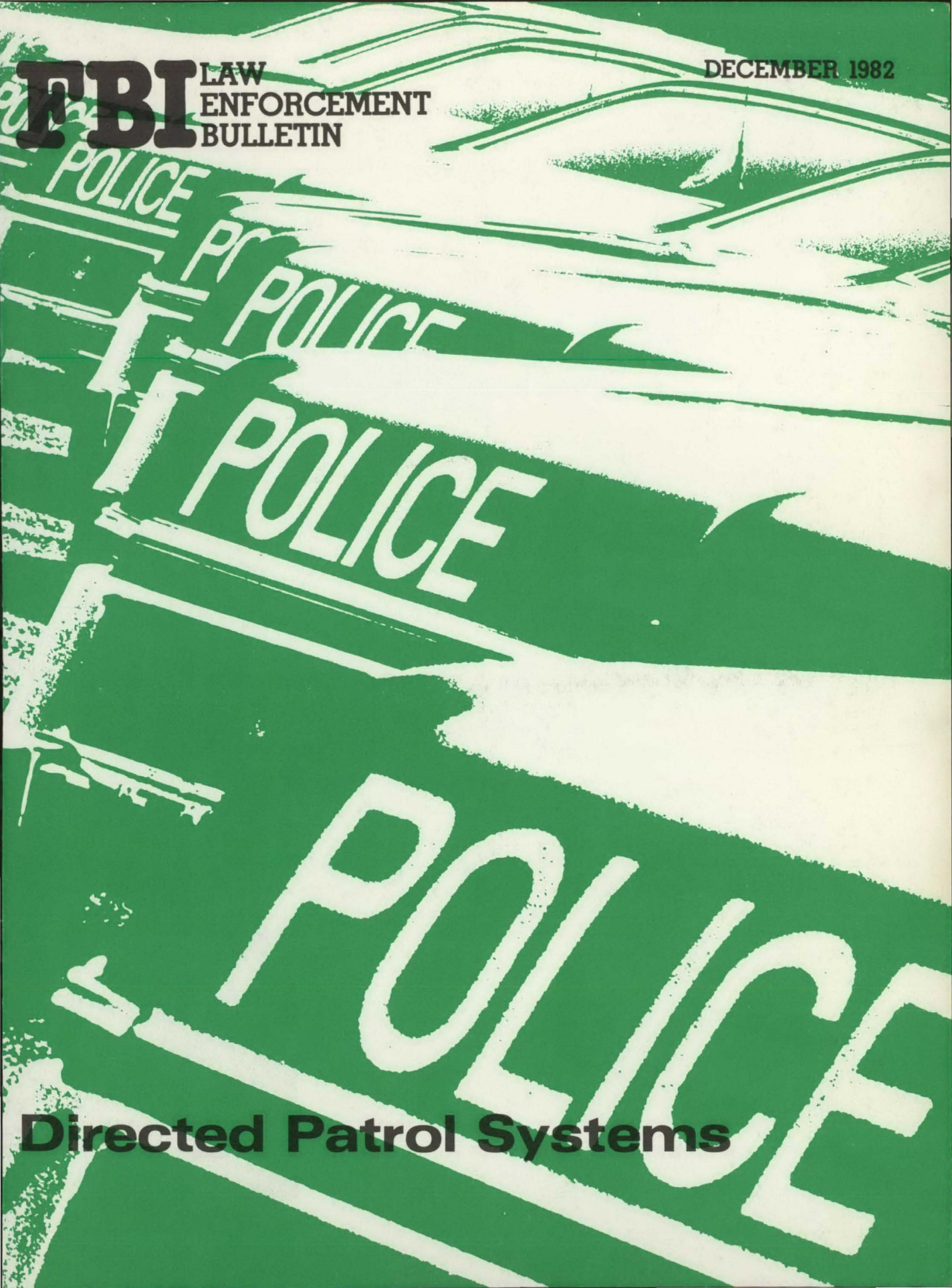
FBI LAW ENFORCEMENT BULLETIN

DECEMBER 1982



Directed Patrol Systems

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DECEMBER 1982, VOLUME 51, NUMBER 12

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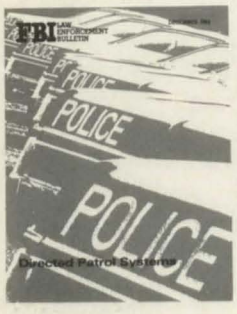

The Cover
With the effectiveness of traditional patrol practices being questioned, police departments must now seek innovative ways to patrol. See article on directed patrol systems, p. 1.

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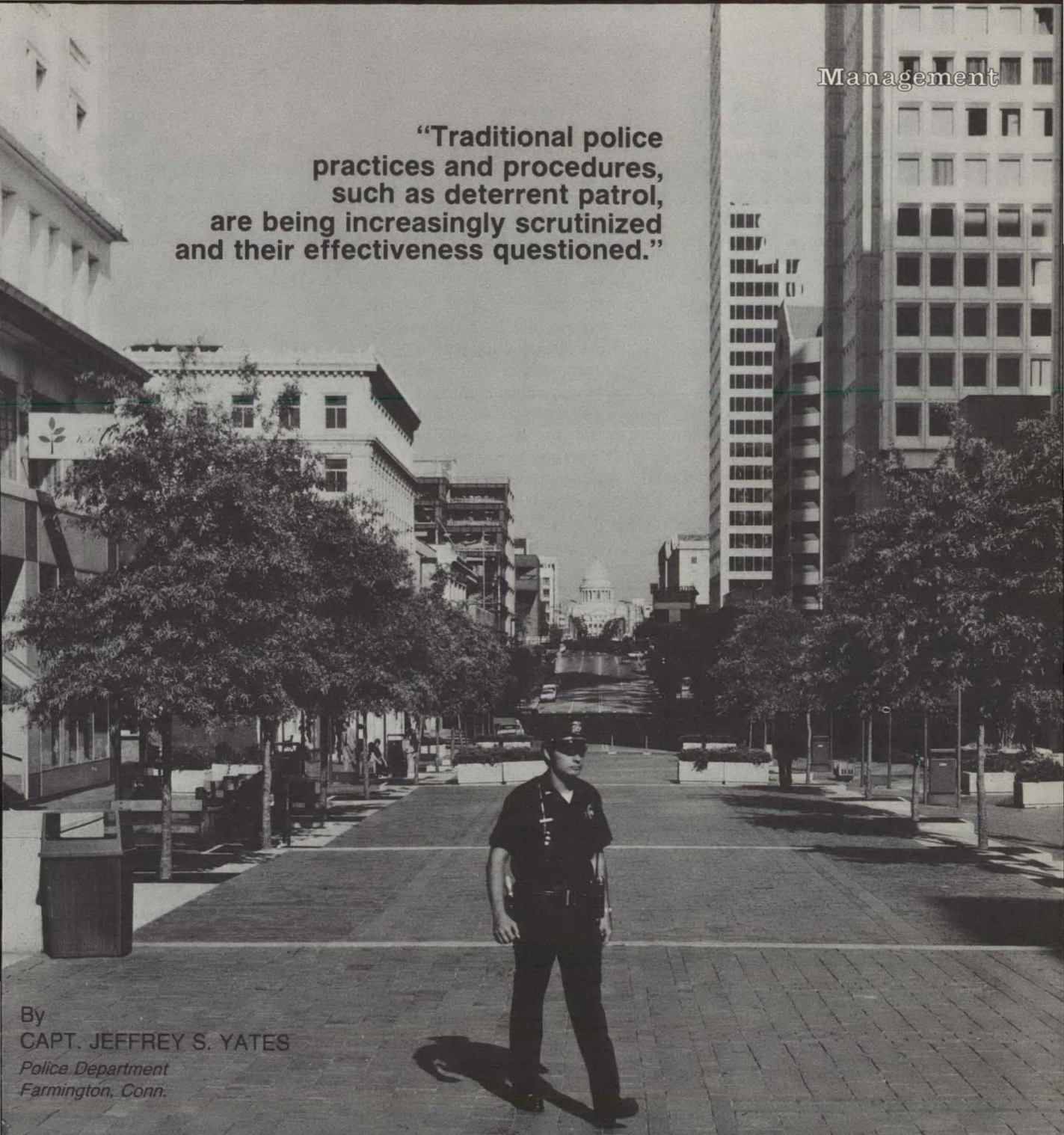
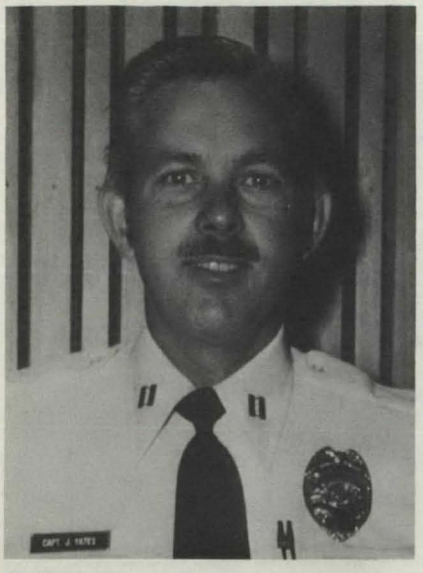


"Traditional police practices and procedures, such as deterrent patrol, are being increasingly scrutinized and their effectiveness questioned."

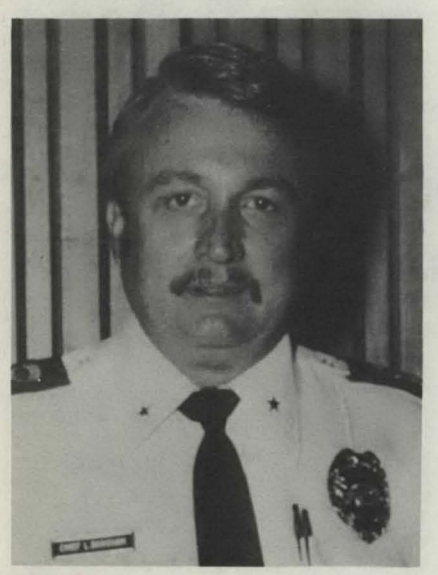
By
CAPT. JEFFREY S. YATES
Police Department
Farmington, Conn.

Directed Patrol Systems

The Answer to Critics of Deterrent Patrol



Captain Yates



LeRoy Bangham
Chief of Police

Police administrators in the 1980's will be required to deal with increasing fiscal constraints as public pressure results in mandates such as Proposition 13. Traditional police practices and procedures, such as deterrent patrol, are being increasingly scrutinized and their effectiveness questioned. It is imperative that police managers consider more efficient deployment of police personnel—they must learn to "do more with less" in the years ahead.

This article will examine one area of concern—improving the effectiveness and productivity of preventive patrol operations. The directed patrol system is a step toward more efficient deployment of police resources.

