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Law Enforcement Bulletin



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FBI

Law Enforcement Bulletin

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The protection of the law extends to pedestrians of all types. Photo courtesy of Terry Herbig.

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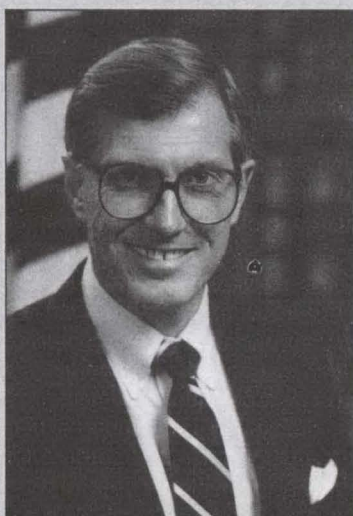
CHANGING OF THE GUARD AT THE BULLETIN

Special Agent Thomas J. Deakin, Editor of the *Law Enforcement Bulletin (LEB)*, will be retiring from the FBI in December, after 28 years of service. A graduate of Washington University School of Law in St. Louis, and a former police officer, he has been the Editor of the *LEB* for over 11 years, which is the longest period served by an Editor in the history of the publication. During Tom's time as Editor, the *LEB* has enjoyed an excellent national reputation. Tom has also used his knowledge and expertise to write *Police Professionalism: The Renaissance of American Law Enforcement*, published this year by Charles C. Thomas. His book is a history of police professionalism and has made a major contribution to the law enforcement profession. Tom plans to write and teach during his retirement, and his FBI friends and the *Law Enforcement Bulletin* staff wish him well and Godspeed.



Special Agent Deakin

Special Agent Gladis



Special Agent Stephen D. Gladis has been named as the new Editor of the *LEB*. A 15-year veteran, Steve has served in the Cleveland, Detroit, San Francisco, and Washington Field Offices. In his last field assignment at the Washington Field Office, Steve supervised the counterterrorism squad.

Also, Steve was an instructor at the FBI Academy in the Education/Communication Arts Unit where he taught public speaking and writing courses in the National Academy Program. Most recently, he has been the Chief of the Speech Unit at FBI Headquarters.

Steve holds a B.A. degree in English from Providence College, an M.A. in Writing and Editing (English) from George Mason University (GMU), and is currently a doctoral candidate at GMU. He is the author of numerous magazine articles on law enforcement and has authored three books, the most recent of which is *ProcessWriting: A Systematic Writing Strategy*.

Report Writing

Do It Right the First Time!

"... a poorly written report frustrates the writer, aggravates the reader, and adds weight to the paperwork burden."

By
WAYNE T. SEAY

*Chief of Detectives
Nassau County Police Department
Mineola, NY*

While report writing has always been an integral part of police work, current demands for documentation threaten to smother primary police functions in an avalanche of paper. Worse yet, many within the ranks see the same report returned to them for a re-write, frequently several times over.

The reasons behind this are generally very basic. Usually, the report fails to supply the required information, or it does not respond to each allegation in the complaint. Perhaps the report did not answer every question in the initiating memo. Less often, poor organization of material and errors in grammar and spelling render a report unintelligible. Whatever the reason, a poorly written report frustrates the writer, aggravates the reader, and adds weight to the paperwork burden.

Yet, if a report can be salvaged in a re-write, it can be properly prepared in the first place. Any writer who can submit an acceptable report after several attempts can learn to do the job correctly in the original draft.

General Guidelines

Clarity, completeness, and correctness characterize good reports. A writer should remember these goals when organizing his or her thoughts and materials before writing a single word.

Clarity

Except for poetry and abstract fiction, a reader should not have to guess what the writer is trying to say. A report is a direct message; its style should reflect its purpose.

Use plain language to convey a clear meaning. Remember that the purpose of the report is to provide information, not compete for a literary prize. Simple words and sentences should be used instead of complex grammatical structures of polysyllabic terms. The report is being written to state facts, not to impress readers.

Most police writers pepper reports with street slang, acronyms, and "cop talk." Yet, using police jargon, bureaucratic language, and excess words does not make a good or acceptable report. Consider the following sentence: "The perpetrator was observed proceeding to his resident location, where he was apprehended and then transported by the writer and his partner to the jail for incarceration." A good report writer would simply state, "We



Chief Detective Seay



Samuel J. Rozzi
Commissioner

followed John Doe to his home, arrested him, and drove him to jail."

