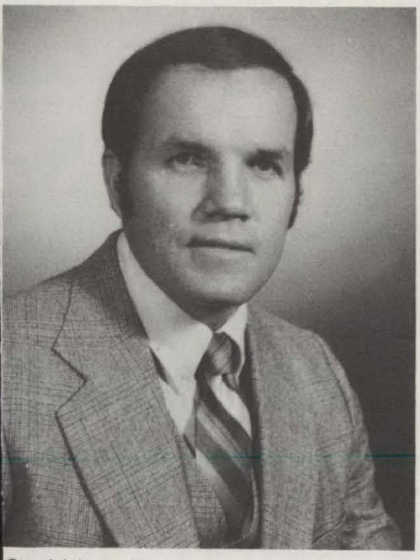
This process of readaptation is stressful in that a change upsets the balance an individual has worked out between himself and the environment. As the amount of change increases, the individual must expend greater amounts of energy in order to find behavior that will reestablish the balance. Difficulty in adapting to significant change(s) over a period of centuries threatens the very survival of a species. On an individual level, failure to adapt to life change produces stress powerful enough to result in the deterioration of health, both mentally and physically.[1]

Human Development

Developmental psychology is the study of the ongoing formation of the human personality. The developmental process is usually described in terms of predictable stages of normal (based on norms) development. That is, development based on observations made by scientists studying large numbers of persons over long periods of time. Child development literature offers examples of established norms of growth, maturation, and development for infants. The normal infant is expected to creep, crawl, stand, and walk at predetermined periods of time (age levels) in the infancy growth cycle.[2] Any significant departure from the established norms is cause for concern to knowledgeable parents, teachers, and physicians. The developmental process should be monitored in order to identify potential problems in time to take corrective action so that continued development will not be adversely affected.

In the general field of psychology, Sigmund Freud was among the first to account for human behavior as being largely the result of early learning experiences during certain developmental stages that occur in accordance with a predetermined natural plan. In his psychoanalytic theory, he discussed the stages of psychosexual development as oral, anal, phallic, latency, and genital. Each stage of development was said to make new demands on the individual, to create new tasks which had to be dealt with successfully, and to arouse conflicts that had to be resolved before further growth and progress could take place.[3]

Today, the study of human development includes the entire lifespan of man. Among others, Erickson,[4] Havighurst,[5] Levinson,[6] and Sheehy[7] have identified stages, "seasons," or "passages" persons pass through on the lifelong journey from infancy to old age. Each development stage includes many predictable challenges, crises, and problems that must be met and resolved before further progress in life adaptation can continue.



Special Agent Depue

Yale social psychologist Daniel Levinson says in his book, *The Seasons of a Man's Life,* that a man will experience at least three major life transition periods. He identifies them as early adult transition (ages 17–22 years), the midlife transition (ages 40–45 years), and the late adult transition (ages 60–65). Each transition period is a potential crisis and should be planned for, fully understood, and dealt with properly. A man must make appropriate adaptation responses to life changes or risk serious maladaptive consequences.[8]

Havighurst discusses the concept of developmental tasks.[9] Developmental tasks are adjustment problems tied to periods of life which must be successfully resolved before growth to more sophisticated levels of functioning can occur. Failure to resolve properly developmental tasks can, therefore, inhibit further development or cause "blind spots" to exist in certain areas of functioning. An example might be the need to learn appropriate intimate behavior between sexes during adolescence. Adolescents learning to embrace go through a trial and error period. There is desire, fear, uncertainty, awkwardness, groping, and misdirected aim. This unsophisticated condition is largely unnoticed by the adolescent partner, who is similarly confused. While the condition is appropriate for adolescents, it would certainly be inappropriate for a 30-year-old adult. An adult who does not have some level of sophistication involving skills for intimate contact with the opposite sex is socially impaired and may not find a partner with the patience and tolerance to afford the opportunity for this belated development. In other words, failure to develop certain life skills while in a particular growth phase can result in inappropriate functioning which adversely affects further development.

Occupational Development

Occupations also appear to have a pattern of development. For instance, there is the applicant phase, the recruit and training phase, the probationary period, the journeyman phase, the specialization, administrative advancement, or veteran phase, and the periods of preretirement, retirement, and postretirement. These stages of occupational development also have their attendant developmental tasks and conflicts. They, too, must be recognized and dealt with for successful adjustment to life circumstances.

In law enforcement, the applicant is often a person who views the job in an idealistic and "romantic" way. The fictionalized "super cop" image fostered by the media has frequently contributed to the occupational interest of this jobseeker. Screening and selection procedures also serve to give the recruit officer a feeling of joining a specially chosen and somewhat elite group of persons.

The training period can be likened to the beginning of an aculturation process. The trainee begins to attach to and identify with the police culture.

Dr. Martin Reiser, Los Angeles Police Department psychologist, explains it as follows:

> "The recruit's concept of himself undergoes some modification as those attributes in his value system change along with his new identification as a police officer. He may see himself as opposed to and disliking people and behavior that were previously conflict free." [10]

The homogeneity of the peer group, the mutual expectations of the job, and the uniformity of standards contribute to the formation of an occupational personality. The young police officer actually looks, acts, and feels different from other members of society.

During the probationary period, the officer works hard to prove competence and gain acceptance within the group. He experiences "shock" at trying to provide services, maintain order, and enforce laws among persons who often hate and despise what police work represents. The officer becomes more and more defensive. It is a difficult time, requiring much new learning.

In the next stage the officer develops a tough exterior to help cope with the threats of abuse and the personal danger of the working environment. Reiser refers to this toughening process as the "John Wayne Syndrome." [11] It impacts both male and female officers and involves a cool authoritative demeanor and over-control of emotion. This behavioral syndrome lasts for several years. The officer spends long hours on the job, uses police jargon, associates with police types, and is suspicious and critical of nonpolice people. Niederhoffer examined the changes which occur in police personality from idealism to cynicism over a period of years, noting that cynicism peaks at about the eighth year of service. [12]

The journeyman phase is next. The officer begins to settle down and mellow. The years of experience have provided poise and self-confidence so the job can be accomplished in a more relaxed and comfortable manner. [13] It is at this developmental stage that serious career decisions are made. These decisions lead to a continuation in the present assignment as a veteran patrol officer, the development of a specialization (detective, training, police community relations work, etc), or to administrative advancement.

"Marriage to a police officer involves coping with a difficult lifestyle."

The retirement periods include dealing with preretirement, retirement, and postretirement developmental tasks. It is a time of "mustering out" of the brotherhood and rejoining the general society. It is often an unsettling time, involving a great change in lifestyle.

Familial Development

As in the studies of personal human development and occupational development, social scientists studying families have also identified a developmental process in the life cycle of the family. To start a family is to start a new organization. The partners bring with them hopes, fears, desires, expectations, habits, and values from the families of origin. It is very important for the partners to take the necessary steps early in the relationship to solve problems arising from differing personal histories and move toward a mutually satisfying lifestyle.

Noted family therapist Salvador Minuchin discusses the family as follows:

> "The family is a social unit that faces a series of developmental tasks. These differ along the parameters of cultural differences, but they have universal roots." [14]

Minuchin says that every family must solve the problems of relating to one another, raising children, dealing with the in-laws, and coping with the outside world. To make life together possible, a new couple must participate in a series of negotiations to arrive at necessary compromises. In an effort to arrive at mutual accommodation, negotiations are necessary to establish routines for such activities as going to bed, getting up, eating meals, being naked, achieving sexual satisfaction, "going out," and sharing such things as the bathroom, television, and the Sunday morning comics.[15]

Minuchin points out that each marriage partner must separate from the family of origin and establish a new satisfying relationship with the other partner. They must develop "patterned transactions"—ways in which one partner monitors and triggers behavior in the other. He refers to these transactional patterns as a "web of complementary demands." [16]

It is important to note that if these developmental tasks are not successfully resolved, progress toward mutual accommodation can be impaired and development of a deeper relationship inhibited. Just as with the adolescent who does not have successful experiences in building relationships with members of the opposite sex and is later "ill-at-ease" in their presence, so too is the marriage partner who has not worked out a system for resolving disagreements over lifestyle and is later uncomfortable and unable to move toward satisfaction of personal desires.

In his book, *Families and Family Therapy,* Minuchin gives an example of a young couple who delayed addressing some developmental tasks of early marriage because the male partner was a full-time college student and did not have the time to learn to be a husband and father. When he graduated from college, he was literally a misfit in his family roles. He had to attempt to learn what he had missed. He had to develop the patterned transactions leading to his own satisfaction, the satisfaction of his spouse, and each of his children. He had to struggle to learn that communicative behavior which he could have "naturally" learned at the appropriate time and phase of life.[17]

The idea of balance also enters into theories of family development. Dr. Murry Bowen, a pioneer in family therapy, has characterized the family as a system. Bowen states that "any relationship with balancing forces and counterforces in constant operation is a system." [18]

Family systems theory is a special kind of applied psychology that deals with intimate relationships. It examines the roles of the individual family members, the context, rules, alliances, and frequently traces family history and development back through several generations.

When it is operating in balance, the family represents one of man's most efficient methods for achieving satisfaction of human needs and desires. When the balance is upset, life can become miserable.

Entering police work imposes a significant change of environment for the officer and his family. The police officer is removed from the mainstream of American life. The uniform sets the officer apart from other members of society, and the nature of the work is unlike that of any other occupation. The officer is often awake while others are asleep, at work while others are at play, and at home while others are traveling on a holiday.

The occupational lifestyle all too frequently upsets the balance of family life. The new spouse of the officer has expectations of what married life will be like. These expectations are usually based on the lifestyle of an "ordinary" American family. The farther reality deviates from the expected, the greater the strain on the adjustment mechanisms.

"Each development stage includes many predictable challenges, crises, and problems that must be met and resolved before further progress in life adaptation can continue."

Dr. Bowen puts it this way:

> "When anxiety increases and remains chronic for a certain period, the organism develops tension, either within itself or in the relationship system, and the tension results in symptoms or dysfunction or sickness." [19]

The Family vs. The Job

When the developmental process of the law enforcement occupation is coupled with that of the family, severe strain can result, especially during the early stages of each. In other words, trouble can be expected in the relationship of the recently married "rookie" police officer. At the same time the job is making the greatest demands and exerting the most influence on the new officer, the marriage is requiring the most attention and positive efforts for relationship building.