Traditional Preventive Patrol

A principal assumption underlying preventive patrol has been that the deployment of highly visible and mobile patrol units could prevent and deter criminal activity. When officers have not been responding to calls for service, they have been engaged in preventive patrol—quasi-random movement through their beats. Although the activity might account for 30 to 40 percent of an officer's time, it is frequently fragmented into small segments of time separated by service calls and the performance of administrative duties.[1] One study concludes that on the average, about 5 hours of an officer's 8-hour shift are allocated at the officer's discretion, while 3 hours are spent on assigned tasks.[2] In other words, the problem with deterrent patrol, in the traditional sense, is that it has given too much latitude to the individual police officer on patrol, with not enough attention being paid to managing the officer's time.[3]

Most departments have not developed systematic patrol goals and objectives that can be used by patrol managers and firstline supervisors to prioritize the patrol workload and develop an effective patrol operation. Frank G. MacAloon, editor of *Law and Order Magazine,* stated, "Yesterday's concept of patrol, the repetitious driving a beaten path to insure police presence and high visibility is about as practical as storing buffalo chips to neutralize the energy crunch. Trained men with modern equipment in the field will always be a necessity, but to expect little else from them is anti-productive and does guarantee boredom. Directing patrol officers to continually seek out suspicious persons, probable or potential criminal acts and constantly report these findings in an organized fashion for analysis is productive. Training the patrol force to initiate the preliminary investigation of crimes discovered or reported in their patrol district further develops their talents and usefulness."[4]

It is important to note that tradition is primarily responsible for what is transpiring today. This tradition began with the creation of the London Metropolitan Police in 1829 and continues today. As the "modern" police emerged in London, their operations were characterized by certain elements that are still common to law enforcement including:

1) Officers were assigned beats—areas in which to conduct their patrol activities;
2) Officers were clothed in a uniform that made them highly visible;

3) Officers patrolled their assigned areas in a random manner; and
4) The tasks the officers performed while on patrol were determined by their own initiative.[5]

These elements emerged as, and remain, the basic components of "preventive" patrol. Until just recently, they were considered "sacred" to the success of the patrol operation. Since 1829, preventive patrol has not changed in any substantial way. With the exception of substituting the motor vehicle for foot patrol, the radio for the call box, and other technical innovations, police patrol is still being handled in most departments in the United States as it was in London in 1829. The tradition of "preventive" patrol has had over 150 years to establish itself.

There are other traditional considerations which also impact upon the effectiveness of the patrol operation. Most firstline supervisors come from the ranks of the patrol force and have been exposed to only the traditional patrol operation. The same is true for most middle management, command, and administrative personnel. Most training provided to the recruit focuses on the traditional mode of patrol. The patrol officer begins his career by learning that "preventive" patrol is the accepted mode of operation, and this concept is reinforced by his peers, supervisors, and chief. From the beginning of the "modern" police era, the activities of patrol officers were undertaken at the initiative of the officer. To a large extent, the patrol officer decided what he did and when he did it while on patrol. The same is true today. This element of "officer-initiated" task performance is probably one of the most significant reasons why "preventive" patrol is ineffective.[6]

The Directed Patrol Approach

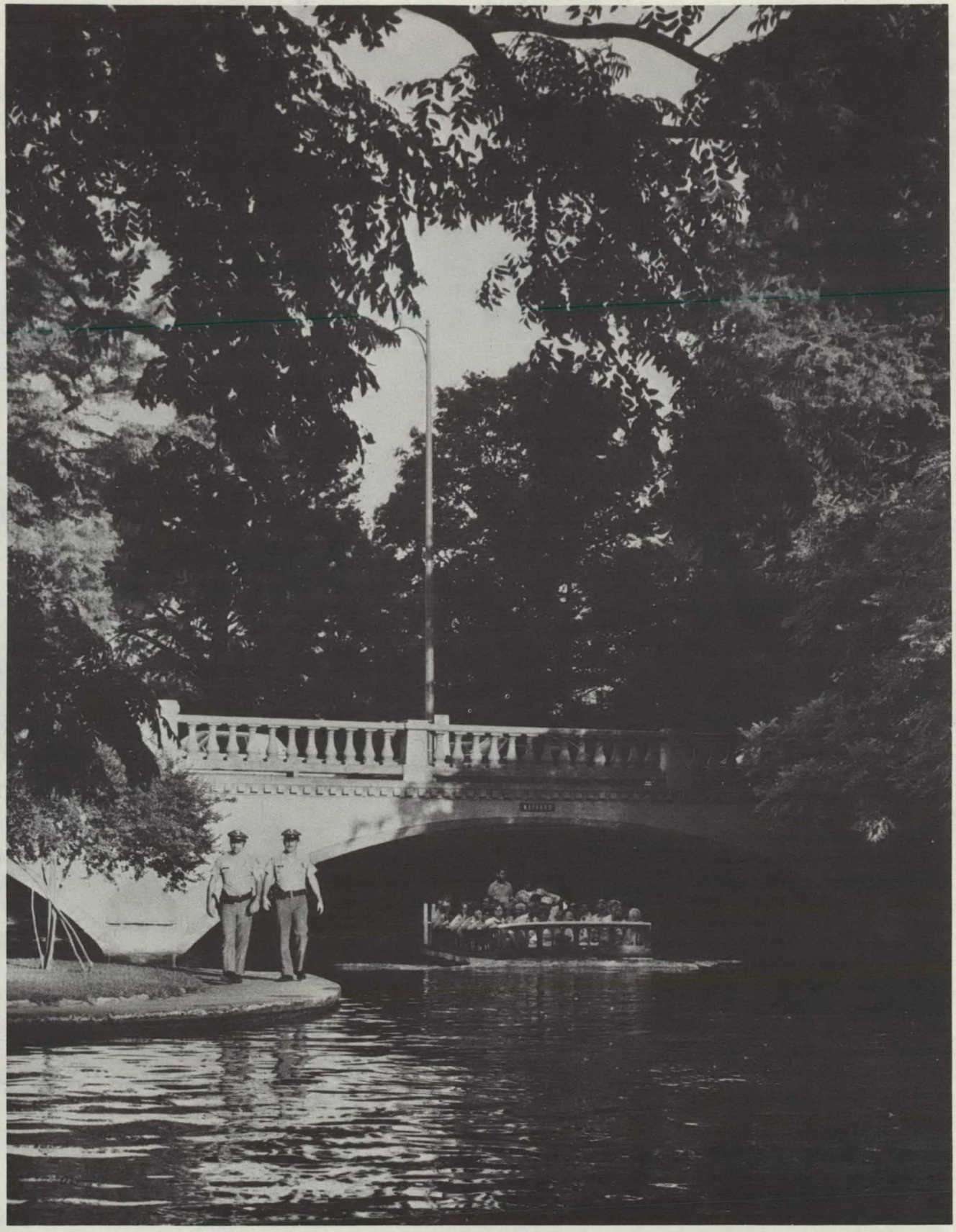
The methods used during directed patrol are no different than the methods used by officers while performing random preventive patrol. Directed patrol is visible, combines both highly mobile vehicular movement with some foot patrol, emphasizes observation of street activity, and encourages officers to initiate citizen contact, as well as pedestrian and vehicular stops. However, unlike traditional patrol, these methods focus on the specific crime and order maintenance problems that exist in a community.[7]

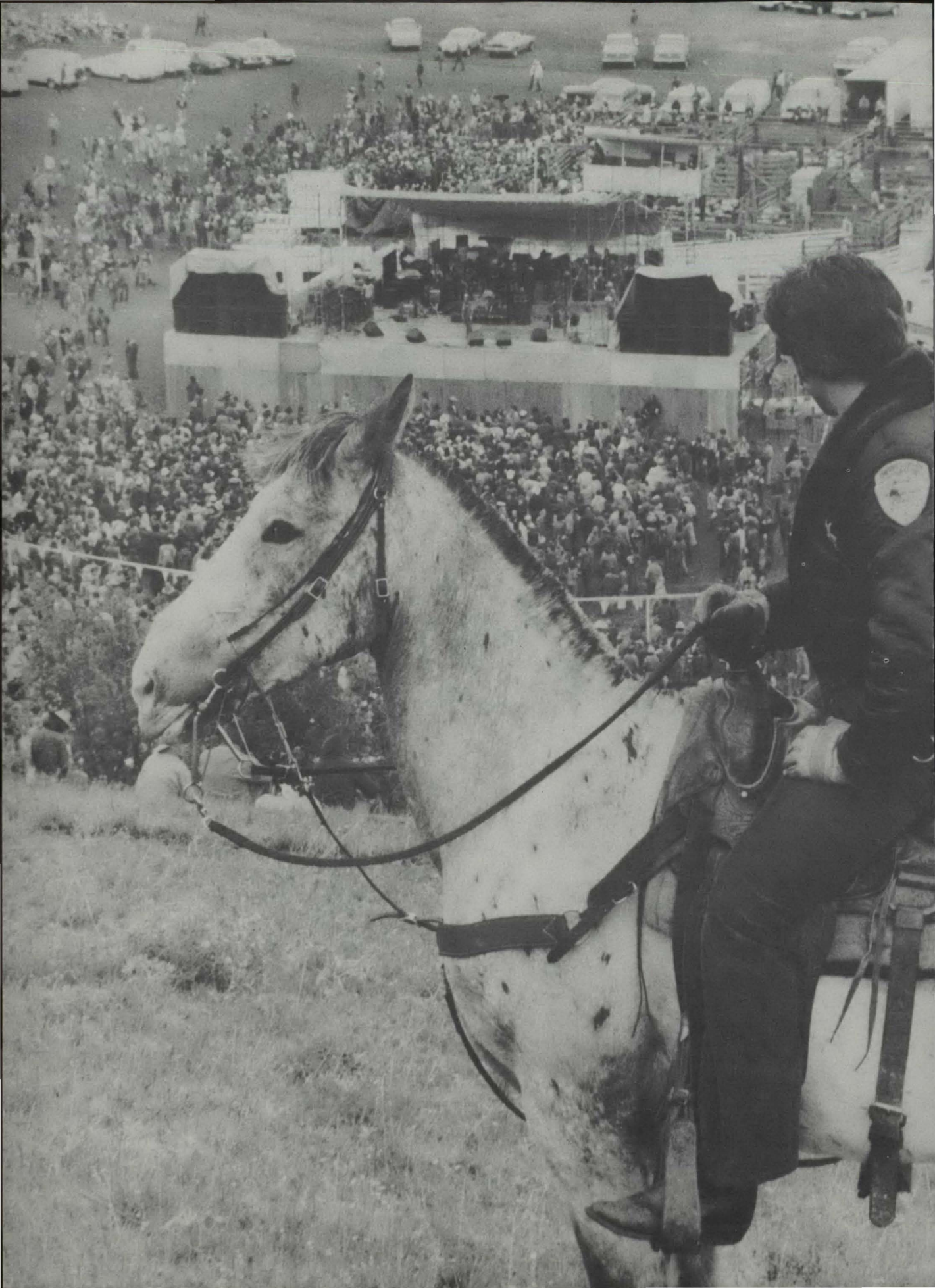
The implementation of a directed patrol program requires a department to rethink its policy of permitting calls for service to be the major determining factor in police operations, and it demands that patrol supervisors assume a major role in analyzing beat problems and planning patrol activities.

There are several advantages to the department, its personnel, and the community when a directed patrol system is used. Directed patrol makes maximum use of available resources. The primary resource within any police agency is its personnel, and any increase in their productivity would have to be viewed as an improvement in resource use. Another significant advantage is that it can increase personnel job satisfaction and morale. By placing the patrol officer in a position to make criminal apprehensions, and therefore, have a direct impact on crime, he will realize more the initial job expectation—that of "catching criminals."

