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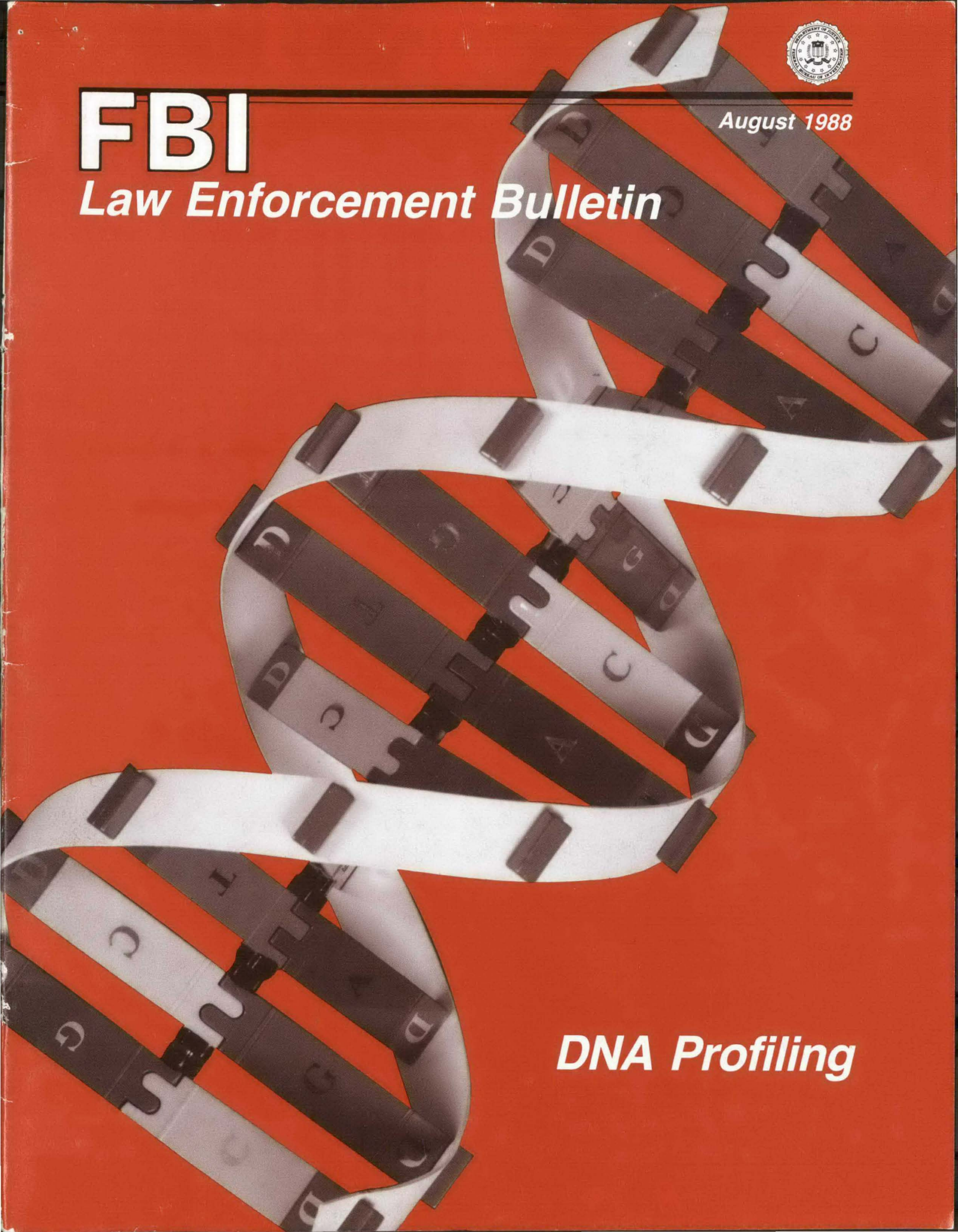
## Law Enforcement Bulletin

August 1988



# DNA Profiling

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# DNA Profiling
## A Tool for Law Enforcement

***"Advances in DNA technology represent perhaps one of the most significant forensic breakthroughs of the century. . . ."***

By
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*Washington, DC*

Consider the following scenarios:

—Police investigating the brutal slaying of a young woman in a southeastern town carefully collect physical evidence at the scene and submit it to their local crime laboratory. Forensic analysis reveals the presence of semen from which a DNA identification profile is determined. This profile is searched through a computerized data bank and a "hit" is made with DNA profiles from similar crimes which occurred months earlier in two northeastern cities. Investigators from these jurisdictions share investigative data, and a suspect is developed. A blood sample obtained from the suspect reveals the same DNA profile, which conclusively identifies him with the semen recovered from the three murder victims.

—The partially decomposed body of a child is found in a rural area. From samples of hair and tissue taken from the remains, a DNA identification profile is made for comparison with DNA profiles of parents of reported missing children.

—Semen is identified on swabbings taken from a rape victim by the attending physician and submitted for analysis, which results in a DNA identification profile being developed. The profile is searched through a central DNA profile data bank and a "hit" is made. The rapist is identified as a resident of an adjacent State who had been convicted 3 years earlier on a burglary charge.

Recent breakthroughs in DNA technology are expected to provide investigators with powerful forensic tools to help solve these difficult kinds of cases.

Personal identification has always been of vital concern to law enforcement. In support of this need, the crime laboratory's primary mission is to apply science to develop information from material recovered from a crime scene, which will identify the perpetrator or associate the perpetrator with the victim or the scene of the crime.

*Deputy Assistant Director Hicks*

The evidentiary materials most frequently recovered in the investigation of a violent crime, such as homicide or rape, are blood, hair, and semen. According to a study conducted in 1984, investigators in many jurisdictions recover these types of evidence more frequently than fingerprints.[1] However, until recently, the forensic analyst has been able to make only limited associations using biological material. DNA technology now provides the analyst with the ability to identify a particular individual based on a drop of blood or semen, or a single hair. Because of its capability to individualize, it is very often referred to as "DNA fingerprinting."

### What is DNA?

Deoxyribonucleic acid (DNA) is an organic substance found primarily in the nucleus of living cells. It comprises the chromosomes within the nucleus and provides the genetic code which determines a person's individual characteristics. The code is expressed by the arrangement of four basic building blocks, called nucleotides, which are represented by the letters A (adenine), G (guanine), C (cytosine), and T (thymine). These nucleotides are linked in chain-like sequences, and their order can vary to provide an almost infinite number of possible arrangements. There are about 3 billion nucleotides in the entire human genetic code.

One of the techniques scientists use to characterize the DNA found in body fluids and tissue specimens is referred to as restriction fragment length polymorphism (RFLP). Special proteins are used to cut the DNA being analyzed at specific sites. These proteins are called restriction enzymes and recognize specific short sequences of four to eight nucleotides, referred to as restriction sites. The restriction sites of greatest value to the forensic scientist are those which are highly variable in the human population (polymorphic). This cutting process results in fragments of DNA of various lengths; hence, the name restriction fragment length polymorphisms. These fragments are then separated on a gel-covered glass plate by a process called electrophoresis. By using other pieces of DNA of known sequence called probes, the analyst can identify the locations on the plate of the DNA fragments of interest. This typically results in a pattern of bands which can then be transferred to photographic film to be interpreted by the analyst.

This a very brief description of the DNA testing process, and there are other methods which are used to characterize DNA.[2] Many different restriction enzymes and DNA probes can be used, and each results in a different banding pattern and provides individual discriminating powers of different values. Because of these variations in test procedures, scientists are now unable to compare test results directly. The ability to classify such information, catalog it, and later search it against other test results is critical for law enforcement use.

### The FBI Role

The FBI has initiated an aggressive forensic research program to develop this technology for eventual implementation in the FBI Laboratory. An ambitious technical training program

***"A national coordination effort is essential if the full law enforcement potential of DNA technology is to be realized."***

is also being developed to instruct personnel of State and local crime laboratories throughout the United States on the use of this technology. The FBI research effort is directed not only at methods development but also at establishing the scientific validity and reliability of these methods to insure that evidence derived from the forensic analysis of DNA can withstand legal challenges to its introduction in the courts.

DNA technology is expected to impact substantially not only the crime laboratory in implementing the technique but also the way certain types of violent crimes are investigated. Classifying systems are now being explored which will allow the DNA profile identifying information to be entered into a centralized computer data bank.

As in the situations described at the beginning of this article, semen collected from victims of unknown subject sexual assault cases might be analyzed and the DNA profiles compared with similar cases stored in the data bank. This would permit definitive linking of similar crimes in one or several jurisdictions, which might not otherwise appear related, thereby facilitating the coordination of leads and other investigative information.

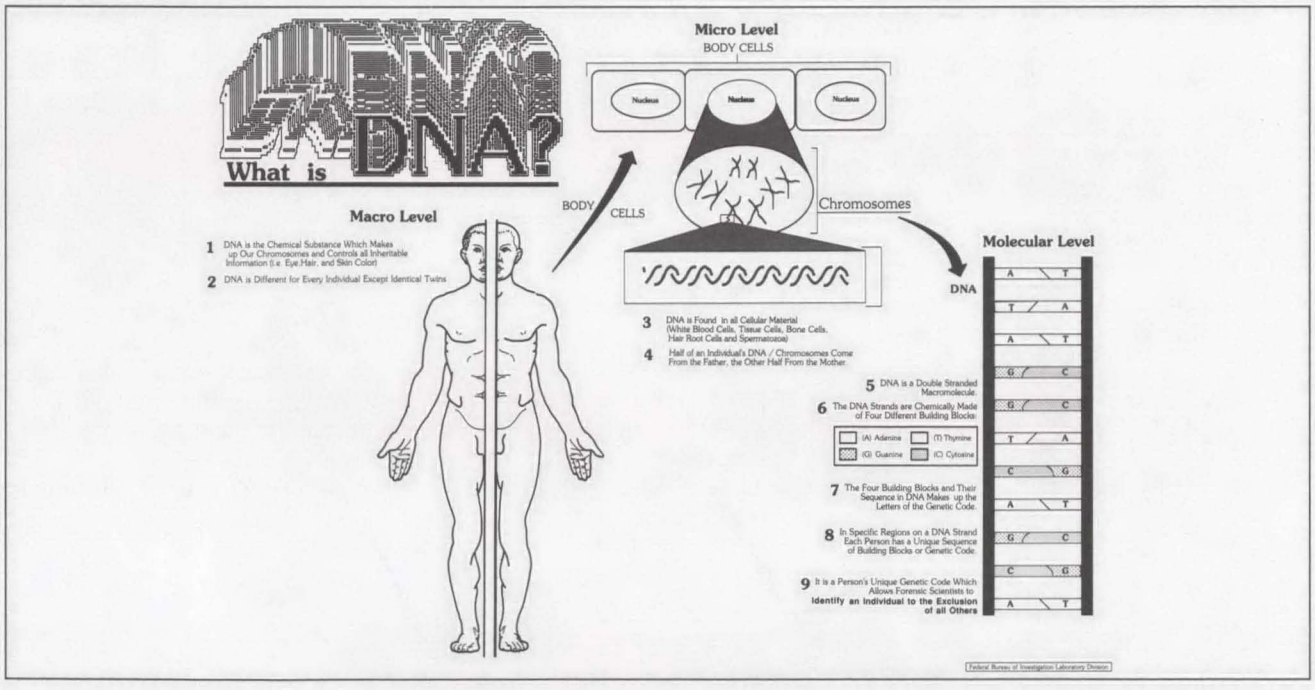
Legislation has been proposed in a few jurisdictions which provides for blood samples to be taken for genetic typing from convicted sex offenders as a condition of paroled release. Such a file would provide a reference against which blood, semen, or hair from the scene of a subsequent crime might be searched. There is also the potential for the establishment of civil files containing voluntarily furnished DNA profiles of individual citizens which might be used to aid in the identification of human remains at the site of a mass disaster.

DNA profiling would be useful to the medical examiner tasked with the identification of unidentified remains. The deceased's DNA profile might be retained for comparison with DNA profiles of the parents or children of missing persons to accomplish an identification through paternity-type DNA testing.

Each of the above concepts, as well as others which might be developed for the application of DNA technology to law enforcement problems, would require the understanding, interest, and support of the user community. The user community is broad and includes crime laboratories, police departments, sheriff's offices, medical examiner's offices, district attorney's offices, and others. A national coordination effort is essential if the full law enforcement potential of DNA technology is to be realized.

### Implementation Strategy

A seminar on DNA technology held in June 1988, at the Forensic Science Research and Training Center at the



***"A national commitment to the routine use of DNA technology by police agencies at all levels will result in a more efficient and effective law enforcement system."***

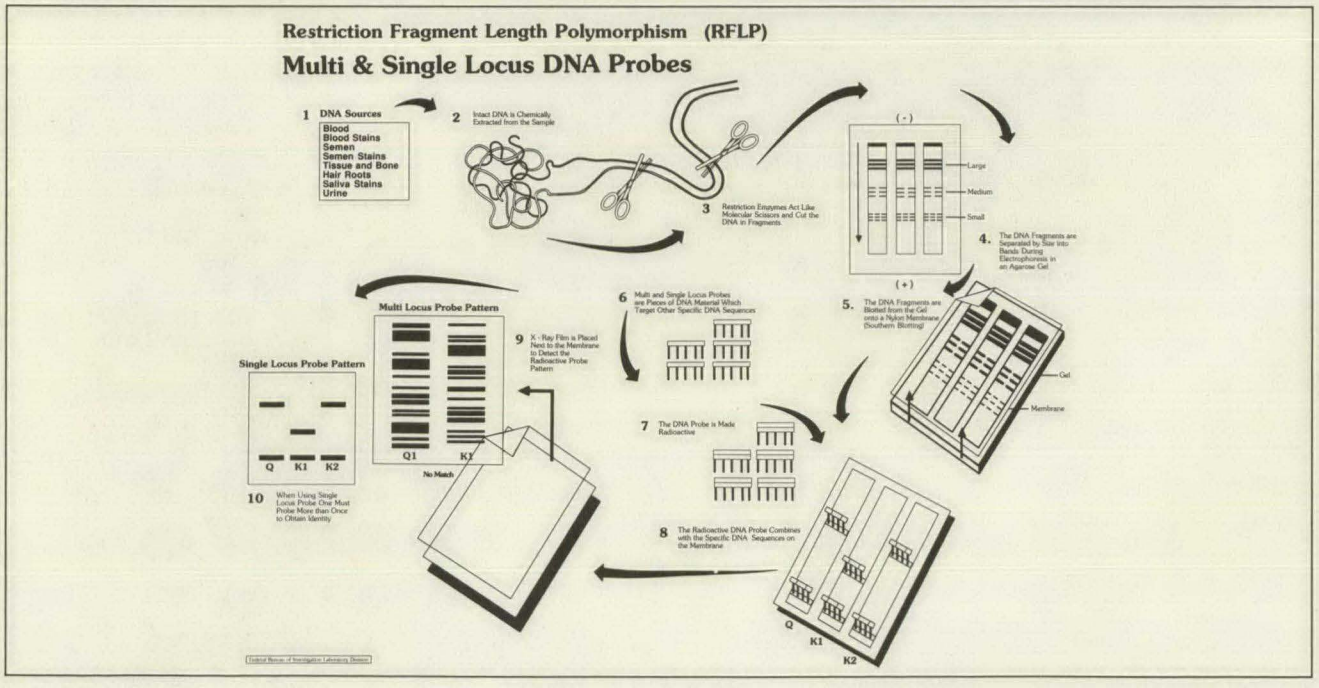
FBI Academy in Quantico, VA, was attended by key forensic and medical researchers from academia, the private sector, and the international crime laboratory community. Two important topics addressed at the meeting were the establishment of DNA standards within the forensic science community and the utility and feasibility of automated data files containing DNA identification profile information. Clearly, it is advantageous to law enforcement on a national scale to coordinate the development of these kinds of systems with the establishment of appropriate controls and standards to permit the effective exchange of DNA identification profiles. To accomplish this, the community must agree upon standards which provide a common language and reference bases to facilitate the exchange of critical investigative information. The system must at the same time permit flexibility to accommodate changes as DNA technology continues to evolve.