Like the college student in Minuchin's example who was dominated by his student role, a police officer can be dominated by the occupational role. Dr. Minuchin points out that following marriage, the new couple must resolve a variety of developmental tasks leading to "mutual accommodation." For instance, he says, "Decisions must be reached as to how the demands of the outside world will be allowed to intrude on the life of the new family." [20]

Police wife Pat James described how the job of her husband became part of her married life:

> "One of the first revelations was that I was involved from the very start in a triangle, a three-sided romance. My rival was, is, and apparently always will be my husband's work." [21]

This statement characterizes the feelings of many wives of police officers. Elaine Niederhoffer, coauthor of *The Police Family: From Station House to Ranch House,* reiterates the feeling by entitling the first chapter of her book, "The Police Occupation: A Jealous Mistress." [22]

When one examines this view of the police officer's job from the viewpoint of family systems theory, it takes on rather weighty importance. When an occupation is viewed as being such an integral part of the family, there exists the very real possibility that the occupation will become part of a triangle.

Dr. Bowen defines a triangle as "a three-person emotional configuration. . . ." [23] It is the smallest stable relationship system.

Dr. Bowen explains it:

> "In periods of calm, the triangle is made up of a comfortably close twosome and a less comfortable outsider. The twosome works to preserve the togetherness, lest one become uncomfortable and form a better togetherness elsewhere. The outsider seeks to form a togetherness with one of the twosome. . . ." [24]

The core problem in the relationship system is called fusion. Fusion indicates a blurring of self-boundaries, the merging of self and other, the loss of individual identity. Normally, if the pull for togetherness becomes too strong, and it threatens to usurp individuality, there is a counteractive pull away.

Family therapists Elizabeth A. Carter and Monica McGoldrick Orfanidis explain triangling as follows:

> "Few people can relate personally for very long before running into some issue in their relationship that makes one or both anxious, at which

point it is automatic to triangle in a third person or thing as a way of diverting the anxiety in the relationship of the twosome. It is dysfunctional in the sense that it offers stabilization through diversion, rather than through resolution of the issue in the twosome's relationship. Thus a couple under stress may focus on a child whose misbehavior gives them something to come together on in mutual concern. Repeated over time, triangling will become a chronic dysfunctional pattern preventing resolution of differences in the marriage and making one or more of the three vulnerable to physical or emotional symptoms, because stabilization with dysfunction, although problematic, is experienced as preferable to change." [25]

Fogarty describes triangles as "the building blocks of the immature family." It is the effort to project the problem in a relationship outside and onto another person or thing.[26]

Carter and Orfanidis talk about detriangling as "the process whereby one of these three frees himself from the enmeshment of the three and develops separate person-to-person relationships with each of the other two." [27]

Applied to the police occupation, this means that a job viewed with such importance may be treated like a person by the officer and like a scapegoat by the spouse. Friction with the spouse may move the officer closer to the job as a source of satisfaction and pleasure. The same friction may cause the spouse to project the blame onto the occupation instead of confronting the officer partner.

Neither action does anything to address the real problem of the faulty family relationship. The unresolved conflicts build toward symptom formation and dysfunction within the system. Detriangling is necessary. The fusion must be broken up and person-to-person relations reestablished.

". . . if . . . developmental tasks are not successfully resolved, progress toward mutual accommodation can be impaired and development of a deeper relationship inhibited."

All families experience conflict. The families affording the greatest satisfaction to their members have found ways to resolve successfully the serious conflicts. The process of resolving conflict involves dealing with developmental tasks which occur at various stages in the relationship so that progress toward greater satisfaction (Minuchin's mutual accommodation) can be accomplished. Until developmental tasks are dealt with, the relationship remains at a premature level of development. It is like the child who never learns to talk. Language is essential to most areas of further social development and without this communicative skill the person cannot proceed to higher levels of human functioning.

In addition, the police occupation imposes a nontraditional lifestyle on family members. To cope with the stress of a different lifestyle, it is necessary that a communication process be established that will allow negotiation of the many inevitable conflicts and lead toward mutual accommodation.

Family therapists Bandler, Grinder, and Satir have divided disturbed family relationships into two conceptual areas—content and process. Content involves the actual problems that exist in the family; process is how the family attempts to deal with the problems. Process which is independent of content "focuses on the patterns of coping within the family system, irrespective of the specific problems found within the family." [28]

Bandler, Grinder, and Satir's "model of family therapy is designed to assist the family in coping effectively at the process level." [29] Assisting family members in having new choices at the process level in any area of content will generalize naturally to other areas of their experience.

In the dysfunctional (police) family, it is absolutely necessary to improve the process of communication by which conflict is resolved and mutual satisfaction is accomplished. Miller, Nunnally, and Wackman discuss a style of communication to accomplish these ends. This style involves learning skills for expressing one's intention to deal with an issue openly and directly by setting forth a procedure for discussion, by being in contact with accepting and disclosing one's self-awareness, by trying to understand and value the partner's self-awareness, and by taking responsible action to improve communication.[30]

That conclusion was also reached by Nancy Welch Maynard and Peter W. Maynard of the University of Rhode Island. The Maynards have conducted research on police family stress at the Minnesota Family Study Center and were responsible for instituting a communication training program in the police academy. "Mindful of the fact that divorce among police couples is soaring, officials of the Rhode Island Municipal Police Academy initiated offering the Minnesota couple communication program to police couples as a preventive measure." [31]

Since the police family lifestyle is atypical, it is probable that there will be more adjustment necessary for family members and more areas of conflict to resolve. If, during the early years in the

relationship, a process for dealing with conflict is not maturely developed, anxiety and discomfort mount. The parties of the relationship must work out developmental tasks which were not addressed at an earlier, more appropriate time. They must work out a negotiation process. This is very difficult to do, but the alternative is likely to be a life of frustration and/or separation.

Balanced Development

A balance must be maintained between the three areas of human development. Each area can interfere with the other. For instance (as we saw in the Minuchin example) personal development, such as pursuing a college degree, can sometimes detract from occupational and/or familial growth. We have all observed instances where a student is so concerned with studies that occupational performance and familial relationships deteriorate. For such a person, everything must revolve around school attendance. Many police officers are also attending college classes, and it is not uncommon to hear their supervisors question their dedication to the job and spouses question their dedication to the family.

Extreme dedication to the family can also serve to upset the development balance. An example of family domination might be an individual who must call the spouse from work many times a day. There is usually a ritual of endearments recited to assure each other that the family relationship is foremost. The individual who cannot even temporarily separate from the family influence is often inhibited from personal growth and/or occupational development. Business travel or working overtime is out of the question. During any temporary separation, the telephone line becomes the umbilical cord. In this relationship, occasionally stopping for coffee or a social drink after work is unthought of by one spouse and is positive proof to the other that such a person cannot love his or her family.

From the occupational standpoint, we have all seen the person who is totally absorbed in the job. Personal growth is equated with occupational growth. Family seems to exist only to support this person in the pursuit of occupational goals. This overemphasis of the occupation leads to underemphasis on nonoccupational personal growth and family life. For example, such persons may realize too late in life that they have always wanted to learn to play a musical instrument but somehow never had the time to do it. Worse yet, they may realize that they barely know family members and can reflect on few meaningful family memories.

Conclusion

Healthy human development requires balance. None of the areas of development can be "sacrificed" for the sake of the others—growth must occur in each area.

Most police families run the risk of occupational domination, especially during the early years of the relationship. Family development and personal development unrelated to the job are often relegated to the "back burner" by the officer. Developmental tasks in these areas are not addressed and negotiations leading to a lifestyle providing satisfaction to each family member are not accomplished.

In response to the young officer who asked how he should explain to his wife that the job must take precedence over anything else, we must answer, "Yes, the job is an extremely important one, but balance is even more important." Human beings are multidimensional and must grow in a variety of ways to attain life satisfaction. A healthy family relationship is a great source of support during times of stress. The law enforcement occupation is a stressful job and a good police officer must take care to protect and cultivate this source of strength. The job does not take precedence over the family. The job takes its place in the total balanced developmental scheme. If we are to speak of precedence at all, it is balanced growth that takes precedence over lopsided development. **FBI**

Footnotes

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Death Scene Checklist

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Within the United States there are still considerable variations in the medicolegal structure used in death investigations. This ranges from the county coroner system to the statewide medical examiner system, with intervening admixtures of both.[1] With the continuous turnover of personnel assigned to homicide squads and criminal investigation divisions, there is an ever-present need for reinforcing the close cooperation which must exist between medical examiners, forensic pathologists, and law enforcement personnel. If a close working relationship does not prevail, neither group can fulfill adequately their obligation. Every death investigation requires employing all available medical and investigative talents and facilities. However, since there are well-established medical examiners' offices or their equivalents in most large cities, many of the problems inherent in smaller jurisdictions or in rural areas are not present.

It is a recommended practice that trained medical personnel be present at all death scene investigations to assist officers in the initial investigation and help formulate preliminary concepts as to possible cause and manner of death. In jurisdictions where a medical examiner system is in operation, responsible medical personnel are available to respond to the officer's request for assistance. In addition, most medical examiners' offices have investigators as staff members who will also be called to the death scene and who will act as liaison between the medical examiner's office and the local law enforcement office. In this way, they can collect the necessary information for the forensic pathologist performing the post mortem examination.

In a hospital environment, the staff pathologist who performs post mortem examinations will not initiate such a procedure before reviewing the deceased's hospital record and possibly discussing the case with the attending physician. This review is not intended to develop any preconceived ideas as to probable cause of death but to assist the pathologist in examining, collecting, and preserving the essential tissues required to develop a diagnosis as to cause of death. If this procedure is followed in the relatively controlled environment of a hospital, it is even more important for the pathologist performing a medicolegal autopsy to be aware of all the circumstances surrounding the death, as well as the past medical and surgical history of the deceased. Additional information on past occupations, sexual habits, drug usage and abuse, and alcohol habits may also be required.

