FBI LAW ENFORCEMENT BULLETIN

AUGUST 1982

MISSING...

FBI LAW ENFORCEMENT BULLETIN

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The NCIC's Missing Person File can be an invaluable tool to investigators in solving missing person cases. See Story p. 20.

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United States Department of Justice
Washington, D.C. 20535

William H. Webster, Director

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Director's Message

At the beginning of this year, Attorney General William French Smith assigned concurrent jurisdiction to investigate drug offenses to the FBI in cooperation with the Drug Enforcement Administration. This is part of an "overall effort to achieve more effective drug enforcement through coordinated efforts involving the Drug Enforcement Administration, the FBI, the United States Attorneys and other agencies in this and other Departments," according to the Attorney General.

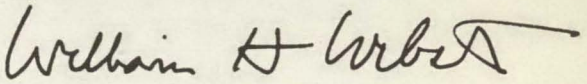
The Attorney General praised the work of the Drug Enforcement Agency, saying that everyone at DEA "can be justly proud of their accomplishments." However, because of the magnitude of the drug problem today "for the first time since its establishment over 50 years ago, the full resources of the FBI will be added to our fight against the most serious crime problem facing our nation. . . ."

This move is part of the Justice Department's overall strategy to bring about more effective drug law enforcement through more coordinated efforts on the part of the DEA, the FBI, U.S. Attorneys, other agencies in the Justice Department, and other departments of the Federal Government. The DEA, according to the Attorney General, "will continue its fine work" and will be helped by this new cooperative effort.

The FBI's investigative effort in this area will be concentrated on major narcotics trafficking organizations, both those tied to traditional organized crime and not, and on high-level smugglers, distributors, manufacturers, financiers, and corrupt public officials who aid narcotics dealing. All the FBI's new authority will be exercised in close coordination with DEA.

We found that this close coordination could, and did, work in the 6 months before this new plan was announced. During that time, the number of joint investigations increased from 6 to 120 throughout the country. In that period, the FBI Executive Assistant Director for Investigations, Francis M. Mullen, Jr., acted as Administrator of DEA. From an administrative standpoint, this was a very good way of bridging the gaps that existed between the two agencies. We envision the continuation of this coordination, including cross-training of DEA and FBI Agents.

The resources of the FBI will be applied as they have been consistently in the past—that is, to do the work that State and local law enforcement cannot do, as defined by the Congress in its setting of Federal jurisdiction. Often, large interstate narcotics smuggling is beyond the budget, personnel, and monetary abilities of local departments. Adding FBI resources in manpower, geographic coverage, and newly gained experience in undercover and organized crime investigations to DEA's wealth of knowledge and experience in the drug field, we believe will have a substantial impact on the national drug problem.



William H. Webster
Director
August 1, 1982

Use of Aircraft in Law Enforcement

An Illinois State Police Experience

By
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and
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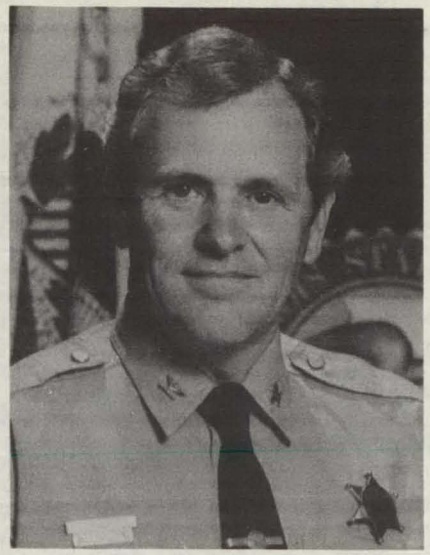
A motorist is stranded on a desolate Illinois highway. He begins to ponder how many miles he will have to walk to get to a telephone to call a garage to pick up his car, which has decided to take an unscheduled rest in the middle of nowhere. Just as he was about to give up hope of finding a good Samaritan who might help, he heard a loud voice booming from the sky above. Looking into the bright sunlight, he could see the outline of a small plane circling above him. Just as he was trying to decide what to do, a loud voice bellowed forth, asking the man whether he was having car trouble. He answered "yes" with one wave, as requested by the voice from above. His response was acknowledged and he was told to sit tight—help would be on the way. Within 20 minutes, an Illinois State Police officer was on the scene, alerting a towing service to the man's location. A couple of hours later, the man found himself back on his way again.

This scenario is similar to others of the past. Although State police aircraft are involved extensively in traffic enforcement, during FY–81, 269 motorist assists were also documented by the Air Operations Section.



Superintendent Miller

Ms. Hayes

Illinois State Police airplanes are in a position to spot a motorist in trouble. The airplanes are equipped with an outside speaker and public address system, making communication with motorists possible. In some instances, the officer in the aircraft may ask the motorist to communicate through hand and arm signals, so that a service truck can be dispatched immediately, thereby eliminating the necessity for a squad car to handle the needs of the motorist. The aircraft also has a CB transceiver on board, enabling officers to communicate with other CB operators who are in trouble, via channel nine—the national emergency channel. High-band and low-band police radios are also installed in the plane so contact can be made with ground patrol.

These aircraft, therefore, provide a very beneficial service to those motorists who find themselves stranded. However, as stated earlier, the aircraft are more commonly used for traffic enforcement.

Illinois was the third State to use the airplane to aid ground patrol in stopping speeders. In November 1959, three new planes were purchased for use in traffic control and other aerial operations. A crew of six was recruited from the ranks.

Predicting the speed of vehicles is a simple task. In various portions of the State, white lines have been painted across a lane of traffic, exactly 660 feet apart. (There are approximately 400 pairs of these white lines in Illinois.) Both the pilot of the aircraft and an observer activate their stopwatches when a vehicle crosses the first white line and stop them when it crosses the second. Using a scale retained in all aircraft, the pilot and the observer check the time lapse and the speed is mathematically computed. By using the scale, a vehicle's speed can be determined to the nearest 1/100th of a mile per hour. For example, a car traveling 60 miles per hour will take exactly 7.5 seconds to travel the 660 feet between the two white lines. The vehicle breaking the second line is then kept in direct view by the observer until it reaches the "catch car" on the ground.

There is no chance of "false echoes" or of radar picking up the wrong car. The electronic stopwatches (there are usually three or four in the aircraft for backup) are checked every 6 months for accuracy. Small errors—to the 1/100th of a second—are certified in writing. If the accuracy of the watch ever falls below the allowable limit, the watches are removed from service. However, certification records have indicated that the watches have needed very little adjustment. If there is a discrepancy in time when the pilot and observer compare their watches, the driver is given the benefit of the doubt. The fastest speed ever clocked in Illinois, using this measurement, was in excess of 132 mph on a two-lane roadway.

Neither the direction of the aircraft or vehicle, the altitude of the aircraft, nor the angle between the aircraft and the roadway reduces the accuracy of the check, as long as the observer can clearly see the lines and maintain constant visual contact with the vehicle.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"These aircraft . . . provide a very beneficial service to those motorists who find themselves stranded."

The accuracy of the measurement used for detecting speeding has been upheld by the court system. Based upon the pilots' personal experience in the courtroom, the speeding arrests made by aircraft receive an overwhelming 95-percent conviction rate. This rate far surpasses the conviction rate experienced when other enforcement tools, such as moving or stationary radar, are employed.

The total number of arrests generated by the aircraft for FY–81 was 35,082, an increase of 171 percent over the 1980 total of 20,512. This significant increase in enforcement activity further demonstrates the expanding role the aircraft plays in the division's enforcement operation.

The Pilots and Their Aircraft

Until May 1981, there were 22 pilots, plus a chief pilot, who is responsible for training and maintenance and who serves as the principle operator of the department's twin-engined aircraft used for executive transportation. These 22 sworn pilots were located in various districts throughout the State; the chief pilot, a nonsworn employee, was stationed in Springfield. This geographical balance continues to be maintained even though there have been cutbacks in the total operation and manpower.

To be considered eligible to be a pilot within Air Operations, a sworn field officer must possess at least a private pilot's license. If the individual is selected, the department provides him training to receive an instrument and commercial rating. Officers, other than the chief pilot, who are assigned to flight duty, participate in the department's technical career path program which compensates the pilot for the "technical" nature of the position they hold.

Ongoing training is provided to the pilots. This training consists of a "flight check" at least every 6 months by the chief pilot, as well as frequent unannounced "spot checks." The pilots must also have a yearly physical. In addition, there is an aircraft maintenance program consisting of 50- and 100-hour inspections which occur between the required 400-hour inspection and the annual inspection.

The fleet itself consists of seven single-engined planes, which are used for patrol purposes, and one twin-engined aircraft which is used basically for executive transportation. These eight aircraft are geographically distributed to reduce flying time to service areas in various cities throughout Illinois.

The fixed-winged aircraft were selected rather than helicopters because of the size of the geographical area they are assigned to cover. Through rapid surveillance, aircraft can reduce the critical timelag between the occurrence of an accident or event requiring assistance and the arrival of the police or other emergency units on the scene. Fixed-winged aircraft are also more cost-effective.

Until late 1980, there were always two pilots in the aircraft whenever it was assigned to airspeed checks. However, in October 1980, in order to cut down on costs, a new program was instituted. Instead of a second pilot, a nonpilot State trooper is now assigned to ride in the aircraft as an observer with the pilot, and he is the one who does the actual clocking of vehicles. With this program, the aircraft can be used during virtually all the daylight hours by rotating pilots and observers, if needed. A decrease in the number of days on which flights were cancelled in FY–81 compared to FY–80 was the result of replacing one of these two pilots with a ground officer.

More time can now be spent on speed checks. The number of total arrests made by both aircraft and ground patrol has risen markedly from the approximate 30,000 average annual number. Along with the increase in the number of arrests made, it was discovered that during FY–81, the aircraft were used more efficiently with an average of 3.7 stops per hour compared to 3.5 stops per hour to flight devoted to traffic enforcement in FY–80.[1]

This program does not result in higher fuel costs because there is no increase in the number of hours flown. Fixed expenses, such as payroll, hangar rent, etc., also remain the same.

Until May of 1981, the average number of air patrol hours in one day was 5 to 6 hours, and the aircraft were operated 7 days a week during daylight hours. However, because of current Federal and State funding constraints, the planes are now used for patrol purposes only 60 tachometer hours per month. This is an average of 3 hours per day, 5 days per week. The funding constraints also resulted in a cutback in the number of sworn pilots needed, necessitating the reassignment of six officers to district oper-

"Airplanes are very valuable to law enforcement in areas such as manhunts, surveillance, photography, emergency relays, as well as in the traditional traffic enforcement role, and should be part of every State police operation."

ations. The airplanes are flown year-round, weather permitting. On selected holidays and on peak summer weekends, a double shift may be flown.

The total number of logged flying hours in FY–81 was 8,362.7 hours. The total number of hours logged between when the State police began its fleet operation and July 1981, is 69,182.8. In spite of this large number of tachometer hours, there has never been an aircraft crash.[2]

Funding

From 1959 until FY–78, the fleet size of the aircraft operation remained at three. During FY–78, a grant was submitted to the National Highway Traffic Safety Administration to purchase and operate three additional aircraft for "line patrol" along interstate highways. The request was believed to be justified because of the increased amount of completed interstate highway, as well as the increased number of vehicles and licensed drivers.

The primary objectives of the proposed program were:

1) To reduce traffic accidents and their severity;
2) To assist motorists; and
3) To assist in supervising an orderly flow of traffic on the interstate and primary highway systems of Illinois.

The secondary objectives included:

1) Supporting and coordinating ground patrols;
2) Search and rescue;
3) Special surveillance and photography;
4) Emergency transportation; and
5) Traffic enforcement.

The Department of Transportation (DOT) gave approval to purchase only two aircraft. This necessitated a revamping of the original program and called for the use of the two aircraft on a concentrated patrol effort on Interstate 57.

In FY–79, another grant proposal was submitted asking for continued operating funds for the two aircraft on Interstate 57, as well as requesting funds for the purchase and operation of two additional aircraft to be used for concentrated enforcement efforts on Interstate 80 and Interstate 74. Funds for the purchase and operation of three helicopters were also requested for duties that would be better handled by rotary-winged aircraft. Permission was granted to purchase one additional aircraft for line patrol on Interstate 80.

In FY–80, an additional aircraft to be designated for special enforcement emphasis was requested to patrol a 127-mile section of highway. Operational funds for the airplane were also requested, as well as continued operational funding for the previous three aircraft. This request was approved.

In FY–81, funds for the operation of the four airplanes were received, along with funds for high-intensity lighting.

At the beginning of FY–82, all Federal funding for the aircraft program was terminated. A request was therefore submitted to the general assembly for replacement of the two aircraft used on Interstate 57, as well as operational funds for the four aircraft and equipment funds for four additional sky-timers. Because of money constraints currently being placed on State government, only replacement aircraft and operational funds were received.