Conciseness is also an important quality to incorporate into written reports. Why write a page when a paragraph will suffice? You can save time, energy, and paper if you keep your reports short and to the point.

Two other points are critical to a good report. First, write in the first person and guard against lapsing into the third person. Many writers begin their reports with "I" but become "the writer" before the report is finished. Also use the active instead of the passive voice whenever possible. It is easier and clearer to say, "I wrote the report," rather than, "The report was written by me." After all, it was the writer who took the action, not the report.

Completeness

To ensure a complete report, begin by asking who, what, where, when, why, and how. By addressing certain questions, you can guarantee that the report will contain all pertinent information and will be free of repetitious and ambiguous statements.

Correctness

An unclear report is baffling, and an incomplete report is annoying, but an incorrect report is unforgivable. A report is a statement of facts, and its readers rely on it to be thorough and accurate. A writer must give a clear and factual account in his or her report. To do so, he or she must check the facts before incorporating them into the report and then document them. It is also important to identify clearly any information that is incorrect. After all, your signature is an affirmation of the information contained in the report. A report

can be well-written, well-organized, and responsive, but if it is inaccurate, it is useless.

Specific Guidelines

A report should deal with only one subject. Title the report in the heading and refer to whatever it is intended to answer.

If you don't know the purpose of the report, you won't be able to respond satisfactorily. Know why the report is being written. Is it responding to an internal memo, a letter of complaint, a claim, etc? If the purpose is not clear, ask your immediate supervisor for clarification. The better you understand the reason for the report, the more likely you can satisfy its needs and the less likely the report will be returned to you for a re-write.

Know who the subjects of the report are and describe them in full. When referring to department members, include name, rank, serial number, shield number, and command. Citizens should be identified by name, address, and connection to the events described (witness, victim, complainant, etc).

Reports should be directed to your commanding officer, unless you are responding to a memorandum. In this case, reply to the person originating the memo. With few exceptions, such as confidential information contained in vice or narcotics reports, all reports should be sent through official channels.

Most memoranda set a deadline for a reply. If the due date cannot be met, request an extension, which can be done by a simple telephone call. If the delay will be a lengthy one, submit an interim report describing what has

"... if a report can be salvaged in a re-write, it can be properly prepared in the first place."

been done, what remains to be done, the reason for the delay, and the estimated date of completion.

Preparing a Report

Before beginning to write your report, arrange your thoughts and facts in a logical sequence. Chronological order is the most common method of presentation, but it is not the only approach. You may want to present the most important items first, or state what is least important right from the start. Whatever sequence is used, stay with your organizational plan.

The first paragraph should contain a brief summary of the problem or the reason for the report, the conclusion, and any recommendations. A report is not a mystery novel; the resolution of the matter at hand should not be kept a secret until the final paragraph.

Next, describe briefly the events or incidents that are necessary to fully understand the report. Number each paragraph and avoid abbreviations. In most instances, only facts are included in police reports. Any speculations, comments, recommendations, or opinions that are appropriate should be identified clearly as such in your report.

Outline in the report the steps that were taken to investigate the complaint, claim, or subject. Be careful to include conversations with the complainants or witnesses, especially those who refuse to give a written statement.

The initiating memo may specify directions that must be followed. If so, be sure to adhere to them, replying to all allegations and answering all questions.

At the end of the report, restate your conclusions and repeat any rec-

ommendations that were made at the outset. It is also advisable to attach copies of all pertinent statements, reports, forms, diagrams, and photos, etc. A supervisor is responsible for ensuring that all necessary documentation has been prepared, attached, and listed in the final paragraph. He or she is also charged with seeing that the required number of copies have been made, are complete and legible, and have been attached for forwarding.

Cover Report

If multiple reports are required from different departmental personnel, a cover report should be written to serve as a comprehensive summary of all the material. Pertinent details obtained from all attached documents are to be included in this cover report. Also note all contradictory versions and resolve or explain the contradictions wherever possible. In the conclusion of the cover report, include recommendations where indicated and an account of any action taken.

The reader of a properly prepared cover report, who has no prior knowledge of the subject matter, should be able to understand the event without having to read any of the other attachments. This is, in fact, the purpose and intent of the cover report.

Endorsement

Superior officers should review reports forwarded through official channels for completeness, correctness, and clarity and indicate their approval by endorsing the report with their signature or initials. Additional information, clarification, or comments may be typewritten on the last page of the cover report and signed. Brief endorsement statements can be handwritten.