A member of the investigative team should be present during all or part of the post mortem examination of every homicide, suspicious death, suicide, and most accidents. Both the pathologist and investigating officer should agree to a suitable time to conduct the post mortem examination so no one is inconvenienced. The police officer can furnish the pathologist with a complete description of the death scene, along with available photographs. Also, investigators of the medical examiner's office who were at the scene should also be present to contribute to the discussion and supply their own photographs. At this time, the police officer can indicate those materials he wants collected as possible evidence and any specialized examinations which he believes are essential to the investigation. During the autopsy, the officer can gain complete firsthand information regarding the cause and suspected manner of death, as well as having direct transfer of all available evidence material. While the latter is not important in the larger medical examiner's office, it is crucial to maintain the chain of custody when autopsies are performed in hospitals and funeral homes. The police officer also contributes to the interpretation of the autopsy findings by describing the anatomic position of the deceased at the scene and any evidence of movement by the deceased following the initial injury. The police officer will also be able to describe and furnish for examination any potential weapons. Upon completion of the autopsy, in most instances, the police officer will know the probable cause of death, the device used to inflict injury, and any additional information which would indicate the need to search the death scene further. He may also be furnished with information indicating the possible habits or personality of the potential assailant, which is most characteristic in the overkill type of injury seen in deaths of homosexual individuals. Therefore, it is evident that the performance of the autopsy and the subsequent interpretation of the findings are greatly enhanced by the presence of the police officer.

". . . a Death Scene Checklist . . . not only would be of value to the pathologist but would also serve as a readily available source of essential information."

In cases where a medical examiner or his investigator were not at the scene or where a police officer cannot be present at the autopsy, it is still essential that certain information be furnished to the pathologist before the autopsy is performed. In order to accomplish this, it might be necessary for a Death Scene Checklist to be completed at the scene and forwarded to the pathologist with the deceased's body. This list not only would be of value to the pathologist but would also serve as a readily available source of essential information. Many jurisdictions already have such lists compiled, and in no way should the proposed checklist be construed as a definitive or all-comprehensive form. Whatever list is used, it should require a minimum amount of writing, and in many cases, questions should be answered simply by checking or circling the appropriate word or phrase.

The checklist is intended to serve only as a guide and can be modified by the jurisdictions adopting it to serve their individual needs. Such a list would have its primary impact in those jurisdictions where the pathologist performing a forensic autopsy has had little, if any, contact with the investigating officers, which results in a scarcity of information regarding the circumstances surrounding the death. It has been our experience in a number of cases that such information, if provided, would have greatly facilitated our post mortem examinations and relieved our unfounded apprehensions.

Case No. 1 The body of an adult white male with a gunshot wound to the head was sent in for post mortem examination. The information from the local medical examiner led us to believe this was a suicide case. However, further examination revealed a contact-type gunshot wound near the back and top of the head. Even though it would be physically possible for an individual to shoot himself in this area, it was considered to be a rather unusual anatomic location. Because of this finding, we became suspicious that this could be a homicide and believed local law enforcement officers should make a complete scene investigation. We soon learned from the officers that the individual was found in a locked room in a house belonging to a family member. A gun was also found with the deceased, who had recently evidenced depression and suicidal tendencies. After receiving this information, we also could agree that the manner of death was suicide.

Case No. 2 We received the body of an adult white female who had sustained multiple shotgun wounds. Examination of the body revealed two perforating shotgun wounds in the left lateral chest wall with no evidence of any penetration into underlying organs, a perforating shotgun wound of the right lateral neck with no involvement of any major vascular structures, and a perforating shotgun wound of the left lateral neck with involvement of major vascular structures, spine, and spinal cord. Certainly, a pathologist viewing this would be highly suspicious that this was a homicide. However, subsequent information garnered through telephone calls with members of the investigating team revealed undisputed evidence that this also was a case of suicide.

Case No. 3 Recently, we received the bodies of an adult black male and adult black female with the possible diagnosis of homicide and suicide. These conclusions were based upon evidence found at the scene. In this case, the investigating officers accompanied the bodies to the morgue and were present during the examinations. Ballistic findings unearthed by the autopsies proved this to be a double homicide. With the availability of this firsthand information, investigating officers could return to their jurisdiction and initiate a more intensive search for the assailant(s).

The importance of compatible, cooperative association between medical examiners, forensic pathologists, and law enforcement officers cannot be overemphasized. The performance of the medicolegal autopsy by the forensic pathologist cannot stand alone without supporting information generated by the law enforcement officer. Likewise, input from the forensic pathologist can assist and sustain the law enforcement officer throughout his investigation. The end result of such a cooperative venture will have a significant impact on society in the apprehension of the guilty and the protection of the innocent. **FBI**

Footnote

A full description of the systems by States is presented in the U.S. Department of Health, Education and Welfare Publication No. (HSA) 78-5252, DEATH INVESTIGATION.

DEATH SCENE CHECKLIST

(This form is to be used as a supplementary source sheet for readily available information and is not intended to replace conventional reports. Copies should be distributed to investigating officers and medical examiners.)

Name of Deceased:

First Middle Last

Address:

Age: **Race:** White Black Hispanic Asian American Indian Unknown

Sex: Male Female

Telephone number:

Marital status: S M W D Separated Unknown

Next-of-kin:

Name:

Address:

Telephone number:

Police Notified by:

Date: Time:

Name:

Address:

Telephone number:

Relationship to deceased:

Deceased found:

Date: Time:

Address: (if different from above)

Location: Apartment House Townhouse Other (describe)

Entrance by: Key Cutting chain Forcing door Other (describe)

Type of lock on door:

Condition of other doors and windows: Open Closed Locked Unlocked

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Body found:

Living Room Dining Room Bedroom Kitchen Attic Basement Other (describe)

Location in room:

Position of body: On back Face down Other:

Condition of body:

Fully clothed Partially clothed Unclothed

Preservation: Well preserved Decomposed

Estimated Rigor: Complete Head Arms Legs

Livor: Front Back Localized

Color:

Blood: Absent Present Location

Ligatures: Yes No

Apparent wounds: None Gunshot Stab Blunt force

Number:

Location: Head Neck Chest Abdomen Extremities

Hanging: Yes No Means:

Weapon(s) present: Gun (estimate caliber)

Type:

Knife:

Other (describe)

Condition of surroundings: Orderly Untidy Disarray

Odors: Decomposition Other:

Evidence of last food preparation:

Where:

Type:

Dated material:

Mail:

Newspapers:

TV Guide:

Liquor Bottles:

Last contact with deceased:

Date:

Type of Contact:

Name of Contact:

Evidence of robbery: Yes No Not determined

Identification of deceased: Yes No

If yes, how accomplished:

If no, how is it to be accomplished:

Evidence of drug use: (prescription and nonprescription) Yes No

If drugs present, collect them and send with body.

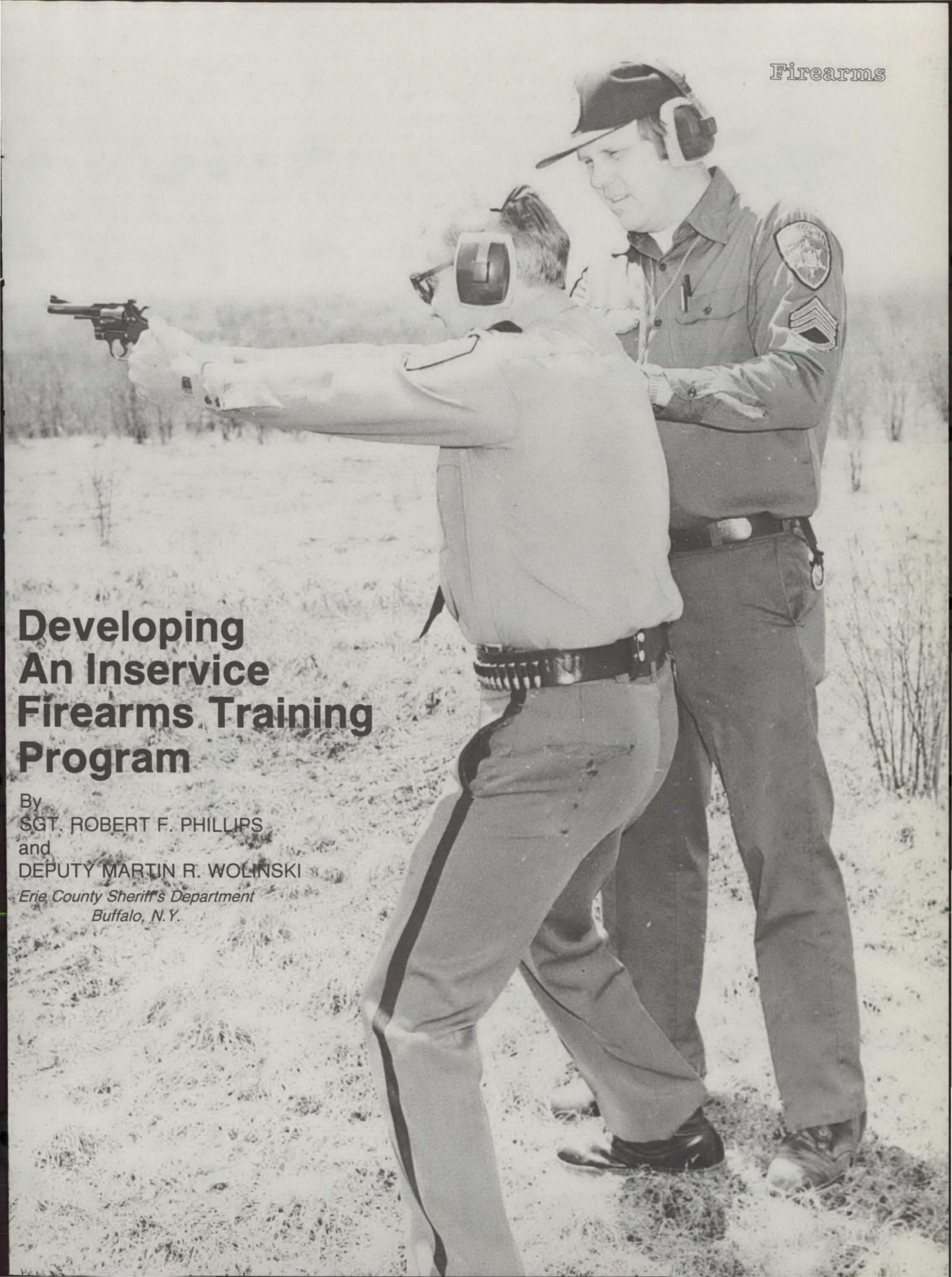
Evidence of drug paraphernalia: Yes No

Type:

Evidence of sexual deviate practices: Yes No

Type: (collect and send with body)

Name and telephone number of investigating officer:



Developing An Inservice Firearms Training Program

By
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Sergeant Phillips

Deputy Wolinski

Every community deserves a professional and well-trained police department. To further this goal in his department, the sheriff of Erie County, N.Y., restructured the firearms training program. He issued an internal order requiring every deputy who carries a weapon as part of his official duties, or who has the authority to do so, to qualify with that weapon.