Department of Transportation Evaluations

Evaluations of the airplanes' effectiveness have been conducted by the DOT's Division of Traffic Safety. These evaluations were conducted for the 1978–1979 period. (The Division of Traffic Safety is currently working on an evaluation for the periods of April 1979, to March 1981.)

The conclusion of the initial interim evaluation stated that "the Illinois State Police aerial patrol was accomplishing its major objectives—reducing the number of accidents and accident severity along Interstate 57."[3] However, the number of motorist contacts was not as high as anticipated, and reductions in speed was not accomplished. Illinois DOT further stated that the project warranted continued funding, with increased emphasis in the areas of motorist contact and speed reduction.[4]

In a later evaluation of the same time period, it was determined that a significant decrease in accidents coincided with the operations of the aerial patrol and that the Illinois State Police aerial patrol had led to a reduction in the number and severity of accidents along rural portions of Interstate 57 and Interstate 80. However, the decrease in the average speeds of vehicles was small. It was also determined that air and ground patrols needed to be better coordinated to increase the number of apprehended violators.

It was further recommended by the DOT that the Illinois State Police continue the aerial patrol of the State's interstate highways, with emphasis on the concept of combined aerial and ground team effort and that highway safety funds continue to be used to underwrite the operational costs of aerial operations.[5]

The DOT, therefore, has concurred that the concept of aerial patrol for the Illinois interstate system is in the best interest of public safety. The program affords the Illinois State Police some operational flexibility, which it requires to be effective and efficient in its enforcement efforts.

Current Problems

In order to use the aircraft most effectively during the present curbing of flight hours, flights for nonlaw enforcement-related activity are being curtailed when possible. When the aircraft are not in operation, the pilots are assigned to road patrol.

Since there is a reduction in the number of hours of operation, the fixed costs associated with the airplanes are a major consideration. To decrease the fixed costs, the crew has been reduced to two pilots, and there has been a geographical reapportionment of the aircraft work areas. Pilots are used on the road during nonflight periods. The procedures used for the depreciation and maintenance cycles are being evaluated. It is also being determined whether the best possible locations for hangars and office facilities are being used.

In the past, the weakest element of the air operation has been the ground support provided. It was determined through a staff study that to be most cost-effective, two chase cars should be used with an objective of 4.1 stops per hour, per trooper.

An evaluation was recently conducted to determine what type of replacement aircraft could be purchased at a more reasonable price than those currently being used. Consideration was given to a smaller aircraft; however, it was decided that the present type of aircraft be retained because of safety, necessity to transport personnel, and its overall versatility.

Consideration is now being given to reduce the size of the fleet so that each plane's use will be increased, and fixed costs can be reduced. A cost benefit analysis will be conducted to determine if increased use is worth the loss of coverage allowed by the present geographically distributed airplane sites.

Summary and Analysis

The airplane is an expensive tool for use in law enforcement because of high fixed costs, particularly for pilots' salaries and aircraft depreciation. However, on a "per mile" basis, the airplanes used in line patrol are no more expensive than equivalent patrol on the ground, and they are definitely superior in terms of area patrolled.[6]

Airplanes have not proved cost-effective in terms of cost incurred for "activity rendered." This is primarily because the aircraft have not been used to their fullest capabilities. For instance, we could increase aircraft operation substantially through the number of hours flown, increase the number of stops for traffic violations and motorists assists each hour, and increase ground support from two chase cars to four for maximum activity and productivity. If the aircraft were used to the fullest extent, they would become cost-effective.[7]

Airplanes are very valuable to law enforcement in areas such as manhunts, surveillance, photography, emergency relays, as well as in the traditional traffic enforcement role, and should be a part of every State police operation. However, it is also important that these planes be made available to agencies such as the Department of Conservation, the FBI, and local law enforcement agencies in order to provide the most efficient and effective law enforcement services to the citizens of the State.

FBI

Footnotes

[1] Richard A. Raub and Bobby L. Henry, Sr., *Aircraft Operating Activity, Two Year Period—FY 80 and FY 81*, Illinois Department of Law Enforcement, Springfield, Ill., p. 7.

[2] Area patrol aircraft are assigned to various sections of the State and are used mainly for traffic enforcement in sensitive areas, such as high-accident areas, "no passing" zones, and truck weigh-in stations. Area patrols are flown when there is at least a 2,000-foot ceiling and at least 5-mile visibility. Line patrol aircraft are assigned areas of interstate highways. Officers observe the highway linearly, keying on accidents, stalled vehicles, traffic backups, and reckless driving. When an emergency is encountered, the aerial patrol stays over the area, pursues, maintains contact, or takes other action appropriate to the situation.

Interstate line patrols are flown when there is at least a 1,000-foot ceiling and at least a 5-mile visibility.

Normal patrols are flown at an altitude of from 1,000 feet to 2,500 feet, at approximately 135 m.p.h.

[3] P. P. Madonia and R. A. Raub, *Interstate Aerial Patrol Illinois State Police Interim Evaluation*, Illinois Department of Transportation, Division of Traffic Safety, Springfield, Ill., May 1979, p. 8.

[4] Ibid.

[5] James P. O'Brien and Charanjit S. Sidhu, *Evaluation of Aerial Patrols of Interstate Highways by the Illinois State Police 1978–1979*, Illinois Department of Transportation, Division of Traffic Safety, Springfield, Ill., April 1980, pp. 12–14.

[6] Richard A. Raub and Bobby L. Henry, Sr., "Cost of Using Airplanes in Traffic Law Enforcement: A Case Study," *Traffic Quarterly*, vol. 35, No. 1, January 1981, pp. 82–83.

[7] Ibid, p. 83.

Using Psychological Consultants in Screening Police Applicants

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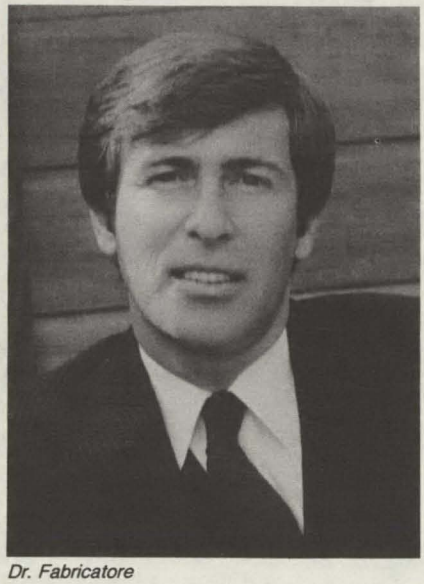
Since the Kerner's Commission recommendation in 1967 that all police officers be psychologically evaluated, psychological screening of applicants has become a routine component of the hiring process in many police agencies. Although the psychological evaluation process is widely used, it has not always been well understood or used to maximum effectiveness. Therefore, it is necessary to clarify some of the basic issues involved in effectively incorporating the "psychological" into the law enforcement administrative process.

Stress, "Liability-Prone," and Negligent Admission/Retention

Research shows that excessive stress can lead to aggressive and unconventional behavior, as well as mental and physical dysfunctions on the job.[1] Police work is a well-known, high-stress occupation. Stress can be a significant factor in causing serious and expensive problems, but the stress tolerance level of officers or applicants can be a significant factor in preventing problems. People have different ways of coping with stress. Some individuals are emotionally "liability-prone." These individuals have an increased propensity to develop serious behavioral, psychological, and physical problems. They may become a serious threat to themselves, fellow officers, the welfare of the community, and the agency budget.

Dr. Saxe



Dr. Fabricatore

Apart from the obvious moral obligation law enforcement agencies have to ensure that their officers do not abuse their powers, inappropriate police behavior is expensive. The cost of investigating and processing personnel complaints is high. Disciplinary actions often include suspension, which reduces manpower. In addition, lawsuits and civil claims are costly in both dollars and manpower and are devastating to agency morale. The courts have identified "negligent admission" and "negligent retention" of officers as agency liabilities. Most agencies can trace a major portion of their unfavorable incidents to a relatively small number of officers. It is in the area of identifying applicants whose behavior will be costly to the agency that psychological screening efforts can be most effective.

Strategies—"Select In" or "Screen Out"

Too often, police administrators are led to believe in a "select in" strategy, which suggests that psychological evaluations can aid in selecting the best candidate for police work. This is not quite true. Psychological input can be helpful in deciding which individuals within an agency or department are suitable for specific assignments, such as Special Weapons and Tactics (SWAT), hostage negotiation, or bomb squads, but the most effective use of psychological evaluation is to "screen out" or identify those applicants who may not be emotionally suitable or may be a high risk for law enforcement. In our experience, the percentage of applicants psychologically unsuitable typically ranges between 5 percent and 20 percent of the applicant pool.

The former strategy—"select in"—implies a precision and level of accuracy that psychologists do not possess and psychological procedures do not produce. In addition, this strategy ignores the possibility that future events, such as personal problems, could severely impact applicants initially judged to be acceptable and cause them to become high-risk employees at a later time.

Unsuitable applicants do not always appear to be inappropriate. Applicant pools approximate the normal curve—some individuals will appear to be excellent candidates, some will be obviously unacceptable, and the great majority will be somewhere in the middle. Applicants in this middle range who, in the judgment of a psychologist, demonstrate risk of engaging in liability-resulting behavior should be screened out. This decision is not always clear, but in admitting individuals to law enforcement, judgmental decisions should be made with caution.

Other mechanisms should exist in the screening process to minimize possible decision errors. Included should be an appeal or review process conducted at a higher administrative level.

How to Select and Best Use a Psychological Consultant

It would be ideal for law enforcement agencies to have a full-time mental health professional as part of the staff. In this case, the professional should be involved in an orientation period long enough to provide familiarity with police management, police officers' tasks, and criteria for successful job performance. Since the majority of police agencies do not have or cannot afford full-time mental health professionals, outside consultants are used for a variety of psychological services, including the psychological

"It is the psychologist familiar with law enforcement who renders a clinical judgment that brings expertise and credibility to the screening process."

screening of applicants. Outside consultants may be psychologists, psychiatrists, management consultants, and on occasion, physicians. Most often, a licensed professional or certified consultant is required.

An important consideration in choosing a professional for a department is the person's ability to relate to the police organization and to become knowledgeable in police consultation. Police agencies are approached by professionals from all areas and backgrounds who wish to become associated with an agency or propose a project on a fee-for-service or contract basis. In rural areas and small towns, police organizations sometimes develop working arrangements with university professors. In some cases, research academicians look upon police officers as subjects for data-gathering and fail to understand totally the needs of police officers and administrators.

Academic persons working in applied areas or professionals who have done research in areas of police psychology are sometimes better prepared to begin consultation in law enforcement. It is, however, important that such professionals also possess training in the area of identifying clinical or personality issues that could impair police officers' performance. Consultants who are not familiar with the job should approach the consultation task initially as a student, and police agencies should insist on exposing them to relevant areas of police work.

The director or chief of police will often be the primary contact for the consultant. The psychological screening information is usually transmitted directly to him or to another previously designated representative. In most cases, the decision to hire is made by the chief of police after background results, medical results, psychological results, and in some cases, polygraph results are available. Some agencies prefer either a "yes or no" response as to whether an applicant is suitable for police work. This response may be verbal, followed by a written report. Some police administrators prefer to meet with the consultant to discuss each applicant. However, in most cases, a detailed written report including the background as reviewed by the consultant, the results of any psychological tests administered, interview data, and a summary and recommendation is submitted to the department.

The consultant should function as part of a team that includes all those involved in processing applicants. It is strongly desirable for the consultant to meet with all persons in the system, including the training officers who will eventually complete the screening process by either recommending recruits for permanent status, probation, or termination. The consultant should know the training officer's perspective and be aware of any past psychological problems of the recruits. The training officer should know on what basis the psychologist will recommend marginal applicants be accepted with the hope they will develop as suitable officers during probation.

Consultants should be willing to explain and defend screening decisions should it become necessary. When an applicant appeals a disqualification, the consultant should be available to appear before a civil service board or in court, if necessary.

In many cases, a psychologist or other professional will be hired solely to provide preemployment psychological screening. After the agency develops confidence in him, the consultant may be called upon to perform psychological "fitness for duty" evaluations on officers who have demonstrated patterns of excessive-force complaints or highly unusual or "liability-prone" behavior. Also, officers applying for special assignments, such as bomb squad technicians or hostage negotiators, may be evaluated to ensure that persons chosen are the best suited for the job. In these cases, the officer's personnel file and work history provide valuable information regarding past performance. Information on the number and nature of complaints against the officer, sick time taken, and performance under stress provides valuable input for the psychological consultant.