When using directed patrol, the department is more likely to attain the goal of reducing crime. Adopting a proactive approach to patrol can result in a reduction of crime in the community—it is an attainable goal.[8]

"The methods used during directed patrol are no different than the methods used by officers while performing random preventive patrol."





"Directed patrol makes maximum use of available resources."

Crime Analysis—A Key Element

Police administrators must look to their records system for information identifying crime patterns and other community problems. It is necessary to attack specific crimes in limited geographic areas with tactics that are tailored to fit the particular crime problem. In order to develop a set of workable objectives, crime data from the community must be analyzed to identify the particular crimes to be targeted and select individual neighborhoods where the programs should be implemented. After the nonpreventable crimes are eliminated from consideration, and before a detailed analysis of the target crimes is conducted, a geographic analysis should be conducted using a pin map to identify the specific neighborhoods with the greatest problems. Once the high-incidence areas have been established, the target neighborhoods should be selected so that a thorough analysis of the targeted crime in that area can be conducted. Basically, there are four factors that must be identified:

1) Who is being victimized;
2) Who are the perpetrators;
3) How the offender is committing the crime; and
4) When the crimes are occurring.[9]

Once these questions have been answered, it is possible to develop countermeasures that can effectively deal with the targeted crime.

Input From Staff, Field Officers, and the Community

Thorough planning is an essential element in the development and implementation of an effective directed patrol operation. Crime analysis is an essential element, as is input and support from staff and field officers. Officers in the field can provide important information on crime and community problems.

Virtually all directed patrol operations make use of some form of crime analysis; however, approaches to analysis and the quality of results vary widely.[10] Crime analysis may involve the informal analysis of patrol officers, the informal judgment of command and supervisory personnel, simple tabulations of crime occurrences, carefully developed, elaborate manual analysis procedures, and highly sophisticated, computerized analysis routines. In addition, community perceptions of particular crime problems should be considered.

Often, problems of the community go unnoticed because police believe that they can best decide priorities. Although final decisions on police strategy must rest with the law enforcement agency, the community is in a good position to advise the police of crime and other problems. Citizens, viewing problems from a different perspective, can provide a law enforcement agency with a differing view. With community input and proper analysis, a department can direct resources into areas of greatest need for substantial impact on crime patterns and other community problems.[11]

Implementation and Evaluation

Planning is an essential element in the implementation of a directed patrol program. Police administrators and planners must consider the new demands being placed upon their patrol personnel and develop training and advisory supports to insure complete program implementation. Members of the department must adapt themselves to the various elements of a directed patrol program. These elements include:

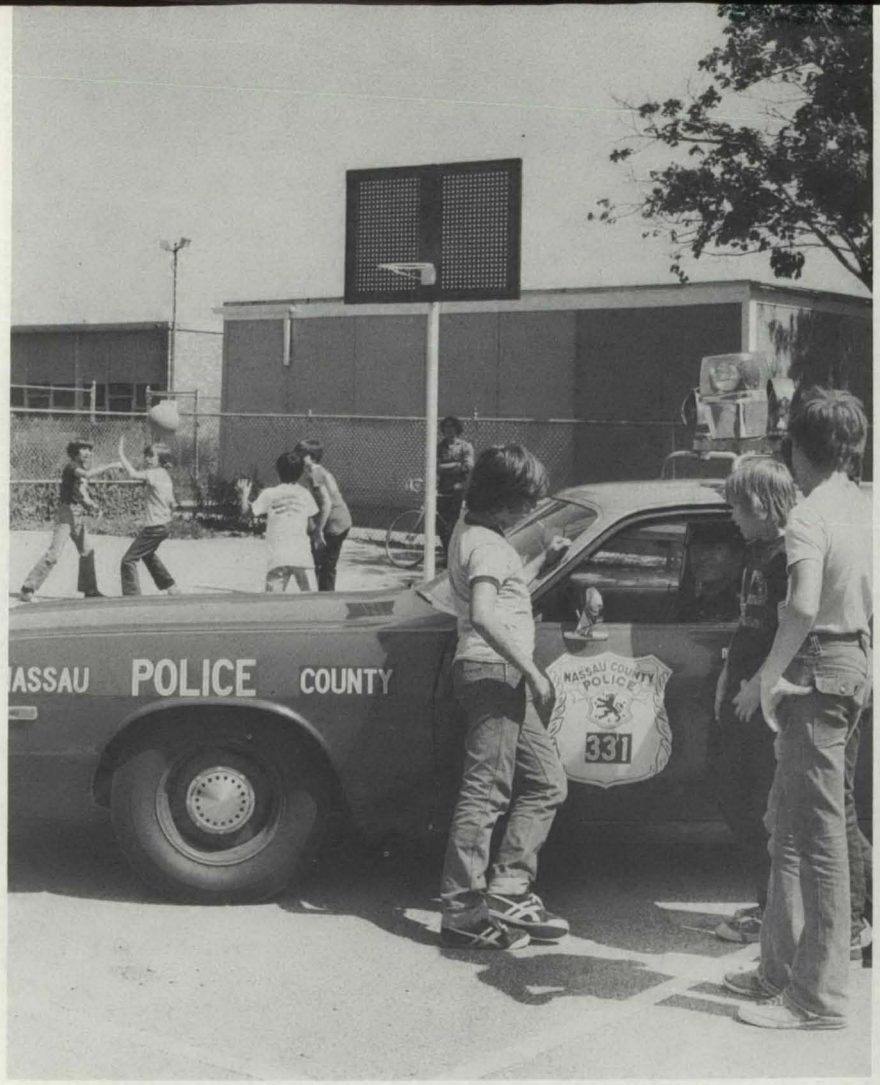
1) Acceptance by firstline supervisors of new analysis and management responsibilities. Supervisors must analyze area crime and traffic problems and develop geographic and time-specific, directed patrol activities. An increased responsibility must also be borne by supervisors for assessing the impact of directed activities and evaluating officers on how well they adapt to directed patrol assignments;
2) Acceptance by patrol officers of directed patrol activities and new schedules and shift assignments that match actual workload demands, the loss of free or random patrol time, and the acceptance of new performance evaluation standards that complement the directed patrol program are primary considerations;
3) Acceptance by communications/dispatch personnel of increased control by the patrol division over dispatch policy, workload prioritization schemes, and the development of alternative call response patterns;
4) Acceptance by investigative personnel of aggressive efforts by patrol officers to complete more detailed preliminary investigations, engage in area

witness canvasses, and perform some nonuniformed patrol activities; and

5) Acceptance by traffic, crime prevention, and community relations personnel of the more aggressive role patrol officers will play in performing these activities as part of their directed patrol assignments.[12]

There are certain critical steps police administrators should take to insure a smooth and orderly development of a directed patrol program. These steps include:

1) "Participatory Planning—It is helpful to let patrol personnel who will be affected by the change participate in the process of planning and development. This provides them with a sense of involvement and commitment to the project's success. It gives the officers an opportunity to voice their concerns and reservations from the outset, and it allows the planning process to benefit from the ideas and advice of experienced patrol officers and supervisors.
2) Officer Training—It is important that all officers be retrained to carry out the directed patrol program. Training should be designed to relieve uncertainties about the project and to provide all personnel with reasons for particular changes and how the changes will affect their jobs.
3) Supervisor Training—Special technical and motivational training should be given to first-line supervisors. Their cooperation can be a critical factor in successful project implementation. This training must emphasize the new management and planning responsibilities to be borne by the first-line supervisor.
4) Program Responsibility—Individual responsibility for the entire project and its various components should be clearly established from the beginning. This will enhance individual accountability for the performance of particular tasks. Positive incentives can be offered by giving special recognition to officers who perform with particular distinction.
5) Performance Monitoring—A system for monitoring project performance should be established and be fully operational prior to implementation. Careful project monitoring provides a means of quickly identifying existent and emerging problems. A department should be willing and able to make necessary adjustments as problems develop.
6) Outside Assistance—Contacting departments which have developed similar projects can be helpful in anticipating and overcoming implementation problems. Their experience can be an invaluable source of guidance and direction.
7) Internal 'Political' Considerations—It should be recognized that the process of developing and implementing changes and innovations in patrol can be, and often is, highly political. In an ideal world, all the



"Implementation of directed patrol systems is one relatively inexpensive way to increase police effectiveness."

members of a department would willingly cooperate in efforts to improve patrol productivity, with conflict arising only when there are honest differences of opinion. In reality, however, projects are often viewed as benefiting some groups or individuals more than others, and the relative sense of gain or loss can have significant consequences for implementation. In implementing a new project, it is important to consider how it will be affected by the internal political realities of a department as well as opinions of individual officers.

8) Public Education—Some changes in patrol practice, such as prioritization of calls for service and deferred response practices, may require reeducation of the public prior to implementation.
9) Performance Evaluation—Departments should develop an officer performance evaluation system that takes into account the major elements of the directed patrol program. Since directed patrol requires officers to match their activities to community problems and frequently to implement new tactics, the rewards system of the department should be changed to reinforce the new program. This is particularly true for sergeants and watch commanders who will be required to design deployment strategies and tactics based upon workload and crime information.

> Instead of rating officers only on how well they handle street incidents, patrol administrators will need to carefully monitor their analysis, planning, and management contribution."[13]

Program evaluation is a critically important aspect of a directed patrol program. It provides the only systematic means of determining whether directed patrols are successful. There are two basic types of measures that are commonly used in program evaluations—outcome measures and process measures.[14] Outcome measures are used to assess the success of a specialized operation in combating crime; process measures are used to examine the way in which the results of specialized operations were achieved. They assist in assessing how a program worked, but they are not indicators of overall effectiveness.

Conclusion

Police resources should be used in more effective and productive ways. Patrol is seen as a preventive function by the majority of police administrators; however, the patrol function is now being assessed. In a study of patrol experiments, it was observed that the old and new types of patrol are still a subject of only limited interest among police and criminal justice professionals—that "this becomes particularly apparent when one attempts to find reference material analyzing the impact of pilot projects."[15] In this regard, it was noted that articles pertaining to the use of directed patrol systems were practically nonexistent in criminal justice journals. Information was more easily located in government publications and textbooks. It would seem, then, that there is more interest in directed patrol among academicians than practitioners of criminal justice administration.

Given the economic and political pressures of the 1980's, fiscal constraints in the public sector will bring increasing pressure to bear on police administrators for improving productivity rather than simply adding personnel as a response to rising crime statistics. Given the cost of putting a police officer on the street, it is simply not feasible to continue adding personnel as we have for the past 150 years. The answer will be found in more efficient deployment of existing, or in some cases, reduced resources.