When developing an inservice firearms training program, several factors must be considered if the program is to be successful. They include:

1) The degree of support given to the program by the head of the agency;
2) Availability of funds for ammunition;
3) Availability of manpower for training purposes;
4) Availability of suitable range facilities (both indoor and outdoor); and
5) The nature of the population to be trained.

The first four factors posed no problems. The sheriff not only endorsed the program but also obtained the ammunition and assigned the manpower necessary to accomplish this training. However, particular attention needed to be directed to the fifth point noted—the nature of the population to be trained. If officers did not support the program or believe it worthwhile, it would founder.

By way of background, New York State has mandated police training. Within a year of the time of appointment, all police officers are required to complete successfully a prescribed course of training provided on a regional level at the Erie County Department of Central Police Services Training Academy. The firearms portion of this training consists of 8 days of range time and a total of 1,350 rounds of 38 wadcutter, as well as familiarization with the shotgun and other weapons. An officer cannot complete the academy course without attaining reasonable proficiency with the handgun.

However, proficiency with a firearm may not always be the case with some officers assigned to the department. Several veteran officers have had only minimal firearms training. In the past, holding center personnel were not required to qualify with a weapon since they did not carry one. Only in recent years have holding center personnel been detailed to court duty and/or to transport prisoners, requiring that they be armed when serving in this capacity. Accordingly, officers who *might* be assigned these details would have to be qualified with a weapon.

The Erie County Sheriff's Department is divided into four primary divisions: Road patrol, 160 deputies; holding center, 208; court detail, 83; and civil division, 18. Historically, only those deputies assigned to road patrol and the civil division received annual firearms training, while deputies assigned to the court division received this training less frequently. However, within recent years, efforts have been made to train the court detail on the same basis as the road patrol and civil division. Holding center personnel have never received firearms training, except in rare instances. If they desired training, they would have to report on their own time and furnish their own weapons and ammunition.

The problem, then, was to develop a course of fire which would be practical, interesting, and yet challenging to those who had recently completed the academy. However, it could not be so difficult that officers with minimal or no training would be unable to qualify thereby destroying their self-confidence and jeopardizing future training efforts.

Sheriff Kenneth J. Braun

The course previously used for firearms training was a modified police "L" 25-round course fired on bullseye and silhouette targets. The ranges, while far from ideal, were nonetheless adequate. And since they were the only ones available, they would continue to be used.

Separate indoor and outdoor courses were designed. The indoor course outline is as follows:

Distance—50 feet
Target—B 21 reduced
Scoring—K values
Total rounds—25
- Five rounds in 5 minutes, one hand, single action;
- Five rounds in 20 seconds (one or two hands), point shoulder position, double action;
- Five rounds in 20 seconds (one or two hands), point shoulder position, double action;
- Five rounds in 10 seconds (one or two hands), point shoulder position, double action;
- Five rounds in 10 seconds (one or two hands), point shoulder position, double action.

With K values, a perfect score, 25 K-5s, is 125. The qualifying score on this course is 75 points raw score or 60 percent. This, of course, was not particularly difficult. However, we believed it necessary to obtain an evaluation of the officers' proficiency without destroying their confidence.

From the outset, two range instructors were used for groups consisting of approximately 6, but not more than 10, deputies. Considerable time was spent with each group on basic safety procedures and firing positions. As the entire department fired the course, those officers recognized as somewhat less than proficient were afforded remedial training. In most cases, after remedial training, these same officers were able to fire not only qualifying but good to excellent scores.

Everyone in the department qualified, including management personnel. Unfortunately, the indoor course generated little enthusiasm. In general, deputies simply believed it was too easy, although it did aid in identifying those officers needing extra help.

The outdoor course included the following specifications:

Target—B 21 reduced
Scoring—2.5 points per hit in the black, all double action, qualifying score 70 percent
Rounds—40 total
21′ one hand, hip shooting, load four—one on each whistle;
Load 6—10 shots in 30 seconds (6 reload 4);
40′ point shoulder position (one or two hands), five rounds, strong hand (no time limit), load five, five rounds weak hand (no time limit);
50′ kneeling position, five rounds, strong hand (no time limit);
60′ five rounds, strong hand, barricade.

Using a 40-round course made available 10 rounds from each box of 50 or a total of 20 rounds for familiarization purposes. Since some of the officers had never fired from these positions, both dry and live firing practices were taken before attempting a course qualification.

"[Officers] must see the progress they are making and the practical applications of the training. . . ."

Again, small groups of men worked with a minimum of two range instructors. An 8-hour block was allotted each group, enough time to cover the essentials of range safety, weapon familiarization and nomenclature, the basics of loading and unloading and blading while doing so, and the myriad of other basic instructions. Moreover, each group dry fired in each position, with care taken to explain the proper position and the reason for learning to fire from that position.

Each part of the course was specifically designed to give the individual officer the edge needed on the street.

The first phase of the course loading with four rounds, forced the officer to remember which way the cylinder turned. If the officer had a Colt whose cylinder rotated clockwise, the weapon should be loaded by rotating the cylinder counterclockwise. In this way, if the officer had to close the weapon and fire in an emergency situation and had only two bullets in the weapon, the two shots would go off the first two times the trigger was pulled. If the cylinder is not rotated in this manner, the officer might have to pull the trigger four times before striking a live round. This delay could cost the officer his life.

Twenty rounds, half of the outdoor course, were fired from the hip-level

position. Statistics furnished to the officers indicated that approximately 90 percent of shooting incidents in which officers lost their lives took place within 20 feet. In 1978, for example, 41 percent of these incidents occurred within a distance of 0–5 feet, 22 percent at a range of 6–10 feet, and 26 percent from a distance of 11–20 feet. This seems difficult to understand unless one considers the average room size is approximately 11 x 15. Moreover, a suspect will generally attempt to escape rather than kill, and it is only when convinced the officer will make an arrest that the suspect will panic.

The officers fired from hip-level position until it became obvious they had mastered the form necessary to strike the target accurately and consistently. Form rather than score was emphasized, since it was believed speed and accuracy would come naturally with practice once the officer mastered the form and position.

Officers were required to jettison their empty brass onto the ground, not catch it. Again, the reason was carefully explained. An officer who habitually caught his brass would do so automatically in the heat of a gun battle, and this action might cost him his life, as it has others in the past. Not only does catching empty brass cost time, but the possibility exists that the brass casings might be confused with live rounds in a highly stressful situation. Speed was emphasized in the loading and unloading sequences. The purpose of this was to teach the officer to load quickly and shoot slowly and to increase his proficiency so that should he have to reload in a combat situation, he would be able to do so under pressure and instinctively.

The entire department qualified in approximately 6–7 weeks. Because of time constraints and range availability, officers who were detailed to fire on specific days did so, regardless of weather conditions. Several of the officers who reported on extremely inclement days asked whatever happened to the old adage that a "good officer never gets cold, wet, or hungry."

"The problem . . . was to develop a course of fire which would be practical, interesting, and yet challenging. . . ."

The initial reactions of the men ranged from enthusiastic through apprehensive through reluctant. The reluctance was easily overcome because everyone, including top management, had to, and did, qualify, and the officers were aware of this.

The apprehension began to evaporate with explanations of the positions, dry firing, and actual firing of the course. Officers realized accuracy and speed were attainable with practice.

With very few exceptions, the outdoor firearms course was well-received. Many officers commented specifically on the usefulness of knowing why they practiced certain positions and range techniques. The explanations enabled them to see a practical application. They believed training would give them the edge they need on the street and would help equip them to react instinctively in a combat situation. They seemed to realize the training was being given for them—to save their lives.

The Future

These courses are a beginning in equipping our officers to handle effectively combat situations. They do not include shoot/don't shoot and use of deadly force situations. These topics are more appropriately covered in other parts of the training and will continue to be emphasized.

It is anticipated that the number of rounds available for each officer to fire will increase in the future and that the courses will be expanded to include some of the standard FBI combat courses, specifically the FBI Close Combat Course.

During the next year, we hope to incorporate firing service ammunition into the program. It is anticipated officers will fire off service rounds in their weapons and cartridge holders during training, and these will be replaced by fresh rounds furnished by the department. This will accomplish two things. First, the officer will be familiar with the differences in recoil between service and wadcutter ammunition; second, the ammunition which the officer carries will be changed at least annually.

We recognize the need for increased firearms training and the need for convincing the officers themselves that the training they receive has practical and useful application. Firearms training, in order to accomplish its purpose, should be something the officers look forward to. They must see the progress they are making and the practical applications of the training for, if not, firearms days will become just another chore that has to be done.

If these courses help to save one officer from serious injury or death, the program will have paid for itself many times over. **FBI**

CHAINS, WHEELS, AND THE SINGLE CONSPIRACY (Part I)

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

Suppose A and B steal an automobile and sell it to C, the owner of a chop-shop that fronts as a legitimate automotive repair business. Then a week later, B and D burglarize a home and sell stolen jewelry to C. In addition to the substantive offenses of motor vehicle theft and burglary, does this activity constitute one criminal conspiracy among all three thieves and the fence or two separate conspiracies with A, B, and C participating in a stolen auto conspiracy and B, C, and D participating in a burglary conspiracy? From a constitutional point of view, does it matter whether the evidence tends to establish one large conspiracy as opposed to two smaller ones? If it does matter, and the prosecutor desires to try jointly as many suspects as possible, how does an investigator gather evidence showing one large conspiracy?