The success of this effort will depend heavily on strong professional commitment to the needs of law enforcement, along with a spirit of cooperation and mutual support within the forensic community.

Steady progress is being made in transferring this important technology to the crime laboratory community. In April 1988, the FBI extended invitations to directors of crime laboratory systems throughout the United States, requesting them to nominate individuals to participate in a visiting scientist program at the Forensic Science Research and Training Center. This 4-month program is designed to provide the technical resources to address the validity and reliability issues associated with DNA testing as quickly as possible. Upon completion of a research project, worked in collaboration with FBI scientists, participants will have developed technical proficiency in the test methods and will have obtained valuable experience in applying DNA implementation efforts in their individual State and local laboratories. A specialized technical training course is being developed for State and local laboratory personnel which will be offered in the fall of 1988. This course, in conjunction with other studies, will also facilitate the introduction of DNA test methods at the local level.

It is anticipated that within 2 to 3 years, DNA testing will be performed fairly routinely on evidence samples. There is an extremely high level of interest in this technology, and if the demand is to be satisfied, agency administrators must take the necessary action to provide the necessary technical personnel and equipment resources.

When forensic DNA testing was initially introduced into this country, the tests were performed at only a few private testing laboratories. During the transition period, as the technology is



transferred to the Nation's crime laboratories, there will continue to be only a limited number of facilities capable of performing these tests. This will necessitate a high degree of selectivity as to which evidence samples are submitted for DNA analysis. Considerations might include an assessment of the probative value of the item of evidence, the size and condition of the evidence stain or specimen, and possible delays which might result in the judicial proceedings while waiting for test results. A physical evidence evaluation and appraisal may show that traditional forensic testing can provide sufficient information that would preclude the need for DNA tests.

### Considerations

While DNA technology will provide a powerful new capability for law enforcement, it will not necessarily displace the forensic methods now employed in the crime laboratory. Not all biological specimens will be suitable for DNA testing, or tests conducted may not provide a conclusive result. In these situations, classical serological tests will still be necessary to glean all possible probative information from the evidence materials. Because of the limited resources available for DNA testing, standard serology tests may be used to screen evidence samples to select the materials most likely to provide a successful DNA result. There will remain a need to identify, isolate, preserve, and analyze a wide range of evidence types, such as firearms, toolmarks, textile fibers, paint, and glass, as well as biological specimens to provide additional information to aid in crime reconstruction.

Care should be exercised by investigators in processing crime scenes to insure other evidence types are not overlooked in the hope of a definitive DNA test result. It is recommended that the local crime laboratory be consulted and kept involved in the evidence evaluation process throughout the investigation. These forensic specialists will insure other evidence types are appropriately analyzed and can assist in isolating materials for DNA testing, even though they may not now perform the test in their laboratories.

National implementation of DNA testing on evidence samples will require law enforcement agencies throughout the United States to commit additional resources for forensic services. Because of the complexity of DNA technology and the nature of the testing process, it is advisable that technical personnel be identified who can be dedicated to DNA testing. This will encourage a high level of technical proficiency and facilitate effective quality control procedures. Start-up costs for DNA testing include some specialized laboratory equipment, and in some instances, acquiring the necessary laboratory space to perform the tests. As testing gets underway, there will be additional costs for the chemical reagents used in the process and the DNA probe materials. Sources in the private sector have been identified who will provide these supplies, perhaps in the form of testing kits.

### Benefits

It is anticipated that the costs associated with the forensic application of DNA testing will be substantially offset by savings in investigative manhours required to develop evidence with which to sustain prosecutions. When this technology is fully implemented, it has the potential to identify perpetrators of crimes sooner in the investigative process and to clear suspects more readily so that investigative resources can be focused more productively. As the criminal justice system becomes better acquainted with the potential power of DNA technology, it is anticipated that additional savings in court time may be realized through shorter trials or averting trial altogether through an increased number of pleas.

### Summary

Advances in DNA technology represent perhaps one of the most significant forensic breakthroughs of the century in its ability to identify a rapist or murderer based on trace amounts of biological evidence left at the scene of a crime.

The goal of making DNA profiling a part of a crime laboratory's arsenal of scientific investigative techniques is being realized. A national commitment to the routine use of DNA technology by police agencies at all levels will result in a more efficient and effective law enforcement system.

FBI

**Footnotes**

[1]Joseph L. Peterson, et al, *Forensic Evidence and the Police: The Effects of Scientific Evidence on Criminal Investigations*, October 1984, U.S. Government Printing Office, publication 0-461-539/23742.

[2]A more-detailed description of the several DNA analysis techniques (written for the nonscientist) can be found in the *Crime Laboratory Digest*, 1988, vol. 15, supplement No. 1, entitled "A Primer on the Methods Used in the Typing of DNA." This publication is available through libraries or by requests directed to the FBI Laboratory, Washington, DC.

# Crime in The United States 1987

Final Uniform Crime Reporting (UCR) figures showed overall serious crime in the United States rising 2 percent in 1987, marking the third consecutive year that the number of offenses reported to the police have increased. The Crime Index total of 13.5 million, or 5,550 offenses per 100,000 inhabitants, was based on reports received from nearly 16,000 law enforcement agencies nationwide, which represent 96 percent of the total U.S. population.

## VIOLENT CRIME

There was virtually no change in the 1987 volume of violent crime when compared to the previous year's total. While aggravated assault was the only offense in this category to show an increase (2 percent), declines were recorded for murder (3 percent), robbery (5 percent), and forcible rape (less than 1 percent). The rate for violent crime, 610 per 100,000 people, was down 1 percent from 1986.

MURDER—The number of murders in 1987 totaled an estimated 20,096, a decrease of 3 percent from 1986, for a rate of 8 per 100,000 people. While the Nation's cities registered 4 percent fewer murders, and virtually no change occurred in the suburban counties, the rural areas recorded a volume increase of 4 percent.

In 1987, 49 percent of the murder victims were aged 20 through 34 years. Males accounted for 74 percent of the

**Index of Crime, United States, 1978-1987**

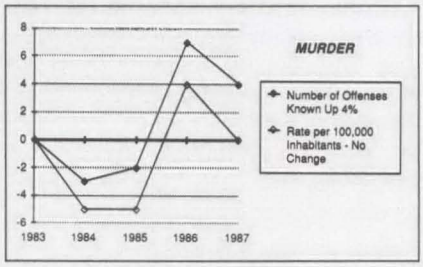
| Population[1] | Crime Index total[2] | Modified Crime Index total[3] | Violent crime[4] | Property crime[4] | Murder and non-negligent man-slaughter | Forcible rape | Robbery | Aggravated assault | Burglary | Larceny-theft | Motor vehicle theft | Arson[3] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Number of offenses: | | | | | | | | | | | | |
| 1978-218,059,000 | 11,209,000 | | 1,085,550 | 10,123,400 | 19,560 | 67,610 | 426,930 | 571,460 | 3,128,300 | 5,991,000 | 1,004,100 | |
| 1979-220,099,000 | 12,249,500 | | 1,208,030 | 11,041,500 | 21,460 | 76,390 | 480,700 | 629,480 | 3,327,700 | 6,601,000 | 1,112,800 | |
| 1980-225,349,264 | 13,408,300 | | 1,344,520 | 12,063,700 | 23,040 | 82,990 | 565,840 | 672,650 | 3,795,200 | 7,136,900 | 1,131,700 | |
| 1981-229,146,000 | 13,423,800 | | 1,361,820 | 12,061,900 | 22,520 | 82,500 | 592,910 | 663,900 | 3,779,700 | 7,194,400 | 1,087,800 | |
| 1982-231,534,000 | 12,974,400 | | 1,322,390 | 11,652,000 | 21,010 | 78,770 | 553,130 | 669,480 | 3,447,100 | 7,142,500 | 1,062,400 | |
| 1983-233,981,000 | 12,108,600 | | 1,258,090 | 10,850,500 | 19,310 | 78,920 | 506,570 | 653,290 | 3,129,900 | 6,712,800 | 1,007,900 | |
| 1984-236,158,000 | 11,881,800 | | 1,273,280 | 10,608,500 | 18,690 | 84,230 | 485,010 | 685,350 | 2,984,400 | 6,591,900 | 1,032,200 | |
| 1985-238,740,000 | 12,431,400 | | 1,328,800 | 11,102,600 | 18,980 | 88,670 | 497,870 | 723,250 | 3,073,300 | 6,926,400 | 1,102,900 | |
| 1986-241,077,000 | 13,211,900 | | 1,489,170 | 11,722,700 | 20,610 | 91,460 | 542,780 | 834,320 | 3,241,400 | 7,257,200 | 1,224,100 | |
| 1987-243,400,000 | 13,508,700 | | 1,484,000 | 12,024,700 | 20,100 | 91,110 | 517,700 | 855,090 | 3,236,200 | 7,499,900 | 1,288,700 | |
| Percent change: number of offenses: | | | | | | | | | | | | |
| 1987/1986 | +2.2 | | –.3 | +2.6 | –2.5 | –.4 | –4.6 | +2.5 | –.2 | +3.3 | +5.3 | |
| 1987/1983 | +11.6 | | +18.0 | +10.8 | +4.1 | +15.4 | +2.2 | +30.9 | +3.4 | +11.7 | +27.9 | |
| 1987/1978 | +20.5 | | +36.7 | +18.8 | +2.8 | +34.8 | +21.3 | +49.6 | +3.4 | +25.2 | +28.3 | |
| Rate per 100,000 inhabitants: | | | | | | | | | | | | |
| 1978 | 5,140.3 | | 497.8 | 4,642.5 | 9.0 | 31.0 | 195.8 | 262.1 | 1,434.6 | 2,747.4 | 460.5 | |
| 1979 | 5,565.5 | | 548.9 | 5,016.6 | 9.7 | 34.7 | 218.4 | 286.0 | 1,511.9 | 2,999.1 | 505.6 | |
| 1980 | 5,950.0 | | 596.6 | 5,353.3 | 10.2 | 36.8 | 251.1 | 298.5 | 1,684.1 | 3,167.0 | 502.2 | |
| 1981 | 5,858.2 | | 594.3 | 5,263.9 | 9.8 | 36.0 | 258.7 | 289.7 | 1,649.5 | 3,139.7 | 474.7 | |
| 1982 | 5,603.6 | | 571.1 | 5,032.5 | 9.1 | 34.0 | 238.9 | 289.2 | 1,488.8 | 3,084.8 | 458.8 | |
| 1983 | 5,175.0 | | 537.7 | 4,637.4 | 8.3 | 33.7 | 216.5 | 279.2 | 1,337.7 | 2,868.9 | 430.8 | |
| 1984 | 5,031.3 | | 539.2 | 4,492.1 | 7.9 | 35.7 | 205.4 | 290.2 | 1,263.7 | 2,791.3 | 437.1 | |
| 1985 | 5,207.1 | | 556.6 | 4,650.5 | 7.9 | 37.1 | 208.5 | 302.9 | 1,287.3 | 2,901.2 | 462.0 | |
| 1986 | 5,480.4 | | 617.7 | 4,862.6 | 8.6 | 37.9 | 225.1 | 346.1 | 1,344.6 | 3,010.3 | 507.8 | |
| 1987 | 5,550.0 | | 609.7 | 4,940.3 | 8.3 | 37.4 | 212.7 | 351.3 | 1,329.6 | 3,081.3 | 529.4 | |
| Percent change: rate per 100,000 inhabitants: | | | | | | | | | | | | |
| 1987/1986 | +1.4 | | –1.3 | +1.6 | –3.5 | –1.3 | –5.5 | +1.5 | –1.1 | +2.4 | +4.3 | |
| 1987/1983 | +7.3 | | +13.4 | +6.5 | ..... | +11.0 | –1.8 | +25.8 | –.6 | +7.4 | +22.9 | |
| 1987/1978 | +8.1 | | +22.5 | +6.4 | –7.8 | +20.6 | +8.6 | +34.0 | –7.3 | +12.2 | +15.0 | |

[1]Populations are Bureau of the Census provisional estimates as of July 1, except April 1, 1980, preliminary census counts, and are subject to change.
[2]Because of rounding, the offenses may not add to totals.
[3]Although arson data are included in the trend and clearance tables, sufficient data are not available to estimate totals for this offense.
[4]Violent crimes are offenses of murder, forcible rape, robbery, and aggravated assault. Property crimes are offenses of burglary, larceny-theft, and motor vehicle theft. Data are not included for the property crime of arson.
All rates were calculated on the offenses before rounding.

victims, and 53 percent were white. Firearms were the predominant murder weapons, with 3 out of every 5 murders committed with these weapons.

Victim/offender relationships showed that 57 percent of the victims were related to or acquainted with their assailants. By circumstance, 37 percent of all murders resulted from arguments, 21 percent were proven or suspected to have occurred in conjunction with felonious activities, such as robbery, arson, etc., 18 percent resulted from miscellaneous nonfelony activities, and 25 percent from unknown circumstances.

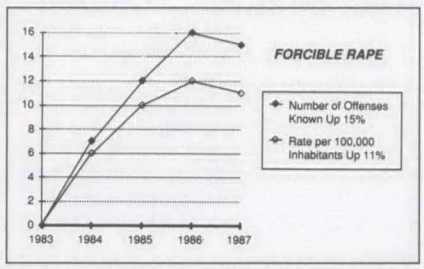
Overall murder arrests in 1987 were down 1 percent from the previous year; yet, murder had the highest clearance rate (70 percent) among the Index crimes. Of all murder arrestees, 44 percent were under 25 years of age, 88 percent were males, and 52 percent were black.




FORCIBLE RAPE—An estimated 91,111 forcible rapes were reported to law enforcement in 1987, a decrease of less than 1 percent from 1986. Eighty-one percent were rapes by force, and the remainder were attempts or assaults to commit forcible rape. By UCR definition, the victims of forcible rape are always females, and in 1987, an estimated 73 of every 100,000 females in the Nation were reported rape victims.

Nationwide, the South recorded a 2-percent decline and the West, a 1-percent drop, while increases of less that 1 percent in the Midwest and 4 percent in the Northeast were registered.