Implementation of directed patrol systems is one relatively inexpensive way to increase police effectiveness. While such a system can be effective in a large city, it is particularly appropriate for use in the small or medium-sized police department. Not only are directed patrol systems relatively inexpensive, but they provide a mechanism for placing resources in areas of real need. **FBI**

Footnotes

[1] William G. Gay et al., *Improving Patrol Productivity, Volume I, Routine Patrol* (Washington, D.C.: U.S. Government Printing Office, 1977), p. 5.
[2] Gordon P. Whitaker, "What is Patrol Work," *Police Studies*, vol. 4, No. 4, 1982, p. 22.
[3] LeRoy Banham, "Directed Patrol System Increases Effectiveness," *Connecticut Police Chief*, vol. 1, No. 2, p. 30.
[4] Frank G. MacAloon, "Conventional Patrol a Boring Gas Waster," *Law and Order*, November 1979, p. 6.
[5] James H. Auten, "Crime Prevention and Police Patrol," *The Police Chief*, August 1981, p. 62.
[6] Ibid., p. 63.
[7] Supra note 1, p. 107.
[8] Supra note 5, p. 66.
[9] John T. Donohue, "Crime Data Analysis: The Weak Link in Community Crime Prevention Programs," *The Police Chief*, March 1982, p. 35.
[10] Stephen Schack et al., *Improving Patrol Productivity, Volume 2, Specialized Patrol* (Washington, D.C.: U.S. Government Printing Office, 1977), p. 62.
[11] Supra note 3, p. 31.
[12] Supra note 1, pp. 150-151.
[13] Supra note 1, pp. 152-154.
[14] Supra note 10, p. 116.
[15] Lawrence J. Szynkowski, "Preventative Patrol: Traditional vs. Specialized," *Journal of Police Science and Administration*, vol. 9, No. 2, p. 167.

Spouse Abuse

The Need for New Law Enforcement Responses

By
NANCY LOVING
Director of Family Violence Programs
Police Executive Research Forum
Washington, D.C.
and
MICHAEL QUIRK
Special Agent
Federal Bureau of Investigation
Atlanta, Ga.

In recent years, family violence has become an increasingly visible and important social issue. Public awareness of family violence began to develop during the late 1960's, when child abuse was identified as a major problem. More recently, spouse abuse (defined as violent acts [1] among married and unmarried sexual partners) has been acknowledged as equally serious. Many consider these assaults to be among the most frequent and underreported crimes in the United States. Over 2,800 homicides a year occur among family members, and it would not be unreasonable to assume that the victims of lesser forms of family violence number several million each year. Further, the effects of such violence are not confined to family members. The *FBI Uniform Crime Report* data show that 32 percent of the reported assaults on officers during 1976–1980 occurred in connection with "responding to a disturbance call," [2] as did 16 percent of all officer deaths during this 5-year period.[3] These assaults represent an enormous drain on public resources, as they consume significant amounts of police officer and prosecutor time. Taxpayers' dollars are also spent on a range of social services, mental health programs, emergency shelters, and child protection services for these families.

Police Intervention

Increased involvement of the criminal justice system has been advocated as a primary means of reducing spouse abuse. Particular pressure is being placed on the police to intervene more directly in these cases to protect the victims and arrest the assailants. Some officers resent this trend because they, along with many citizens, believe these cases are private matters and not a part of "real" police work. Trained, socialized, and rewarded to apprehend and arrest felons, many officers resent these victims for distracting them from their preferred crimefighting activities. Moreover, frustration often turns into either hostility or indifference when officers repeatedly encounter victims who are routinely beaten and fail to press charges or return to the battering relationship. If these victims refuse to help themselves, the officers conclude that there is little they can do for them. This attitude is further complicated by the belief of officers that many of the victims provoke the attack and get only what they deserve or that the couple is engaged in a sadomasochistic relationship. More often than not, many of the real reasons women stay in battering relationships—economic dependence, fear, and learned helplessness—are not apparent.

Other police officers willingly accept intervention into spousal violence cases as a legitimate part of their duties, but they are more concerned with their lack of training to handle these calls effectively. They may be particularly sensitive to the physical danger these calls pose for all police officers, and as a result, respond in a hasty or superficial manner. Many officers have found spouse abuse to be a frustrating

Ms. Loving

problem because, until recently, there have been no social services or shelters to which they could refer victims or assailants for long term assistance. Even when services are available, officers can become frustrated and indifferent because they are seldom able to determine from the agencies whether their intervention was helpful.

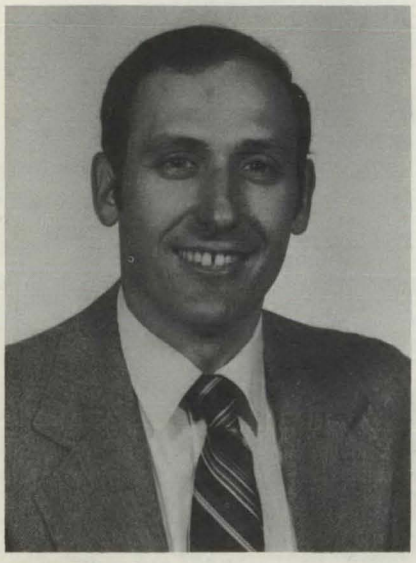
The new emphasis on arrest in spouse abuse cases is of particular concern to many police officers. Until recently, police in most jurisdictions were trained to avoid arrest in this type of case or were restricted by statute to making a warrantless arrest in a misdemeanor assault case if the assault occurred in their presence. New laws in 20 States, however, have greatly expanded police arrest powers in these cases, making probable cause sufficient for a warrantless misdemeanor assault arrest.[4] Even so, some officers resent arrest mandates as intrusions on their professional judgment and flexibility, while others regard them as a narrow-minded approach that will have a minimum effect on the overall problem. Painfully aware of the overcrowding in jails and delays in the court proceedings, many officers believe that a singular reliance on arrest in response to these calls is neither realistic nor effective.

Another important concern for many officers is the increased threat of civil litigation as a result of these new arrest requirements. Facing greater public scrutiny of their performance, officers are particularly susceptible to charges of false arrest, false imprisonment, and improper or excessive use of force. Noting these risks, 11 States have enacted police immunity laws to protect officers against civil suits for action taken in a good-faith effort to enforce the provisions of a domestic violence statute.[5]

Changes in emphasis of police interventions illustrate the continuing problem that family crises pose for police agencies. These crises raise conflicts between the family's right to privacy and the right to equal protection under the law for each family member, as well as challenge cultural traditions that place a high value on harmonious family life.

The last 2 decades have seen an increasing tendency for law enforcement agencies to seek and apply the expertise of behavioral and social scientists to police work. This alliance has revolutionized the ways the criminal justice system deals with the mentally ill, the homeless, and juvenile offenders. A part of this revolution has been the adoption of crisis intervention techniques for dealing with disputes between neighbors, landlords and tenants, and family members. Generally, these procedures call for the responding officer to calm the dispute, listen carefully to both parties without showing favoritism or fixing blame, and suggest ways to resolve the problem without involvement of the criminal justice system. Although useful in many contexts, the techniques of mediation and negotiation are applicable particularly in spousal conflicts that do not involve the use of violence.

The failure to make the distinction between spousal conflicts that involve the use or threatened use of violence and those that do not results in confu-



Special Agent Quirk

sion and poor police performance. By combining all family calls into one broad category and assigning it a low-priority status, important distinctions have been overlooked, procedures have remained irrelevant, and most important, the victims and police officers have suffered repeated assaults and injuries. It must be emphasized, however, that the failure to make these distinctions is not unique to law enforcement. Until recently, both social service agencies and the judiciary were committed to the philosophy and practice of keeping the family unit together at all costs, a commitment which is slowly being replaced with a more realistic approach that acknowledges the need for some couples to divorce.

Pressures for Change

Women's rights groups have criticized police handling of spousal violence calls mainly because of the officers' refusal to make arrests in these situations. They are particularly offended by the terminology of the crisis intervention approach, which labels these calls "a dispute" or "a conflict" and the people involved "the disputants." This language, they believe, hides the prevalence of wife beating cases. Moreover, they view some officers' insistence on taking a neutral stand in these situations as possibly resulting in subtle encouragement to assailants. The same may also be said of the failure to arrest the assailants who, they contend, may continue the assaults if they are not punished. These beliefs have led several women's groups to file class action suits against law enforcement agencies, charging negligence and violation of the victims' civil rights. The most notable of these cases, *Bruno* v. *Codd,*[6] was brought by 12 battered women against the New York City Family Court. In a June 1978, consent decree that settled the case, the department agreed to make arrests when there is reasonable cause to believe that husbands have committed felonious assault against their wives and to send one or more police officers in response to every call from a woman who charges that her husband has assaulted or threatened to assault her. The police also agreed to inform a battered wife of her rights to a criminal or civil court proceeding, to provide protection or aid in getting medical help if she needs it, and to help in locating the assailant if he has left the scene.

In a similar case in Oakland, Calif., a group of battered women brought a class action lawsuit against the Oakland Police Department,[7] charging that wife beating calls were given a low priority and that officers responded to them with a policy of avoiding arrests. They also charged that the police did not inform victims of their rights to make citizens' arrests. In an out-of-court settlement in November 1979, the department agreed to treat all domestic violence as alleged criminal conduct and to make arrests in appropriate cases. It also agreed to develop new training materials and implementing orders to include the development and distribution of a resource brochure for battered women.

In addition to these lawsuits, many State legislatures have enacted statutes specifically designed to reduce spouse abuse. The statutes have several or all of the following provisions:

". . . many State legislatures have enacted statutes specifically designed to reduce spouse abuse."

1) Identify "spouse abuse" or "domestic violence" as a specific crime;
2) Grant criminal court jurisdiction over certain family offenses;
3) Make violation of a restraining order a criminal offense; and
4) Eliminate requirements that a misdemeanor assault occur in an officer's presence before an arrest can be made.

Need for Policy Guidelines

In 1979, the Police Executive Research Forum conducted a study for the Law Enforcement Assistance Administration (LEAA) to determine how law enforcement agencies could improve their response to spouse abuse calls. Among the most important conclusions of the final report was the need for law enforcement agencies to update and revise their policies and operational procedures for these calls.[8] Too many agencies, it was found, were relying on the crisis intervention approach developed in the late 1960's, with its emphasis on reconciliation of the parties and arrest avoidance. The forum report recommended that law enforcement agencies' policy statements address the following areas: 1) Proper use of law enforcement actions against the assailant; 2) extent of attention and protective services given to the victim; 3) proper use and enforcement of civil remedies; 4) proper use of civilian social service aides; and 5) nature of relationships with social service agencies and battered women's groups.

The report also recommended new agency procedures that would provide officers with practical guidelines for performing their proper functions when restoring order and safety, determining whether a crime has been committed and taking proper law enforcement actions, and making social service and legal agency referrals for family members. New procedures and programs should be monitored and evaluated for several years. In addition, a mechanism should be established to determine the abused victims' satisfaction with the procedures, to process their complaints, and to review the effectiveness of new police training programs.

Another important task is the development of arrest criteria for spouse abuse cases. The forum report, for instance, recommends that arrests be made in cases involving serious injury, use of deadly weapon, and/or violation of a restraining order.[9] Other arrest guidelines, such as those developed by the Chicago Police Department, list the following factors as indicating that an arrest should be made: [10]

1) *Serious, Intense Conflict*—Officers must first consider the nature and intensity of the dispute. Intense disputes of a serious nature most often require an immediate arrest. An intentionally inflicted serious injury certainly requires arrest of the offending party for battery. Likewise, severe property damage is a measure of dangerous aggression which may call for an arrest. However, officers must remember that damage to coowned property is a civil matter. Any resulting arrest cannot be based on damage to the property, but should be based on the assault or disorderly acts committed.

2) *Use of Weapons*—If the parties have indicated any intent to use an inherently or potentially dangerous object during the dispute, either offensively or defensively, an immediate arrest of the offending party would be appropriate to prevent a further, more serious confrontation.