In all cases, it is important to remember that the decision as to who will be selected for employment and which officers will receive specialized assignments remains in the hands of the administration. The psychologist or consultant only provides specialized in-

formation and judgments that will be taken into consideration along with other important factors. In some instances, police administrators may choose officers who have not been recommended by the psychologist. Often, in these instances, the psychological consultant can identify areas of needed development and can suggest to the administration ways of supporting individual development.

Screening Components

Police administrators and managers are often concerned with the validity of psychological tests. Psychological instruments and procedures were developed through scientific and statistical investigation, but the relevance of any single statistical score to a well-integrated psychological judgment is often overemphasized. Good decisions require information. The three best sources of information in evaluating law enforcement applicants are:

1) Psychological tests;
2) Background information; and
3) An indepth or "clinical" interview by a psychologist knowledgeable in law enforcement.

All information developed in the preemployment stages could reasonably be used by a clinical psychologist. Typically, most psychologists choose the Minnesota Multiphasic Personality Inventory (MMPI), the Sixteen Personality Factor Questionnaire (16PF), or the California Psychological Inventory (CPI). Extensive information exists on these instruments and their use in law enforcement screening;[2] however, psychologists may vary in the psychological tests they use depending on their training and experience.

Some psychological tests, such as the MMPI and the 16PF, can be computer scored, but a psychologist must review and interpret the results on an individual basis. Because most computer interpretations of the MMPI are based on the assumption that the test applicant is a mental patient or an outpatient in psychotherapy, negative or pathological information is likely to be emphasized. The MMPI can be extremely useful in screening, but it must be interpreted by a professional who is knowledgeable in both the test's subtleties and law enforcement.

The Psychologist as an Expert Judge

In the psychological screening approach, the psychologist plays a critical role in integrating psychological test results, background information, and interview data in order to arrive at a judgment of unsuitability. This is a "clinical" or expert judgment, not a statistical or scientific outcome. Studies have been done relating various kinds of biographical or psychological test score information to criterion variables, such as disciplinary actions, number of arrests made, commendations, sick time taken, on-the-job automobile accidents, etc. These studies are helpful in suggesting which tests and criteria may be of potential benefit, but to rely totally on test scores and correlations would be inappropriate. It is the psychologist familiar with law enforcement who renders a clinical judgment that brings expertise and credibility to the screening process.

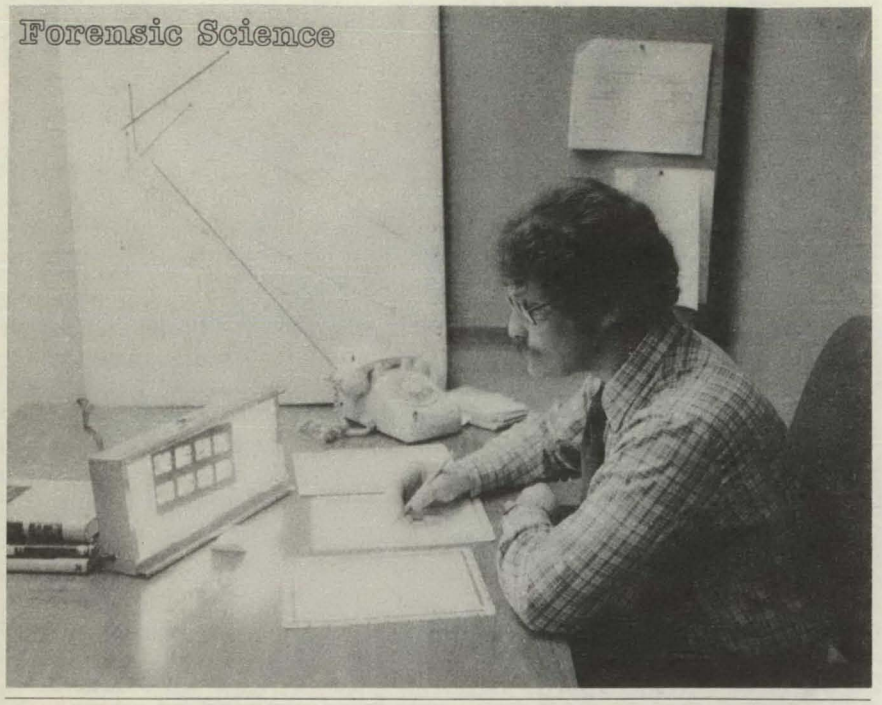
The psychological consultant, properly trained and working as support for management, can maximize the success and professionalism of the screening and selection process.

Psychologists cannot predict the future. However, assuming they know the intricacies of a police officer's job, they can develop relevant information regarding an individual's emotional functioning in a law enforcement position and render a judgment about an individual's suitability. Psychological screening minimizes the admission of inappropriate applicants and is consistent with the safeguards and precautions that the law and commonsense dictate. **FBI**

Footnotes

[1] W.D. Haynes, *Stress Related Disorders in Policemen* (San Francisco: R & E Research Associates, Inc., 1978); R.H. Rahe and E.K.E. Gunderson, *Life Stress and Illness* (Springfield, Ill.: Charles C. Thomas, 1974); M. Reiser, "Stress, Distress and Adaptation in Police Work," *The Police Chief*, January 1976.

[2] J. Gottesman, *The Utility of the MMPI in Assessing the Personality Patterns of Urban Police Applicants* (Hoboken: Stevens Institute of Technology, 1975); S.J. Saxe and M. Reiser, "A Comparison of Three Police Applicant Groups Using the MMPI," *Journal of Police Science and Administration*, vol. 4, No. 4, 1976; J. Fabricatore, F. Azan, and H. Snibbe, "Predicting Performance of Police Officers Using the 16 Personality Factor Questionnaire," *American Journal of Community Psychiatry*, vol. 6, No. 1, 1978; R.H. Blum, *Police Selection* (Springfield, Ill.: Charles C. Thomas, 1964).



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Dental Identification Program: An Overview

Skeletal remains are unearthed in a desert. A woman's body is washed up on shore. The multilated and scorched body of a man is found in a vacant field. Many times, in cases such as these, the identity of the body is never known. To enhance the probability of identification, California implemented in 1979 the first statewide dental identification program in the United States. The program, which is administered by the California Department of Justice (DOJ), assists law enforcement agencies and coroners in identifying unidentified deceased persons by comparing their dental charts with the charts of persons reported missing by law enforcement agencies throughout the western United States.

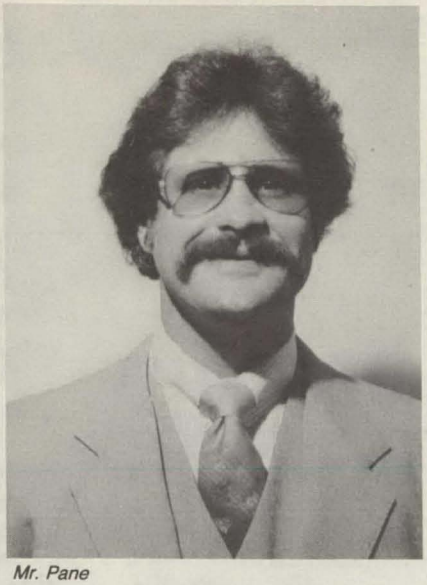
Case Histories

On February 25, 1979, the San Diego County Coroner's Office was notified of an unidentified deceased person who was a victim of the "Freeway Killer" in southern California. The dental charts of this homicide victim were submitted to the DOJ dental identification program for comparison against the dental charts of missing persons. The search resulted in a possible match with records of an individual reported missing by the Milpitas Police Department, 450 miles north of San Diego. The deceased person was positively identified by the San Diego County Coroner's Office as the missing person from Milpitas.

On January 25, 1981, the San Bernardino County Coroner's Office was notified that two human legs had been found. A female torso, with head, legs, and hands severed, was discovered on January 28th, 30 miles from the location of the legs. The hands were not located, but the head was eventually found a month later, 200 feet from where the legs were found. A forensic anthropologist confirmed that all body parts were from the same victim. The dental chart of the victim was submitted to the dental identification program. A search of program files resulted in a probable match with dental records of an individual reported missing by the Santa Ana Police Department in Orange County, which is southwest of San Bernardino County. The deceased person was positively identified by the San Bernardino County Coroner's Office as the missing person from Orange County.

Program Implementation

The idea for the California program was initiated by two San Diego dentists, Dr. Norman "Skip" Sperber and Dr. Robert Siegal, who specialize in forensic odontology—the scientific study of teeth. Their enthusiasm resulted in support and passage of legislation which became effective January 1,



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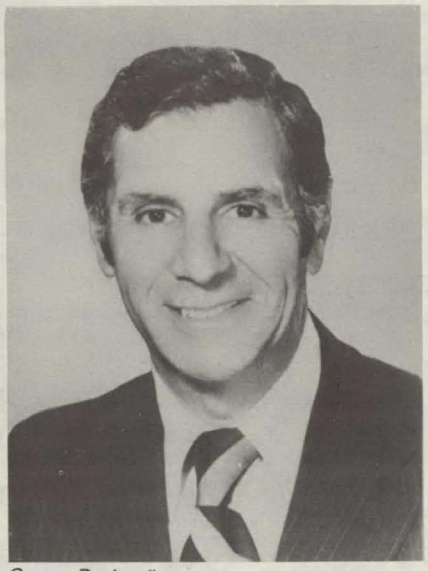

George Deukmejian
California Attorney
General

1979. The law requires local law enforcement agencies and coroners to supply dental records for missing persons and unidentified deceased persons to the California Department of Justice.

In accordance with the new law, the local law enforcement agency completes a DOJ missing persons report and provides the immediate family or next of kin with a DOJ release form requesting that they obtain the missing person's dental records. After conferring with the county coroner about unidentified deceased persons that may be the missing person, the law enforcement agency forwards the DOJ missing persons report and dental records to the dental identification program.

Dental charts of unidentified deceased persons are submitted to the program by county coroners after they have exhausted all attempts to identify the individuals. These dental charts are compiled for the specific purpose of comparison with dental records of missing persons. If a match occurs, the coroner who submitted the dental chart is notified and sent the dental records of the missing person for positive identification.

Prior to implementation of the program, DOJ maintained separate files on missing persons and unidentified deceased persons which contained physical descriptors that were compared for possible matches. However, in many cases, it was difficult to obtain physical descriptors of fingerprints needed for identification because the bodies were badly mutilated or decomposed. With the use of dental charts and records, positive identification is facilitated since most people have had some type of dental work done while there are many people who have not been fingerprinted.

To date, the program has identified 29 unidentified deceased persons. In many cases, unidentified deceased persons were positively identified as missing persons reported by California agencies hundreds of miles away from where the bodies were discovered. A majority of the persons identified—25 of the 29—were victims of homicide. This included homicide victims in Nevada and Arizona who were identified through the program as missing persons from California. This was possible because law enforcement agencies and coroners throughout the western United States may use the program.

Through the program, positive identification was also made for an additional 17 unidentified deceased individuals for whom coroners had possible names. In such cases, the program was able to furnish a missing persons report and dental records to the coroners to assist in establishing the identity of the deceased.

The current file includes dental records of 600 missing persons and 300 unidentified deceased persons. Dental records and charts of missing and unidentified deceased persons are maintained for as long as the submitting agency wishes and are continually compared against incoming reports.

The dental identification program has saved law enforcement agencies and coroners valuable time in their investigations by providing a means to make positive identifications through the use of dental records and charts. Most importantly, however, the program has aided the families of missing and unidentified deceased persons by clearing some of the uncertainties confronting them. **FBI**

The Use of Video Technology in Shotgun Training

A Unique Approach

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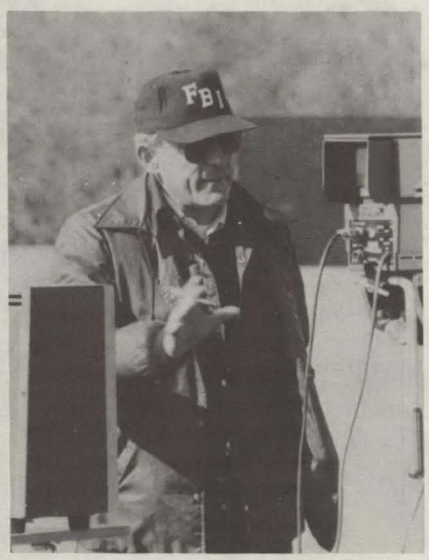
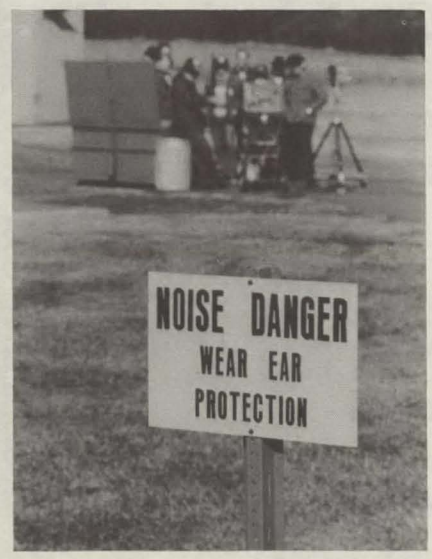




Increased attacks on law enforcement officers in the United States in recent years emphasize the necessity for officers to be alert during all phases of police work. A key weapon in the defensive arsenal of a law enforcement agency is the shotgun, which necessitates a high level of skill in its use. To augment an officer's proficiency with the shotgun, the FBI initiated a "Police Shotgun Training Course," using a combination of video tape technology and student behavior modeling.