The clearance rate for forcible rape offenses was 53 percent, although arrests for this offense in 1987 were down 2 percent from those in 1986. Of those arrested, 45 percent were under the age of 25, with 29 percent in the 18- to 24-year age group, and 50 percent were white.

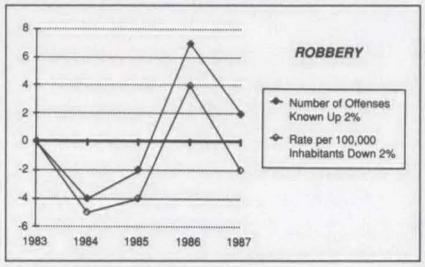



ROBBERY—Law enforcement agencies recorded 517,704 robberies in 1987, 5 percent fewer than in 1986. An estimated $327 million property loss was a result of these offenses, for an average of $631 per incident.

Downward trends in robbery were evident nationwide and throughout all population groups in 1987. Nationally, the robbery rate of 213 per 100,000 inhabitants was 6 percent below the 1986 rate. The highest rate—900 per 100,000 people—was in cities with populations over 1 million.

Strong-arm tactics were used in 44 percent of all reported robberies, firearms in 33 percent, knives or cutting instruments in 13 percent, and other dangerous weapons in the remainder. Over half of the robberies were on streets and highways.

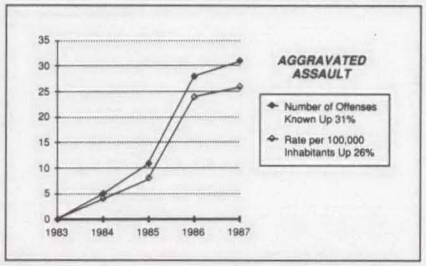
During 1987, 27 percent of robberies were cleared, while robbery arrests overall were down 4 percent when compared to the 1986 total. Sixty-one percent of those arrested for robbery were under 25 years of age, 92 percent were males, and 63 percent were black.




AGGRAVATED ASSAULT—An estimated 855,088 aggravated assaults took place in 1987, up 2 percent over the 1986 volume. Increases of 3 percent in the Nation's cities and 1 percent in both the suburban and rural counties were recorded for the same 2 years. The national rate per 100,000 for aggravated assault was 351.

Data on weapons used in aggravated assaults showed 21 percent were committed through the use of firearms, another 21 percent with knives or cutting instruments, 25 percent with personal weapons (hands, fists, feet), and 32 percent with blunt objects or other dangerous weapons.

Geographically, the Northeast and West registered upswings of 7 and 6 percent, respectively, while the Midwest experienced a 1-percent decline and the South, a less than 1-percent drop. The clearance rate for aggravated assault was 59 percent in 1987, and arrests for this offense were up 4 percent over the previous year. Of the arrestees, 87 percent were males and 58 percent were white.




## PROPERTY CRIME

Collectively, the volume of reported property crimes was up 3 percent nationwide. While burglary showed little change, larceny-theft rose 3 percent and motor vehicle theft increased 5 percent. There were 5 percent fewer arsons in 1987 than in 1986. Relating the property crime volume to population, the 1987 national rate rose 2 percent to 4,940 offenses per 100,000 inhabitants.

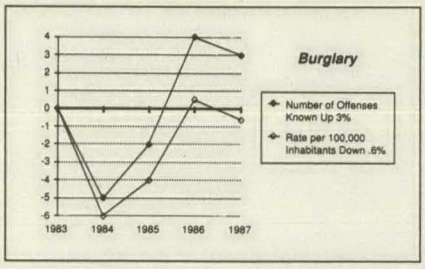
BURGLARY—During 1987, more than 3.2 million burglary offenses were reported to law enforcement agencies

nationwide, a decrease in volume of less than 1 percent from the 1986 total. An estimated national loss of $3.2 billion, or an average loss of $975 per incident, was a result of this offense. The national burglary rate dropped 1 percent to 1,330 per 100,000 in 1987. In the regions, the West showed a 9-percent drop; the Northeast, a 1-percent decline; the South, a 3-percent upswing; and the Midwest, a 1-percent increase.

Two of every three burglaries were of residences. The average loss per offense for residential burglary was $1,004, and for nonresidential burglary, $914.

Of all recorded burglaries in 1987, 70 percent involved forcible entry, 21 percent were unlawful entries, and the remainder were forcible entry attempts. The 14-percent national clearance rate for burglary in 1987 was the lowest rate among the Index crimes.

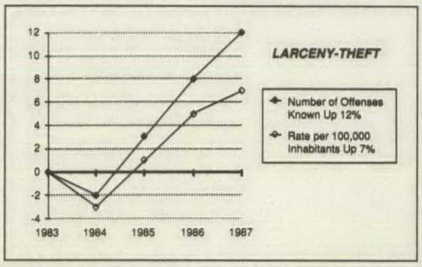
Arrest trends for 1986 and 1987 revealed a 1-percent decrease in total burglary arrests. Of the burglary arrestees, 92 percent were males, 69 percent were under 25 years of age, and 67 percent were white.




LARCENY-THEFT—There were approximately 7.5 million larceny-thefts nationwide in 1987, a 3-percent increase over the 1986 level. These offenses were up 3 percent in the Nation's cities, while the rural and suburban counties registered increases of 2 and 4 percent, respectively. The 1987 larceny-theft rate was 3,081 per 100,000 inhabitants. The South, Northeast, and Midwest regions of the Nation experienced upswings, while the volume of larceny-thefts showed no change in the Western States.

Average losses due to larceny-theft were $404 per incident, with a total national loss estimated at $3 billion. Thefts of motor vehicle parts, accessories, and contents accounted for 38 percent of the larceny thefts, and thefts from buildings and shoplifting each accounted for an additional 15 percent of the total.

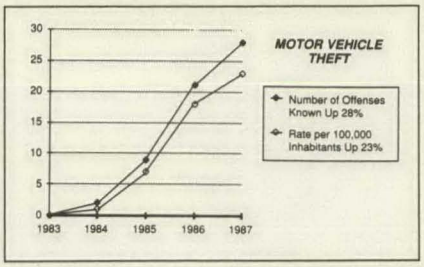
Twenty percent of the reported larceny-thefts were cleared, and arrests for this offense were up 3 percent from 1986. Forty-five percent of all larceny-theft arrestees were under 21 years of age, and 66 percent were white.




MOTOR VEHICLE THEFT—An estimated 1 of every 144 registered motor vehicles was reported stolen nationwide during 1987 when nearly 1.3 million offenses were reported to law enforcement. The volume was 5 percent higher nationally and in cities, while it increased 1 percent in rural counties and 9 percent in suburban counties. Motor vehicle thefts increased in three regions of the country; only the Midwest registered a decline of 5 percent in its motor vehicle theft volume.

Of the motor vehicles stolen, 77 percent were automobiles, 15 percent were trucks or buses, and the remainder were other types. The stolen vehicles accounted for an estimated national loss of over $6 billion and an average value per vehicle of $4,964 at the time of the theft.

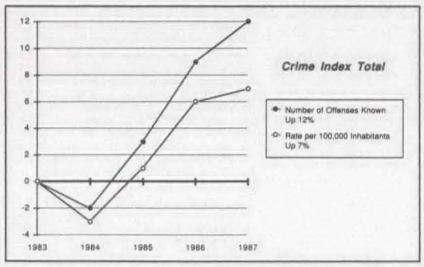
While law enforcement cleared only 15 percent of the motor vehicle thefts reported in 1987, overall arrests for this offense were up 11 percent over the 1986 total. Fifty-eight percent of the arrestees for motor vehicle theft were under 21 years of age, 90 percent were males, and 60 percent were white.




ARSON—During 1987, 102,410 arson offenses were recorded by 12,810 law enforcement agencies. The arson volume declined nationally and in all regions from 1986 to 1987. A 5-percent decrease was recorded nationwide and in the West and Northeast, while the total dropped 8 percent in the South and less than one-half of 1 percent in the Midwest. The national arson rate was 50 per 100,000 U.S. inhabitants.

Data based on reports from 12,649 agencies furnishing at least 1 month of supplemental information in 1987 showed that of the property targeted by arsonists, structures accounted for 55 percent, mobile property (motor vehicles, airplanes, boats, etc.) for 28 percent, and other types of property (crops, timber, etc.) for 17 percent. Sixty-one percent of the structural arsons involved residential property, and 93 percent of the arsons of mobile property involved motor vehicles. The reported monetary value of property damaged due to arson nationwide was $907 million, with an average loss per incident of $10,755.

Of the arsons coming to the attention of law enforcement during 1987, 16 percent were cleared. Only persons under age 18 accounted for 36 percent of all arson clearances, a higher percentage of juvenile involvement than for any other Index crime. An estimated 18,000 persons were arrested for arson in 1987. Eighty-six percent of the arrestees were males, 40 percent were under 18, and 73 percent were white.




## CRIME DISTRIBUTION

Crime Index trends for 1987 revealed volume upswings in three regions of the Nation—an increase of 4 percent in the South, 3 percent in the Northeast, and 2 percent in the Midwest. The West experienced a 1-percent decline in serious crime from 1986.

Similar to the national experience, law enforcement agencies in the Nation's cities and in rural counties registered a 2-percent rise in overall reported crime, while the increase in suburban counties was 3 percent.

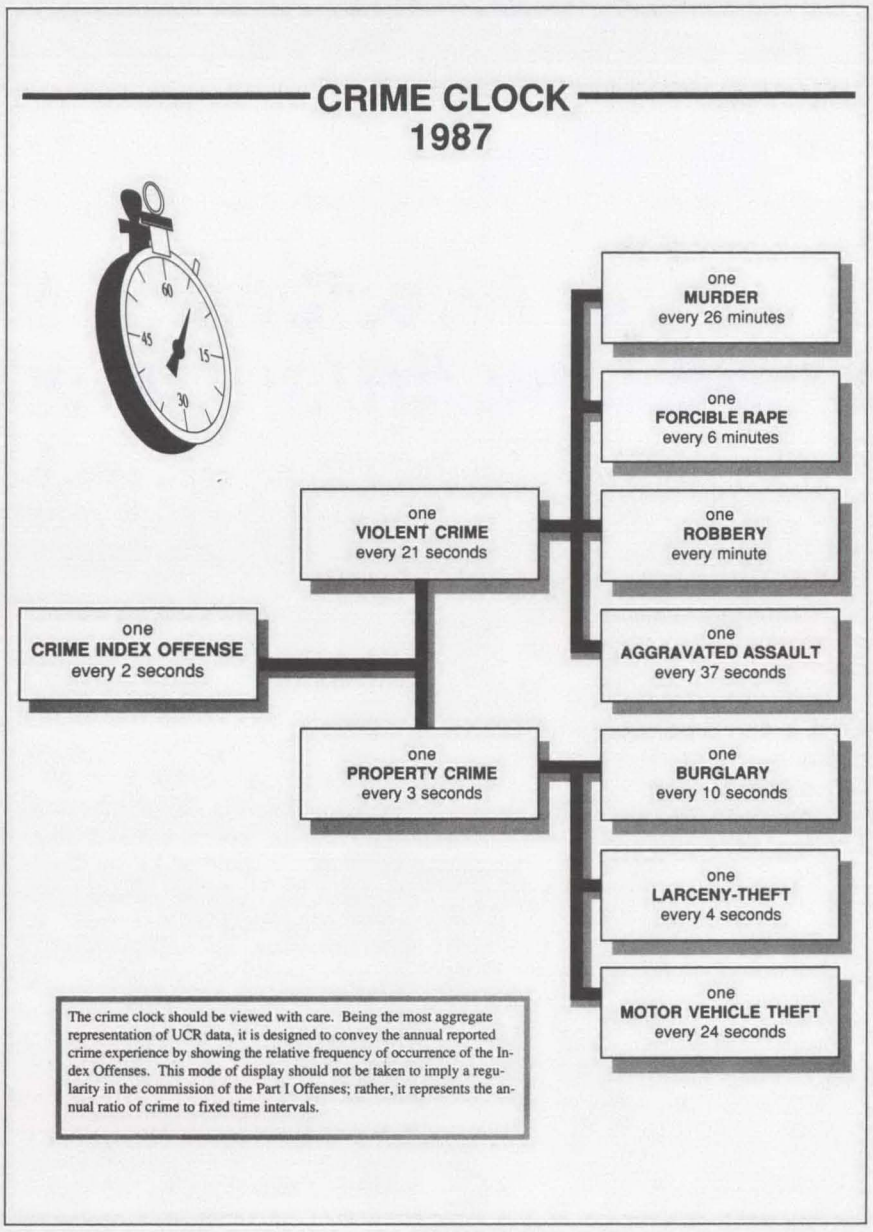
## CLEARANCES

Of the total Crime Index offenses recorded by law enforcement agencies during 1987, 21 percent were cleared. The clearance rate for violent crime was 47 percent, while an 18-percent clearance rate was registered for property crimes. Of the overall offenses cleared by law enforcement, 18 percent involved only young people under age 18. Persons in this age group accounted for 8 percent of the violent crime clearances and 21 percent of those for property crimes.

Crime Index clearance rates for the regions showed the highest rate (22 percent) was in the West. In the South, the rate was 21 percent; in the Northeast, 20 percent; and in the Midwest; 19 percent.

## ARRESTS

Arrests for all offenses except traffic violations totaled an estimated 12.7 million in 1987. Relating the arrest volume to population, the national rate was 5,330 per 100,000 people. Overall arrests increased 2 percent in 1987 compared to the 1986 level.




The 1.7 million arrest total for driving under the influence was the greatest number recorded for any offense in 1987. Males were most often arrested for this offense, which accounted for 14 percent of all male arrests. Females were most often arrested for larceny-theft.

Adult arrests were up in 1987 by 3 percent, while those of persons under 18 years of age declined 1 percent. Five percent of all persons arrested nationwide were under the age of 15, 16 percent were under 18, 30 percent were under 21, and 48 percent were under 25. Four of every 5 arrestees were males, and 69 percent of all persons arrested were white. FBI

# Training Priorities in State and Local Law Enforcement

***". . . the study has pointed out the need to explore alternative training technologies . . . to augment conventional classroom training and reach the large, widely dispersed population of law enforcement officers."***

By
ROBERT G. PHILLIPS, JR.
*Operations Research Analyst*
*Institutional Research*
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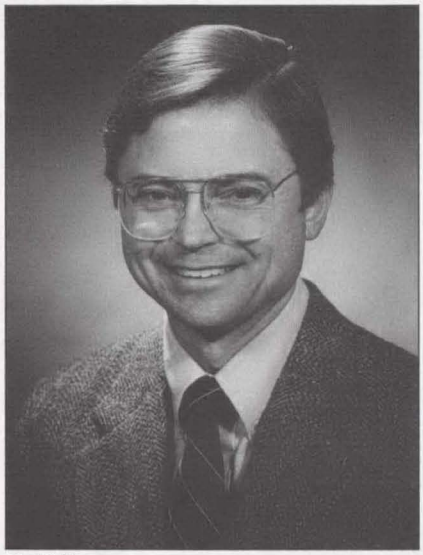
*Quantico, VA*

The U.S. Department of Justice (DOJ) has long supported the training of State and local law enforcement officers. To determine what types of training would most effectively use available resources, the DOJ recommended in 1981 that a long-term, comprehensive assessment of State and local law enforcement training needs be conducted. In response to the DOJ's request, the Institutional Research and Development Unit (IRDU) of the FBI's Training Division undertook the "Nationwide Law Enforcement Training Needs Assessment." The survey identified the training needs of sworn officers and ranked these needs by priority.