3) *Previous Injury or Damage*—If the complainant has previously been a victim of the offending party's aggression, officers should consider the extent of any previous injury or damage. The present conflict could become more serious if an immediate arrest is not made.

4) *Previous Court Appearance*—A previous criminal court appearance against the offending party may strongly indicate a victim's sincerity to prosecute. An immediate arrest should be made when it is apparent that the victim's interest would be best served by returning the parties to the court that handled the former complaint.

5) *Previous Attempt to Sever the Relationship*—If there has been a previous voluntary separation of the parties, indicating an attempt to end the relationship, there is less need to consider the disruptive effects an arrest may have on the relationship. If the parties have separated, intrusion should be considered an aggravating factor.

"All segments of the criminal justice system must be sensitized to the serious nature of these cases and to the need to hold the assailants accountable for their action."

6) *Second Call to Police*—A second call for police service may indicate that conciliatory measures have failed. An arrest would be appropriate to avoid further escalation of the dispute after officers again leave the scene.
7) *Children or Mentally Deficient or Intoxicated Parties Involved*—When children or mentally deficient or intoxicated individuals are assailants or victims in domestic conflicts, special consideration is required. As assailants, they are not easily reasoned with, and as victims, they are not easily able to avail themselves of criminal, civil, or other remedies. The discretionary latitude of officers is far more limited in such circumstances, and an arrest is more likely to be appropriate. When an arrest is appropriate, officers must ensure that provisions are made for the care of children who would otherwise be left unattended.

Another set of arrest standards for domestic violence cases was issued by the Westchester County, N.Y., district attorney in December 1978.[11] They mandate arrest in the following cases:
1) Whenever a gun, a deadly weapon, or a dangerous instrument has been used,
2) Whenever there is reasonable cause to believe that a felony has been committed,
3) Whenever there has been a maiming or other serious physical injury,
4) Whenever there is a history of criminal activity between the parties and where the defendant's record indicates violent criminal history, and
5) Where, in the judgment of the police officer, the sanction of an arrest appears necessary for the future protection of the victim.

A third approach to arrest criteria was published in a revised domestic violence training manual of the Oakland, Calif., Police Department, which states: "It should be presumed that arrest is the most appropriate response in domestic violence crimes which involve apparent felonies, allegations of repeated acts of violence, situations where an offense is committed in your presence, and situations in which a citizen's arrest is demanded." [12]

In many jurisdictions, if police officers choose not to arrest an assailant for a misdemeanor assault, they may initiate several effective law enforcement actions where permitted by State law. These include:
1) *Misdemeanor citations*—Similar to traffic tickets, these citations are issued as a condition of release from police custody. They require the assailant to promise to appear at a hearing and post bail that will be returned. An assailant who does not appear is considered guilty of the misdemeanor and forfeits the money. The assailant also will lose the money if he loses the case. This citation could lead to the assailant's arrest only if a magistrate issued a warrant when the assailant did not post bail or did not appear at the court hearing.
2) *Protective custody*—Used in lieu of arrest to keep a citizen lawfully in police custody for 1 or 2 days in situations where the person is drunk, appears mentally unstable, or acts out of control.
3) *Domestic violence summons*—Currently issued in Ohio in cases where there are insufficient grounds for arrest. Both parties in a domestic violence case are required to participate in a voluntary counseling program. This is a method of diversion from the criminal justice system, but prosecution may be considered if the resulting arbitrated agreement is broken by either party.
4) *Domestic violence temporary restraining order*—May be filed in municipal courts by police officers after arresting an assailant or filing a criminal complaint against the assailant with the prosecutor. The restraining order is used as a means of ensuring the safety and protection of the victim. A hearing on this motion must take place within a given period of time, and the presence of the officer may be required at the hearing.

Liaison Efforts

While police can do much to improve their responses to spouse abuse cases, they alone cannot reduce the problem. All segments of the criminal justice system must be sensitized to the serious nature of these cases and to the need to hold the assailants accountable for their action. Moreover,

community resources must be available to deal with the underlying cases of the abuse on a long term basis. Emergency shelters, 24-hour hotlines, counseling programs for victims and batterers, and legal services must be available. Since police are often the only outsiders to be summoned during these violent conflicts, it is imperative that they have both the necessary diagnostic skills to determine what kind of assistance is necessary and reliable information about available social services in the community.

Since these cases often grow more violent over time, police can help monitor for patterns of repeat abuse. In Westchester County, N.Y., for example, officers are required to notify the district attorney of all spouse abuse incidents, including those that do not involve arrest. The district attorney then sends a letter to the assailant, either directing him to cease the abuse or to come in for consultation. Another letter is sent to the victim informing her of available options. A case file is then established on the household and monitored for subsequent incidents.

Another approach developed by the Detroit, Mich., Police Department involves the use of a triplicate-copy social service referral card for officers' use in these cases. One copy is sent to the social service agency to which the victim has been referred by officers, another is sent to a police department domestic conflict monitoring project, and the third copy is left with the victim, who can use it as proof of prior abuse during subsequent police intervention.

These cooperative efforts can be augmented by numerous other activities, such as officers distributing referral cards for battered women's shelters to victims, providing victims with information about legal remedies, and encouraging assailants to enter treatment programs.

Training

All police officers should be trained to handle spouse abuse. The stress and danger involved in these calls make it imperative that responding officers learn not only how to defuse and contain these situations but also how to ensure the safety of all involved parties. Because many of those cases tend to regress over time, officers must learn to respond in ways that will neither escalate the immediate violence nor contribute to a subsequent deterioration of the situation. Police training programs should be designed to improve officers' intellectual grasp of the nature of the problem and clarify their law enforcement duties in these cases.

The training program should also teach the officers how and when they should instigate the options available to them, such as arrests, citations, restraining orders, and crisis intervention skills. Additional training topics should include safety precautions, medical procedures, and techniques for establishing order and security.

A serious problem that police training programs must seek to overcome is the negative attitude held by many police officers—that spousal violence calls are a nuisance, that they do not constitute "real" police work, and that family matters are not the province of the police. These attitudes, which themselves are a byproduct of poor training, contribute to insensitive and hostile police responses and to a failure to provide spouse abuse victims with adequate protection. Such practices, as we have seen, can be traced to numerous factors, including the refusal of many victims to press charges or to remove themselves from the battering relationship. The tendencies of some officers to be preoccupied with their crimefighting mission and of some administrators to urge officers to resolve these calls quickly in order to reduce service call backlog contribute to this problem.

During 1981, an innovative training course on family violence was developed at the FBI Academy at Quantico, Va., and incorporated into the National Academy curriculum to supplement its traditional training programs. "Family Violence—New Approaches for Police," a 10-hour elective, emphasizes the need for police coordination between police departments, prosecutors, and community service agencies. The curriculum included guidelines for making social service referrals for abuse victims, arresting and prosecuting batterers, and detecting and investigating child sexual assault cases. Films and guest speakers were used to acquaint the officers with the dynamics of spouse abuse and with the cyclical nature of the abusive behavior. Student officers reported that what they learned in the course made their jobs easier. "Two rewards for making changes in the way law enforcement

"Few officers have been properly trained to handle these volatile calls. . . ."

takes care of these calls are being injured less often and being called less frequently to the same homes," one California police officer remarked. A New York City police officer added, "As an investigator, my job is easier if the guy on the street handles these cases right. If they do, I won't have so many homicides on my desk."

Recently, the Police Executive Research Forum published a comprehensive curriculum for law enforcement training officers.[13] It presents a complete 20-hour course and includes materials for use in five 4-hour sessions, including understanding spouse abuse, statutory requirements, officer procedure and legal issues, responding to the call, disposition alternatives, and using community resources. Suggestions for lecture format, films, group discussions, and panel presentations are provided, as well as materials to be used as handouts to officers.

Summary

Patrol officers are often required to respond to calls for help in cases involving violence among married and unmarried couples. Citizens are relying increasingly on the 24-hour availability of law enforcement officers and their ability both to "do something" to stop the violence and to provide counseling and emergency services. Officers routinely respond to these calls, often to the same households, and occasionally become targets of the violence. Few officers have been properly trained to handle these volatile calls, and as a result, often use their own discretion and instinct to resolve them.

Wide variation in police responses to these calls have been the norm for many years. Not only have police been pressured to focus their resources on violent street crimes, but they have reflected a larger cultural tradition which regards family matters as private. During the past few years, however, as spouse abuse has dramatically emerged as a major social problem, public scrutiny has focused on all aspects of the problem. Law enforcement agencies have been singled out for particularly harsh criticism for failure to provide victims with adequate protection and for not making arrests in cases involving felony assaults.

The traditional law enforcement response to these calls, emphasizing crisis intervention skills and reconciliation of the parties, is inappropriate in cases involving serious injury or repeated abuse and is not effective for reducing the number of spouse abuse incidents. In fact, it may aggravate the problem by suggesting to assailants that their violent behavior can be overlooked. Thus, the need for a new law enforcement response to spousal violence calls is clear, both to provide adequate protection to the victims and to ensure the safety of the responding officers. New perceptions of this major social problem have resulted in pressures for effective solutions, not the least of which will be effective and humane law enforcement policies and procedures. **FBI**

Footnotes

[1] A physical violence scale, developed by Dr. Murray Straus of the University of New Hampshire, identifies the following acts as spouse abuse: Throwing things; pushing, shoving or grabbing; slapping; kicking, biting or hitting with fist; beating up, threatening with knife or gun; and using knife or gun. See Murray Straus, "Wife Beating: Causes, Treatment and Research Needs," *Battered Women: Issues In Public Police* (Washington, D.C.: U.S. Civil Rights Commission, 1978) p. 470.

[2] Disturbance calls include all types, e.g., man with a gun, bar fights, family quarrels, etc.

[3] U.S. Department of Justice, Federal Bureau of Investigation, CRIME IN THE UNITED STATES—*1976*, pp. 286–288; *1977*, pp. 286–288; *1978*, pp. 302–305; *1979*, pp. 304–306; *1980*, pp. 336–388 (Washington, D.C.: Government Printing Office).

[4] ALAS. STAT. §§ 09.55.600–09.55.640, 12.55.135, 22.15.100, ARIZ. REV. STAT. §§ 13.3601, 13.3602 (Supp. 1980) as amended by ch. 224, 1981 Ariz. Legis. Serv., p. 796 (West 1981). FLA. STAT. ANN. § 741.30 (West Supp. 1980), HAWAII REV. STAT. § 709.906 (1976) as amended by Act 266, 1980 Hawaii Sess. Laws, p. — —; IDAHO CODE § 19–603 (1947 and Supp. 1979); ILL. ANN. STAT. ch. 85 § 507–a (Smith-Hurd 1979) as amended by H.B. 366 (enacted 1981); KY. REV. STAT. § 431.005 (Supp. 1980); ME. REV. STAT. ANN. tit. 19 §§ 769, 770 (1964) as amended by ch. 420, 1981 Me. Legis. Serv., p. 836; MASS. GEN. LAWS ANN. ch. 276 §§ 28, 42A (West 1972 and Supp. 1980); MICH. COMP. LAWS ANN. §§ 764.15a, 769.4a, 772.13, 772.14a (West Supp. 1979); MINN. STAT. ANN. § 629.341 (Supp. 1980); NEV. REV. STAT. § 171.124 (1979); N.H. REV. STAT. ANN. § 594: 10–1 (Supp. 1979); N.M. STAT. ANN. § 31–1–7 (Supp. 1978); N.Y. FAM. CT. ACT § 168 (McKinney 1975 and Supp. 1976–1980) as amended by ch. 416, 1981 N.Y. Laws, p. — —; OHIO REV. CODE ANN. §§ 109.73, 109.77, 2935.03, 737.11 (Page Supp. 1980); ORE. REV. STAT. §§ 107.7, 133.055, 133.310 (1977); R.I. GEN. LAWS § 11–5–9 (Supp. 1980); TEX. CODE CRIM. PROC. ANN. art. 14.03 (Vernon 1977) as amended by ch. 422, 1981 Tex. Sess. Law Serv., p. 1865; WASH. REV. CODE ANN. §§ 10.99.010–10.99.070 (1980). A State-by-State summary analysis of domestic violence legislation may be obtained for $5.00 from the Center for Women Policy Studies, 2000 P Street, N.W., Washington, D.C., 20036.