The procedure employed in this training is based on behavior-modeling theories. By this it is implied that behavior modeling or observational learning can add totally new behavior to one's repertoire. Wehrenberg and Kuhnie, writing in *Personnel Journal,* urge the use of video tape models for focusing on performance and changing performance.[1] Modeling-based training is also emphasized by Porras and Anderson, who state that the absence of modeling, including the use of video tape techniques, results in training programs that change attitude or persepctive, but fail to change behavior.[2]

The term "self-confrontation," credited to Gerbard Nielsen who described the effects of video tape playback techniques on participants,[5] is critical to the concept of this training process. Self-confrontation is a means of video tape feedback presented to an individual so that he may see and hear his performance as the instructor and colleagues witnessed it when it was delivered.

Background

The use of video tape recording and playback for training purposes is not a new technique. Researchers in the education field and private industry began to investigate the use of video tape equipment for training and education at the time of its introduction in the 1950's.

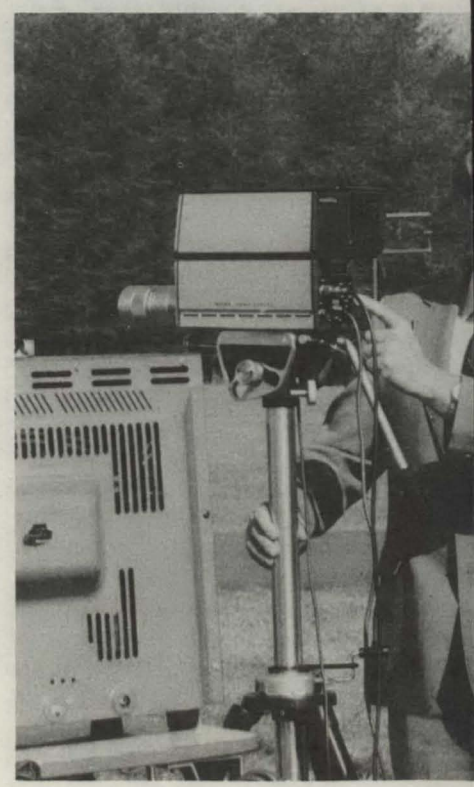
In the initial phases, the video medium was unproven for educational purposes, and there were doubts about its reliability. Costs of the intricate systems then available were prohibitive for many organizations, and the systems being developed were not compatible with each other, adding to the complexity of selection.

However, the use of video tape equipment made its way quickly into the institutional spectrum. Certain sectors, such as business and industry, have taken a lead, both in volume of current activity and originality of applications and program formats.[4]

Early use by educators was limited, primarily because video communications consisted of live programing on closed-circuit transmissions. As the development of video tape equipment progressed and the possibilities for programing, storage, and playback were enhanced, those in education were able to upgrade their capabilities. Today, the use of video equipment in the education field is widespread.

Video feedback is viewed as being a reinforcing device for the learner. It has been stated that reinforcement is probably the single most important concept in understanding the learning process. Some researchers see the relationship between feedback and behavior change as a process by which an individual can more effectively use the feedback of information appropriate to his change project, and thereby, be

"'. . . TV applications, once thought to be imperfect or not practical, are possible today to help resolve law enforcement communications problems.'"



more successful in attaining his change goal.

Results in experiments with video feedback have produced mixed reactions. The theory that it is a useful device that does improve learning is shared by many who have used the technique; however, specific controlled research does not always support this view. One exception is that of McCroskey and Lashbrook, reporting in the *Speech Teacher*, who conclude that video tape playback of a student's performance, accompanied by instructor and student discussion, can make a positive contribution toward increasing students' insight into the communication process.[5]

In recent years, both small and large police departments who have made extensive use of video equipment report positive behavioral change. The New York City Police Department has used video equipment extensively for inservice training, primarily for the largest segment of the department—the Field Services Bureau. The mobility of video equipment has enabled them to film street scenes, providing greater realism in training.[6] The Greenburgh, N.Y., Police Department discovered that video may not be the least expensive method of training, but it can be extremely valuable in crime scene training, recording voluntary confessions, and surveillance. Unable to question the value of the video method with regard to its ability to transfer knowledge, they concluded it is well worth the expense in

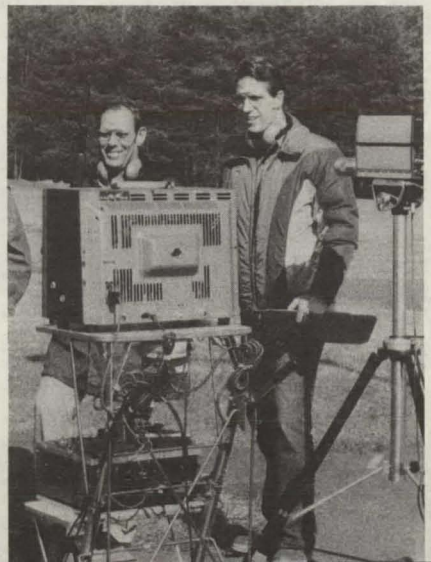
an effort to upgrade professional skills through training.[7]

Another law enforcement approach was outlined by Lt. John Fakler of the Suffolk County, N.Y., Police Department, who employed television technology to assist in the control of large-scale demonstrations. Lieutenant Fakler stated that "television played a useful role at this demonstration and it is clear that it would be equally effective at disasters or other unusual disturbances. The equipment to do the job is available, dependable, and not difficult to use. Improved technology has also lowered the price for equipment that was once too expensive to consider."[8] Lieutenant Fakler's summary of the situation is quite explicit: "Television technology has advanced considerably during the past 5 years, and TV applications, once thought to be imperfect or not practical, are possible today to help resolve law enforcement communications problems."[9]

The Police Shotgun Training Course—Pilot Program

The Police Shotgun Training Course (PSTC) is an elective taken by students enrolled in the FBI National Academy. Students' abilities in the use of the shotgun range from highly competitive skeet shooters to those who are novices.

When a pilot program using video tape recording equipment in shotgun training was initially attempted, the PSTC consisted of five 2-hour sessions. Although the use of video gave the students an opportunity for self-confrontation, several problems developed. Since the video tape recording equipment had to be obtained from the Academy's Instructional Technology Services Unit, excessive instructor preparation time was necessary. In addition, a video technician was used to tape each session, since the instructors were fully engaged in the training process. As a result, the maximum training benefits were not achieved, since the technician lacked an adequate background in firearms training.



In order to insure that each of the 15 students were video taped during the 2-hour class period, very short segments of each individual's performance were taped. These segments appeared in random order so that the flow of instruction taking place on four separate skeet fields was not interrupted. The time constraints made it impossible for each student to view the video tape immediately, thereby reducing the effectiveness of this method of training. And the random sequencing on the field made it difficult to locate a particular student during playback, which was extremely time-consuming for both student and instructor.

The difficulties encountered in the pilot program alerted the staff to the fact that a concentrated effort must be applied if there were to be effective results.

Current Design of the PSTC

Student evaluations revealed that a majority of police departments offered insufficient training with the shotgun, which suggested that additional time should be allocated to enable the students to further develop their shotgun techniques and skills while attending the FBI Academy.

Currently, the PSTC elective is divided into 10 2-hour blocks of instruction, with each class of students divided into groups of 5. The first session consists of a lecture/discussion dealing with the application of the shotgun in police work. The second includes a demonstration by the instructor and practical application by students of safety checks, assemble area loading, unloading, and combat loading with dummy ammunition, with an instructor's critique of the procedures. The third session begins with live firing and the use of stationary targets to practice the fundamentals and techniques previously presented.

"As proficiency with the shotgun increases, law enforcement officers are better able to defend themselves and those they are sworn to protect."

Sessions four and five consist of the FBI's shotgun course #2 (skeet), while sessions six and seven are the FBI's shotgun course #8 (combat skeet). Both shotgun courses are used to develop the student's mastery of the operation and function of the police shotgun without consciously thinking about this process and to develop the concept of "lead" as it pertains to hitting moving targets. It is during sessions four through seven that each student is video taped and given time for self-confrontation immediately afterwards.

Methodology

Although the positions and number of shots used in shotgun course #2 are applicable to standard American skeet shooting, one major variation is used by the FBI. The student is required to start with the weapon below shoulder with the safety in the "on" position until the target (bird) is called. This ready-gun position invariably becomes an international skeet shooting position, wherein a portion of the weapon stock is below the lateral line of the forearms.

It should be remembered that the use of skeet for law enforcement training by the FBI is not an attempt to teach competitive shooting methods, but to prepare the student for the defensive use of the weapon. To continually allow a shooter to bring the shotgun to the shoulder and have the safety in the "off" position prior to initiating a timed shooting phase is analogous to never drawing from the holster when training with the handgun. Statistical surveys of gun battles show very few instances where the officer has the opportunity to cover an opponent with the weapon prior to using deadly force.[10]

By using the FBI's ready-gun position, the student must act upon a self-initiated, internal command (calling the target) or react to external stimuli (trap machine noise or the target exiting the house). If an internal command is employed by the shooter to initiate action (gun movement), the target will reach midpoint of the field approximately 1.5 seconds after the signal to release the bird has been given. It will reach the front lateral edge of the opposite house in about 3 seconds. When external stimuli are used, as particularly necessary in the combat skeet course, the target will reach the field midpoint in about 1 second and the opposite house 2.5 seconds after the trap noise or the target exiting the chute. Either method sufficiently reduces the time available to the shooter, which requires a reaction in place of a deliberate action as is usually possible in most shotgun training or qualification courses. By necessitating a reaction, i.e., mounting the weapon to the shoulder, placing the safety in the "off" position, tracking the target, establishing lead, and firing the shot, most shooters cannot simultaneously perceive their personal conditioned reaction in the attempt to break the target. In other words, the shooter normally is unable to recall action, such as how the weapon was mounted to the shoulder, head position, or continuation of swing. The instructor can advise the students of these actions, particularly those that are incorrect techniques. However, as in any verbal communication, visualization of the problem is difficult. At this point, the use of video tape recording enhances the development of proper techniques. The students themselves, through course critiques and comments, expressed increased enthusiasm for and awareness of the development of proper shooting techniques.

It was clearly demonstrated that behavior change of a position nature was achieved using instructor model-based training, in conjunction with immediate review of video taped student performance.

Equipment

A Remington Model 870, the standard-issued shotgun for all FBI field offices and many law enforcement agencies, is used during the training. The video recording equipment includes a Sony AVC 3200 black-and-white camera with a Fujinon 12.5 100mm. zoom lens, a Sony AV 3600 solid-state recorder with ½-inch reel-to-reel tape, and a Sony 19-inch television monitor for playback. A 100mm. zoom lens allows the instructor to position all the video equipment at a fixed location. The location of the camera behind station four enables taping of the entire field with minimum camera adjustments.

In 1982, this equipment is not considered "state-of-the-art," but is available through the Instructional Tech-

nology Services Unit for full-time assignment to the firearms range and proves to be both reliable and durable. The equipment used originally did not have sound capability, although it was adequate. However, the addition of sound equipment enhanced the realism of the self-evaluation by the student.

The recorder, monitor, and related equipment is on a mobile cart, while the camera is on a wheeled tripod. Both units can be moved easily to any location on the range complex.

Recommendations

For agencies that may wish to incorporate the use of video tape equipment into their firearms training programs, the following is recommended:

1) A total shotgun training period of 20 to 25 hours is desirable to accommodate video tape playback to provide immediate self-confrontation and reinforcement for the student. The additional time is required if students are to maintain the same level of skill practice on techniques as were present prior to the incorporation of video equipment. The results of this combination is a higher level of student proficiency than would otherwise be achieved.
2) A minimum amount of time should be allowed to expire between actual firing, self-confrontation, and return to firing (reinforcement). This enhances the skill learning process.
3) A stationary video taping position is necessary for the TV camera, recorder, and monitor which can then be adequately handled by a single instructor performing both cameraman and instructor duties.
4) When training is conducted on more than one field, within a limited time span, and with only a single video unit, consideration should be given to using a cameraman or technician with a firearms training background, enabling the principal shotgun instructor to have more time for training.
5) If available, the use of more than one video camera and cassette recorder being employed simultaneously on various ranges would accommodate more students. The playback equipment with an additional instructor should be centrally located for use by all groups on a rotating basis.
6) Training groups on each skeet field should be limited to five students, with a separate instructor for each group.