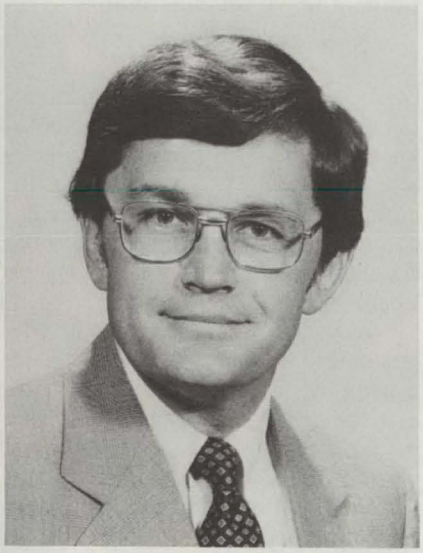
The single vs. multiple conspiracy issue raised by these questions is one of the most perplexing problems facing courts in criminal conspiracy cases.[1] The investigation of this crime can be particularly cumbersome when the evidence establishes a large criminal organization with several persons actively participating in a variety of unlawful acts, while others appear only on the periphery of the enterprise.

Answers to the questions posed previously can provide some guidance to investigators trying to prove one criminal conspiracy based on the activities of numerous individuals. The first part of the article reviews the substantive law of conspiracy and addresses the constitutional considerations raised in both single and multiple conspiracy prosecutions. Next month, in the second part of the article, the "chain" and "wheel"[2] structural forms of conspiracies will be analyzed to show investigators how such concepts have been used successfully to overcome a variety of constitutional challenges to conspiracy prosecutions.

The Conspiracy Weapon

In 1925, Judge Learned Hand referred to the criminal conspiracy charge as that "darling of the modern prosecutor's nursery."[3] This comment seems as relevant today as it was some 56 years ago, for the recent emphasis on organized and white-collar crime prosecutions[4] has made the conspiracy indictment, or additional count of conspiracy in an indictment alleging substantive offenses, a potent prosecutorial weapon. Federal prosecutors generally will include a conspiracy charge whenever a case involves multiple defendants,[5] and there are indications that local prosecutors are increasing their use of the conspiracy charge as an effective approach to such criminal activities as the distribution of narcotics, public corruption, corporate theft, and consumer fraud.[6]

Conspiracy prosecutions are attractive for a variety of reasons. First, the crime of conspiracy permits the intervention of criminal law at a time prior to the commission of a substantive offense. Courts have long recognized the uniqueness in the criminality



Special Agent Campane

of group action. There is a sense of special danger to the public welfare in the combination of individuals bent on committing a crime. The support and cooperation of co-conspirators are believed to increase the likelihood of criminal conduct on the part of each participant and to reduce the possiblity of withdrawal. Many years ago, the U.S. Supreme Court characterized it as follows:

> ". . . an offense of the gravest character, sometimes quite outweighing in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery and adding to the importance of punishing it when discovered." [7]

Second, a conspirator is not allowed to shield himself from prosecution because of a lack of knowledge of the details of the conspiracy, or its intended victims, or the identity of his co-conspirators and their contributions; conspiracy is designed to prevent the opportunity for escaping punishment by someone claiming anonymity within a group. Schemes to defraud, for example, often require a division of labor among numerous individuals in a complex organization. The crime of conspiracy provides society with some protection from such organizations before the plan has gone so far as to be punishable for attempt, when only the active participants can be reached.[8]

Third, and most importantly, there are valuable evidentiary and tactical advantages available to a prosecutor in conspiracy cases. Under the co-conspirator exception to the hearsay rule, an act or declaration by one co-conspirator committed in furtherance of the conspiracy is admissible against each co-conspirator.[9] A conspiracy trial may take place in any jurisdiction where any overt act is committed by any of the conspirators.[10] The statute of limitations is tolled with each additional overt act.[11] Under the theory of complicity, a conspirator is liable for the substantive crimes of his co-conspirators and can be punished for both the conspiracy and the completed substantive offense.[12] Even late joiners to an ongoing conspiracy can be liable for prior acts of co-conspirators if the agreement by the latecomer is made with full knowledge of the conspiracy's objective.[13] Finally, increased judicial convenience and economy are attractive features in conspiracy prosecutions. As a result, judges are generally reluctant to sever defendants for separate trials.[14]

In view of such enticing advantages available to prosecutors in conspiracy cases, investigators should expect to be called upon to gather evidence alleging the existence of one or more conspiracies, in addition to the traditional investigation of substantive crimes.

"The single vs. multiple conspiracy issue . . . is one of the most perplexing problems facing courts in criminal conspiracy cases."

Conspiracy—Development of The Law

The crime of conspiracy began as an English statute narrowly drawn to provide a remedy for a few specific offenses against the administration of justice, such as the procurement of false indictments or the maintenance of vexatious suits. Proof of the falsity of the charge was shown by the jury's acquittal of the defendant.[15] The crime began its gradual expansion in the *Poulterers' Case*,[16] decided in 1611. The defendants confederated to accuse a man falsely of robbery, but he was so obviously innocent that the grand jury refused to return an indictment. As a defense to a subsequent damage suit, the poultry merchants claimed no conspiracy existed because the crime was never consummated, that is, the accused was never indicted, tried, and then acquitted. But the court decided that confederating itself constituted the basis of the crime rather than the actual lodging of an indictment followed by a formal acquittal.

During the latter half of the 17th century, the crime of conspiracy expanded as part of the common law to include agreements to commit any criminal or otherwise unlawful activity. Courts generally applied the rationale of the *Poulterers' Case*, that the gist of the crime of conspiracy was the agreement among confederates and no additional overt act was necessary. The crime also included agreements to commit lawful acts where the means employed were unlawful. In the case of *Rex* v. *Edwards*,[17] decided in 1724, the defendants were indicted for conspiring to marry off a pauper woman to the inhabitant of another town so that their own town might escape liability for support. Ignoring any distinction between law and morals, the prosecutor argued that although the end result (a married woman) was lawful, the purpose of the agreement, namely, to dispose of a town liability, was immoral and rendered the agreement illegal.

This development resulted in the confusing common law definition of conspiracy as a combination of two or more persons to achieve an unlawful object or to achieve a lawful object by unlawful means.[18] The object need not, in theory, be a substantive crime. Agreements to commit civil wrongs or to do something immoral or wrongful may be punishable as criminal conspiracies,[19] although many States provide by statute that the object of a criminal conspiracy must be some crime or some felony.[20] Some statutory definitions also provide the additional requirement of proof of an overt act in furtherance of the conspiracy.[21]

But it is the confederating together, the agreement to commit a crime, which furnishes the basis for most conspiracy liability today, and the crime is complete when the agreement is entered into, the overt act being a less significant element of proof.[22] The need to understand and prove the scope of the agreement and the participants to it is the key to success in any conspiracy prosecution.

Constitutional Considerations

As a result of the pervasive present-day use of the conspiracy charge, courts, commentators, and defense attorneys are quick to note the potential for abuse to which such prosecutions lend themselves.[23] That is, while focusing on group behavior, the prosecution may fail to address adequately the constitutional rights of the various individual defendants.

A variety of such constitutional guarantees may be raised and successfully litigated regardless of whether a defendant is prosecuted for his participation in one conspiracy or whether his activities suggest his participation in multiple conspiracies, and regardless of the particularities of varying State conspiracy statutes.

Charging A Single Conspiracy

The evidence may suggest one overall conspiracy, while proof at trial establishes the existence of two or more. It has long been held that in such a case, the variance between the charge and the proof may "affect the substantial rights"[24] of the accused. Althought these rights are rarely well-articulated by the courts, they are founded on two specific constitutional guarantees spelled out by the U.S. Supreme Court over 30 years ago.

In *Berger* v. *United States*,[25] decided in 1934, a single conspiracy to utter counterfeit notes had been charged, but the proof at trial established one conspiracy involving Berger and two co-defendants and another

between one of the latter and a fourth defendant. The Supreme Court held that such a variance between the one conspiracy charged and two conspiracies proved did not affect Berger's "substantial rights" to the extent a reversal would have been in order.

But the Court intimated for the first time that such rights are based on the sixth amendment to the U.S. Constitution. The sixth amendment preserves, in part and by implication, an individual's right to a fair trial.[26] A specific component of this sixth amendment protection is the right to be informed of the nature and cause of the accusation.[27] The elements of the charge must be set forth with sufficient particularity to avoid surprise, provide an opportunity for a fair defense, and protect a defendant from a subsequent prosecution by making clear the offense for which he had been previously tried.[28] As the Supreme Court in *Berger* put it:

> "The general rule that allegations and proof must correspond is based upon the obvious requirement (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise at the trial; and (2) that he may be protected against another prosecution for the same offense." [29]

In this case, the Court believed the variance was harmless error because it was equivalent to Berger having been indicted for two conspiracies but convicted of only one, a hypothetical situation in which he could show no prejudice because the evidence against him did prove his involvement in a conspiracy, although a smaller one than that charged.

Nevertheless, the sixth amendment foundation was laid by the Court in the *Berger* case, and it is a potential defense in any complicated single conspiracy prosecution. Defendants will argue that they did not know all the conspirators or what the others were doing; that they are responsible only for what they themselves were doing when caught. Because that usually is only a part of the conspiracy, it is different from the whole, and in consequence, is not the conspiracy alleged in the indictment. For lack of notice of the charge, defendants contend they should be acquitted.[30]

Twelve years later, in 1946, the Supreme Court identified an additional constitutional guarantee available to attack single conspiracy prosecutions. In the leading conspiracy case of *Kotteakos* v. *United States*,[31] 32 defendants were charged in a single conspiracy prosecution for defrauding the Federal Government. The defendants used the same loan broker to assist them to induce various financial institutions and the Federal Housing Administration to grant credit, loans, and advances for housing renovation and modernization. However, the loan applications contained false and fraudulent information because the proceeds were intended to be used for purposes other than required by the National Housing Act. Seven defendants were eventually found guilty.

The circuit court of appeals believed the trial judge was plainly wrong in supposing that upon the evidence, there could be a single conspiracy, for no connection was shown between any of the defendants other than their mutual use of the same loan broker. The appellate court believed the trial judge should have dismissed the indictment for this material variance between the proof and the pleadings, but nevertheless held the error to be nonprejudicial, since guilt was so manifest it was "proper" to join the conspiracies and "to reverse the conviction would be a miscarriage of justice." [32] Citing *Berger,* the appellate court reasoned that because the proof was sufficient to establish the participation of each petitioner in one or more of several smaller conspiracies, none of them could have been prejudiced because all were found guilty of being members of a single larger conspiracy of the same character.[33]

The Supreme Court disagreed with the lower court and reversed the convictions because due process required the defendants' guilt be proved individually and personally. Although the Court was emphatic in pointing out the necessity of particularized case-by-case analysis on the issue of the materiality of a variance, the opinion showed a shift in emphasis from *Berger's* reliance on the criteria of notice of charges and surprise to the equally important factor of transference of prejudicial evidence.