The study was conceived as a longitudinal analysis to allow researchers to identify new needs as they arise and to help them identify any trends that might exist. To date, the IRDU has completed four phases of the study. Articles describing the findings of the first two phases have already been published.[1] This article identifies training needs that agencies have consistently rated as high priorities over the four phases of the study and summarizes selected phase III and IV findings.

The IRDU gathered information for the study from State and local law enforcement agencies by using a questionnaire containing a list of job activities carried out by sworn officers. Researchers collected five types of information for each of the activities listed in the questionnaire:

1) The gap law enforcement personnel perceived between the level of expertise required to carry out the activity in an optimum manner and the level of expertise currently possessed by law enforcement officers;
2) The harm which would result from inadequate performance of the activity;
3) The time spent performing the activity;



*Mr. Phillips*

4) The number of officers requiring additional training in the activity; and
5) The degree to which agencies considered the Federal Government a source of training in the activity.

The study used a mathematical model to combine this information to produce a composite training priority score for each activity.[2]

To minimize the time required of respondents, the project staff divided the questionnaire into three separate booklets. No individual law enforcement officer was asked to complete more than one of the three booklets.

**Questionnaire Recipients**

During phases III and IV, the IRDU distributed survey packets containing the questionnaire, a response booklet, and related materials to a stratified sample of nearly 2,500 State and local law enforcement agencies across the Nation. The project staff drew this sample from the population of all State and local law enforcement agencies in the data base of the Uniform Crime Reporting Section of the FBI, with the exception of college and university police, which were not considered part of the population for this study.[3] The IRDU sent one survey packet each to sample agencies with fewer than 500 sworn officers. It provided agencies with 500 or more sworn personnel with between 3 and 101 survey packets each.

During phases III and IV, the response rate for agencies with 10 or more officers averaged 81 percent. The highest average rate of response (96 percent) came from agencies with 500 or more sworn personnel. When agencies with fewer than 10 sworn officers are included, the rate of response drops to 64 percent. This overall response rate resulted from the very low rate of return of these smaller agencies. An average of 37 percent of the agencies with four or fewer sworn officers responded, while the response rate for agencies with five to nine sworn officers was 54 percent. Figure 1 breaks down the response rate by size of agency.

Police chiefs/assistant chiefs or sheriffs/deputy sheriffs provided 42 percent of all usable responses, sworn officers at the level of sergeant or higher provided 48 percent, and other ranks of officers, such as corporal, patrolman, and trooper, provided the remaining 10 percent.

**Training Priorities by Job Activity**

The Nationwide Law Enforcement Training Needs Assessment Project seeks, among other things, to provide information that will help guide the development of Federal law enforcement training programs for State and local law enforcement. The nature and extent of Federal involvement in such programs, however, is influenced by the stability of the identified training priorities. Priorities that remain high on the list year after year warrant different curriculum development and delivery strategies than priorities that may appear one year and disappear the next.

During the first 4 years of this study, the agencies consistently ranked

***"The Nationwide Law Enforcement Training Needs Assessment Project seeks . . . to provide information that will help guide the development of Federal law enforcement training programs for State and local law enforcement."***

TABLE 1
CONTINUING TRAINING PRIORITIES

| Activity Statement |
|---|
| Handle Personal Stress |
| Maintain Appropriate Level of Physical Fitness |
| Conduct Interviews/Interrogations |
| Collect, Maintain, and Preserve Evidence |
| Drive Vehicle in Emergency/Pursuit Situations |
| Promote Positive Public Image |
| Develop Sources of Information |
| Fire Weapons for Practice/Qualification |
| Testify in Criminal, Civil, and Administrative Cases |
| Search Persons, Dwellings, and Transportation Conveyances for Illegal Drugs |
| Write Crime/Incident Reports |
| Investigate Conspiracy to Illegally Import, Manufacture, Distribute Controlled Substances |
| Protect Crime Scene |
| Detect, Gather, Record, and Maintain Intelligence Information |
| Investigate Possession with Intent to Distribute and/or Sale of Illegally Imported/Manufactured Controlled Substances |
| Search and Document (Photographs, Sketches, Evidence Logs, etc.) Crime Scenes |
| Develop and Maintain Control of Informants in Drug Investigations |
| Use Effective Supervisory Philosophies and Leadership Styles |
| Use Undercover Techniques in Drug Investigations |
| Handle Domestic Disturbances (To Include Awareness of Possible Abuse of Spouses, Children, and the Elderly). |

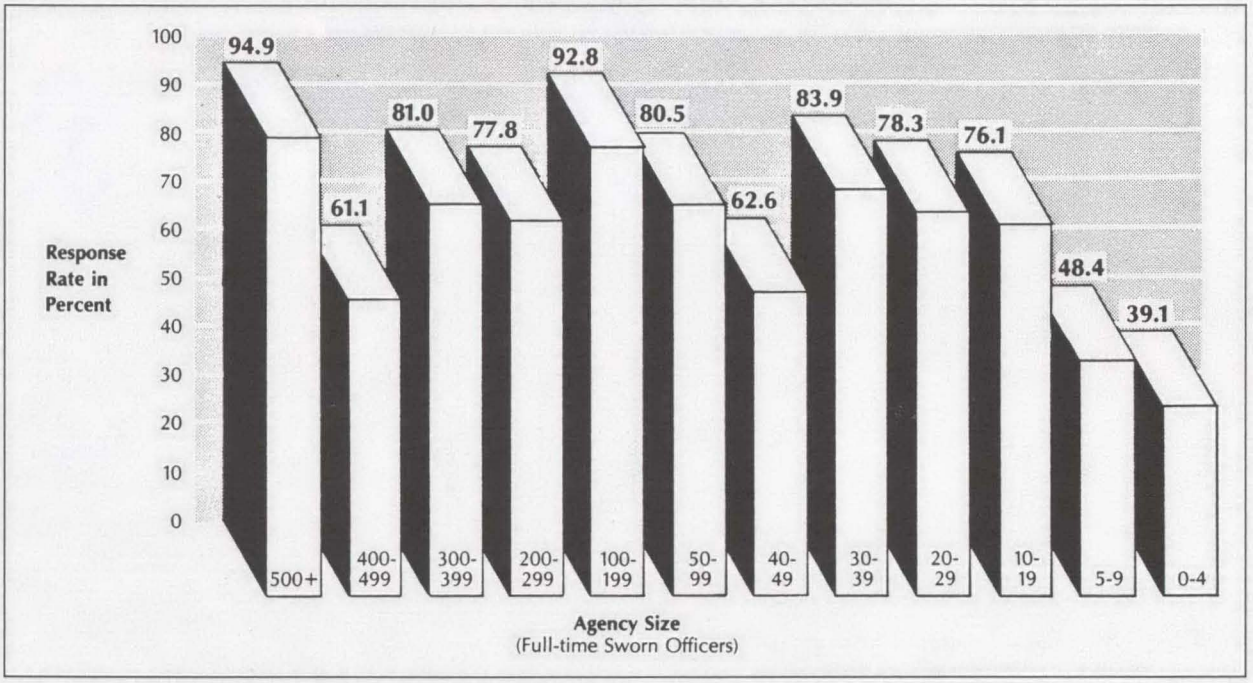
20 individual job activities among the top 25 percent in importance, regardless of agency type or size. These continuing training priorities, shown in table 1, should be considered particularly stable because they have maintained their high ranking for at least the 3 most recent years of this study. (The agencies have ranked 14 of the activities among the top 25 percent in importance for all 4 years of the study.) The project staff expects most of the activities shown in table 1 to continue to rank high in the future. Due to the consistency with which agencies have rated activities during phases I through IV, the IRDU will initiate future phases of this study once every 2 or more years, depending on the information needs of the Federal, State, and local law enforcement communities.

### Training Priorities by Job Category

To facilitate the development of training programs that address identified training needs, the researchers grouped job activities listed in the questionnaire into five major job categories—drugs, detective/juvenile/vice/intelligence, common, patrol/traffic, and supervisory/management.

When job category training priorities are differentiated by agency type and size, training priority differences become evident. Figure 2 graphically illustrates, for municipal and county police and sheriff's agencies employing 500 or more sworn personnel, the number of top 25-percent activities occurring in each job category as a percent of all activities in the category. Figures 3, 4, and 5 show job category priorities for three additional agency type/size groupings.

**Figure 1**
**Response Rate by Size of Agency**




As figures 2 through 5 illustrate, the "drug" category received the highest priority rating across all types and sizes of agencies, except for police and sheriff's agencies with 500 or more sworn personnel. In fact, drug-related activities have sustained a high level of training priority during phases II through IV. These findings support continued Federal involvement in drug training.

While the "supervisory/management" job category ranked low among the categories, its importance in law enforcement training should not be underestimated. Since one of the factors used to determine training priority is the number of officers requiring additional training, and only a small portion of all sworn officers occupy supervisory or managerial positions, priority ratings for supervisory and managerial job activities tend to be lower than those for many other activities. However, it is important that managers and supervisors exercise their job responsibilities with great skill, because their performance directly influences the quality of service provided to the public by their subordinates. Thus, supervisory and managerial training will contribute to improved job performance not only by the individuals trained but also by the much larger group of officers they supervise.

### Agency Training Expenditures

During phase III, the project staff gathered data regarding the amount of money State and local agencies budget for training their officers. In general, annual agency training budgets for the sample agencies ranged from a low of zero to a high of $7 million, with an overall median expenditure of $2,500. In terms of agency type, the researchers found sheriff's agencies to have the

*". . . drug-related activities have sustained a high level of training priority. . . ."*

**Figure 2**
**Priority Training Needs For**
**Municipal and County Police Agencies and Sheriff's Departments**
**With 500 or More Sworn Personnel (n = 846)**

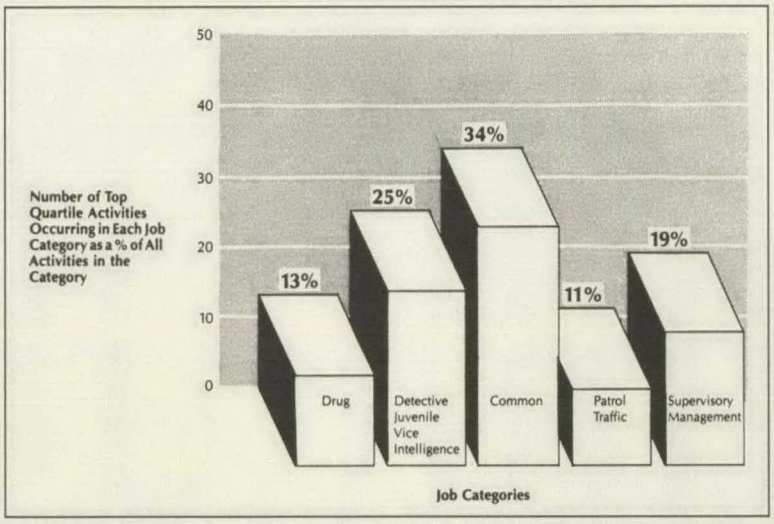



**Figure 3**
**Priority Training Needs For**
**Municipal and County Police Agencies**
**With Fewer Than 500 Sworn Personnel (n = 830)**

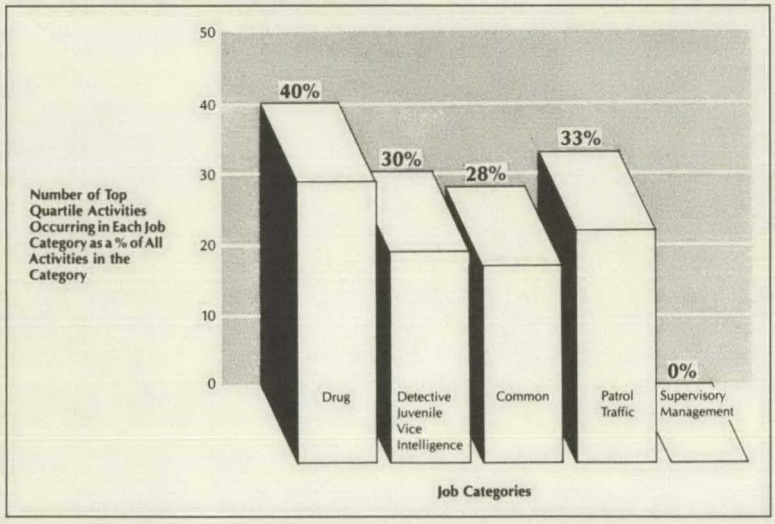


**Figure 4**
**Priority Training Needs For**
**Sheriff's Departments**
**With Fewer Than 500 Sworn Personnel (n = 638)**

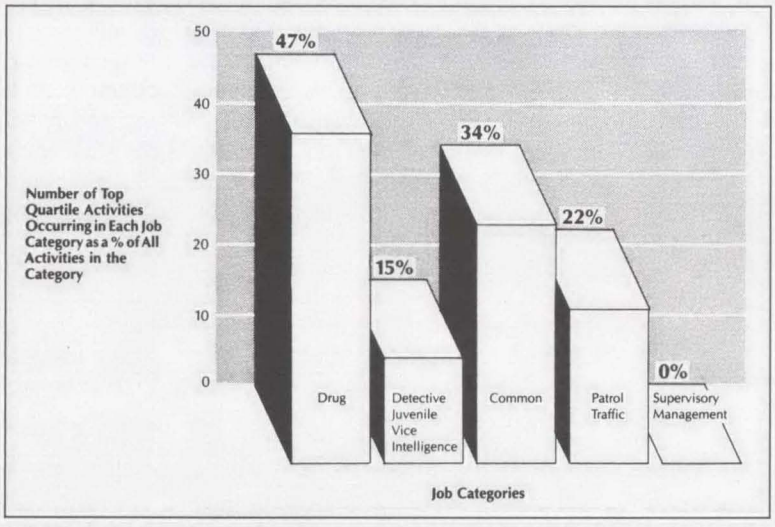
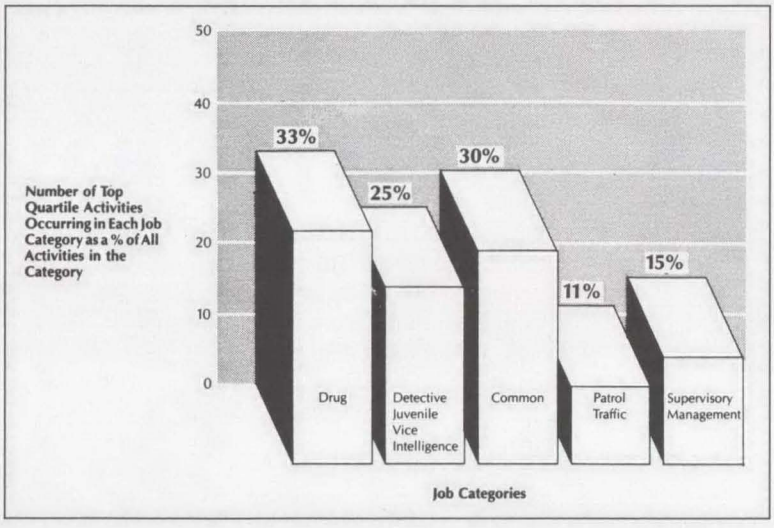



**Figure 5**
**Priority Training Needs For**
**State Police/Highway Patrol Agencies (n = 368)**



***". . . annual agency training budgets for the sample agencies ranged from a low of zero to a high of $7 million, with an overall median expenditure of $2,500."***

lowest median training budget—$1,800. They determined median training budgets to be $2,300 for municipal police, $27,000 for county police, and $543,523 for State police/highway patrol agencies. Note that the large differences in training budgets by type of agency result primarily from differences in agency size and not from inherent differences by agency type in the level of support for training. State and county police agencies are much larger on the average than typical municipal police or sheriff's departments, and therefore, they tend to have higher training budgets.