Summary

While the full potential of video tape technology has not been reached, advantages accrue for the law enforcement agency that wishes to train shotgun marksmen in a proficient and economical manner. The use of video tape recording equipment to complement a shotgun training course is a cost-effective and efficient method. Cooperative and imaginative efforts on the part of the law enforcement agency will enable a student to make judgments about the effectiveness of the video tape procedure as it applies to the unique law enforcement student. The results are likely to have impact on instructional procedures and could enhance the quality of training a law enforcement student receives.

Proficiency in any skill activity is dependent on the degree to which the student masters the basic techniques. Through the use of video taping and subsequent self-analysis, students are able to visualize defects in their own personal basic shotgun techniques. Once defects are identified, corrective action to change adverse activity and increase overall proficiency is accelerated. As proficiency with the shotgun increases, law enforcement officers are better able to defend themselves and those they are sworn to protect.

FBI

Footnotes

[1] Stephen Wehrenburg and Robert Kuhnie, "How Training Through Behavior Modeling Works," *Personnel Journal,* vol. 7, July 1980, pp. 76–81.

[2] Jerry I. Porras and Brad Anderson, "Improving Managerial Effectiveness Through Modeling-Based Training," *Organizational Dynamics,* Spring 1981, pp. 60–77.

[3] John H. Barwick and Steward Kranz, *Profiles in Video* (White Plains, N.Y.: Knowledge Industry Publications, Inc., 1975), p. 2.

[4] Harry P. Baker, "Film and Videotape Feedback: A Review of the Literature," Austin University of Texas Research and Development Center for Teacher Education, November 1970, p. 2.

[5] James C. McCroskey and W.B. Lashbrook, "The Effect of Various Methods of Employing Video-taped Television Playback in a Course in Public Speaking," *The Speech Teacher,* vol. 19, September 1970, p. 205.

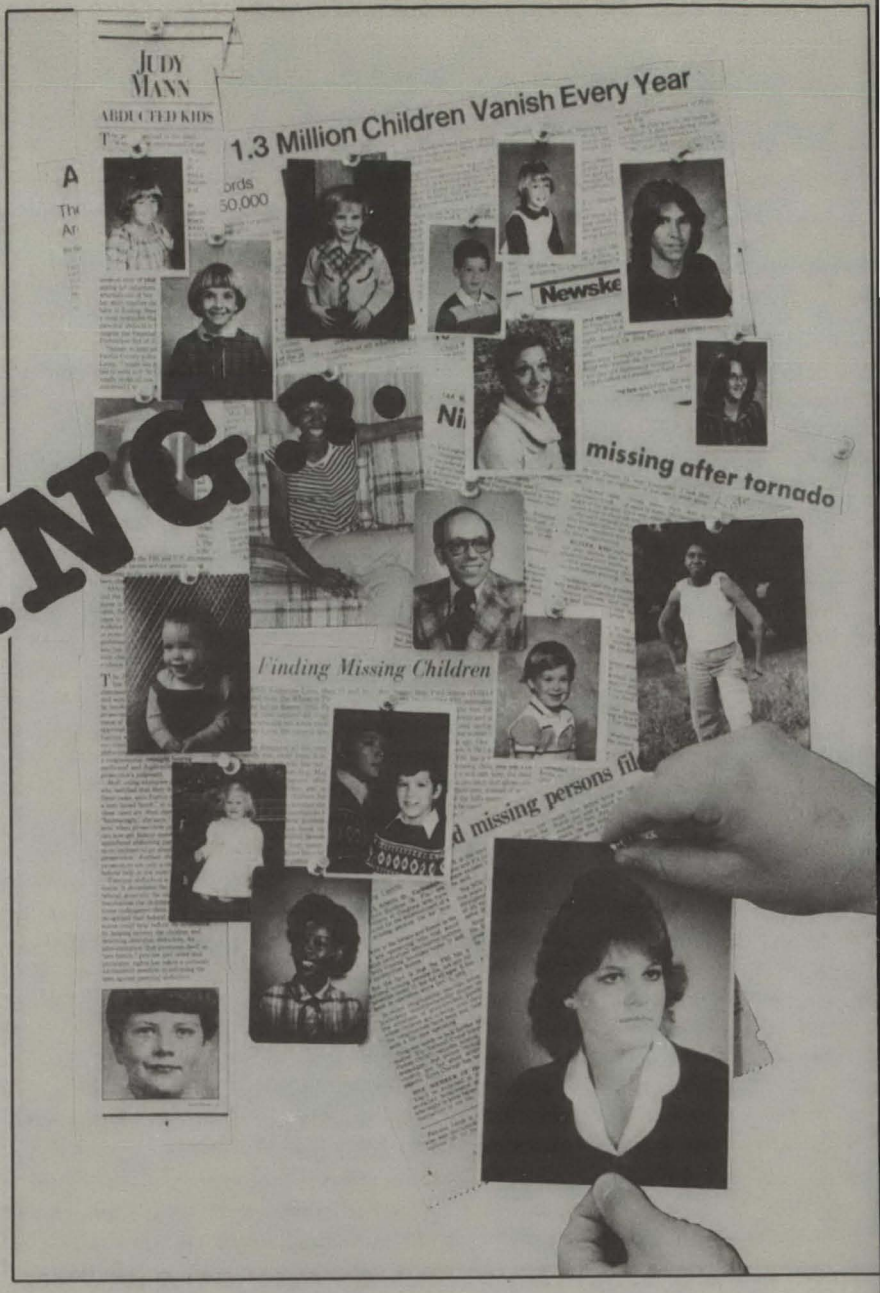
[6] Thomas M. Lawlor, "Video Tape: A Viable Training Medium," *FBI Law Enforcement Bulletin,* vol. 45, No. 9, September 1976.

[7] William B. McDonald, "The Use of Video Tape in Law Enforcement Training," *FBI Law Enforcement Bulletin,* vol. 49, No. 12, December 1980.

[8] John Fakler, "Television: A Versatile Tool at Large Demonstrations," *FBI Law Enforcement Bulletin,* vol. 48, No. 12, December 1979.

[9] Ibid.

[10] "Survey of Gunbattles Involving FBI National Academy Attendees," Firearms Training Unit, FBI Academy, Quantico, Va., 1982.



By
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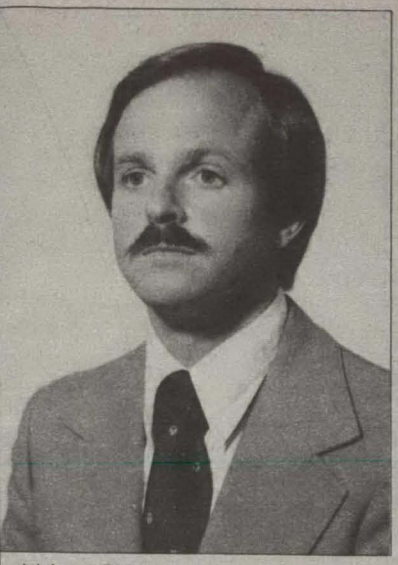
The National Crime Information Center's Missing Person File



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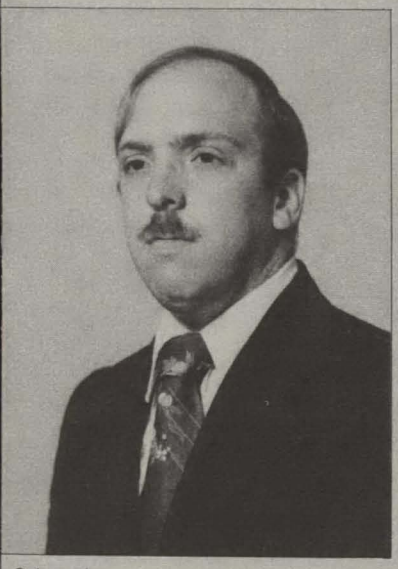


Schuessler

"There is a distinct need for a national system to help in locating missing persons." This statement has recently been heard in the Nation as a plea from some sectors of the public seeking law enforcement action, although the criminal justice community has long recognized the need for a centralized computerized system for aiding and locating missing persons. At a February 1974, meeting, the National Crime Information Center (NCIC) Advisory Policy Board approved the establishment of a Missing Person File. This file was added to the nationwide NCIC system on October 1, 1975. The Missing Person File provides law enforcement agencies with the capability of entering missing person records into the FBI's NCIC computer and inquiring against this file with instantaneous response.

The File

In order to use the Missing Person File to its maximum potential, all law enforcement personnel should be aware of its existence and the criteria for entering a missing person record into NCIC. The file is composed of four categories of records. These categories and the criteria for entry in each are as follows:

1) Disability—A person of any age who is missing and under proven physical and/or mental disability or is senile, thereby subjecting himself or others to personal and immediate danger.
2) Endangered—A person of any age who is missing and is in the company of another person under circumstances indicating that his physical safety is in danger.
3) Involuntary—A person of any age who is missing under circumstances indicating that the disappearance was not voluntary, i.e., abduction or kidnaping.
4) Juvenile—A person who is missing and declared unemancipated as defined by the laws of his State of residence and who does not meet the entry criteria of the other three categories.

A record may be entered in the Missing Person File if the entering agency has documentation supporting the stated conditions under which the person is declared missing. Examples of acceptable documentation are a written statement from a parent or legal guardian confirming that the person is missing and verifying his date of birth, a written statement from a physician or other authoritative source corroborating the missing person's physical and/or mental disability, or a written statement from a parent, legal guardian, family member, or other authoritative source advising that the missing person is in the company of another person under circumstances indicating that his physical safety is in danger or that the missing person's disappearance was not voluntary. A missing person report filed with a police agency is sufficient documentation for entering a juvenile in category No. 4. Although some departmental rules establish time delays in entering individuals' records into the Missing Person File, there is no mandatory system requirement for delayed entry, i.e., 24-hour time lapse from disappearance to entry.

A record entered in the disability, endangered, or involuntary category is retained in the file indefinitely until a locate is placed on the record or action is taken by the entering agency to delete the record. A record entered in

"The Missing Person File provides law enforcement agencies with the capability of entering missing person records into the FBI's NCIC computer and inquiring against this file with instantaneous response."

the juvenile category is retained until the person is no longer a juvenile as defined by the statutes of his State.

The Missing Person File is designed to permit entry of descriptive information and unique numeric identifiers. The record specifically differentiates the individual as a missing person and not a person for whom an arrest warrant is outstanding.

Off-Line Search Capability

In addition to online searches of the NCIC computer by criminal justice agencies with NCIC terminals, special off-line computer searches not possible with a terminal may be conducted for all NCIC files by contacting the FBI's NCIC staff. As online searches of timely and accurate information can increase the probability of wanted person apprehension and stolen property recovery, these searches can also facilitate locating a missing person or identifying a dead body. NCIC off-line search possibilities are infinite. Searches can be limited to a certain time frame, i.e., a particular year, day, or hour, and to the records and/or transactions of a particular State or city. An NCIC off-line search can be made with a minimum of one search parameter; however, searches including all available information will be more effective. Searches can be made on common personal descriptors, such as sex, height, weight, estimated age, scars, marks and hair coloring, to assist in identifying a missing or deceased person.