". . . conspiracy is designed to prevent the opportunity for escaping punishment by someone claiming anonymity within a group."

The Court recognized that when many conspire, they invite mass trial, but in such cases every effort must be made to individualize and safeguard each defendant in his relation to the mass. The Court pointed out:

> "The dangers of transference of guilt from one to another across the line separating conspiracies, subconsciously or otherwise, are so great that no one really can say prejudice to substantial right has not taken place. . . . That right, in each instance, was the right not to be tried *en masse* for the conglomeration of distinct and separate offenses committed by others as shown by this record." [34]

Single conspiracy prosecutions thus create an additional risk of imposing guilt by association when a judge believes it is too difficult a task for the jury to keep the proof against numerous defendants separate. This transference of guilt may affect a "substantial right" guaranteed by the due process clauses of the 5th and 14th amendments to the U.S. Constitution from which a single conspiracy defendant may seek relief.

In a more recent case, the Second Circuit Court of Appeals in *United States* v. *Bertolotti* [35] reversed the single conspiracy conviction of seven individuals for prejudicial variance when it held that the evidence proved multiple conspiracies. The court cited one item of evidence as a specific example of the prejudice suffered by the defendants, as well as an illustration of the inherent dangers of combining unrelated criminal acts under the roof of an alleged single conspiracy. As part of its investigation, the district attorney's office placed a court-authorized wiretap on the telephone of one suspect. Tapes of 55 intercepted calls were played to the jury and introduced as evidence of narcotics negotiations between two defendants. None of the remaining defendants either participated or was mentioned in any of the 55 taped conversations. As a result, the court stated:

> "The prejudicial effect, however, of requiring the jury to spend two entire days listening to obviously shocking and inflammatory discussions about assault, kidnaping, guns and narcotics cannot be underestimated. No defendant ought to have a jury which is considering his guilt or innocence hear evidence of this sort absent proof connecting him with the subject matter discussed." [36]

After a review of the evidence as whole, the court concluded:

> "The possibilities of spill-over effect from testimony on these transactions are patent when the number of defendants and the volume of evidence are weighed against the ability of the jury to give each defendant the individual consideration our system requires." [37]

Having concluded that the variance is material because it affects these "substantial rights," [38] a court will generally consider three alternative remedies. First, if the variance is established before or during trial, the government can be compelled to elect which conspiracy to proceed with and which one or more to sever for separate trials.[39] Most importantly, however, the indictment as a whole is not dismissed. Second, the trial judge may continue the trial but instruct the jury to be alert to the possibility of multiple conspiracies and admonish them to separate carefully defendants and conspiracies.[40] But where, at the close of testimony, it is clear that a jury cannot find a single overall conspiracy as a matter of law, the defendant is also entitled to an instruction that the evidence relating to the other conspiracy or conspiracies may not be used against him under any circumstances.[41] A failure to so charge would require reversal.[42] Third, where the variance between the proof and the pleadings is hopelessly confused or where there is a risk of prejudice, either from evidentiary spillover or transference of guilt, a reversal is in order, with the severance of various defendants and conspiracies for retrial.[43]

Constitutional considerations aside, it tries the patience of a court for a prosecutor to complicate criminal prosecutions of multiple defendants and the inevitable appeals with a joint trial, single conspiracy charge. In *United States* v. *Sperling,*[44] the Federal Government successfully indicted 28 defendants in a single conspiracy prosecution to purchase, process, and resell narcotics from 1971 to 1973. Two defendants were acquitted, two pled guilty, eight were unavailable for trial, three were acquitted by the jury, and two had their cases severed for separate trials.

The convictions of the other 11 defendants were upheld on appeal, but the court warned:

> "We take this occasion to caution the government with respect to future prosecutions that it may be unnecessarily exposing itself to reversal by continuing the indictment format reflected in this case. While i

is obviously impractical and inefficient for the government to try conspiracy cases one defendant at a time, it has become all too common for the government to bring indictments against a dozen or more defendants and endeavor to force as many of them as possible to trial in the same proceeding on the claim of a single conspiracy when the criminal acts could be more reasonably regarded as two or more conspiracies, perhaps with a link at the top. Little time was saved by the government's having prosecuted the offenses here involved in one rather than two conspiracy trials. On the contrary, many serious problems were created at the trial level, including the inevitable debate about the single conspiracy charge, which can prove seriously detrimental to the government itself." [45]

Charging Multiple Conspiracies

Adherence to the *Sperling* court's admonition, which suggests prosecution for multiple conspiracies in successive trials or multiple counts in one trial, presents equally hazardous constitutional problems.

The fifth amendment to the Constitution provides, in part, that no person shall be put in jeopardy of life or limb twice for the same offense. This guarantee against double jeopardy protects against a second prosecution for the same offense after acquittal or after conviction, and it protects against multiple punishment for the same offense. The prohibition is not just against being twice punished but being twice put in jeopardy of being punished. It was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense.[46]

The same offense requirement becomes particularly significant with conspiracy cases. A prosecutor's attempt to try and convict an individual at successive trials for taking part in two successive conspiracies, when only one overall conspiracy is proved, would result in a conviction for the same offense twice.[47] This prohibited prosecutorial procedure is called "fragmentation," [48] and a defendant would be able to bar the second prosecution at the outset by demonstrating that the activities encompassing the allegation were part of one overall conspiracy for which the defendant had already been put in jeopardy in a former prosecution by the same governmental entity.[49]

United States v. *Palermo* [50] is a case in point. Joseph Amabile was associated with Melrose Park Plumbing, a subcontractor for the Riley Management Company which built various apartment building complexes in suburban Chicago from 1962 to 1965. He was tried and convicted in Federal court for conspiring to extort $48,500 from the managment company by threatening Riley with work stoppages and physical violence, and in so doing, interfering with interstate shipments of construction materials.[51]

In a second prosecution, Amabile was tried and convicted for extorting an additional $64,000 from Riley on a later subcontracted construction project in which Amabile conspired with others, including various public officials in Northlake, Ill. On appeal, Amabile successfully argued his participation in one continuous agreement to extort money from Riley whenever his company was Riley's plumbing subcontractor. The Court held:

> "Although the methods of obtaining money from Riley on the various projects may have been different, the overall objective was the same. . . . Even though the incidents occurred over a period of years, the overall agreement constituted a continuing conspiracy against Riley. Since Amabile has already been tried and convicted of conspiring to extort money from Riley, Amabile's Fifth Amendment rights were violated by placing him in jeopardy twice for the same criminal act." [52]

Even if the prosecution is able to show multiple conspiracies, a defendant may argue that the prosecutor has overreached and has resorted unfairly to multiple charges and successive trials in order to accomplish indirectly what the double jeopardy clause prohibits. The defendant will attempt to show that the prosecution is trying to wear him out with a succession of trials when the evidence suggests a lesser number or only one prosecution. The question is whether such a course has led to fundamental procedural unfairness prohibited by the 5th and 14th amendments, and this is determined by the facts of each case.[53]

The prosecution may be able to avoid double jeopardy and due process claims by establishing evidence of multiple conspiracies, but *United States* v. *Guido* [54] suggests an additional hurdle in the path to successful multiple conspiracy prosecutions. Two defendants pled guilty to Federal drug conspiracy charges in California and were subsequently convicted of similar charges in Arizona. On appeal, the defendants contended that their activities consisted of one conspiracy and

"The need to understand and prove the scope of the agreement and the participants to it is the key to success in any conspiracy prosecution."

the multiple convictions twice put them in jeopardy and deprived them of due process by subjecting them to piecemeal prosecutions. A Federal appellate court agreed that the evidence established only one conspiracy, but in a strongly worded opinion devised a different reasoning:

> "Here the defendants were prosecuted twice for the same conspiracy due to the failure of the Arizona prosecutor to evaluate properly the prior California indictment. Guido and Boyle raise double jeopardy and due process claims, but we need not rely upon these constitutional safeguards since, under our supervisory power of the administration of criminal justice, the court has the authority to correct such unfairness." [55]

Another form of fragmentation occurs in conspiracy prosecutions when a defendant is charged at one trial with multiple counts of conspiracy and the proof establishes a lesser number or only one.[56] The principal vice of this procedure is that it, too, may result in multiple punishment for participation in a single conspiracy and is equally violative of the double jeopardy clause.

In *Braverman* v. *United States*,[57] the defendants were indicted on seven counts, each charging a general conspiracy to violate separate sections of the Internal Revenue Code. The Supreme Court held that the defendants' manufacture and sale of untaxed alcohol was one conspiracy. "The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one." [58]

The common remedy for such unconstitutional fragmentation is fortunately less severe than the outright bar to the subsequent prosecution required in multiple trial fragmentation. The court will generally let the trial proceed and ignore the number of charges on which a defendant is subsequently convicted and impose but a single sentence for the one conspiracy.[59]

Defendants A, B, C, and D, the burglars, thieves, and fence in our hypothetical case, would thus be able to avail themselves of a variety of legitimate constitutional and equitable claims to defeat an attempt to prosecute them for their participation in either a single conspiracy or two separate conspiracies. A prosecutor may be able to avoid this potential dilemma and proceed with the more frequent and desired single conspiracy prosecution if the results of the police officer's investigation are thorough enough to structure the unlawful agreement as either a wheel or chain conspiracy.

Such structural descriptions are generally well-accepted by the courts, and in next month's issue, part two of this article will present an analysis of these configurations and provide the police officer with some examples of the kinds of evidence that can join the spokes to the hub of the wheel or weld the links to the chain so that A, B, C, and D may be jointly tried and successfully prosecuted in a single conspiracy prosecution. **FBI**

(Continued next month)

Footnotes

[1] *See, e.g., Krulewitch* v. *United States*, 336 U.S. 440, 446 (1948) (Jackson, J., concurring) "The modern crime of conspiracy is so vague that it almost defies definition." *Schaffer* v. *United States*, 362 U.S. 511, 524 (1960) (Douglas, J., dissenting) "Conspiracy presents perplexing problems that have long concerned courts." *United States* v. *Perez*, 489 F.2d 51, 57 (5th Cir. 1973), *cert. denied*, 417 U.S. 945 (1974) " . . . [A] frustrating and challenging task indeed. . . ."