Perhaps the most striking figure resulting from the economic analysis was the $725 median annual training budget for that half of the agencies having budgets less than the $2,500 median of all agencies in the sample. This means that one-fourth of the agencies surveyed budgeted $725 or less annually for training, while another fourth budgeted between $725 and $2,500. Most (93.4 percent) of the agencies in this group were relatively small, employing fewer than 30 sworn officers.

Agency training budgets, which may cover the costs of any course materials, tuition, travel, and per diem associated with the training, represent one major component of the total cost of training sworn officers. A second important component is the cost of an officer's salary while in training. The project staff estimates the cost of officers' salaries while they train to exceed $70 million annually. These figures are based on findings of a study conducted by the International City Management Association,[4] combined with findings of phase III of the Nationwide Law Enforcement Training Needs Assessment. These constitute conservative estimates of the magnitude of salary costs borne by agencies in providing training to their sworn officers in those agencies that provided the necessary data. More than 9,000 agencies serving populations of under 10,000, which were not included in the International City Management Association study sample, annually consume substantial additional resources.

Officers' salaries during training, together with the resources budgeted for training, account for the bulk of agency resources supporting training of sworn officers. However, additional agency training costs (such as those associated with developing, producing, and delivering in-house training and the cost of agency facilities used for training activities, etc.) represent other agency resources consumed in the process of training sworn officers. Estimates of the total annual amount State and local agencies spend to train their sworn officers will vary considerably, depending on how the very limited available data are interpreted. A conservative figure, based on data available during phase III of the study, would be at least $200 million or an average of over $400 for every full-time officer in the Nation.

## Conclusion

Phases I through IV of the Nationwide Law Enforcement Training Needs Assessment study have provided the U.S. Department of Justice specific information about the training priorities of State and local agencies. Further, the study has given information to Justice Department agencies to use in budgeting and program planning. Finally, the study has pointed out the need to explore alternative training technologies (such as video taping and satellite broadcasting) that have the potential to augment conventional classroom training and reach the large, widely dispersed population of law enforcement officers. Future phases of the study will continue to update current and past findings. At the same time, future phases will seek to identify emerging training priorities so law enforcement trainers can continue to help provide high-quality law enforcement services to citizens across the Nation. FBI

**Footnotes**

[1]Robert G. Phillips, Jr., "State and Local Law Enforcement Training Needs," *FBI Law Enforcement Bulletin*, vol. 53, No. 8, August 1984, pp. 6-15; "FBI Surveys State and Local Law Enforcement Training Needs," *The Police Chief*, vol. 53, No. 7, July 1986, pp. 18-23.

[2]U.S. Department of Justice, Federal Bureau of Investigation, *State and Local Law Enforcement Training Needs in the United States, 1985, Volume II: Technical Report* (Quantico, VA: Institutional Research and Development Unit, 1986), pp. 31-32. This report describes the model and its application, as well as other methodological aspects of the study. Note: The analytic model used to identify and prioritize training needs was designed to operate from a national perspective. Since training priorities may vary greatly from one agency to another, the results of the Nationwide Law Enforcement Training Needs Assessment will not necessarily reflect training priorities within a specific agency. Therefore, individual agencies wishing to use the results discussed in this article for training management purposes should also take into account any factors (environmental, political, etc.) that could cause training priorities within the specific agency to differ from the priorities of law enforcement agencies in general.

[3]U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1984* (Washington, DC: U.S. Government Printing Office, 1985).

[4]G. J. Hoetmer, *Police, Fire and Refuse Collection* (Baseline Data Report, vol. 16, No. 7) (Washington, DC: International City Management Association, 1984).

# Escort Services
## A Front For Prostitution

***"Crimes of theft, drug abuse, robbery, and assault and battery are frequent byproducts of an organized prostitution service."***

By
LT. MICHAEL E. BIGGS
*Police Department*
*Huntington Beach, CA*

The oldest profession has long posed a serious problem to law enforcement. By its very nature, prostitution presents obstacles to its eradication. Prostitutes are transitory and operate under several guises, ranging from street walkers to those engaged in clandestine operations, such as modeling studios and massage parlors. However, the prostitution activity that is most difficult to prosecute is the escort service.

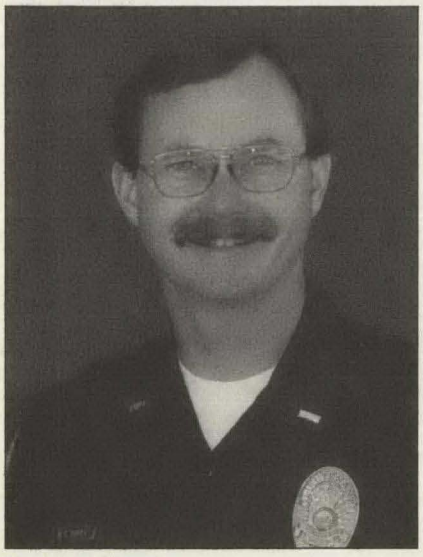
**The Problem**

Legitimate escort services provide the customer with a companion for social events rather than sex. However, there are escort services which operate under the guise of offering legal companionship, but in reality, are designed to provide for the sexual gratification of its customers.

The criminal activities associated with illegal escort services reach far beyond sexual acts. Crimes of theft, drug abuse, robbery, and assault and battery are frequent byproducts of an organized prostitution service. In addition, the public health can be affected through the spread of communicable diseases.

An illegal escort service designed as a front for a prostitution ring generally operates in the following manner. The operator of the service advertises in various publications, ranging from newspaper classified ads to telephone directories. These advertisements run simultaneously using different phone numbers, usually offering the company of women to men with money. For example, "Classy lady seeks generous gents 40 and over for fun. Julie 555-5310"; "Shapely foxy redhead seeks wealthy men for dates 555-4805"; or "Two sexy blonds would love to model in your home, generous, over 40 only 555-4779." These phone numbers will generally be assigned to fictitious names and have call forwarding capabilities to a central location, which is most commonly the residence, vehicle, or business office of the operator. In an office, the operator maintains the business records and equipment needed to operate the service on a day-to-day basis.

The records might include the applications and contracts of the escorts which show their physical descriptions, addresses, phone numbers, and photographs. In some cases, these documents contain detailed descriptions of what sexual acts they will not perform, what costumes or roles they will adopt while entertaining a customer, and the



*Lieutenant Biggs*

*Chief G. L. Payne*

rules and procedures regarding how the service operates, including fees charged, length of sessions, payoffs to the service operator, hours worked by the escort, and the reliability of each escort in responding to calls and ensuring customer satisfaction.

The operator's records will also contain information relating to the financial aspects of the business. Most commonly, this will be in the form of lists showing money due from escorts, the names of customers who have written bad checks, credit card procedures and imprinters, advertising expenses, and money paid to escorts. It is not uncommon for escort services to have multiple bank accounts which will show sizeable deposits on a rotating basis.

The last major category of records often found in an escort service's office relates to customer service. Such records include customer names and identifying information, sexual preferences, physical likes and dislikes, records of incoming calls and services rendered, names of prank callers, undercover vice officers' names and descriptions, locations of previous arrests, and phone numbers used by undercover officers.

The owner/operator of an escort service is shielded from discovery and arrest by several protective barriers designed to provide high-profit margins from the illegal act of prostitution and minimal exposure to investigating officers. To accomplish this, the operator will hire established prostitutes, those referred by other escort services, or by advertising for escorts in the classified sections of local newspapers. On many occasions, the operator will conduct interviews by phone to obtain descriptions and background information, thereby protecting his or her identity. The operator will also explain that the escort service will merely arrange legitimate dates and that the escort is not to do anything illegal. This way, the service operator is able to claim that a legitimate escort service was being operated and that he or she had no knowledge of any illegal sexual activity taking place.

Advertising for the escort service is placed in telephone directories, adult publications, and personal classified ad sections of local newspapers. Customers call in response to the advertisements and give personal information to the operator, including name, address, home phone, occupation, business address, phone number, driver's license number, credit card numbers, the location of the call, and physical description. The operator also determines how much time the customer wants to spend with the escort and how the customer was referred to the service before telling the customer that someone will call back soon.

Next, the operator tries to verify the identity of the prospective customer by checking the information given against the "John" or customer file, prank file, and undercover police officer file. The operator will also check listed phone information to see if the name is valid. In some instances, operators will call other escort service operators to see if the customer has used such services in the past. Large escort services sometimes use personal computers to manage these recordkeeping functions.

Once the operator has verified the information, a phone call is placed to a

***"The owner/operator of an escort service is shielded from discovery and arrest by several protective barriers designed to provide high-profit margins . . . and minimal exposure to investigating officers."***

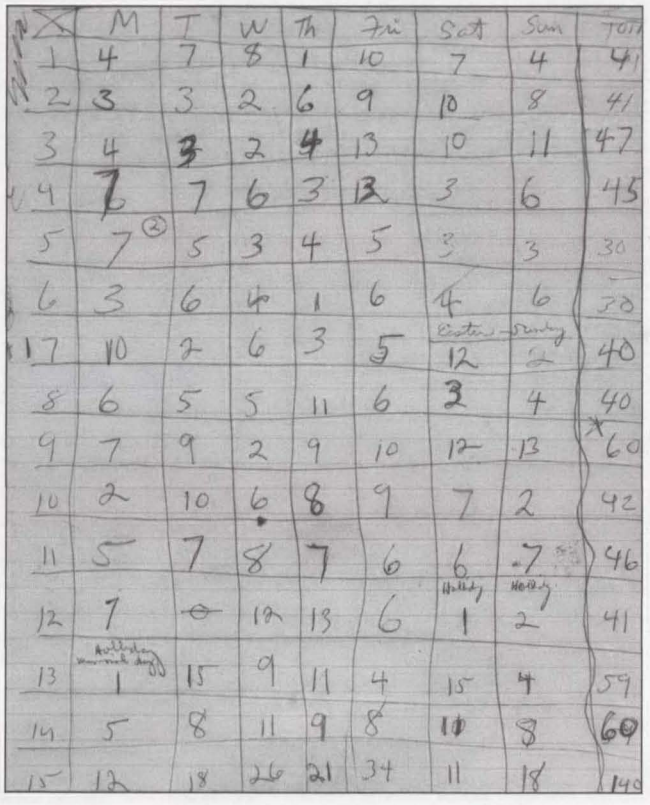
prostitute, relaying the necessary information. The prostitute will call the customer, describe herself, and explain the fee schedule and how it must be paid. Prices vary, but generally run $30 as a service fee and $50 for a one-half hour session and $100 for a full hour. Higher prices are charged for longer periods of time. The prostitute tells the customer that these fees are for her time and companionship. It is only on rare occasion that sexual acts are discussed at this point. If the prostitute feels comfortable with the customer, she asks for directions to the meeting place and gives an estimated time of arrival.

Upon arriving, the prostitute checks the location for signs of police presence. She then verifies the customer's identification, and if convinced the customer is not an undercover police officer, collects the escort service fee and her fee. This is usually done in cash; however, large services will accept credit cards and personal checks from regular customers. As soon as the money is collected, the prostitute calls the escort service operator to say that all is going well.

Once the calls ends, the prostitute asks the customer what services he desires. The termination of the call also signals the service operator to begin monitoring the time the prostitute spends with the customer. Previous agreements between the operator and the escort requires that she phone the operator again, after she is finished with the customer. This serves to notify the operator that the escort experienced no problems and that she is available for another call.

If the operator does not receive the second call, it can be assumed one of three things has happened. First, the customer was an undercover police officer and the escort has been arrested for prostitution; second, the customer has prevented the escort from leaving and is detaining her against her will; or third, the escort has fled with the service fee and the money she made on the call.

If the service is large enough to employ a security force, they will be asked to look into the problem; otherwise, the service operator investigates. Whoever does the checking will almost always call the location and ask for the escort or customer by name. If this does not resolve the problem, a call will be placed to the police reporting a serious disturbance requiring assistance.




*This record sheet shows the number of calls 15 escorts went on during a 1-week period.*

***"The two most common methods of investigating illegal escort services are using undercover police officers to pose as customers and developing escort service employees as informants."***

If the prostitute has been arrested, the escort service will receive a call from her during the booking process. This will certainly alert the operator to the fact that the name, address, and phone number used by the client are in actuality a part of an undercover police operation. If the customer is holding the escort against her will, calling the room or sending the police to the location will almost always rectify the situation and free the prostitute. If the escort has fled with the money, the operator will limit the prostitute's future work prospects by notifying other area escort services that she is unreliable.

In Orange County, CA, there are over 50 escort-related published advertisements in the phone directories and in excess of 20 escort-related advertisements in the personal classified ad section of a local daily newspaper. The records seized during the investigation of some escort services reveal that the number of prostitutes working for each service ranges from 1 to 30. The financial records of two escort services, each employing 12 to 15 prostitutes, showed that each grossed in excess of $250,000 annually. The overhead of operating these services is minimal, leaving the operator a high-profit margin.

### Possible Solutions

To prosecute an illegal escort service successfully, investigators must always seize the business records kept by the operator. The goal of these investigations should be to develop enough information to allow the investigating agency access to the escort service's operating location and records. This is usually done by gathering sufficient information to show probable cause that such an illegal operation exists and by obtaining and serving a search warrant. The specific tactics used by an investigating agency to obtain a search warrant depend on the size, type, and operating area of the illegal escort service, as well as how the operation of the service was brought to the attention of the police.

Most escort services are discovered through open sources of information, such as phone directories, newspaper personal advertisements, or publications catering to adult entertainment. Less frequent are cases where employees of the service or customers inform the police about the service. The two most common methods of investigating illegal escort services are using undercover police officers to pose as customers and developing escort service employees as informants.