Figure 1

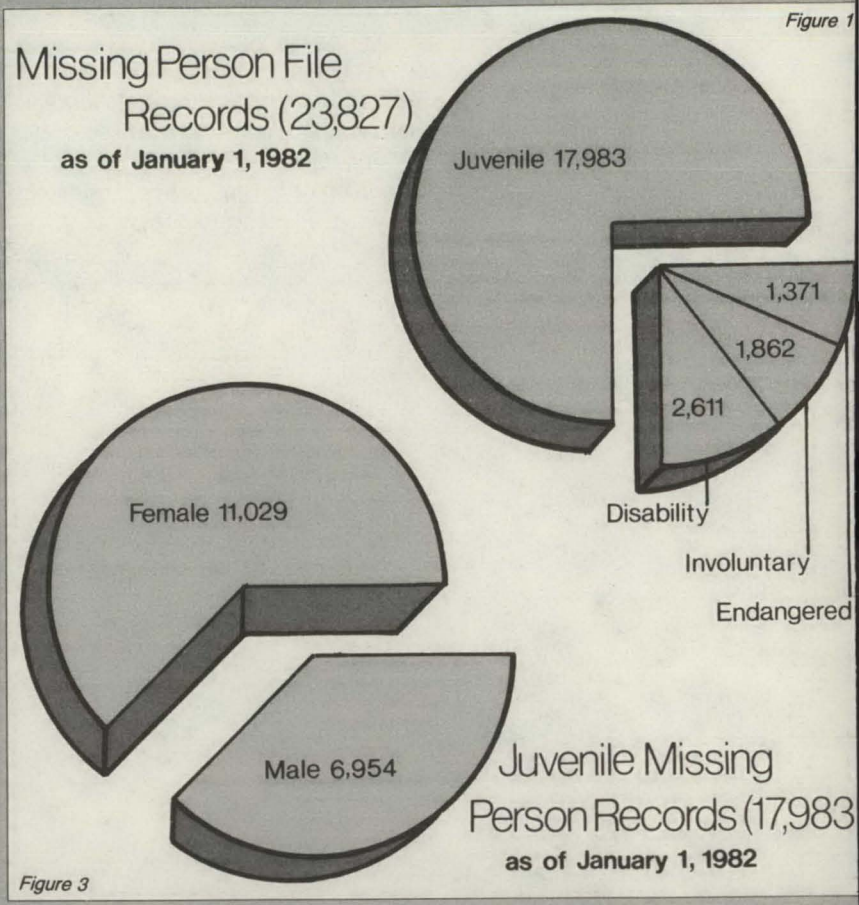


Figure 3

Unidentified Dead File Pilot Project

As an additional investigative tool, the NCIC Advisory Policy Board approved the establishment of a nationwide unidentified dead file pilot project. The Colorado Bureau of Investigation (CBI) Unknown Dead File is currently available to all criminal justice agencies for a test period of 2 years. The pilot will determine whether there is a need to establish an unidentified dead file on a national basis, whether a file of this type could be automated, and what type of information should be included to best serve the user.

An authorized agency seeking to identify a recovered body is required to transmit a form describing the remai to the CBI via the National Law E forcement Telecommunications Sy tem, Inc. (NLETS) or by simply sendi the form through the mail. The C Identification Unit files the report aft computerizing the identification inf mation shown on the form.

An investigator working on a mis ing person case may check the U identified Dead File by providi available identification data. Prompt r sponse is provided during normal bu ness hours, giving the inquirer a

possible lead information, such as who has a body fitting the description of the missing person.

Once an identification is made, the originating agency requests the CBI to destroy the index record in the Unidentified Dead File. This file does not contain complete investigative reports, photographs, x-rays, or locations of the remains. The information contained in the file serves as an index to establish contact between agencies seeking to locate missing persons and identify deceased persons whose bodies have been located. The file's value is dependent on its completeness, nationwide entry of records, and active use by investigators.

Public Concern

Various major metropolitan cities have a large volume of missing person cases reported annually. There are 30,000 reported missing person cases,[1] 50,000 parentally abducted children,[2] and 1 million runaways,[3] annually. During some of the recent major cases—the Gacy murders in Chicago, the Atlanta kidnapings, the missing Patz child in New York, and the Walsh abduction in Florida—there was considerable media coverage indicating that police agencies were not coordinating their efforts in locating missing persons and that a nationwide missing person system was virtually nonexistent. This type of public awareness should encourage all law enforcement agencies to ensure the use of the Missing Person File.

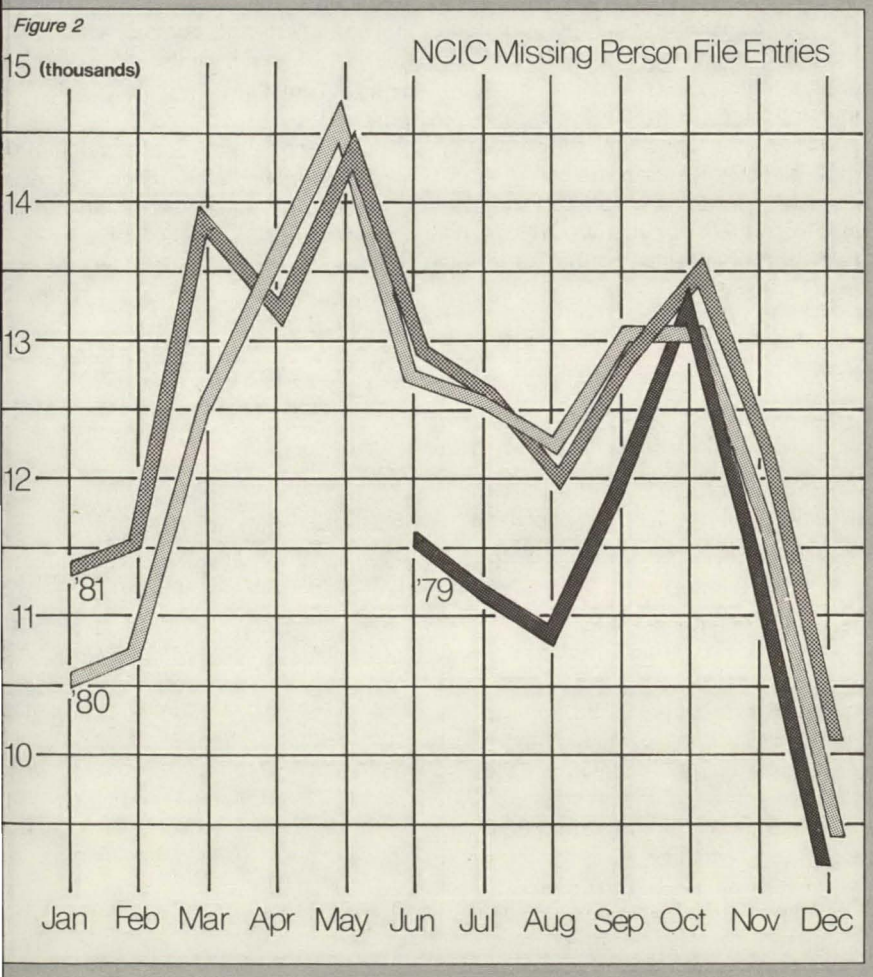
In using the Missing Person File, it is important that:

1) The missing person report be filed and additional documentation, if required, be furnished;
2) The information be entered into the system on a timely basis; and
3) The record be removed when the individual is located.

A statistical analysis of the Missing Person File was recently conducted to determine the degree of its use by law enforcement agencies. Between October 1975, and January 1982, 791,403 records were entered in the NCIC Missing Person File, an average of 10,552 entries per month. Recent analyses have shown that an average of 76 percent of the records in file are in the juvenile category. It is estimated that 601,466 records have been entered for missing juveniles since the file became operational in 1975. This would be an average of 8,020 juvenile-category entries per month.

As of January 1, 1982, there were 23,827 records in the NCIC Missing Person File. Of these records, 17,983 were in the juvenile category, 1,371 were in the endangered category, 1,852 were in the involuntary category, and 2,611 were in the disability catego-

Figure 2



"Use of the NCIC Missing Person and Unidentified Dead Files can result in significant humanitarian service and criminal justice accomplishments."

ry. (See fig. 1.) Review of monthly entries for 1980 and 1981 shows that the yearly high for both years was in the month of May, with 14,646 entries in 1980 and 14,357 entries in 1981. The month in which the least number of entries were made was December for both years, with 9,366 entries in 1980 and 10,088 entries in 1981. Figure 2 shows monthly entries from June 1979, through December 1981.

Juvenile Category Statistics

Of the 17,983 missing juvenile entries, 61.3 percent were entered for females and 38.7 percent were entered for males. Missing males outnumbered missing females for most ages through age 12. Missing females substantially outnumbered missing males between 13 and 19 years of age. Missing persons 10 years old and younger represent only 3.2 percent of the records; persons 11, 12, and 13 years old represent 10.1 percent of the records; persons 14, 15, 16, and 17 years old represent 85.4 percent of the records; and persons 19 years old and older represent 1.2 percent of the records. Percentages do not total 100 percent because of rounding.

Of the missing juveniles, whites comprised 82 percent of the records followed by blacks with 16.4 percent of the records. The majority of the entries—51.1 percent—are for white females. White males comprise 30.9 percent of the records, black females comprise 9.3 percent of the records, and black males comprise 7.1 percent of the records. (See fig. 3.) These figures are constant during the course of the year, with juvenile entries constituting the majority of records on file. If the estimates indicating that there are over 1 million runaways annually are correct, a total of approximately 114,000 juvenile records entered into the Missing Person File per year would indicate that the full potential of the file is not being utilized.

Figure 3

Juvenile Missing Person Records

Race	Females	Percent of Total Records	Males	Percent of Total Records	Total	Percent of Total Records
American Indian or Alaskan Native	86	.5	67	.4	153	.9
Asian or Pacific Islander	16	.1	16	.1	32	2
Black	1,671	9.3	1,284	7.1	2,955	16.4
White	9,191	51.1	5,548	30.9	14,739	82.0
Unknown	65	.4	39	.2	104	.6
Total	11,029		6,954		17,983	

Successful Utilization

A recent successful use of the file highlights its potential. An individual Tom J.,* lost his memory. He only knew his name as a result of a document which he had in his possession. After 2 years of attempting to discover his past, with negative results, Tom J. began a new life. He married and found employment. One day, Tom J. was stopped by a police officer for a traffic violation. The officer made an inquiry on him, via NCIC. The inquiry resulted in a "hit"—Missing Person—Endangered, entered by a Florida agency. Tom J. was brought to the police station and contact was established with his parents. After verifications, Tom was reunited with his parents.

Use of the NCIC Missing Person and Unidentified Dead Files can result in significant humanitarian service and criminal justice accomplishments. It is yet another tool for the law enforcement officer to use in order to better serve the public. FBI

**Fictitious—Summary of facts taken with permission from American Broadcasting Corporation program, 4-6-81, "That's Incredible."*

Footnotes

[1] Ingrid Groller, "Where are They?" *Parent's Magazine*, April 1981, p. 70.

[2] "Up Front," *People Magazine*, October 5, 1981, p. 30.

[3] *New York Times*, June 22, 1980, Section 11, p. 9.

REASONABLE EXPECTATION OF PRIVACY, THE EMPLOYEE-INFORMANT, AND DOCUMENT SEIZURES (Part I)

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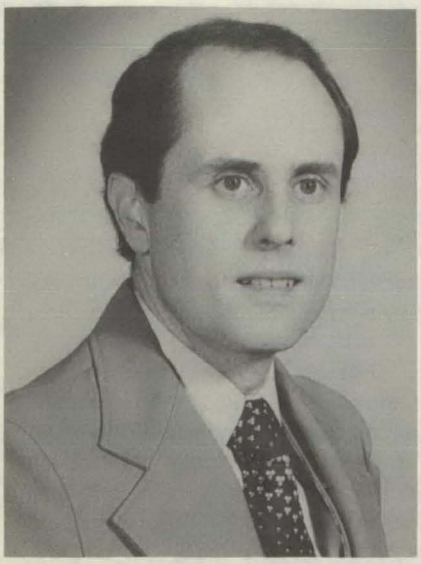
Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at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

"A" is the owner of a small construction business which has recently been awarded several government contracts. "B" is his secretary and bookkeeper, and her responsibilities include access to and control over company records. The records are kept in a locked safe in B's office, and both A and B have keys to the safe. B suspects that A is bribing public officials to obtain government contracts, and her suspicions are enhanced by certain records that she has handled in the course of her daily duties. B reports her suspicions to a law enforcement agency having jurisdiction over this type of offense. She informs an officer that certain records maintained at the business premises support her belief that A is violating the law. The officer tells her to return to the business, obtain the questionable records, and bring them to the police station for his review. B returns to the business during normal working hours and takes the suspicious files out to her car for delivery that evening to the officer. Does B's conduct constitute a search under the fourth amendment to the U.S. Constitution,[1] and if so, is such a search reasonable? These questions can only be answered by an analysis and application of the "reasonable expectation of privacy" doctrine, which was announced by the Supreme Court in the late 1960's, and of recent Federal court decisions interpreting the fourth amendment. This article discusses some of the important issues raised by the hypothetical case described above and reviews those decisions which offer some answers.

Reasonable Expectation of Privacy Standard—Origin and Development

The reasonable expectation of privacy concept has its roots in the U.S. Supreme Court's decision in *Katz* v. *United States*.[2] FBI Agents monitored incriminating gambling conversations of Katz by the warrantless use of a microphone on top of a public telephone booth used by Katz. Katz was convicted of Federal gambling violations and his conviction was affirmed by a Federal appellate court. The Supreme Court reversed, and in so doing, focused upon the question of whether the warrantless microphone surveillance constituted a search under the fourth amendment. The Court observed that Katz made an effort to preserve the privacy of his conversations by closing the door to the phone booth and concluded that the FBI's conduct violated the defendant's privacy expectation, upon which he justifiably relied. The Court concluded that such conduct amounted to a search which, in the absence of a warrant, was unreasonable under the fourth amendment.