Synopsis

For reports having more than 1½ pages, prepare a synopsis to be directed to the commissioner or chief. A synopsis sheet contains a brief account of the initiating circumstances, steps taken to resolve the issue, the investigator's findings, and any recommendations.

Summary

Report writing is a vital part of police work. Yet, valuable time and energy are expended on reports that must be re-written because of certain deficiencies. This waste of resources can be eliminated if the writer of any police report follows certain guidelines.

First, organize all thoughts and materials before writing a single word, including everything needed for a complete report. Ensure that all facts presented are accurate. Remember to use plain language to avoid spelling and grammatical errors. This will also simplify punctuation. Be concise, clear, and complete. A good report is a timesaver for everyone, especially for the one who takes the time to write it right, and thus, writes it only once.

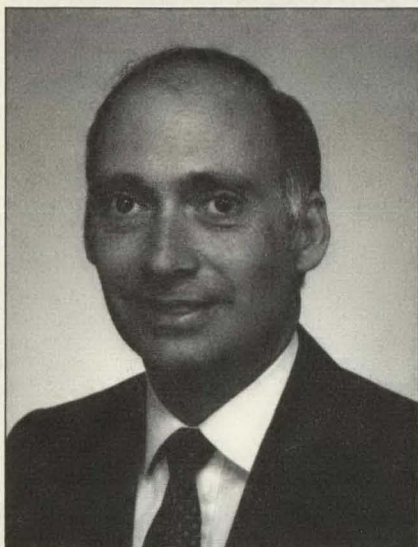
FBI



Hogan's Alley

The FBI Academy's New Training Complex

By
JAMES R. PLEDGER, M.P.A.
Special Agent/Unit Chief
Practical Applications Training Unit
FBI Academy
Quantico, VA



Special Agent Pledger

Practical exercise training is an excellent method for law enforcement instructors to reinforce classroom instruction. Topics such as legal matters, crime scene searches, and the techniques and mechanics of arrest can be combined into one multidisciplinary learning event. Hogan's Alley, the new complex at the FBI Academy in Quantico, VA, provides the realistic environment necessary for effective training.

This facility combines training/office/classroom space into one complex that increases training effectiveness. The construction of this complex is part of the Academy's master development plan, and a small annual appropriation has allowed planning and site development to proceed at a limited pace.

In 1985, the co-location of the Drug Enforcement Agency's (DEA) Office of Training to the FBI Academy created the immediate need for more training space. Construction of Hogan's Alley, first known as the Practical Problem Training Complex, actually began in 1986 and will continue in phases, with the expected completion to be within the next 15 years, depending on budgetary constraints.

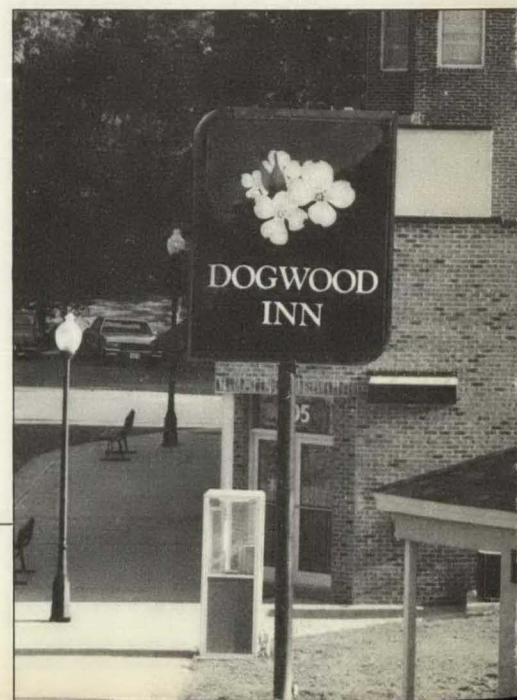
The original concept was to build a fully developed urban area resembling that found in almost any small town across the United States. FBI and DEA instructional staff use the realistic environment to train students in the practical skills of crime scene investigation and photography, surveillance techniques, mechanics of arrest, and other required investigative skills. The flexible architectural design allows for a maximum number of training scenarios.

Training began on a limited basis in February 1987, as the first construc-

tion phase was being completed. The architecture simulates 1920's-1930's urban construction, but subsequent phases will be more modern, consistent with the normal growth and building patterns in most cities. The complex covers approximately 35 of the 60 available acres at a site south of the main FBI Academy grounds. Later, a rural area of 10 acres will include a mobile home and several small outbuildings.