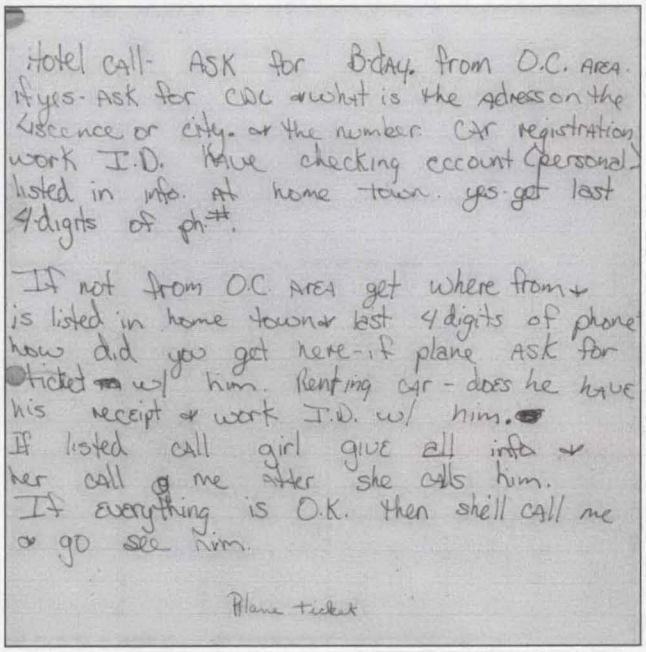
### Undercover Investigations

To conduct effectively an undercover investigation into illegal escort services, police officers posing as customers must be equipped with identification that will satisfy the scrutiny of the escort service. Identification should include such items as a driver's license, credit cards, business identification, business cards and references, a checking account, airline tickets, and vehicle registration. The name and address used by the undercover operator may need to be published in a telephone directory.

The location chosen for the undercover operation is very important, the most common being a hotel or motel. However, because these locations are often used for undercover investigations, many illegal services will not send escorts to customers calling from a hotel or motel. If a residence, such as a private home or apartment, is used, the undercover operator must insure that his false identification matches the address of the operation. Most illegal escort service operators realize the difficulty in obtaining extensive credentials bearing false addresses. Another important consideration is to have the utility bills for the address in question bear the fictitious name of the undercover operator.

A site selected for an undercover operation should be thoroughly checked for compatability with the equipment that will be used. Some transmitters will not work in concrete or metal buildings. It is also important to ensure that the devices are positioned where a signal can be transmitted.

The location should also allow for good concealment and easy access for backup surveillance officers. It is recommended that some officers be as close as possible to the undercover operator, as well as having some officers located outside the building. For example, if the undercover operation is being run from a hotel or motel, apartment, or business office, one team of backup officers should be in an adjacent room or no farther than across the hall and a second team should be outside in a mobile post. When a private home is used, one team should be concealed on the premises and a second team outside in a mobile post. Both teams should be equipped with monitoring devices that allow them to hear the conversation between the undercover officer and the prostitute. It is also



Hotel call- ASK for B-day. from O.C. area. If yes- ask for CDL or what is the adress on the license or city. or the number. Car registration work I.D. have checking account (personal) listed in info. at home town. yes- get last 4 digits of ph.#.

If not from O.C. area get where from + is listed in home town or last 4 digits of phone how did you get here- if plane ask for ticket w/ him. Renting car - does he have his receipt or work I.D. w/ him.

If listed call girl give all info + her call me after she calls him.

If everything is O.K. then she'll call me or go see him.

Plane ticket

*Various instructions are left to assist the person who takes calls over the telephone.*

essential that the backup teams be able to communicate with each other at all times. The conversation between the undercover operator and the escort should be recorded whenever possible.

Once the undercover operator phones a service and receives a call back that an escort is on the way, the surveillance teams are responsible for monitoring the events outside and notifying the undercover operator of the escort's arrival. They then watch the car she arrives in, along with any companions who may have accompanied her.

Once the escort and undercover operator are alone, it is the operator's responsibility to handle the investigation according to the policies of his agency and within the guidelines set by the prosecuting agency.

When the undercover operator perceives a violation, he notifies the backup teams by a prearranged signal. This is usually something that is said in the course of conversation with the escort which is then broadcast by the transmitter, but can actually be any kind of audible signal. If the transmitter is not working, a secondary visual signal should be prearranged to notify the backup teams to enter.

When the undercover operator signals the backup teams to enter, he should position himself so as to keep the escort from reaching her purse, since many escorts carry weapons. The backup team should be responsible for arresting the escort and detaining any of her companions until their involvement is determined. It is the undercover operator's responsibility to prevent the escort from arming herself and for alerting the backup team to any weapons or evidence.

Photographs of the escort should be taken if requested by the prosecuting agency. Every effort should be made so as not to degrade the escort; if the escort has disrobed, she should be allowed to dress immediately.

Once the scene is secured, the undercover operator should collect all available evidence. This might include lists of customers, directions to meeting spots, directions to the undercover arrest site, birth control devices, such as condoms or contraceptive sponges, credit card imprinters, and invoices. The undercover operator or his designee should always try to interview the

***"Investigating illegal escort services is time-consuming and often requires smaller agencies to combine resources for effectiveness."***

escort for information about the escort service operator.

**Informant Operations**

Another method of investigating escort services is to identify prostitutes or other employees who have first-hand knowledge of how the service operates and to use that information to gain access to the business records of the service operator. Once the investigating agency has seized the business records, the final phase of the investigation begins. First, prostitutes working for the service must be identified and interviewed to establish that the service operator knew that the customers he/she sent them to were for the purpose of having sex and that they gave him/her money obtained from the customers. Second, customers must be identified and interviewed for the purpose of establishing that they arranged for a sexual encounter with an escort by calling the service. Third, if the investigating agency is capable of doing so, it should take over and temporarily operate the service after the business records are seized to corroborate other evidence showing the purpose of the escort service is to arrange sexual liaisons and not legitimate dates

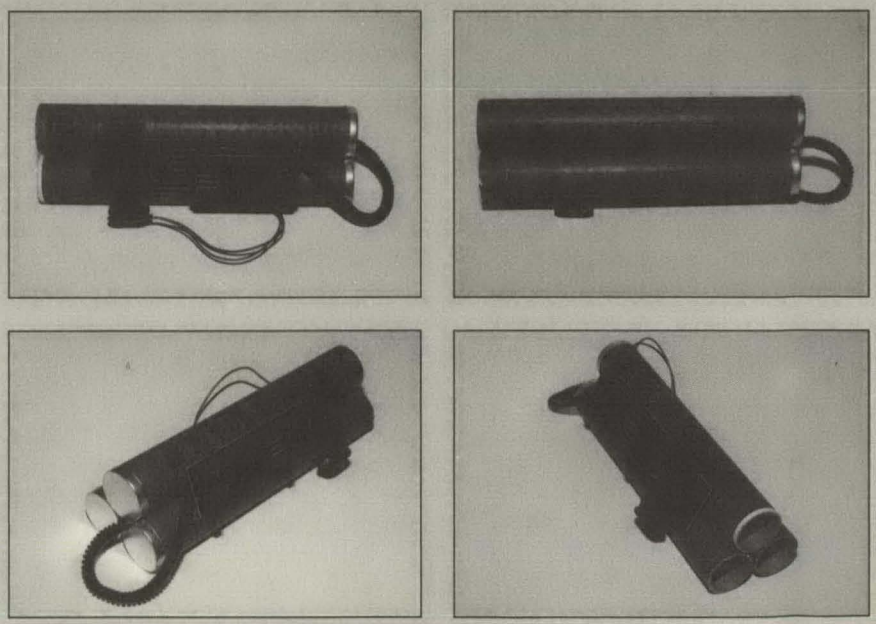
Using undercover police officers to meet customers while posing as escorts will normally establish that the customer was seeking a sexual act. This, in conjunction with the information gained from an examination of the escort service business records, tape recordings of solicitations by escorts, and testimony of prostitutes and customers as to the nature of the escort service and how it operated, will generally meet the burden of proving that the escort service was operating as a prostitution ring.

**Conclusion**

Investigating illegal escort services is time-consuming and often requires smaller agencies to combine resources for effectiveness. However, with hard work and a well-planned investigation, the result can be a successful prosecution. FBI

## Hoax Bombing Device

This device was discovered by an employee at the Charleston International Airport in Charleston, SC. While it appears to be an authentic explosive device, it is actually an alarm clock sold commercially as a novelty item. Approximately 10 inches in length overall, the only working part is the small black clock, which is about 3 inches long. Because of its realistic appearance, this clock could easily be used as a "hoax" bombing device.



# The Constitutional Right to Discovery

## A Question of Fairness

***". . . society wins '. . . not only when the guilty are convicted but when criminal trials are fair; our system of . . . justice suffers when any accused is treated unfairly.' "***

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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.*

In the legal context, "discovery" is the means by which one party to a legal action seeks to learn as much as possible about the opposing party's case in order to devise an appropriate trial strategy. The Supreme Court once explained the purpose and effect of the discovery process as follows:

> "[Discovery rules] are based on the proposition that the ends of justice will best be served by a system of liberal discovery which gives both parties the maximum possible amount of information with which to prepare their cases and thereby reduces the possibility of surprise at trial."[1]

By reducing the possibility of surprise, discovery "enhances the fairness of the adversary system."[2]

Notwithstanding the enhanced fairness presumably produced by the discovery process, the Federal Constitution is silent on the issue. Consequently, the development of discovery rules in criminal cases has been relatively recent — and primarily legislative — in origin, with the Congress and the State legislatures fashioning rules to govern discovery within their respective jurisdictions.

Then, in the 1963 decision of *Brady* v. *Maryland*,[3] the Supreme Court held that in a criminal case, the accused has a *constitutional* right to discover exculpatory evidence, i.e., favorable evidence possessed by the prosecution that is material to the outcome of the proceeding.

The *Brady* decision clearly recognized a *constitutional right of discovery* for the defense in criminal cases and a corresponding constitutional duty of the

*Special Agent Hall*

government to disclose. This article will examine the case law that led to that decision and then analyze that decision and the subsequent developments which more clearly define the defendant's right and the government's duty.

## THE HISTORICAL UNDERPINNINGS OF *BRADY* — 1935-1963

The doctrinal seeds from which the *Brady* rule sprouted were sown long before that decision, in the Supreme Court's interpretation of the Due Process Clause. The Constitution guarantees that no person can be deprived of life, liberty, or property without due process. Although the Due Process Clause is specifically set forth in both the 5th and 14th amendments — and is therefore applicable to both Federal and State governments — it is not defined in either. In the absence of a specific definition, the Supreme Court has characterized due process, in general terms, as "fundamental fairness."[4] It is this ingeniously flexible definition of due process which made the *Brady* decision possible, if not inevitable. That decision was the culmination of a theme which had begun to appear in U.S. Supreme Court decisions almost 30 years earlier, and the salient developments of which may be briefly summarized in the following cases.

### 1935 — *Mooney* v. *Holohan*[5]— Perjured Testimony Solicited

The defendant, Mooney, who was serving a life term in prison for first-degree murder, asserted that the sole basis for his conviction was perjured testimony knowingly used by the prosecuting authorities. Furthermore, he alleged that the prosecutor deliberately suppressed evidence which would have impeached and refuted the testimony thus given against him.

The Supreme Court held that the prosecutor violated due process by contriving to deprive a defendant of liberty "through a deliberate deception of court and jury by the presentation of testimony known to be perjured."[6] The constitutional violation was not simply the knowing use of perjured testimony at the trial; it included the withholding of that critical information from the defendant. The *Mooney* decision marks the first time that the Supreme Court recognized the existence of a *constitutional* obligation of the government to disclose information to an accused.

### 1942 — *Pyle* v. *Kansas*[7]—Perjured Testimony/Intimidation of Witness

Pyle, the defendant in a murder trial, appealed his conviction, alleging that the prosecutor knowingly solicited perjured testimony from two witnesses on threat of prosecution and suppressed by intimidation the testimony of other witnesses whose evidence would have been favorable to his case.

The Supreme Court remanded the case for a determination of the facts, but suggested that if the defendant's allegations were proven, they would "sufficiently charge a deprivation of rights guaranteed by the Federal Constitution . . . ."[8]

In both *Mooney* and *Pyle*, the alleged constitutional violations were two-fold: First, that the prosecutors knowingly and deliberately used perjured testimony, and second, that the suppression of information deprived the defendants of the opportunity to effec-

***"The* Brady *decision clearly recognized a* constitutional right of discovery *for the defense in criminal cases and a corresponding constitutional duty of the government to disclose."***

tively impeach the government witnesses or to introduce favorable evidence in their behalf.

**1957 — *Alcorta* v. *Texas*[9]—Perjured Testimony - Unsolicited and Uncorrected**

Alcorta was convicted of first-degree murder and sentenced to death in the slaying of his wife. His defense claim of "sudden passion" — which, if successful, would have reduced both the offense and the penalty — was rejected by the jury, following the testimony of the key prosecution witness who denied having an affair with the defendant's wife. The prosecutor allowed the testimony to stand, even though the witness had previously told the prosecutor that he had in fact engaged in sexual intercourse with the defendant's wife on several occasions. Unlike the *Mooney* and *Pyle* cases, the prosecutor had not solicited the false testimony; he simply allowed it to stand uncorrected.

The Court held that the prosecutor's failure to correct the false testimony constituted a violation of due process. The Court reasoned that disclosure of the facts concerning the true relationship between the witness and the defendant's wife could have affected the jury's evaluation of the defendant's "sudden passion" claim. Accordingly, it could have resulted in conviction for a lesser offense than first-degree murder and imposition of a less severe punishment than death.

**1957 — *Roviaro* v. *United States*[10]—Informant Identity**

The *Roviaro* case, decided the same year as *Alcorta*, raised an issue that was quite different in character, but one that is still relevant to the development of the concept of due process discovery.

In *Roviaro*, the defendant was seeking disclosure of the identity of a confidential government informant who was a major participant in a drug transaction involving the accused and was — the defense contended — a material witness to the issue whether the accused knowingly transported the drugs as charged.

The Supreme Court recognized the government's privilege to withhold from disclosure the identity of confidential informants, but held that "the fundamental requirements of fairness" demand that the privilege give way "[w]here the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause. . . ."[11] The Court declined to establish a fixed rule governing the right of an accused to discover an informant's identity, choosing instead to adopt a balancing test which would weigh "the public interest in protecting the flow of information against the individual's right to prepare his defense."[12]

The *Roviaro* decision represents a significant extension of an accused's due process right to discovery; for, unlike the earlier cases, there is no suggestion of prosecutorial wrongdoing in soliciting or permitting perjured testimony or in suppressing substantive information that might be favorable to the defense. The information sought is the identity of the government's informant, and the request for disclosure is based on the argument that the substance of the informant's testimony is crucial to the defense.

**1959 — *Napue* v. *Illinois*[13]—Impeachment Evidence**

At the defendant's murder trial, the principal prosecution witness, then serving a prison term for the same murder, testified in response to the prosecutor's direct question that he had received no promise of consideration in return for his testimony. In fact, the prosecutor had promised consideration, but did not correct the witness' testimony. Unlike the *Alcorta* case, where the uncorrected testimony of the witness related directly to the question of the defendant's guilt, here the relationship was indirect, focusing instead on the *motivation* underlying the witness' testimony.