A few years later, in *United States* v. *Miller*,[3] the Court applied the *Katz* formulation in a case in which Miller's bank was served with a defective grand jury subpena which called for the bank to produce copies of his checks, deposit slips, and financial statements. These records were admitted into evidence at his tax fraud trial, and he was convicted. A Federal appellate court reversed, holding that the fourth amendment was violated when the bank records were obtained pursuant to a defective subpena. The Supreme Court, however, set aside the appellate decision and held that Miller had no protectable fourth amendment interest in the incriminating records. Since the fourth amendment was not implicated, the validity of the subpena was immaterial. Miller argued that he had a reasonable expectation of privacy in the records, since they were copies of personal records furnished to the bank for a limited purpose. The Court rejected this claim and said that its decision would have been the same even if Miller's original records were involved



Special Agent Callahan

instead of copies. The Court reasoned that Miller had no justifiable expectation of privacy in records which he voluntarily exposed to his bank. Further, he assumed the risk in revealing his private affairs in this manner that the bank might convey the information to the government. The Court noted:

> ". . . the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, *even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed."*[4] (emphasis added)

A 1978 Federal appellate decision applied the *Katz* reasonable expectation of privacy rationale in a tax evasion case. In *United States* v. *Choate,*[5] the Court found that Choate, the addressee, had no justifiable expectation of privacy in information appearing on the face of mail addressed to him. The court held that the mail cover used in the investigation was valid, notwithstanding the absence of a warrant, because the sender of the mail knowingly exposed the outside of the letters to postal employees and others.

A more recent application of the privacy concept occurred in the Supreme Court's 1979 decision in *Smith* v. *Maryland.*[6] In *Smith,* local officers had reason to believe that the defendant was making threatening and obscene telephone calls to the victim. Without a warrant, they placed a device on the suspect's phone line designed to monitor numbers dialed from his telephone. The installation occurred at the central office of the telephone company. The device disclosed a call placed on the suspect's phone to the victim's home. Based in part on this fact, police obtained a search warrant for the suspect's home. The subsequent search revealed incriminating evidence. Smith was convicted, and his appeal was denied by the Court of Appeals of Maryland. Smith argued before the U.S. Supreme Court that he had a reasonable expectation of privacy in the numbers he dialed on his home phone, and therefore, when police obtained those numbers without a warrant, an unreasonable search occurred. The Court rejected this contention and held that Smith had no reasonable expectation of privacy in these circumstances. The Court observed:

> "When he used his phone petitioner voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment. . . . In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed."[7]

Since Smith had no reasonable expectation of privacy, the fourth amendment was inapplicable, and the use of the monitoring device did not constitute a search.

The foregoing cases stand for the proposition that when an individual chooses to reveal his private affairs voluntarily to third parties, whether that revelation be in the form of written records, mail, or telephone numbers dialed, the person has no reasonable expectation of privacy in that which he

voluntarily exposes. In such circumstances, the individual is held to have assumed the risk that the party to whom such voluntary revelations are made might turn the information over to the police. If no reasonable expectation of privacy is intruded upon, no search takes place, and the fourth amendment is inapplicable. Applying this reasoning to the hypothetical case described above, it can be argued that when A voluntarily exposes criminal wrongdoing to B in the form of records to which she has access and over which she has control, he has no expectation of privacy with respect to B in those records.

Privacy and the Employer-Employee Relationship

In the hypothetical case, if the police were to appear at A's business office to conduct a warrantless search for records, such conduct would likely be viewed by the courts as an unwarranted intrusion into A's reasonable expectation of privacy. *Mancusi* v. *DeForte*[8] illustrates the point. In *DeForte,* State officers conducted a warrantless search of a room in a union hall that the defendant union official shared with other union officers. They seized union records which incriminated DeForte. The Supreme Court reversed his State conviction, holding that he had a reasonable expectation of privacy in the room he used with other union officers. This reasonable privacy expectation was unreasonably invaded by the warrantless action of the police. However, in reversing DeForte's conviction, the Court observed:

> ". . . DeForte shared an office with other union officers. DeForte still *could reasonably have expected that only those persons* . . . would enter the office and that records would not be touched except with their permission . . . ."[9] (emphasis added)

An inference can be drawn here that although DeForte had a reasonable expectation of privacy in the union office vis-a-vis outside governmental intrusion, such did not exist with respect to other union officials with whom he shared the office space. The existence of such a distinction finds further support in a recent U.S. Supreme Court decision in *Marshal* v. *Barlow's, Inc.*[10] In *Marshal,* an inspector representing the U.S. Department of Labor appeared at the business premises of Barlow to conduct a safety inspection pursuant to Federal statute. Barlow determined that the inspector had no warrant and refused to allow the inspection. A court order was obtained authorizing the inspection. Barlow again refused admission and sought injunctive relief. A three-judge district court ruled in Barlow's favor and issued an injunction which barred the Government from conducting a warrantless search of the business. The Secretary of Labor appealed, and the Supreme Court held the Federal statute unconstitutional insofar as it purported to authorize warrantless safety inspections of covered businesses. The Court rejected the Government's claim that since Barlow had exposed safety violations to the observation of his employees in the nonpublic area of the business space, he forfeited as well his expectation of privacy regarding warrantless safety inspections. The court explained that things which employees observe in their daily functions are beyond the employer's reasonable expectation of privacy. However, the Court distinguished Government inspectors from employees as follows:

> "The government inspector, however, is not an employee. Without a warrant he stands in no better position than a member of the public. . . . The owner of a business has not, by the necessary utilization of employees in his operation, thrown open the areas where employees alone are permitted to the warrantless scrutiny of government agents."[11]

In 1979, the Third Circuit Court of Appeals decided *In the Matter of Grand Jury Empanelled February 14, 1978.*[12] In this case, the Government served a subpena duces tecum upon the office manager of Dominick Colucci's construction company (a sole proprietorship) for the business records of the company. The U.S. district court quashed the subpena, holding that the fifth amendment shielded Colucci from the compelled disclosure of his business records. The Government appealed, claiming that Colucci was not compelled to provide testimonial evidence against himself since the subpena for the records was directed to the office manager and not Colucci. Colucci countered that argument by claiming that as the office manager's employer, he had constructive possession of the disputed records. The court of appeals rejected this argument and noted that the office manager's duties involved the preparation, custody, and use of these documents. The court added:

". . . the Government cannot insulate itself from the operation of the fourth amendment by recruiting an informant to do that which would violate a citizen's justifiable expectation of privacy if done by the police directly."

> "At the least, it can be said that Colucci had no expectation of privacy vis-a-vis DeMato (office manager) an individual who was under no enforceable obligation of confidentiality." [13]

The court held that this absence of an expectation of privacy precluded a conclusion that Colucci had constructive possession of the records. The district court's order quashing the subpena was reversed. While the court's decision was grounded on the fifth amendment, it sheds light on the meaning of the privacy concept growing out of the fourth amendment.

The above-described decisions support the view that an employer has a reasonable expectation of privacy in his business affairs sufficient to protect his records against direct, warrantless seizure by police. However, he may have no such expectation in business records where he has voluntarily relinquished access and control over them to an employee.

Privacy and Informant Seizures—General Rule

It is a well-established principle of law that the Government cannot insulate itself from the operation of the fourth amendment by recruiting an informant to do that which would violate a citizen's justifiable expectation of privacy if done by the police directly.[14]

The principle was established in *Gouled* v. *United States,*[15] a 1918 Supreme Court decision in which a business acquaintance of the defendant, on behalf of and under direction of the Federal Government, seized without warrant certain documentary evidence from the defendant's office while there on a friendly visit. The Court reversed a conviction based on the use of this evidence.

The issue was whether the secret taking of evidentiary papers from a suspect's business office by a Government agent lawfully present offended the fourth amendment. The Court held that the fourth amendment prohibition against unreasonable searches and seizures operates to bar evidence taken by a governmental agent who gains entry to a suspect's home or office by stealth, social acquaintance, or under guise of a business call, and who thereafter secretly seizes the incriminating materials, whether the suspect is present or not. Subsequent decisions have engrafted exceptions onto the basic rule.

Exceptions to General Rule Privacy and Nonemployee Informant Seizures

It is now a settled principle of fourth amendment law that when a criminal suspect voluntarily invites a police informant into an area where he reasonably expects privacy and chooses to expose criminal conduct to the informant, the suspect gives up any reasonable privacy expectation by misplacing his trust in the informant. The suspect is held to have assumed the risk that the person with whom he is dealing might be an informant or police agent. Support for this principle can be found in *Hoffa* v. *United States.*[16]

Hoffa, a well-known labor official, was awaiting trial after being indicted for alleged criminal violations of the Taft-Hartley Act. The Government suspected that Hoffa would attempt to tamper with the jury at his upcoming trial. Partin, a labor official and friend of Hoffa, agreed to assist the Government in substantiating its belief that Hoffa would attempt to improperly influence the jury. At Hoffa's invitation, Partin was present in Hoffa's hotel suite on several occasions during his Taft-Hartley trial. While there, he was privy to or overheard several incriminating conversations engaged in by Hoffa and others regarding a plot to bribe jurors. Hoffa was ultimately convicted of obstruction of justice, based in part upon testimony furnished by Partin regarding the above conversations. The conviction was affirmed by a Federal appellate court and the Supreme Court accepted the case for review. Hoffa argued that the informant's presence in his hotel suite violated the fourth amendment, in that his failure to disclose his role as a Government operative vitiated the consent to enter, and that by listening to Hoffa's conversations, the informant conducted an illegal search for verbal evidence. The Court, although not specifically using the reasonable expectation of privacy terminology (*Hoffa* predated *Katz* by 1 year), rejected Hoffa's claim. The Court held that when Hoffa invited the informant into his private premises and voluntarily exposed planned wrongdoing, he relied not on the security of the hotel room but rather upon his misplaced confidence in the informant. The Court observed that when Hoffa misplaced his trust in the informant, he necessarily assumed the risk that this trust might be betrayed, that the informant might reveal his words to the Government and ultimately testify against him in a criminal trial.

The Supreme Court's 1971 decision in *United States* v. *White*[17] marked the convergence of the principles of reasonable expectation of privacy and misplaced confidence—assumption of the risk. In *White*, a Government informant was fitted with a radio transmitter which operated to allow law enforcement officers to monitor an incriminating conversation that White had with the informant in White's

ıome. At White's Federal narcotics tri-
ıl, the monitoring officers testified to
vhat they overheard, and White was
:onvicted. A Federal appellate court
eversed the conviction, holding that
uch warrantless monitoring violated
he defendant's reasonable expecta-
ion of privacy as explicated in *Katz.*
The Supreme Court reversed and ob-
erved that the *Katz* decision did not in
ny way disturb or negate its decision
ı *Hoffa.* The Court used language
vhich is significant in support of the
dea that the principles of reasonable
xpectation of privacy and misplaced
onfidence—assumption of the risk—
vere joined in the *White* decision. The
Court stated:

> "If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's *constitutionally justifiable expectations of privacy,* neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and *whose trustworthiness* the defendant *necessarily risks.*" [18] (emphasis added)

A similar result was reached in *Jnited States* v. *Coven.*[19] A business ssociate of the defendant agreed to lead guilty to one count of mail fraud nd to cooperate with the Government ı its investigation regarding Coven and thers. Wilt, the cooperating business ssociate, was invited into the private ffices of the defendant and surreptiously recorded conversations of the efendant. The conversations were onducted in Wilt's presence, although e was not a party to them. Additionally, vhile in the private office of the defendnt, Wilt read into a tape recorder the ontents of documents which were furished to him by Coven. The defendant was convicted of wire and mail fraud, based in part upon evidence gleaned from the efforts of Wilt on behalf of the Government. On appeal, the appellate court rejected Coven's fourth amendment arguments, holding that he had no reasonable expectation of privacy in a conversation conducted in the presence of a third party who was lawfully present, even when the third party was not a party to the conversation. Furthermore, the court found no expectation of privacy regarding Wilt's reading into a tape recorder the contents of documents given to him by Coven. The court reasoned that since Wilt could have testified to the contents of the documents, he could read their contents into a recorder without violating the fourth amendment. Thus, a person has no reasonable expectation of privacy in wrongdoing which he voluntarily reveals to a third party. If the third party turns out to be a Government agent, the wrongdoer is held to have misplaced his trust in the third party and to have assumed the risk that the third party might deceive him. In such circumstances, the fourth amendment is inapplicable and no search takes place.