[5] ARIZ. REV. STAT. §§ 13.3601, 13.3602 (Supp. 1980) as amended by ch. 224, 1981 Ariz. Legis. Serv., p. 796 (West 1981); ILL. ANN. STAT. ch. 85, § 507–a (Smith-Hurd 1979) as amended by H.B. 366 (enacted 1981); IOWA CODE ANN. § 236–11 (West Supp. 1980); MINN. STAT. ANN. § 629.341 (Supp. 1980); N.H. REV. STAT. ANN. § 594–10–1 (Supp. 1979); N.M. STAT. ANN. § 31–1–7 (Supp. 1978); N.C. GEN. STAT. §§ 50B–1–50B–7 (Supp. No. 5, 1979); N.D. CENT. CODE §§ 14–07.1–01–14.–07.1–08, 29–01–15(4) (Supp. 1979) as amended by N.D.S.B. 2339 (enacted 1981); ORE. REV. STAT. §§ 107.7, 133.055, 133.310 (1977); UTAH CODE ANN. §§ 30–6–1 – 30–6–8 (Supp. 1979); WASH. REV. CODE ANN. §§ 10.99.010–10.99.070 (1980).

[6] *Bruno* v. *Codd*, 90 Misc. 2d 1047, 396 N.Y.S. 2d 974 (Supreme Court 1977).

[7] *Scott* v. *Hart*, No. 6–76–2395 (N.D. Cal., filed October 28, 1976).

[8] Nancy Loving, *Responding to Spouse Abuse and Wife Beating: A Guide for Police* (Washington, D.C.: Police Executive Research Forum, 1980).

[9] Ibid. p. 61.

[10] Warren Breslin, "Police Intervention in Domestic Confrontations," *Journal of Police Science and Administration*, September 1978.

[11] Carl U. Vergari, "Domestic Violence Laws," *Criminal Law News*, vol. IX, No. 1, December 1978.

[12] Oakland Police Department, *Training Bulletin III–J (Revised) Domestic Disputes*, Oakland, Calif., Police Department, November 1979, p. 8.

[13] Nancy Loving, *Spouse Abuse: A Curriculum Guide for Police Trainers* (Washington, D.C.: Police Executive Research Forum, 1981).

The scene is a familiar one. A truck tractor is stolen from a terminal yard, a truck stop, or off the street. It is immediately delivered to a location where a team of mechanics will dismantle the vehicle. Within a matter of hours, the remains of the truck tractor are being sent in different directions for use in repair of other vehicles or in the completion of a new truck tractor started from a glider kit. The vehicle that was originally stolen is gone forever, and it is unlikely that it will ever be recovered or that the thieves or dismantlers will be apprehended.

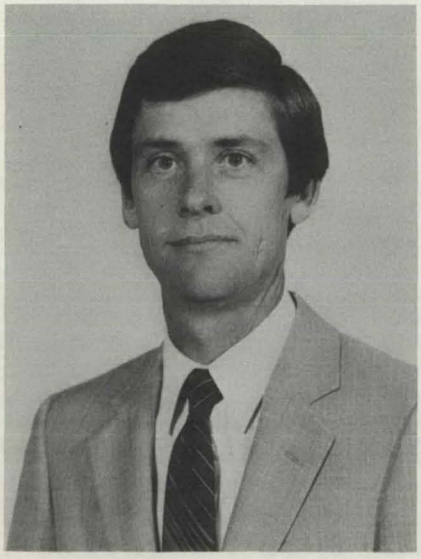
Pilot Program Attacks Truck Theft

By
LOUIS E. BRACKSIECK
Special Agent
Federal Bureau of Investigation
Washington, D.C.

Based on statistical review of data from the FBI National Crime Information Center (NCIC), approximately 1,500 stolen truck tractors were entered into the system each month during calendar year 1981. For the same period, approximately 1,100 truck tractors were cleared or canceled per month. This disparity between the entries and clearances and cancellations, graphically profiles a nagging problem in the trucking industry as well as in law enforcement—more trucks are stolen than are recovered.

A private organization is now attacking this problem with an identification program designed to deter potential thieves and to assist law enforcement officers. The Truck Renting and Leasing Association (TRALA),

The sandblasting gun and the template held at the left of this photograph combine to quickly and clearly etch the full vehicle identification number onto and outside rearview mirror.



Special Agent Bracksieck

which represents 300 member companies engaged in truck and trailer rental and leasing, has initiated a pilot program in the Atlanta, Ga., area to mark over 2,500 tractors. In approximately 40 minutes, using a small sandblasting gun and a template cut from plastic, two men can mark a truck tractor in approximately 40 locations with the full vehicle identification number (VIN). Many of the markings are in easily seen places such as windows, grillwork, bumpers, fuel tanks, and frame members. Hidden areas, as well as the major component parts, are also etched. Such widespread markings are expected to discourage thieves from attempting to change numbers on stolen vehicles and chop shop operators from using these parts.

In addition to the numbering procedure, warning decals are affixed to the vent window on the driver's side and to the vehicle dash. The decals indicate that the markings have been made and provide a telephone number law enforcement officers can call if a vehicle is located. In addition, large signs will be prominently displayed at truck terminals to serve as a warning to potential thieves.

This program was inaugurated in March 1982, after a 2-year study of the truck theft problem by TRALA's Insurance Safety and Security Committee. The FBI supported the idea throughout its development.

A member of the committee suggested the marking program based on his experience with a similar effort at a car rental business. Beginning with a fleet in Chicago, the car rental establishment marked over 6,000 automobiles in an 18-month period in four cities, with favorable results. In a report to the committee, it was noted that after placing 20 VIN's on each car, thefts dropped dramatically and recovery rates improved to almost 100 percent.

The chairman of TRALA's Insurance Safety and Security Committee has reported an enthusiastic response from the operations personnel at the various participating companies. The committee will collect data to evaluate the success of the pilot. A reduction in thefts and improvement in recovery rate will be the benchmark of a successful program.

Law enforcement personnel will also benefit from this project. Proper vehicle identification is a critical element in any vehicle theft investigation. Through the use of this marking method, identification will be significantly aided, making the investigator's job somewhat easier.

TRALA's effort could help solve many cases in the future. It is almost certain that a successful pilot program will lead to more widespread participation, not only by TRALA members but throughout the trucking industry. **FBI**

A warning decal is prominently displayed in an easily seen area, and the glass is marked with a warning and toll free telephone number which can be called by an investigator.

PROBABLE CAUSE: INFORMANT INFORMATION (CONCLUSION)

By
ROBERT L. McGUINESS
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, Va.

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.

The first part of this article dealt with meeting the *Aguilar* standard for the use of hearsay information in establishing probable cause. The conclusion deals with corroboration of hearsay information and other approaches that might be taken to establish probable cause while protecting the identity of an informant.

Corroboration

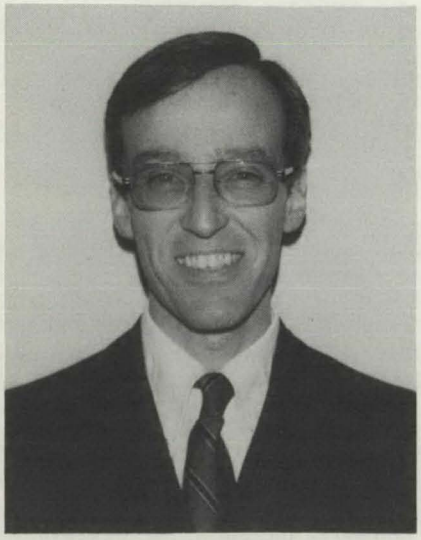
A strict reading of *Aguilar* might lead to the conclusion that corroboration is only pertinent to the second prong of the *Aguilar* test, since in defining the second prong, the Court noted that it could be satisfied by facts showing that "the informant was 'credible' *or his information 'reliable'* " (emphasis added). The phrase "or his information reliable" would appear to have reference to corroboration. However, another statement in *Aguilar* suggested that corroboration may be sufficient to cure both prongs.[74] The first corroboration case to be considered by the Court after *Aguilar*, namely, *Spinelli* v. *United States,*[75] resolved this question and established that corroboration could in fact cure both prongs of the test.

Before considering the facts of *Spinelli,* however, a pre-*Aguilar* corroboration case must be considered, namely, *Draper* v. *United States.*[76] The *Draper* case establishes a particular type of corroboration, which the Court in *Spinelli* approves of.

Corroboration *a la Draper:* Verifying the Details of a Tip

Draper v. *United States* involved a criminal informant who had been furnishing information to an agent of the Bureau of Narcotics over a 6-month period, which information the agent had always found to be "accurate and reliable." The informant told the agent that " 'Draper had gone to Chicago the day before [September 6] by train [and] that he was going to bring back three ounces of heroin [and] that he would return to Denver either on the morning of the 8th of September or the morning of the 9th of September also by train.' " The informant furnished the agent with a detailed physical description of Draper (a Negro of light brown complexion, 27 years old, 5'8" tall, weighing about 160 pounds) and a detailed description of the clothing he would be wearing (light-colored raincoat, brown slacks, and black shoes). The informant also stated that Draper would be carrying a tan zipper bag and that he habitually "walked real fast." Armed with this information, on September 9th, law enforcement officers saw a person alight from an incoming Chicago train who exactly fit the description given by the informant. Moreover, the individual was walking fast and carrying a tan zipper bag. At this point, Draper was arrested and a search incident to arrest uncovered two envelopes containing 865 grams of heroin and a syringe. On the basis of these facts, the Court held that the agent, having "personally verified every facet of the information given him by [the informant] . . ., had 'reasonable grounds' to believe that the remaining unverified bit of . . . information—that Draper would have the heroin with him—was likewise true."