The Supreme Court invalidated the defendant's conviction, holding that just as the use of false testimony which goes to the issue of defendant's guilt violates due process, the use of false testimony which goes to the *credibility* of the witness may also. The Court noted that the jury's evaluation of a witness' truthfulness and reliability may well affect the determination of innocence or guilt, and ". . .it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend . . .[T]he false testimony used by the State in securing the conviction . . . may have had an affect on the outcome of the trial."[14]

These cases illustrate that a limited constitutional basis for discovery in criminal cases had been recognized even before the 1963 decision of *Brady* v. *Maryland*. Thus, the significance of *Brady* lies not in the originality of its concept but in the breadth of its application. Whereas the cases which preceded it dealt with specific and

***" 'suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment. . . .' "***

relatively narrow categories of evidence — e.g., perjured testimony, witness impeachment evidence, or informant identity — *Brady* extended the defendant's constitutional right of discovery to include much more.

## THE LANDMARK DECISION— *BRADY* v. *MARYLAND*[15]

Brady was tried for first-degree murder in the State of Maryland, found guilty, and sentenced to death. At his trial, he took the witness stand and admitted his participation in the crime, but claimed that a companion, Boblit, did the actual killing. Prior to his trial, Brady had requested the opportunity to examine any statements made by Boblit that were in the possession of the prosecutor. Although several statements were disclosed, the one in which Boblit admitted strangling the victim was not. In fact, Brady did not learn of the latter statement until he had already been tried, convicted, and sentenced. On appeal, the State appellate court ordered a new trial on the grounds that the prosecutor's failure to disclose the requested information denied Brady due process of law as guaranteed by the 14th amendment to the U.S. Constitution. Concluding, however, that nothing in the withheld statement would have reduced Brady's offense below first-degree murder, the court limited the scope of the new trial to the issue of punishment. That decision was appealed to the U.S. Supreme Court.

The Supreme Court was asked to decide the narrow question of whether Brady was denied due process by the State appellate court's restriction of the new trial to the question of punishment. The Supreme Court affirmed the decision, but took the opportunity to elaborate on the Federal constitutional right of a defendant in a criminal prosecution to discover evidence possessed by the prosecution. The Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment. . . ."[16]

Although *Brady* v. *Maryland* was not the first case in which the Supreme Court found a constitutional basis for discovery in a criminal case, the decision is nevertheless a landmark in the Court's interpretation of due process. "Brady material" has entered the vocabulary of lawyers and law enforcement officers alike as a generic description of exculpatory evidence, i.e., evidence that is favorable to the defense, and the "Brady rule" is universally recognized in legal circles as signifying the government's obligation to disclose such evidence to the defense.

## APPLICATION AND SCOPE OF THE *BRADY* RULE

Any assessment of the application and scope of the *Brady* rule should begin with the recognition that the Constitution does not provide the defendant with access to "everything known to the prosecutor"[17] or to "all police investigatory work on a case."[18] In other words, as the Supreme Court has succinctly stated:

> "There is no general constitutional right to discovery in a criminal case, and *Brady* did not create one."[19]

On the other hand, there is a constitutional right to discover exculpatory evidence, i.e., *favorable evidence* that is *material* to the issues of guilt or punishment. The scope of the rule is to be found in the meaning of those terms.

### Favorable Evidence

The government's constitutional duty to disclose information to the defense does not encompass evidence that is neutral or incriminating. However, evidence that tends to support the defense position is a different matter and may well be subject to disclosure.

Illustrations of favorable evidence may be seen in several of the Supreme Court cases previously discussed. For example, evidence that a principal prosecution witness committed perjury when testifying on the issue of the defendant's guilt is clearly favorable to the defense.[20] Similarly, evidence which sheds light on a witness' motivation to testify, such as a prosecutor's promise to a codefendant for special consideration in return for his testimony, may assist the defense in challenging the credibility of that witness.[21] Likewise, the existence and identities of witnesses whose testimony casts doubt on the defendant's guilt are favorable evidence,[22] as is the confession of another person to the commission of a crime with which the defendant is charged.[23]

In addition to these examples, there might be numerous pieces of information in the files of the prosecution and the police that would be potentially favorable to the defense, and prudence would suggest that they should be disclosed. However, a failure to disclose such evidence rises to the level of a constitutional violation only when "the omission deprived the defendant of a

fair trial. . . ."[24] Describing its holding in the *Brady* case, the Supreme Court recently stated:

> "The holding in *Brady* v. *Maryland* requires disclosure only of evidence that is both favorable to the accused and 'material either to guilt or to punishment.' "[25]

Thus, the full impact of the *Brady* rule — invalidation of the trial — is felt only when the favorable evidence suppressed by the prosecution is also *material*.

**Materiality**

The pre-*Brady* discovery cases provided scant instruction as to the standard used by the Court in weighing the significance of the undisclosed evidence. For example, in *Napue* v. *Illinois*,[26] the Court ordered a new trial because the nondisclosed evidence of promises made by the prosecution to a key witness "might well have" led the jury to conclude that the witness fabricated his testimony to curry favor with the prosecutor, and thus, "may have had an effect on the outcome of the trial."[27]

**The Standard Established — *Brady* and *Agurs***

In the *Brady* decision, the Court described the standard as one of *materiality*, although the Court did not define the standard. Applying the standard to the facts of that case, the Court held that the undisclosed confession of Brady's codefendant was material, but only to the issue of punishment. In reaching that decision, the Court adopted the State appellate court's assessment of the significance of Boblit's confession. The Maryland court stated:

> "There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Brady as being the one who wanted to strangle the victim . . . Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting. We cannot put ourselves in the place of the jury and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck . . . [I]t would be 'too dogmatic' for us to say that the jury would not have attached any significance to this evidence in considering the punishment of the defendant Brady."[28]

Because the Court concluded that knowledge of Boblit's confession "might have affected" the jury's determination of the proper punishment to be meted out to Brady, the confession was deemed to be material, and a new trial ordered on that issue.

The broad language of the *Brady* decision could be read to suggest that all favorable evidence is also material, if there is a *possibility* that it could influence the jury or affect the outcome of the trial. However, the Court has specifically rejected a "sporting theory of justice,"[29] explaining:

> "If everything that *might* influence a jury must be disclosed, the only way a prosecutor could discharge his constitutional duty would be to allow complete discovery of his files as a matter of routine practice."

The Court concludes:

> "Whether or not procedural rules authorizing such broad discovery might be desirable, the Constitution surely does not demand that much."[30]

In *United States* v. *Agurs*,[31] the Court distinguished three situations that might arise and which could affect the standard of materiality:

1) The prosecution knowingly uses perjured testimony or fails to disclose that such testimony was used to convict the defendant. *Standard of Materialty*: Is there "any reasonable likelihood that the false testimony could have affected the jury's judgment?"[32]

2) The prosecution fails to volunteer favorable evidence in response to a general defense request, or no request at all. *Standard of Materiality*: Did the nondisclosure create "a reasonable doubt that did not otherwise exist?"[33]

3) The prosecution fails to respond to a specific defense request. *Standard of Materiality*: Is there any reason to believe that the nondisclosure "might have affected the outcome of the trial?"[34]

Considering the facts in *Agurs* to fall within the second situation, the Court held that the nondisclosure of evidence of a homicide victim's prior criminal record was not material, even though the defendant asserted that such information supported her claim of self-defense. The Court explained its decision as follows:

> "The proper standard of materiality must reflect our overriding concern

**" '. . . the conviction must be reversed, only if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial.' "**

with the justice of the finding of guilt. Such a finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt. It necessarily follows that *if the omitted evidence creates a reasonable doubt that did not otherwise exist*, constitutional error has been committed . . . If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial." [35] (emphasis added)

Although the *Agurs* decision provided some guidance as to the manner in which the materiality standard should be applied, the suggested formula is relatively complex and can be affected by such things as the nature of the evidence or the specificity of the defense request.

### The Standard Defined—*Bagley*

A major step toward clarity was taken in the 1985 decision of *United States* v. *Bagley*.[36] Bagley asserted that the government failed to disclose the existence of a promise to pay two key prosecution witnesses for their testimony and thus denied him access to effective impeachment evidence.

The Court remanded the case to the Federal appellate court to determine if the nondisclosed evidence was *material*. But, more importantly, the court offered a simplified formulation of the standard.

Noting that the *Brady* rule requires disclosure of evidence that is both *favorable* to the defense and *material* to either guilt or punishment, the Court observed that the rule is based on the requirement of due process and is designed to "ensure that a miscarriage of justice does not occur." [37] Thus, the question is not whether the government failed to turn over all favorable evidence to the accused, but rather, did that failure "deprive the defendant of a fair trial." The Court concluded:

". . . a constitutional error occurs and the conviction must be reversed, only if the evidence is material in the sense that its *suppression undermines confidence in the outcome* of the trial." [38] (emphasis added)

In one portion of the opinion, Justice Blackmun suggested a single standard of materiality to cover all three of the eventualities envisioned by the Court in *Agurs*:

"The evidence is material only if there is *reasonable probability* that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (emphasis added)

Furthermore:

"A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." [39]

This formulation was accepted by a majority of the Court and has been followed by most lower courts.

For example, in *United States* v. *Burroughs*,[40] the defense alleged that the government's failure to disclose a deal made with a key witness' wife, as well as threats to take away their children, violated *Brady* and required a new trial. The Federal appellate court rejected the defense argument and held that even though that information was "favorable" to the defense, the witness' testimony was corroborated by the testimony of numerous others, and there was no "reasonable probability . . . that this additional information . . . would have resulted in a different outcome." [41]

Similarly, in *United States* v. *Page*,[42] the government failed to disclose certain ledgers containing information favorable to the defense. The Federal appellate court rejected the defense argument that the nondisclosure violated the *Brady* rule. The court reasoned that the evidence was cumulative, the defense could have readily acquired it from the accountant who prepared the ledgers, and the evidence of guilt was very strong. In sum, there was not a "reasonable probability" that disclosure would have changed the outcome of the case.

Having considered the scope of evidence encompassed by the *Brady* rule of discovery, it is necessary to focus on the nature of the obligation imposed by the rule on the prosecution and police. The government action that offends due process under the *Brady* rule is *nondisclosure* of exculpatory evidence.

### Nondisclosure

#### The Prosecutor's Duty

In the context of the *Brady* rule, nondisclosure refers to a failure of the government to provide exculpatory, i.e., favorable/material, information to the defense. The obligation to do so is dependent on the government's possession of, or access to, the evidence sought. Clearly, there can be no obligation to provide information to the defense which the government either does not possess or of which it could

not reasonably be imputed to have knowledge or control.[43] Neither does the government have an obligation to search for exculpatory evidence that is not already within its possession or control,[44] nor to disclose evidence which the defense already possesses or to which he has ready access.[45] Moreover, there is no requirement that disclosure precede trial, unless delay would deny the defendant a fair trial.[46]

Although the issue of nondisclosure in some cases may turn upon whether a specific defense request for the evidence has been made, a request is not necessary in all cases to trigger the obligation. If the evidence ". . . is so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce, that duty should . . . equally arise even if no request is made." [47] Similarly, if perjured testimony is given by a prosecution witness, the obligation to disclose that fact does not depend on a defense request.[48]

In the *Agurs* case, the Court noted that the issue of disclosure can arise at two different points—prior to trial, when the prosecution must decide what evidence is to be disclosed, and following the trial, when the jury may be required to decide if there was failure to disclose properly. Although the legal standard is the same in both situations, the Court recognized that there is "a significant practical difference between the pretrial decision of the prosecutor [what should be disclosed] and the post-trial decision of the judge [what should have been disclosed]." The Court observed that given the "imprecise standard" that governs disclosure, and the fact that the significance of an item of evidence can seldom be predicted prior to trial, "the prudent prosecutor will resolve doubtful questions in favor of disclosure."[49]

Unfortunately, sometimes "doubtful questions" can be even further complicated by the emergence of legitimate governmental interests against disclosure. As previously noted, that is true whenever the defense is seeking the identities of confidential government informants. It can be true of other information as well. When it occurs, one possible resolution of the prosecution's dilemma is to submit the problem to the trial judge. The Court suggested that alternative in the *Agurs* case as a means of resolving close issues, and the propriety of that approach was affirmed more recently in the case of *Pennsylvania* v. *Ritchie*.[50]

Ritchie was convicted of several counts of sexually abusing his young daughter. On appeal, he asserted that he had been denied access to the confidential investigative files of the Children and Youth Services (CYS) — a State agency created to investigate allegations of child abuse — and that the files might have contained the names of favorable witnesses, as well as other unspecified, exculpatory evidence. The Pennsylvania Supreme Court remanded the case with instructions to allow defense counsel inspection of the entire file to search for any useful evidence.

The U.S. Supreme Court affirmed the remand, but reversed the State court's holding on the proper means of resolving the conflict of interest. Reaffirming the materiality standard of "reasonable probability" offered in *Bagley*, the Court rejected the suggestion that a defendant's right to discover exculpatory evidence includes "the unsupervised authority to search through the Commonwealth's files."[51]

The Court held that the competing interests of the defense (to discover exculpatory evidence) and the State (to protect the confidentiality of child-abuse investigative files) could be properly balanced by an *in camera* review of the files by the trial judge. The Court stated:

> "An in camera review by the trial court will serve Ritchie's interest without destroying the Commonwealth's need to protect the confidentiality of those involved in child-abuse investigations."[52]

One particularly burdensome aspect of the duty to disclose exculpatory information to the accused is that it operates "irrespective of the good or bad faith of the prosecution."[53] In *Agurs*, the Court emphasized this point by stating:

> "Nor do we believe the constitutional obligation is measured by the moral culpability, or willfulness, of the prosecutor . . . If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor."[54]

The Court reasoned that nondisclosure of evidence favorable to the defense and material to the issue of guilt or punishment deprives the defendant of a fair trial, notwithstanding the good or bad faith of the prosecutor. Because the culpability of the prosecutor is not the issue, his actual knowledge of the existence of exculpatory evidence is not required to impose the obligation to disclose.

***". . . nondisclosure of evidence favorable to the defense and material to the issue of guilt or punishment deprives the defendant of a fair trial, notwithstanding the good or bad faith of the prosecutor."***

In *Giglio* v. *United States*,[55] the Court imputed to the prosecutor who tried the case the knowledge of a promise made to a witness by a different prosecutor. In doing so, the Court held that "whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor . . . A promise made by one attorney must be attributed, for these purposes, to the Government."[56]

### The Investigator's Responsibility

The rule places a corresponding burden on the law enforcement officer to recognize potentially exculpatory evidence in the investigative files and assure that the prosecutor is actually aware of its existence. Withholding *Brady* material deprives the defendant of a fair trial, regardless of whether the error is that of the prosecutor or the investigator. The investigating officer generally knows more about the case and the evidence than anyone else; the prosecutor depends heavily upon the knowledge and candor of the investigator to assure that the case is effectively prosecuted and that the government's legal obligations are satisfied. A close-knit relationship between prosecutor and investigator is essential to assure that valuable evidence is not suppressed or a prosecution jeopardized through ineffective communication. It is clearly a case of "what you don't know can hurt you."

## CONCLUSION

*Brady* v. *Maryland* recognizes the constitutional right of an accused to discover exculpatory evidence that is within the possession or control of the government. That right is limited in scope to evidence that is both favorable to the defense and material to the issue of either guilt or punishment.