In the hypothetical case, A (the employer) voluntarily exposed to B, his employee, evidence of criminal wrongdoing in the form of written records. B was given access and control over those records by A. Many similarities exist between the facts of the hypothetical and those of cases like *Hoffa, White,* and *Coven.* In all of the cases, including the hypothetical, the informant is lawfully present. Likewise, in all, the defendant voluntarily exposes to the informant, or in his presence, incriminating evidence. In *Coven*, part of the incriminating evidence involved written material, the contents of which were read into a tape recorder by the informant. The legal principles found in cases like *Hoffa* and *White*, when considered in light of the similarities noted above, suggest that A, with respect to B, has no reasonable expectation of privacy in the incriminating records. Thus, there is no search when B turns over to the police records which she has access to and control over by virtue of her employment status. The fourth amendment seems inapplicable to the hypothetical case.

The only apparent factual distinctions between cases like *Hoffa* and the hypothetical are that in the latter, the informant is an employee and the evidence is contained in records which are physically taken. The remaining question is whether these factual differences are distinctions of constitutional dimension.

Privacy and Employee-Informant Seizures

In *United States* v. *Billingsley*,[20] one Gander, the secretary-treasurer of a corporation, removed incriminating documents from the corporate president's office without his knowledge. These records were turned over to the Government and admitted into evidence against several individuals on trial for mail fraud. The corporate president, from whose office the records were removed, and other defendants were convicted. Prior to the secretary-treasurer's removal of the documents, he

". . . when a criminal suspect voluntarily invites a police informant into an area where he reasonably expects privacy and chooses to expose criminal conduct to the informant, the suspect gives up any reasonable privacy expectation. . . ."

had notified the FBI by telephone of his suspicions regarding criminal misrepresentations that the defendants had made to investors. He told the FBI at that time that he already was in possession of corporate records which confirmed his suspicions. Approximately 1 week after alerting the FBI to the existence of certain incriminating records in his possession, Agents arrived to collect them. It was between the first telephone call to the FBI and the time Agents arrived to pick up the first group of documents that Gander removed a second group of records from the president's office. At the time the Agents appeared to pick up the first group of records, Gander turned over to them the second group as well. The defendants argued that this second group of records should have been declared inadmissible since Gander had clearly been in contact with the FBI prior to obtaining them and was acting at their direction and under their control when he went to the office and removed them. The appellate court rejected this contention, holding that Gander, by virtue of his position in the corporation, had a clear right to custody of the records. The court noted that the trial record was devoid of any indication that the removal of the records from the president's office was illegal. The court finally concluded that Gander was not acting as an agent of the FBI at the time he removed the second group of records. It is submitted that since Gander had a right to custody of the records because of his job and did not remove them illegally from the president's office, the result would have been the same even if the court had found Gander to be an agent of the Government.

In *OKC Corporation* v. *Williams*,[21] the corporation filed suit, seeking to enjoin the Securities Exchange Commission (SEC) from investigating certain alleged questionable oil pricing practices. The corporation argued that the SEC investigation began as a result of a fourth amendment violation, and therefore, should be ordered discontinued. At a board of directors' meeting, a decision was made to distribute copies of a report to each of the board members. One member turned his copy over to an OKC employee, who copied it and made the copy available to another corporate employee. The latter turned over his copy of the report to the SEC.

The district court judge granted the SEC's motion for summary judgment on alternative grounds. First, the court determined that when the corporate board member voluntarily handed over his copy of the report to another corporate employee, he took the risk that the latter individual, or anyone to whom the latter person would make the report available, would reveal the report or its contents to the Government. The court observed that the fact that the board member turned the report over to the corporate employee for a limited purpose of performing a tax analysis was of no consequence. The court found that the board member had no reasonable expectation of privacy in the report he voluntarily revealed to his associate. Second, the court concluded that the SEC had no involvement whatsoever in obtaining the report. The district judge subse quently reconsidered and withdrew the portion of his opinion relating to expec tation of privacy and assumption of risk He reasoned that the constitutiona issue was difficult and unnecessary t decide, since the case could be decide upon less complex grounds, namely that the Government played no part i the report coming into its hands. Not withstanding this withdrawal, the distric judge's analysis is highly persuasive.

In *United States* v. *Williams*,[22] th defendant, a former president of a feder ally insured bank, was convicted o misapplication of bank funds and ob taining extensions of credit from th bank by fraudulent means. After th defendant's scheme was uncovered, h resigned as bank president but re mained a member of the bank's board o directors. The defendant's successor t the position of bank president was con tacted by an FBI Agent and asked t produce any records in possession o the bank which might prove useful to th investigation of Williams' activities. Th new president, in response to this re quest, gathered up five unsealed enve lopes containing monthly checkin statements, cancelled checks, and de posit slips belonging to Williams. These items had been held by the bank fo Williams to pick up, apparently at hi request. The new president voluntaril turned these records over to the FB Agent when he appeared at the bank Some of the items were introduced int evidence at Williams' trial.

Following his conviction, William argued on appeal that the Governmen obtained the documents in violation o the fourth amendment. The appellat court held that the new president wa acting as an agent of the FBI when h gathered up the questioned documents Notwithstanding, the court conclude

that Williams could entertain no legitimate expectation of privacy in the contents of original checks and other documents which he placed in the control of the bank. The court further held that he could not reasonably expect that the bank would not deliver these records to the FBI for their perusal. Williams' fourth amendment claim was rejected.

United States v. *Ziperstein* [23] presented a factual situation strikingly similar to the hypothetical case set forth in this analysis. Ziperstein was the owner of several medical clinics located in Chicago, Ill. Eisentraut was a pharmacist in Ziperstein's employ. Eisentraut contacted the FBI and told an Agent that he had knowledge and documentary evidence that Ziperstein was involved in a large-scale Medicare fraud. He informed the Agent that the records were located in a storage room at one of the clinics, and the Agent expressed an interest in them. The documents included prescriptions filled by Eisentraut, as well as other incriminating papers. Two days later, Eisentraut took the records to the FBI. Some of the documents were admitted into evidence at Ziperstein's trial, and he was convicted. On appeal, Ziperstein argued that Eisentraut stole the records and that this theft, in view of the FBI's expressed interest in the material, violated the fourth amendment. In rejecting the defendant's contention, the court observed:

> "We are not concerned with determining whether these documents are properly characterized as 'stolen.' The Fourth Amendment clearly countenances numerous seizures where the items seized are taken without the express consent of the owner. Instead, the Fourth Amendment inquiry focuses on whether the owner had a reasonable expectation of privacy with respect to the seized items." [24]

The court explained that the prescriptions came within the daily observation and control of Eisentraut, and thus, Ziperstein had no expectation of privacy in such records.

The foregoing cases provide support for the idea that there is no constitutional significance to informant seizures simply because the informant is an employee. Furthermore, there should be no constitutional distinction between an informant seizing verbal evidence, such as was the case in *Hoffa*, and an informant-employee seizing tangible evidence in the form of incriminating records when access and control exist. In these situations, a common thread appears throughout. A person involved in crime has voluntarily exposed criminal wrongdoing to a third party. He is thus held to give up any reasonable expectation of privacy he had with respect to the information so revealed. He is held to have misplaced his trust in the third party and to have assumed the risk that the third party might be an informant. The fact that the informant is an employee and turns over tangible rather than verbal evidence is of no constitutional consequence.

In the hypothetical case, A voluntarily exposed evidence of criminal wrongdoing to B, his employee. A voluntarily gave her access and control over the incriminating records. Therefore, A has no reasonable expectation of privacy in the records with respect to B. B's taking them at the suggestion of the police makes her a police agent; however, this taking involves no search and the fourth amendment is inapplicable. The evidence will be admissible against A at his trial.

The conclusion of this article will examine: (1) Other legal justifications for the seizure of documents by employees, (2) potential criminal liability of both employee and officers growing out of document seizures, and (3) statutory impediments to the taking and use of certain documents. **FBI**

Footnotes

[1] U.S. Const. amend. IV provides in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

[2] 389 U.S. 347 (1967).

[3] 425 U.S. 435 (1976).

[4] *Id.* at 443.

[5] 576 F.2d 165 (9th Cir. 1978), *cert. denied,* 439 U.S. 953 (1978). A mail cover is defined by the U.S. Postal Service [USPS) as the process by which a record is made of any data appearing on the outside cover of any class of mail. It does not involve opening mail or checking the contents of any class of mail. USPS regulations governing mail covers are codified in 39 C.F.R. § 233.2 and designate the chief postal inspector to administer all matters governing mail cover requests by law enforcement agencies.

[6] 442 U.S. 736.

[7] *Id.* at 744.

[8] 392 U.S. 364 (1968).

[9] *Id.* at 369.

[10] 436 U.S. 307 (1978).

[11] *Id.* at 315.

[12] 597 F.2d 851 (3d Cir. 1979).

[13] *Id.* at 865.

[14] Annot., 36 A.L.R.3d 553 at 559 (1971).

[15] 255 U.S. 298 (1918).

[16] 385 U.S. 293 (1966). For other Supreme Court decisions with similar holdings, see *Lopez* v. *United States,* 373 U.S. 427 (1963) and *Lewis* v. *United States,* 385 U.S. 206 (1966).

[17] 401 U.S. 745 (1971).

[18] *Id.* at 751.

[19] 662 F.2d 162 (2d Cir. 1981).

[20] 440 F.2d 823 (7th Cir. 1971), *cert. denied,* 403 U.S. 909 (1971).

[21] 490 F. Supp. 560 (N.D. Tex. 1979).

[22] 639 F.2d 1311 (5th Cir. 1981), *cert. denied,* 70 L.Ed.2d 473 (1981).

[23] 601 F.2d 281 (7th Cir. 1979), *cert. denied,* 444 U.S. 1031 (1980).

[24] *Id.* at 289.

WANTED BY THE FBI

Photographs taken 1980 *Photograph taken 1979*

Philip Andrew Bono

Philip Andrew Bono, also known as Michael Bono, Philip Bono, Philip Andrew Michael Bono, Jr., Philip Angel Bono, Claude G. DeRusha, Frank Faccio, Michael Faccio, Tom James Franklin, Philip Tobey, Philip Venturi, and others.

Wanted for:

Interstate Flight—Bail Jumping (Arson)

The Crime

Bono was convicted and sentenced to a 12-year term for the arson of a Lake Tomahawk, Wis., restaurant. He later failed to appear at his appeal hearing.

A Federal warrant was issued on May 7, 1981, charging Bono with unlawful interstate flight to avoid prosecution for the crime of bail jumping.

Description

Age	42, born May 12, 1940, Melvindale, Mich. (not supported through birth records).
Height	5′8″ to 5′9″.
Weight	200 pounds.
Build	Stocky.
Hair	Brown.
Eyes	Brown (wears glasses).
Complexion	Olive.
Race	White.
Nationality	American.
Occupations	Bartender, bouncer, cook, fishing guide, laborer, truckdriver.
Scars & Marks	Scar left eyebrow, abdominal scar; tattoos: letter "P" on back of left index finger, heart on left and right biceps.
Remarks	Has worn a full beard and permanent in hair in the past.
Social Security No. Used	387-40-3504.
FBI No.	584 735 C.

Caution

Bono, a convicted arsonist and reported associate of organized crime members, is being sought for the deliberate burning of a building where he was employed. In the past, Bono has used explosives in the commission of crime. He should be considered armed and dangerous.

Notify the FBI

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

Classification Data:

NCIC Classification:

231765PO111614171910

Fingerprint Classification:

23	L	9	Ur	11
M	1	U		

I. O. 4897

Right middle fingerprint

U.S. GOVERNMENT PRINTING OFFICE : 1982 O - 376-205

Change of Address

Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City State Zip

Submission of Live Ammunition to the FBI Laboratory

When live ammunition is forwarded to the FBI Laboratory for examination, commercial carriers, such as United Parcel Service or Federal Express, must be used. It is a violation of U.S. Postal Service regulations to send such materials through the U.S. mail.

Regulations governing shipments of small arms ammunition are set out by the Department of Transportation (DOT) in their Hazardous Materials Regulations. For small shipments, these regulations can generally be summarized as follows:

1) Small arms ammunition must be packed in pasteboard or other inside boxes, in partitions designed to fit snugly in the outside container, or must be packed in metal clips.
2) The outside of all packages containing small arms ammunition must be marked "SMALL ARMS AMMUNITION."

Special regulations exist for quantities of ammunition over 50 pounds, ammunition with irritating agents, and ammunition to be shipped with other hazardous materials. For these situations, refer to the DOT regulations.

These regulations pertain only to the shipment of live ammunition. Unloaded firearms and fired bullets and cartridge cases may be sent to the Laboratory via the U.S. mail.

U.S. Department of Justice
Federal Bureau of Investigation

Official Business
Penalty for Private Use $300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS-432

Second Class

Washington, D.C. 20535

Interesting Pattern

This pattern is classified as an accidental-type whorl. Inasmuch as this impression contains more than two deltas, the tracing, which is outer, is obtained by tracing from the extreme left delta to the delta on the extreme right.