[2] *See Note, Federal Treatment of Multiple Conspiracies*, 57 Colum. L. Rev. 387 (1975), which distinguishes the "wheel" from the "chain" conspiracy. The metaphors were used in England as early as 1929. In *Rex* v. *Meyrick And Ribuffi*, 21 Crim. App. R. 94 (1929), two night club owners were convicted of conspiracy to sell whiskey unlawfully and effect a public mischief. The appeals court upheld the conviction and stated, at 101–02: "There may be one person, to adopt the metaphor of counsel, round whom the rest revolve. The metaphor is the metaphor of the centre of a circle and the circumference. There may be a conspiracy of another kind, where the metaphor would be rather that of a chain; A communicates with B, B with C, C with D, and so on to the end of the list of conspirators."

[3] *Harrison* v. *United States*, 7 F.2d 259, 263 (2d Cir. 1925).

[4] *See, e.g.*, Webster, *An Examination of FBI Theory and Methodology Regarding White-Collar Crime Investigation and Prevention*, 17 Am. Crim. L. Rev. 275, 279–80 (1980). The FBI emphasizes such crimes as corruption of political, governmental, business, and labor officials; frauds in Federal programs; bank embezzlements; international frauds; patent and copyright violations.

[5] *See* Marcus, *Conspiracy: The Criminal Agreement In Theory and Practice*, 65 Geo. L.J. 925, (1977) (Summary of interviews with Federal and local prosecutors; conspiracy estimated to account for one-fifth of all Federal indictments); *see also, Principles of Federal Prosecution*, U.S. Department of Justice (1980). Part C, Selecting Charges, advises Federal prosecutors to structure charges to permit proof of the strongest case possible and to ensure the introduction of all relevant evidence. To further this goal, they are encouraged to consider the desirability of adding the conspiracy count where the substantive offense resulted from an unlawful agreement.

[6] *See* Marcus, *Conspiracy: The Criminal Agreement In Theory and Practice, supra* footnote 5; also *see, e.g., State* v. *Yormark*, 284 A.2d 549 (N.J. Sup. Ct. App. Div. 1971) (Conspiracy between automobile owners, lawyers, doctors, auto repair shop owners, and insurance adjustor to defraud insurance company); *People* v. *Incerto*, 505 P.2d 1309 (Colo. 1973) (Conspiracy to bribe a judge); *Commonwealth* v. *James*, 326 A.2d 548 (Pa. Sup. Ct. 1974) (Burglary conspiracy); *Commonwealth* v. *Benjamin*, 339 N.E.2d 211 (Mass. App. Ct. 1975) (Conspiracy by employees to defraud a finance company); *People* v. *Quintana*, 540 P. 1097 (Colo. 1975) (Conspiracy to commit perjury to prevent extradition of another).

[7] *United States* v. *Rabinowich*, 238 U.S. 78, 88 (1915).

[8] The Model Penal Code, however, minimizes the group danger aspect, focuses attention on the liability of the individual conspirator, and balances the dangers of prejudice against the need to attack organized criminality. Model Penal Code, § 5.03 (Proposed Official Draft, 1962). This "unilateral" formulation has been adopted by most States. *See Notes, Conspiracy: Statutory Reform Since the Model Penal Code*, 75 Colum. L. Rev. 1122, 1125 (1975).

[9] *United States* v. *Gooding*, 25 U.S. 460, 469 (1827) (12 Wheat.) (dictum); *see generally*, Wigmore, Evidence § 1360 (Chadbourn rev. ed 1978); *see* Fed. R. Evid. 801 (d) (2) (E).

[10] *See Krulewitch* v. *United States* (Jackson, J. concurring) *supra* footnote 1 at 452. This rule reduces to a "phantom" the right of an accused under the sixth amendment to trial by an impartial jury of the State and district wherein the crime was commited; *United States* v. *Beil,* 577 F.2d 1313 (5th Cir. 1978), *cert. denied,* 440 U.S. 946 (1978), (Government permitted to try two defendants in Georgia when they had stolen automobiles in Illinois and sold them in Illinois without any knowledge that the vehicles would be placed in interstate commerce and without any knowledge that the vehicles would be transported to Georgia by a conspiring purchaser).

[11] *United States* v. *Kissel,* 218 U.S. 601, 608 (1910); *Grunewald* v. *United States,* 353 U.S. 391 396–97 (1957).

[12] *Pinkerton* v. *United States,* 328 U.S. 640, 643 (1946).

[13] *Delli Paoli* v. *United States,* 352 U.S. 232, 237 (1957).

[14] *See generally, Schaffer* v. *United States, supra* footnote 1 at 516, (Joinder of defendants not prejudicial even after the dismissal of the conspiracy count); *see United States* v. *Malatesta,* 583 F.2d 748, 760–64 (5th Cir. 1978), (Colman, J., concurring), *cert. denied,* 440 U.S. 962 (1978) (Criticizing a reluctance to sever defendants and the resultant use of a "slight evidence" rule in the fifth circuit.

[15] On the history of conspiracy, *see* Sayre, *Criminal Conspiracy,* 35 Harv. L. Rev. 393 (1922).

[16] *Id.* at 398, summarizing 9 Coke 55b.

[17] *Id.* at 403, summarizing 8 Mod. 320 (1724).

[18] *Commonwealth* v. *Hunt,* 45 Mass. (4 Met.) 111, 123 (1842); *Pettibone* v. *United States,* 148 U.S. 197, 203 (1893); *Pinkerton* v. *United States, supra* footnote 12 at 647.

[19] *See, e.g.,* Cal. Penal Code, § 182 (West 1970), which punishes those who conspire to commit any act injurious to the public health and to public morals or to pervert or obstruct justice; 18 U.S.C.A. § 371, which punishes those who commit any offense against the United States or who defraud the United States or any agency thereof.

[20] *See, e.g.,* Va. Code Ann. § 18.2–22; *accord,* N.Y. Penal Law § 105.00–105.15 (McKinney 1975).

[21] *See, e.g.,* N.Y. Penal Law § 105.20, *supra* footnote 20; *accord,* Cal. Penal Code § 184, *supra* footnote 19; 18 U.S.C.A. § 371.

[22] *See, e.g., State* v. *Moretti,* 244 A.2d 499 (N.J. 1968), *cert. denied,* 393 U.S. 952 (1969) (Conspiracy to commit an unlawful abortion upheld even after woman later found not to be pregnant); *United States* v. *Varelli,* 407 F.2d 735 (7th Cir. 1969), *cert. denied,* 405 U.S. 1040 (1969) (Hijacking conspiracy complete upon agreement).

[23] For court decisions, *see Krulewitch* v. *United States* (Jackson, J., concurring), *supra* footnote 1 at 445–58 (Interstate prostitution conspiracy); *Schaffer* v. *United States* (Douglas, J. dissenting), *supra* footnote 1 at 517–524 (Interstate transportation of stolen property conspiracy); *United States* v. *Malatesta* (Coleman, J., concurring), *supra* footnote 14 at 760–64 (Conspiracy to conduct a racketeering enterprise); *United States* v. *Kelly,* 349 F.2d 720, 758–59 (2d Cir. 1965), *cert. denied,* 384 U.S. 947 (1966) (Wall Street securities fraud conspiracy); *United States* v. *Mardian,* 546 F.2d 973, 977–80 (D.C. Cir. 1976) (Watergate conspiracy). For legal commentary, *see Developments In the Law of Criminal Conspiracy,* 72 Harv. L. Rev. 920, 923–24 (1959); *see generally,* Wechsler, Jones and Korn, *The Treatment of Inchoate Crimes In the Model Penal Code Of The American Law Institute: Attempt, Solicitation, And Conspiracy* (Part II Conspiracy) 61 Colum. L. Rev. 957 (1961). For a defense attorney's point of view, *see White Collar Crime Attorney—Client Privilege Discussed at ABA Meeting,* 27 Cr.L. 2496, 2498–99 (1980), where the remarks of panelists at a symposium on white-collar crime at the American Bar Association's 1980 annual meeting are summarized. One panelist advised defense attorneys to think about ways to cut complex cases up. Pretrial strategies should be directed to "control the compass" of the litigation, i.e., sever defendants and counts, develop a multiple conspiracy analysis, or attack the specificity of the indictment. There is no way in the world, the panelist noted, for a defendant in a lengthy trial with numerous defendants and charges to get a fair trial. There are precious few clients who can afford this kind of protracted litigation, and there are precious few jurors who can sit through a 6- or 8-month trial and come up with any kind of a reasoned conclusion.

[24] *Berger* v. *United States,* 295 U.S. 78, 82 (1934). The phrase is that of § 269 of the Judicial Code, 40 Stat. 1181 (1919), the predecessor of Rule 52(a), Fed. R. Crim. P., which now states: "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

[25] *Id.*

[26] *See Powell* v. *Alabama,* 287 U.S. 45, 71 (1932); *United States* v. *Wade,* 388 U.S. 218, 227 (1967).

[27] U.S. Const. amend. VI provides, in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation . . . ."

[28] *See Kotteakos* v. *United States,* 328, U.S. 750, 775 (1946); *United States* v. *Lindsey,* 602 F.2d 785, 787 (7th Cir. 1979).

[29] *Berger* v. *United States, supra* footnote 24 at 82.

[30] See *Blumenthal* v. *United States,* 332 U.S. 539, 551 (1947); also *see generally, Kotteakos* v. *United States, supra* footnote 28 at 775. The Court reversed a single conspiracy prosecution on due process grounds but warned that the sixth amendment's notice of charges clause may have provided an alternative reason to reverse: "Nor need we now express opinion whether reversal would be required in all cases where the indictment is so defective that is should be dismissed for such a fault . . . ."

[31] *Id.*

[32] *United States* v. *Lekacos,* 151 F.2d 172, 174 (1945).

[33] *Id.* at 173–74.

[34] *Kotteakos* v. *United States, supra* footnote 28 at 775.

[35] 529 F.2d 149 (2d Cir. 1975).

[36] *Id.* at 158.