The *Brady* rule imposes a substantial burden on the prosecution and the police to be alert to the existence of such evidence in their files and to be sensitive to the importance of the obligation to disclose. A violation of the duty, if discovered, results in the invalidation of the proceeding and requires a new trial. By the same token, an undetected violation results in an unfair trial, thus denying the accused due process. In *Brady*, the Supreme Court observed that society wins ". . . not only when the guilty are convicted but when criminal trials are fair; our system of . . . justice suffers when any accused is treated unfairly."[57]

The same point is captured in the following statement inscribed on the walls of the U.S. Department of Justice:

"The United States wins its point whenever justice is done its citizens in the courts."

FBI

**Footnotes**

[1] *Wardius* v. *Oregon*, 412 U.S. 470, 473 (1973).
[2] *Id.* at 474.
[3] 373 U.S. 83 (1963).
[4] *See, e.g., Twining* v. *New Jersey*, 211 U.S. 78 (1908); *Powell* v. *Alabama*, 287 U.S. 46 (1932); and *Palko* v. *Connecticut*, 342 U.S. 165 (1952).
[5] 294 U.S. 103 (1935).
[6] *Id.* at 112.
[7] 317 U.S. 213 (1942).
[8] *Id.* at 216.
[9] 355 U.S. 28 (1957)
[10] 353 U.S. 53 (1957).
[11] *Id.* at 60-61.
[12] *Id.* at 62.
[13] 360 U.S. 264 (1959).
[14] *Id.* at 269, 272.
[15] 373 U.S. 83 (1963).
[16] *Id.* at 87.
[17] *United States* v. *Agurs*, 427 U.S. 97, 106 (1976).
[18] *Moore* v. *Illinois*, 408 U.S. 786, 795 (1972).
[19] *Weatherford* v. *Bursey*, 429 U.S. 545, 559 (1977).
[20] *Mooney, supra* note 5.
[21] *Napue, supra* note 13.
[22] *Pyle, supra* note 7.
[23] *Brady, supra* note 15.
[24] *Agurs, supra* note 17, at 108.
[25] *United States* v. *Bagley*, 473 U. S. 667, 674 (1985).
[26] *Napue*, supra note 13.
[27] *Id.* at 272.
[28] *Brady, supra* note 15, at 88.
[29] *Agurs, supra* note 17, at 108.
[30] *Id.* at 109.
[31] *Id.*
[32] *Id.* at 103-104.
[33] *Id.* at 104.
[34] *Id.* at 112.
[35] *Id.* at 112-113.
[36] 473 U.S. 667 (1985).
[37] *Id.* at 675.
[38] *Id.* at 678.
[39] *Id.* at 682; *see also, Pennsylvania* v. *Ritchie*, 94 L.Ed.2d 40 (1987).
[40] 830 F.2d 1574 (11th Cir. 1987).
[41] *Id.* at 1580.
[42] 828 F.2d 1476 (10th Cir. 1987); *see also, United States* v. *Srulowitz*, 785 F.2d 382 (2d Cir. 1986); *United States* v. *Adams*, 759 F.2d 1099 (3d Cir.), *cert. denied*, 106 S.Ct. 336 (1985); *Bond* v. *Procunier*, 780 F.2d 461 (4th Cir. 1986); *United States* v. *Christian*, 786 F.2d 203 (6th Cir. 1986); *United States* v. *Jackson*, 780 F.2d 1305 (7th Cir. 1986); *United States* v. *Risken*, 788 F.2d 1361 (8th Cir.), *cert. denied*, 107 S.Ct. 329 (1986); *Landano* v. *Rafferty*, 670 F.Supp. 570 (D.N.J. 1987); and *United States* v. *Alberici*, 618 F.Supp. 660 (D.C. Pa. 1985).
[43] *See, e.g., Morgan* v. *Salamack*, 735 F.2d 354 (2d Cir. 1984); *United States* v. *Messerlian*, 832 F.2d 778 (3d Cir. 1987) (medical evidence in possession of doctor, not prosecution); *United States* v. *Mitchell*, 777 F.2d 248 (5th Cir. 1985) (information requested was sealed by court order, not within prosecution's possession or control); and *United States* v. *Alderdyce*, 787 F.2d 1365 (9th Cir. 1986) (medical evidence possessed by hospital not within knowledge or control of prosecution).
[44] *See, e.g., United States* v. *Guerrerio*, 670 F.Supp, 1215 (S.D.N.Y. 1987) (evidence possessed by local grand jury, Federal prosecutor not required to acquire through court order and provide to defense).
[45] *See, e.g., Government of Virgin Islands* v. *Martinez*, 831 F.2d 46 (3d Cir. 1987) (no violation when prosecution did not advise defense counsel that defendant had confessed to investigators since defendant obviously knew and should have told his attorney); *see also, United States* v. *Janis*, 831 F.2d 773 (8th Cir. 1987) (defense already knew of nondisclosed agreement between prosecution and witness); *United States* v. *Wilson*, 787 F.2d 375 (8th Cir.), *cert. denied*, 107 S.Ct. 197 (1986) (evidence concerning FBI interview of defendant's wife already known to defendant who called wife as witness); and *United States* v. *Davis*, 787 F.2d 1501 (11th Cir.), *cert. denied*, 107 S.Ct. 184 (1986) (discrepancy between prosecution witness' grand jury and trial testimony was readily discoverable by defense who knew witness' identity prior to trial).
[46] *See, e.g., United States* v. *Johnston*, 784 F.2d 416 (1st Cir. 1986); *United States* v. *Mitchell*, 777 F.2d 248 (5th Cir. 1985); *United States* v. *Browne*, 829 F.2d 760 (9th Cir. 1987); *United States* v. *Blandin*, 784 F.2d 1048 (10th Cir. 1986); *United States* v. *Vastola*, 670 F.Supp. 1244 (D.N.J. 1987); *United States* v. *Schwimmer*, 649 F.Supp. 544 (E.D.N.Y. 1986); *United States* v. *Dwyer*, 647 F.Supp. 1440 (M.D. Pa. 1986); and *United States* v. *Nakashian*, 635 F.Supp. 761 (S.D.N.Y. 1986).
[47] *Agurs, supra* note 17, at 107.
[48] *Mooney, supra* note 5.
[49] *Agurs, supra* note 17, at 108.
[50] 94 L.Ed.2d 40 (1987).
[51] *Id.* at 58.
[52] *Id.* 60.
[53] *Brady, supra* note 15, at 87.
[54] *Agurs, supra* note 17, at 110.
[55] 405 U.S. 150 (1972).
[56] *Id.* at 154.
[57] *Brady, supra* note 15, at 87.

# WANTED BY THE FBI

*Any person having information which might assist in locating these fugitives is requested to notify immediately the Director of the Federal Bureau of Investigation. U.S. Department of Justice, Washington, DC 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.*

*Because of the time factor in printing the* FBI Law Enforcement Bulletin, *there is the possibility that these fugitives have already been apprehended. The nearest office of the FBI will have current information on the fugitives' status.*

*Date photographs taken unknown*

**William Bradford Bishop, Jr.,**

also known as Bradford Bishop, Bradford Bishop, Jr. W; born 8-1-36; Pasadena, CA; 6′1″; 180 lbs; med bld; brn hair; brn eyes; med comp; occ-U.S. Government foreign service officer; remarks: Is proficient in several languages, including Italian and Serbo-Croatian.
Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classificatioin:

23PI1719161913DIPI16

Fingerprint Classification:

23 L 19 W IOO 16
L 2 U OII

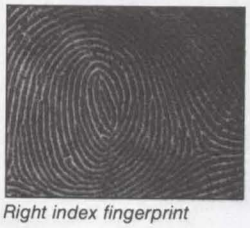
I.O. 4696

Social Security Number Used: 556-48-3489

FBI No. 497 002 L7

**Caution**

Bishop is being sought in connection with the bludgeon slayings of five members of his immediate family. Bishop reportedly is under psychiatric care and uses medication for depression. Consider extremely dangerous and having possible suicidal tendencies.



*Right index fingerprint*

*Date photograph taken unknown*

**William Thomas Smith,**

also known as William Thomas Smith, Jr., William Thomas, William Tee, Smitty.
W; born 10-15-24; Cincinnati, OH; 5′4″; 135 lbs; small bld; gray hair; blue eyes; med comp; occ-bus driver, private security guard, sales, shipping and receiving clerk, vacuum cleaner repairman; remarks: Reportedly an avid square dancer and bridge player.
Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

PMDOPMPO1713PM161917

Fingerprint Classification:

13 M 25 W OMO 17
M 27 W MOO

I.O. 4776

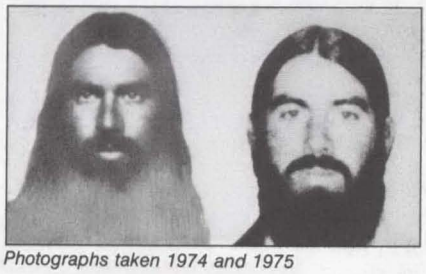
Social Security Number Used: 293-14-2197

FBI No. 846 350 A

**Caution**

Smith, who may be armed with a .32-caliber handgun, is being sought in connection with the abduction-shooting murder of his estranged wife. Consider Smith armed and dangerous.

*Right ring fingerprint*



*Photographs taken 1974 and 1975*

**Roy Clinton Sieg,**

also known as Roy Clinton Sieb.
W; born 1-22-47; Kentfield, CA; 6′; 170 lbs; med bld; brn hair; hazel eyes; med comp; occ-carpenter, chimney sweep, hod carrier; remarks: Is a motorcycle enthusiast and reportedly associates with motorcycle gang members. Allegedly has suffered shock damage to the left eye causing poor vision; scars and marks: Scar left knee.
Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

POPI15PO161713141816

Fingerprint Classification:

15 O 25 W IOO 16
L 17 U OOO

I.O. 4796

Social Security Numbers Used: 555-72-1263; 555-73-1263

FBI No. 516 057 L10

**Caution**

Sieg, who reportedly trains attack dogs and who may be armed with an automatic pistol, is wanted for the murder of an individual who after being beaten was shot through the head at point-blank range. Consider Sieg armed and dangerous.

*Right index fingerprint*

# WANTED BY THE FBI

*Photographs taken 1973*

**Robert Ralph Moret,**

also known as Robert Ralph Benliza, Robert Ralph Moret Benliza, Ralph Mantelli, Benliza Moret, Benliza Morett, Bobby Moretti.
W; born 12-29-36; Brooklyn, NY (not supported by birth records); 5'8"; 146 lbs; slender bld; brn hair; brn eyes; ruddy comp; occ-aircraft mechanic; scars and marks: scars on forehead, left wrist, and right bicep, mole on back.
Wanted by FBI for INTERSTATE FLIGHT-ARMED ROBBERY

NCIC Classification:

12590857PM1557090913

Fingerprint Classification:

| | | | | | | |
|---|---|---|---|---|---|---|
| 12 | M | 1 | R-r | | Ref: | 17 |
| | M | 5 | R | 13 | | 5 |

I.O. 4746

FBI No. 157 773 F

**Caution**

Moret, who has been convicted of aggravated assault, armed robbery and murder, is being sought as an escapee from custody. He is reportedly a narcotics addict with suicidal tendencies. Moret should be considered armed and dangerous and an escape risk.

*Right ring fingerprint*

*Photographs taken 1975 and 1977*

**Jose Dionisio Suarez Y Esquivel,**

also known as Dionisio Suarez Esquivel, Jose Suarez Esquivel, Jose D. Suarez, Jose D. Suarez-Esquivel, Jose Dionisio Moises Suarez Esquivel.
W; born 2-17-39, Holguin, Oriente, Cuba (not supported by birth records); 5'10"; 175 lbs; large bld; black hair; brn eyes, light comp; occ-used car salesman; remarks: May be wearing beard and/or mustache; scars and marks: Scar upper lip under nose.
Wanted by FBI for CONSPIRACY TO MURDER A FOREIGN OFFICIAL

NCIC Classification:

120912171312CM041413

Fingerprint Classification:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 12 | M | 1 | U | IOO | 13 | Ref: | 3 |
| | M | 3 | W | MIO | | | 3 |

I.O. 4799

Social Security Numbers Used: 202-70-9712; 262-70-9712

FBI No. 264 663 E

**Caution**

Jose Dionisio Suarez Esquivel and Virgilio Pablo Paz Romero, Identification Order No. 4800, members of a terrorist group reportedly responsible for several acts of violence in which deaths and injuries have occurred, are known to have been armed in the past and are being sought in connection with the bombing deaths of a former Chilean ambassador and female business colleague. Consider both armed and dangerous.

*Left index fingerprint*

*Photographs taken 1976 and 1977*

**Virgilio Pablo Paz Y Romero,**

also known as Alejandro Bontempi, Virgil Paz, Virgilio Paz, Virgilio P. Paz, Virgilio Pablo Paz, Virgil Romero, Virgilio Romero, Virgilio Paz Romero, Virgilio P. Paz-Romero, "Javier," "Romero."
W; born 11-20-51; Santa Clara, Las Vilas, Cuba (not supported by birth records); 5'7" to 5'9"; 150 to 185 lbs; med bld; brn hair; brn eyes; light comp; occ-clerk, truck driver, used car salesman; remarks: May be wearing beard and/or mustache or clean shaven.
Wanted by FBI for CONSPIRACY TO MANUFACTURE UNLAWFUL EXPLOSIVES; CONSPIRACY TO MURDER A FOREIGN OFFICIAL

NCIC Classification:

0409070911AA07AA0410

Fingerprint Classification:

| | | | |
|---|---|---|---|
| 4 | 1 | U | 11 |
| | 1 | aUa | |

I.O. 4800

Social Security Numbers Used: 140-44-9630; 071-36-2803

FBI No. 626 118 L9

**Caution**

Virgilio Pablo Paz Romero and Jose Dionisio Suarez Esquivel, Identification Order No. 4799, members of a terrorist group reportedly responsible for several acts of violence in which deaths and injuries have occurred, are known to have been armed in the past and are being sought in connection with the bombing deaths of a former Chilean ambassador and female business colleague. Consider both armed and dangerous.

*Right thumb print*



☆U.S. Government Printing Office: 1988—202-051/80008

# Unusual Pattern

The appearance of this pattern is unusual as is the appearance of many accidental whorls. This particular accidental whorl consists of a combination of two different types of patterns excluding the plain arch and possesses three deltas. The extreme deltas are considered in obtaining a tracing of outer.

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# The Bulletin Notes

On April 1, 1988, Officer William Gregory of the Washington, DC, Metropolitan Police Department was on patrol with his dog, Dylan I, when they came upon the scene of an armed robbery. The gunman attempted to flee the scene, but was pursued by Officer Gregory and Dylan I. During the chase, the gunman fired several shots, striking the dog. Although injured, Dylan I continued the chase until the gunman attempted to enter a waiting car holding three more subjects. Here, Dylan I reached the gunman, who began firing more shots, again striking the dog. Officer Gregory was forced to return fire, and all four subjects were arrested on the scene. Dylan I has recovered from his injuries, but has retired from service. The Bulletin congratulates Officer Gregory and Dylan I on their courageous actions.