Thus, the Court adopted the principle that corroboration may take the form of simply verifying the details of a tip, though the details may not be of a suspicious nature. The exact contours of this principle were later refined in *Spinelli* v. *United States.*[77]



Special Agent McGuiness

The *Spinelli* Case

In *Spinelli* v. *United States,* an affidavit for a search warrant set out the following informant's tip:

> "The Federal Bureau of Investigation has been informed by a confidential reliable informant that William Spinelli is operating a handbook and accepting wagers and disseminating wagering information by means of the telephones which have been assigned the numbers WYdown 4-0029 and WYdown 4-0136." [78]

The tip clearly failed the basis of knowledge prong of the *Aguilar* test by not stating how the informant came by his information. Moreover, the affidavit failed to establish the informant's veracity, such as by a statement of prior performance. The FBI, however, had verified that Spinelli was seen entering an apartment to which the telephone numbers disclosed in the tip were assigned. The argument was advanced that by having confirmed this detail, corroboration a la *Draper* had been made, thus transforming the otherwise insufficient tip into probable cause. The Court answered this contention as follows: "Independent police work in that case [Draper] corroborated much more than one small detail that had been provided by the informant." Thus, the Court did not overrule *Draper,* nor did it indicate that corroboration of innocent details was insufficient to cure both prongs of the *Aguilar* test. What *Spinelli* did establish is that if the type of corroboration employed is that of simply verifying details of a tip that are nonsuspicious in nature, *i.e.,* those not suggesting the crime under investigation, there must be a significant number of details verified—not just one detail.[79]

Another illustration of this is the case of *United States* v. *Larkin,*[80] decided by the U.S. Court of Appeals for the Ninth Circuit. In *Larkin,* a first-time informant's tip reported that a 1972 black-on-blue "blazer-type" vehicle, bearing a specific license plate number and proceeding from El Centro, Calif., to Los Angeles, would be transporting narcotics. An officer spotted such a vehicle on the same morning he received the tip. The defendant was arrested and a search of the vehicle uncovered narcotics. The court held that this tip, not meeting both prongs of *Aguilar,* was not sufficiently corroborated in the *Draper* sense, since only a few details were verified, as opposed to *Draper* where a "wealth of detail" was corroborated.

Thus, if an officer intends to rely on this type of corroboration, *i.e.,* verifying nonsuspicious details of a tip, he should elicit from the informant as many facts as possible concerning the subject and his activities. Information as to the subject's address, telephone number, description, occupation, vehicles owned, etc., would be relevant. As to the subject's conduct, all details concerning the manner in which he is carrying out the crime should be obtained for verification.

A type of "verifying the details" corroboration that is convincing is where detailed information not generally known to the public concerning the prior commission of a crime is furnished by an informant and verified. For instance, in *People* v. *Clay,*[81] an informant stated that the defendants told him that they committed an armed robbery and showed him the shotgun employed and the money taken in the crime. The informant then supplied detailed descriptions of the suspects. All

". . . if the type of corroboration employed is that of simply verifying details of a tip that are nonsuspicious in nature . . . there must be a significant number of details verified—not just one detail."

of this information concerning the crime was checked and found to be accurate. The court found this to be adequate corroboration and sufficient to establish probable cause.

Suspicious Conduct

Perhaps a better form of corroboration is that of uncovering suspicious conduct on the suspect's part which suggests the crime under investigation. In other words, the corroboration does not just confirm some innocent details of a tip, as was done in *Draper,* but detects facts and circumstances which connote the crime at hand. This was a second contention of the Government in *Spinelli.* The Government argued that the following facts, taken together, were sufficient corroboration of the informant's tip:

1) Observing Spinelli travel from Illinois to St. Louis, Mo. on four occasions;
2) Observing Spinelli enter an apartment to which the telephone numbers referred to above were assigned; and
3) The fact that Spinelli was known to be "a bookmaker . . . (and) gambler . . . ."

The Court held that this was insufficient. Traveling from one State to another and entering an apartment can "hardly be taken as bespeaking gambling activity." Being in an apartment that has two separate telephone lines is not unusual. "Many a householder indulges himself in this petty luxury." Even when both of these facts are taken together, they raise "no suggestion of criminal conduct," nor should they be "endowed with an aura of suspicion by virtue of the informer's tip." Moreover, merely stating that a person is a bookmaker and gambler is wholly conclusory—"a bald and unilluminating assertion of suspicion that is entitled to no weight" in assessing probable cause.

Thus, there must be facts and circumstances observed or disclosed which in themselves are suspicious, *i.e.,* suggest the crime under investigation, to fit this type of corroboration. Indeed, the Supreme Court noted that had it been shown that the apartment which Spinelli visited contained an "unusual number of telephones" or if "abnormal activity" had been observed, a different case would be before the Court.

An excellent example of this is found in the Maryland case of *Dawson* v. *State*[82] which, also being a gambling investigation, serves as a useful comparison with *Spinelli.* In *Dawson,* the officer began his affidavit by reciting his investigative experience with respect to gambling in order to demonstrate his basis for believing that certain of the facts set out in the affidavit were suspicious. The informant's tip, which did not meet the *Aguilar* two-pronged test, was then stated, along with information that:

1) Dawson was arrested and convicted of gambling violations less than 3 years previously;
2) Dawson was observed over a 2-week period without ever seeing him engaged in a legitimate business;
3) Dawson had two separate unlisted telephones at his residence, and one of the numbers was previously discovered in the course of a raid of an illegal lottery operation;
4) Dawson was observed each day purchasing a scratch sheet;
5) Dawson was observed each day stopping at a number of places, including liquor stores and restaurants, for periods of no more than several minutes and was never observed to purchase anything [the officer indicated that this is characteristic of the "pick-up man" phase of a gambling operation];
6) Dawson returned to his house before noon daily and remained there until after 6:00 p.m. [the officer indicated that this is when number and horse race bets are normally placed and when results become available]; and
7) On one occasion, Dawson was observed to spend the day with a named person who had been previously arrested for gambling violations.

In concluding that probable cause could be found from these facts, the court stated:

"The appellant urges strongly that not one of his observed activities could not easily have been engaged in by an innocent man. That is true. It is also beside the point. What the appellant ignores is that probable cause emerges not from any single constituent activity but, rather, from the overall pattern of activities. Each fragment of conduct may

". . . an officer is well-advised to state in his affidavit the reason that certain circumstances are suspicious when the same facts would not strike such a note in the average person."

communicate nothing of significance, but the broad mosaic portrays a great deal. The whole may, indeed, be greater than the sum of its parts." [83]

The circumstances of the *Dawson* case, taken together, were unusual and inviting of explanation. The officer helped to demonstrate the suspicious nature of Dawson's conduct by specifically noting *why* he found Dawson's activities to be suspicious. Consequently, an officer is well-advised to state in his affidavit the reason that certain circumstances are suspicious when the same facts would not strike such a note in the average person.

Second Independent Informant

Another avenue of corroboration is through a second informant whose report independently corroborates the first. Supreme Court authority for this type of corroboration is found in the pre-*Aguilar* cases of *Jones* v. *United States* [84] and *Rugendorf* v. *United States,* [85] and to a lesser extent, the 1971 case of *United States* v. *Harris.*[86] In each of these cases, however, there were additional elements of corroboration. In *Jones,* there was knowledge of the defendants' propensity for the crime from previous admissions to the use of narcotics and prior observations by the officer of needle marks on them; in *Rugendorf,* a police officer had furnished an element of corroboration to three informants' reports; in *Harris,* the main informant made a statement against his penal interest and contraband had previously been recovered from the defendant.

While there is no known authority stating that corroboration by a second informant is not sufficient in itself to establish probable cause, it is usually the case that this is not the only element of corroboration.[87] Thus, it would be worthwhile to bolster the affidavit with some additional elements of corroboration. In many cases, this may easily be done by some knowledge of defendant's background, such as previous convictions for the offense under investigation,[88] recovery of stolen goods or contraband, or previous admissions of wrongdoing; [89] the verification of some details of the tip; [90] the uncovering of some suspicious circumstances; [91] or the fact that one of the informants has made a statement against his penal interest.[92]

Propensity for Committing the Crime

As indicated above, another type of corroboration recognized by the Supreme Court is that of the officer's knowledge of defendant's propensity for committing the crime under investigation. This may consist of knowledge of the defendant's prior criminal record for this offense,[93] previous admissions and observations of consistent conduct,[94] or the recovery of stolen property or contraband in the past.[95] However, this type of corroboration standing alone is never sufficient to establish probable cause.[96] This would be the practical equivalent of holding, as the Court said in *Beck* v. *Ohio,*[97] "that anyone with a previous criminal record could be arrested at will." Thus, it is a type of corroboration which can only be employed with other forms of corroboration to establish probable cause.

Double Hearsay

Is the use of double hearsay from a criminal informant ever permissible? In other words, can information from an informant whose information is based on another's report to him be sufficient in itself? The courts have unanimously endorsed this when the information from each of the sources meets the *Aguilar* standard.[98] This is not difficult to comprehend when the double hearsay consists of information from a fellow law enforcement officer who is relaying information from his informant. However, what of the situation in which an informant repeats information to the officer from another and the officer seeks to act upon such? Assuming the primary hearsay information satisfies *Aguilar, i.e.,* the source states how he knows the information and he has a prior track record of reliability, and the secondary source's basis of knowledge is established, the question arises as to establishing the secondary source's veracity. Not being an informant as such, he will not have a track record of past performances for the officer to refer to. Two methods of satisfying the veracity prong for this secondary source have been recognized under these circumstances. First, his information might be a statement against his penal interests and therefore acceptable of belief.[99] But beyond this is the notion that when this secondary source is not bartering, selling, and trading his information directly to the police, the truth of his information can more readily be accepted.[100] For instance, in the Maryland case of *Thompson* v. *State,*[101] an informant of

proven reliability attempted to make a purchase of narcotics from a street seller. The street seller advised the informant that he would not have any narcotics to sell until Thompson, his supplier, arrived with such, which would be at 1:00 p.m. The reliable informant knew Thompson to drive a particular vehicle. When the car arrived, it was searched, narcotics were discovered, and Thompson was arrested. Thompson challenged the search, since the probable cause was based upon double hearsay. In upholding the use of double hearsay, the court stated:

> "This street seller was . . . engaged in a purely commercial venture for his own profit. He was dealing with a regular and presumably valued customer. Being unable initially to satisfy his customer's demands, it was to his every advantage to assure the prompt return of that customer as soon as fresh merchandise was available for sale. He simply had no purpose in misleading his own clientele. The circumstances in which the seller passed on the information to a customer and confidant are replete, we think, with reasonable assurances of trustworthiness." [102]

Supreme Court authority for the use of double hearsay is found in the *Spinelli* case, previously discussed. In referring to the fact that the informant failed to state his basis of knowledge, the Court in *Spinelli* observed:

> "We are not told how the FBI's source received his information—it is not alleged that the informant personally observed Spinelli at work or that he had even placed a bet with him. *Moreover, if the informant came by the information indirectly, he did not explain why his sources were reliable.*" [103] (emphasis added)

Thus, the use of double hearsay is not constitutionally infirm. The informant, however, should be instructed to ascertain how his sources have acquired their information so that the basis of knowledge prong of the *Aguilar* test can be satisfied.

Informant Appearing Before Magistrate

If all else fails, another method which may be employed when the information emanates from a first-time informant is to bring the informant before the magistrate and have him file an affidavit under oath.[104] Since this is no longer hearsay information, *Aguilar* is not applicable. As with any other affiant, the magistrate is free to believe or disbelieve him.