[37] *Id.* at 157.

[38] The "substantial rights" affected in conspiracy cases and explained in the text are not all-inclusive. Courts have intimated, for example, that another due process problem may arise if the co-conspirator exception to the hearsay rule is used to obtain critical testimony in a single conspiracy prosecution that is later found to have been two conspiracies. *See, e.g., United States* v. *Miley,* 513 F.2d 1191, 1208, n.12 (2d Cir. 1975), *cert. denied,* 423 U.S. 842 (1976); *United States* v. *Geaney,* 417 F.2d 1116, 1120 (2d Cir. 1969), *cert. denied, Lynch* v. *United States,* 397 U.S. 1028 (1970).

[39] *See Commonwealth* v. *Benjamin, supra* footnote 6 at 222–223; 8 Moore's Federal Practice § 8.04 [1], where the preferred approach in Federal practice is a motion by the defendants under Rule 12(b)(2), Fed. R. Crim. P., to compel the government to elect the count or counts upon which it desires to proceed; *accord, United States* v. *Bowline,* 393 F.2d 944, 947–48 (10th Cir. 1979).

[40] *See Blumenthal* v. *United States, supra* footnote 30; *United States* v. *Sperling,* 506 F.2d 1323, 1341 (2d Cir. 1974), *cert. denied,* 95 S.Ct. 1351 (1975); *Commonwealth* v. *Benjamin, supra* footnote 6 at 222–23.

[41] *See United States* v. *Johnson,* 515 F.2d 730 (7th Cir. 1975).

[42] *Blumenthal* v. *United States, supra* footnote 30 at 551.

[43] *Kotteakos* v. *United States, supra* footnote 28 at 776; *accord, United States* v. *Kelly, supra* footnote 23, 758–759; *United States* v. *Borelli,* 336 F.2d 376, 385–87 (2d Cir. 1964), *cert. denied, Cinguergrano* v. *United States,* 379 U.S. 960 (1965); *Commonwealth* v. *Benjamin, supra* footnote 6 at 222–223; *cf. Burks* v. *United States,* 437 U.S. 1 (1978), and *Hudson* v. *Louisiana,* 49 U.S.L.W. 4159 (Feb. 24, 1981). If the evidence is found to be legally insufficient to prove a conspiracy to either the trial judge or reviewing court, double jeopardy may preclude retrial; *accord, United States* v. *Bowline* (Holloway, J., dissenting), *supra* footnote 39 at 951.

[44] *Supra* footnote 40.

[45] *United States* v. *Sperling, supra* footnote 40 at 1340–41.

[46] U.S. Const. amend. V, provides, in part: ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb. . . ." For the best Supreme Court analysis of this clause, *see Green* v. *United States,* 355 U.S. 184, 187–88 (1957); *accord, North Carolina* v. *Pearce,* 395 U.S. 711, 717 (1969); *United States* v. *DiFrancesco,* 66 L. Ed. 2d 328, 338–42 (1980).

[47] *See Commonwealth* v. *Benjamin, supra* footnote 6 at 221; *United States* v. *Guido,* 597 F.2d 194 (9th Cir. 1979).

[48] *Commonwealth* v. *Benjamin, supra* footnote 6 at 222.

[49] *See Abbate* v. *United States,* 359 U.S. 187 (1959) (Activities denounced as criminal by both Federal and State governments are separate offenses and subsequent State or Federal conspiracy prosecutions do not violate the double jeopardy clause); *accord, Bartkus* v. *Illinois,* 359 U.S. 121 (1959) (Double jeopardy does not bar a State prosecution after acquittal in Federal court for alleged Federal crime).

[50] 410 F.2d 468 (7th Cir. 1969).

[51] *United States* v. *Amabile,* 395 F.2d 47 (7th Cir. 1968), *cert. denied,* 401 U.S. 924 (1968).

[52] *United States* v. *Palermo, supra* footnote 50 at 471.

[53] *See United States* v. *Papa,* 533 F.2d 815 (2d Cir. 1976), *cert. denied,* 429 U.S. 961 (1976) (Defendant pled guilty to a narcotics conspiracy charge in the Southern District of New York. Subsequent conspiracy trial in the Eastern District of New York upheld, over harassment objection, as a separate agreement). *See also Hoag* v. *New Jersey,* 356 U.S. 464 (1958) (Consecutive trials for the robbery of five individuals on the same occasion upheld over harassment objection).

[54] *Supra* footnote 47.

[55] *United States* v. *Guido, supra* footnote 47 at 198.

[56] *See Commonwealth* v. *Benjamin, supra* footnote 6 at 221–223; *United States* v. *Morado,* 454 F.2d 167 (5th Cir. 1972), *cert. denied,* 406 U.S. 917 (1972). The government in *Morado* tried a novel approach in the indictment to cut through the constitutional thicket. One count charged a single conspiracy and five additional counts charged multiple conspiracies. Defendants' motion to quash the five multiple counts was upheld on double jeopardy grounds. After trial, the defendants were able to argue the evidence did, indeed, show multiple conspiracies, and since only one was charged, the variance affected their sixth amendment right to notice of charges. Over the government's objection that the defendants were having their cake and eating it too, the court stated, at 170: "A defendant has a fundamental right to be free from both errors. Their unchallenged success in urging that the trial should proceed on the single conspiracy count in no way forecloses them from attacking their convictions."

[57] 317 U.S. 49 (1942).

[58] *Id.* at 53.

[59] *Id.* at 55; *accord, United States* v. *Mori,* 444 F.2d 240 (5th Cir. 1971), *cert denied,* 404 U.S. 913 (1971); *Commonwealth* v. *Benjamin, supra* footnote 6.

WANTED BY THE FBI

Photographs taken 1978

Allen Ray Allen

Allen Ray Allen, also known as Allan Ray Akkeb, Allan Ray Allen, Allen Raymond Allen, Roy Allen Allen, Butch Allen, Michael F. Calhoun, Donald Lee Harper, Jimmy Lee Knigge, and others.

Wanted for:

Interstate Flight—Robbery, Criminal Activity in Drugs, and Failure to Appear

The Crime

Allen is being sought in connection with a robbery in which the victim was shot and wounded. He is also being sought by local authorities for kidnaping, armed bank robbery, possession of a stolen motor vehicle, and child stealing.

A Federal warrant was issued on October 3, 1978, at Portland, Oreg.

Criminal Record

Allen has been convicted of possession of dangerous drugs, forgery, and auto theft.

Description

Age	32, born November 14, 1948, Artesia, Calif.
Height	5′8″.
Weight	170 pounds.
Build	Medium.
Hair	Blond.
Eyes	Blue.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Carpenter, dry wall worker, and laborer.
Scars and Marks	Scars on armpits; tattoos: Eagle and rose on left forearm, skull and hat on right arm, snake on chest, man and woman on stomach, woman and skull with multipattern design on back.
Remarks	Reportedly a heroin addict and health food enthusiast.
FBI No.	293 080 H.

Caution

Allen should be considered armed, extremely dangerous, and an escape risk.

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.

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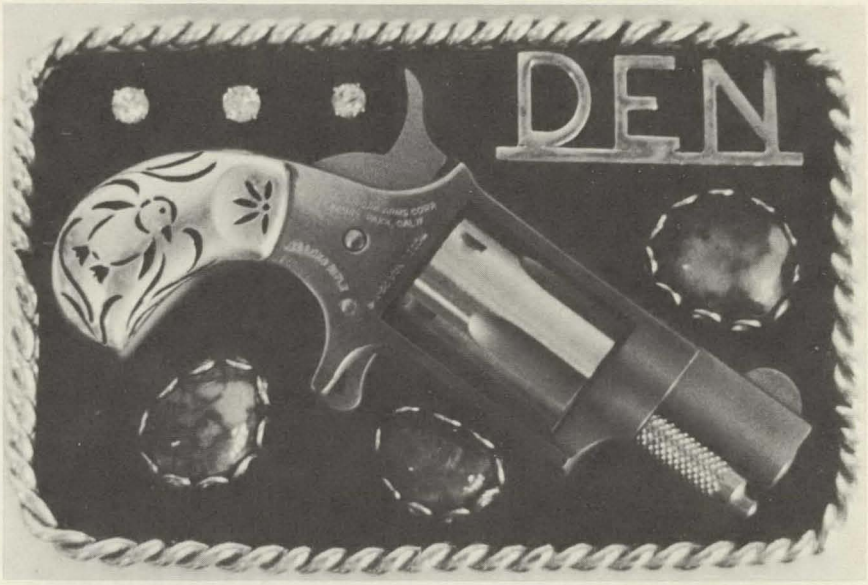
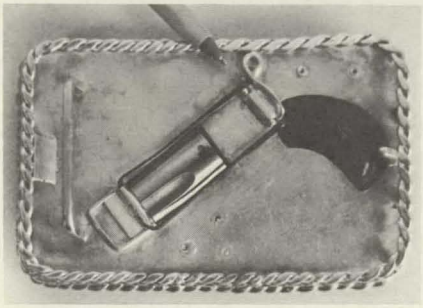
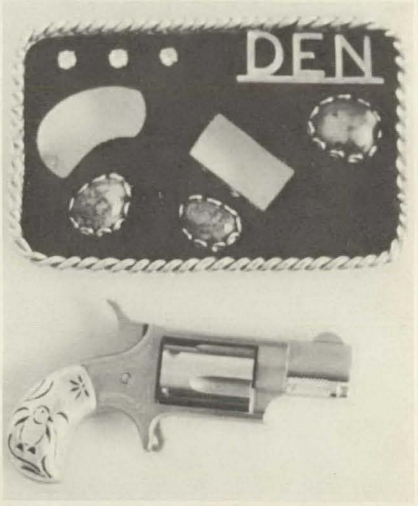
Belt Buckle Pistol

Security officers at the Johnson-Bell Airport, Missoula, Mont., recently discovered that a man entering the controlled airport boarding area was wearing a western-type belt buckle with what appeared to be a cast or dummy pistol. The buckle was actually a fully functional, five-shot, .22-long rifle caliber revolver that could be removed from the belt buckle by simply turning a catch on the back. Once removed from the belt buckle, the pistol could be aimed and fired.

The individual in possession of the belt buckle weapon indicated that it was made by his wife, who makes jewelry, belt buckles, etc., as a hobby.







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