This procedure may not be acceptable to the informant, of course, since his identity is revealed thereby. However, three different approaches have been taken by State courts in an effort to strike a balance. In *People* v. *Stansberry*,[105] the informant was allowed to sign "John Doe" to his affidavit. On appeal to the Supreme Court of Illinois, this procedure was not found constitutionally deficient. In the Wisconsin case of *Rainey* v. *State*,[106] the court upheld a procedure whereby the informant testified to certain facts under oath before a magistrate but did not reveal his name on the record. The New York case of *People* v. *Brown* [107] offered a further variation. In support of a search warrant, an officer testified to the facts given him by his informant. The informant was also produced and confirmed the information to the magistrate off the record, not under oath. The court found this to be a sufficient basis upon which to credit the informant's report.

No Federal case approving such a procedure is known, but two cases to the contrary exist. In *United States ex rel. Pugh* v. *Pate*,[108] the U. S. Court of Appeals for the Seventh Circuit held that a "false-name" affidavit violates the fourth amendment. The only authority the court could refer to, however, was a previous case, *King* v. *United States*,[109] decided in 1960 by the fourth circuit. In the *King* case, the magistrate was actually deceived as to the true name of the affiant and the case was decided primarily on the basis of Rule 41 of the Federal Rules of Criminal Procedure, which at the time required that the warrant state the "names of the persons whose affidavits have been taken in support thereof." Rule 41 no longer requires this.

It is submitted that since the Supreme Court has indicated that under certain circumstances a witness may testify at trial without stating his name,[110] for purposes of merely establishing probable cause, an informant could likewise be relieved of having his true name stated on an affidavit for public review. In such circumstances, the public affidavit could omit his name, with the affidavit bearing his true name being maintained under seal with the court. Another alternative would be for the court to maintain the true name of the informant in a sealed transcript concerning the warrant application.

". . . the officer's knowledge of defendant's propensity for committing the crime under investigation . . . can only be employed with other forms of corroboration to establish probable cause."

Sealing the Affidavit

Another method of protecting the informant's identity, at least for a period of time, would be to request a court to seal the affidavit upon which the warrant is based.[111] This procedure might be followed whenever the affidavit would reveal the informant's identity, whether by reason of the fact that he is actually named or that the nature of his information discloses his identity. This would enable an informant to continue his activities undisclosed. As long as the affidavit were unsealed in sufficient time to permit the defendant to challenge the probable cause before trial, it would appear to be a constitutionally permissible procedure.

Grand Jury

Another apparently seldom-used technique where either the problem of a first-time informant is present or where disclosure of the informant's information might identify him is to employ the grand jury process, with the grand jury returning an indictment and an arrest warrant being issued on the basis of the indictment.[112] At the grand jury proceeding, either the officer could testify to the informant's information or the informant could himself appear and testify. Secrecy is traditionally attached to grand jury proceedings[113] and the testimony given is not generally discoverable by the defense in many jurisdictions.[114] Therefore, the problem of the information identifying the informant would also not be present. Moreover, an indictment by the grand jury is not subject to review by the courts concerning the information upon which they acted.[115]

While an arrest warrant will be issued solely on the basis of an indictment, a search warrant will not. However, the possibility exists that the mere fact that an indictment has been issued might serve as a basis for establishing that the defendant committed the crime, thus providing part of the probable cause to support the search. The only Federal case on this subject, however, holds to the contrary.[116]

Conclusion

While the *Aguilar* case presents a formidable test for the use of hearsay information, there are a number of paths which have been outlined for the law enforcement officer to follow in converting a tip, which may not in itself constitute probable cause, into one that does. Furthermore, the officer should not feel constrained in thinking that the methods outlined herein are the only acceptable ones. Other approaches await discovery by the resourceful and imaginative officer, and establishment into law through the efforts of the aggressive prosecutor.

FBI

Footnotes

[74] *Supra* note 4, at 109 n.1.
[75] *Supra* note 16.
[76] *Supra* note 7.
[77] *Supra* note 16.
[78] *Id.* at 422.
[79] On this point *see also United States* v. *Branch,* 565 F.2d 274 (4th Cir. 1977).
[80] 510 F.2d 13 (9th Cir. 1974).
[81] 55 Ill.2d 501, 304 N.E.2d 280 (1973).
[82] 11 Md.App. 694, 276 A.2d 680 (Ct. Spec. App. 1971).
[83] *Id.* at 687.
[84] 362 U.S. 257 (1960).
[85] 376 U.S. 528 (1964).
[86] *Supra* note 64.
[87] For a case in which informants corroborating each other was in itself held to give rise to probable cause, *see United States* v. *Hyde,* 574 F.2d 856, 863–864 (5th Cir. 1978).
[88] *See United States* v. *Farese,* 612 F.2d 1376, 1379 (5th Cir.), *cert. denied,* 447 U.S. 925 (1980); *United States* v. *Clements,* 588 F.2d 1030, 1034–35 (5th Cir. 1979), *cert. denied,* 440 U.S. 982 (1979) and 441 U.S. 936 (1980).
[89] *See supra* note 8.
[90] *See United States* v. *Vazquez,* 605 F.2d 1269, 1281 (2d Cir.), *cert. denied,* 444 U.S. 981 (1979); *United States* v. *Clements, supra* note 88; *United States* v. *Weinrich,* 586 F.2d 481, 488–90 (5th Cir. 1978).
[91] *United States* v. *Hyde,* 574 F.2d 856, 863 (5th Cir. 1978); *United States* v. *Scott,* 555 F.2d 522 (5th Cir.), *cert. denied,* 434 U.S. 985 (1977).
[92] *See United States* v. *Martin,* 615 F.2d 318 (5th Cir. 1980); *United States* v. *Regan.* 525 F.2d 1151, 1156–57 (8th Cir. 1975).
[93] *See Brinegar* v. *United States,* 338 U.S. 160 (149).
[94] *See supra* note 8.
[95] *United States* v. *Harris, supra* note 64.
[96] *See Beck* v. *Ohio,* 379 U.S. 89 (1964).
[97] *Id.*
[98] *See United States* v. *Santarpio,* 560 F.2d 448, 453 (1st Cir.), *cert. denied,* 434, U.S. 984 (1977); *United States* v. *DiMuro,* 540 F.2d 503, 510 (1st Cir. 1976), *cert. denied,* 429 U.S. 1038 (1977); *United States* v. *Fiorella,* 468 F.2d 688, 691 (2d Cir. 1972), *cert. denied,* 417 U.S. 917 (1974); *United States* v. *Williams,* 603 F.2d 1168, 1171 (5th Cir. 1979), *cert. denied,* 444 U.S. 1024 (1980); *United States* v. *Smith,* 462 F.2d 456, 459–60 (8th Cir. 1972).
[99] *See United States* v. *Poulack,* 556 F.2d 83, 87 (1st Cir.), *cert. denied,* 434 U.S. 986 (1977); *United States* v. *Carmichael,* 489 F.2d 983, 986–87 (7th Cir. 1973) (en banc); *Commonwealth* v. *Kaschik,* 235 Pa.Super. 388, 344 A.2d 519 (1975).
[100] *See United States* v. *Spach,* 518 F.2d 866, 871 (7th Cir. 1975); *Thompson* v. *State,* 16 Md. App. 560, 298 A.2d 458 (Ct. Spec. App. 1973).
[101] *Id.*
[102] *Id.* at 462.
[103] *Supra* note 16, at 416.
[104] *United States* v. *Hunley,* 567 F.2d 822 (8th Cir. 1977); *Skelton* v. *Superior Court,* 81 Cal. Rptr. 613, 460 P.2d 485, 490–91 (1969).
[105] 47 Ill.2d 541, 268 N.E.2d 431, *cert. denied,* 404 U.S. 873 (1971).
[106] 74 Wis.2d 189, 246 N.W.2d 529 (1976).
[107] 40 N.Y.2d 183, 352 N.E.2d 545 (1976).
[108] 401 F.2d 6 (7th Cir. 1968), *cert. denied,* 394 U.S. 999 (1969).
[109] 282 F.2d 398 (4th Cir. 1960).
[110] *Smith* v. *Illinois,* 390 U.S. 129 (1968) (concurring opinion).
[111] Fed.R.Crim.P. 57(b); *cf.* Fed.R.Crim.P. 6(e)(4).
[112] Fed.R.Crim.P. 9.
[113] *Pittsburgh Plate Glass Co.* v. *United States,* 360 U.S. 395 (1959).
[114] Fed.R.Crim.P. 6(e)(2), (3).
[115] *United States* v. *Calandra,* 414 U.S. 338 (1974).
[116] *United States* v. *DeFalco,* 509 F.Supp. 127 (S.D. Fla. 1981).

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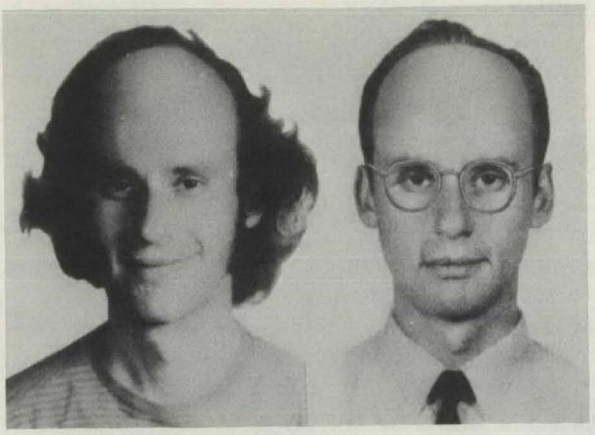
WANTED BY THE FBI



Photographs taken 1971 (retouched)

Ronald Kaufman

Ronald Kaufman, also known as Christopher Charles Mohr, Christopher Curtis Mohr, James Edward Jensen, and Charles E. Owens

Wanted for:

Malicious attempt to damage and destroy buildings by explosives, National Firearms Act; Federal Reserve Act

The Crime

Using the assumed name of Christopher Charles Mohr, Kaufman rented safe-deposit boxes in banks located in the cities of Chicago, Ill., New York, N.Y., and San Francisco, Calif. Kaufman allegedly planted bombs in the boxes, which were individually set to detonate by long range timers using a calendar clock. Anonymous letters describing the planting of the bombs were sent to various newspapers.

On January 13, 1972, a Federal warrant for Kaufman's arrest was issued in San Francisco, Calif.

Description

Age	44, born February 5, 1938, Milwaukee, Wis.
Height	5'10" to 5'11".
Weight	160 to 165 pounds.
Build	Medium.
Hair	Brown.
Eyes	Brown.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Laborer, office worker, mail handler, radio repairman, research associate.
Scars and Marks	Pea-sized birthmark on right ankle.
Remarks	May wear glasses; stutters when excited; described as extremely intelligent; knowledgeable in the German language; meticulously clean and neat; a loner who maintains a spartan existence; a health foods enthusiast; has been diagnosed in the past as having mental problems and indications of homosexual tendencies.
Social Security Nos. Used	389-34-8220 572-98-1398 572-98-4495 398-34-8220 398-34-3220.
FBI No.	242 076 J7.

Classification Data:

NCIC Classification:
PMPICOPI16DI17152116

Fingerprint Classification:

17 M 29 W 101 16 Ref: 29
I 25 U 000 17

Caution

Kaufman may be armed and should be considered very dangerous.

Notify the FBI

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

I.O. 4483

Right middle fingerprint

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Questionable Pattern

The pattern presented this month is questionable and interesting due to the triple looping formations. In the FBI, this pattern is classified as an accidental-type whorl. The reference is necessary because of the questionable nature of the recurve at point A.

693-26