The FBI Academy firearms range, made famous in motion pictures and television, prompted the name "Hogan's Alley." On the original firearms range, surprise shoot/don't shoot situations tested trainee performance and judgment. At the new Hogan's Alley, investigative scenarios test these dimensions, but trainees use only deactivated weapons capable of firing blanks. Also, they must articulate, in writing, the reason for any discharge of this weapon during training.

The new Hogan's Alley complex includes commercial and industrial areas. It contains a bank, post office, drug store, rooming house, bar/deli, pawn shop (actually a front for a clandestine casino), pool hall, motel, movie



Bank robbery subject #2 is arrested in one of the lower motel rooms under the watchful eye of a PAU instructor.

New Agent trainees interview motel manager and display photograph of subject. Note motel "set" in background.

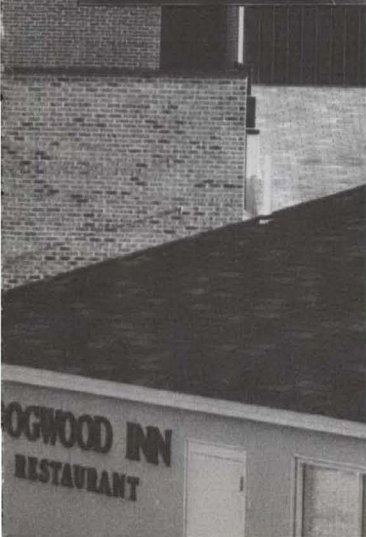


The Dogwood Inn not only has motel rooms for use in practical exercises but also a fully equipped classroom and office space for the Practical Applications Unit.

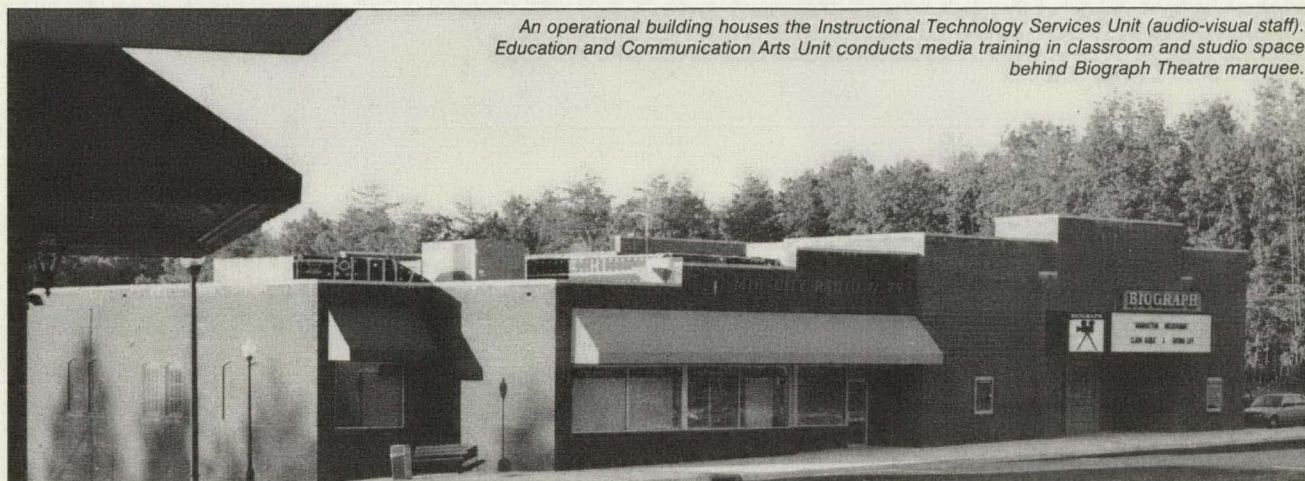


theater, trailer park, warehouse area, and a residential street with townhouses and apartments. The fronts and backs of the buildings often have different uses. For instance, the rear of the row of buildings which includes the bar/deli, pawn shop/casino, and pool hall is part of the motel "set." This facade is actually a false front for part of the motel, but these motel rooms are only 24 inches deep. The use of angles and contrasts in "Hollywood set" technology gives the illusion of depth and space. A trailer park with various sizes and styles of mobile homes is also on the site. The motel "restaurant" is actually a fully equipped, 50-seat classroom used as a place to brief trainees before an exercise and to conduct the post-exercise critique.

Furnishings for the residential buildings, such as sofas, chairs, desks, and bedroom furniture, have come largely from seized and forfeited property obtained in FBI and DEA investigations. An expensive pool table



"Hogan's Alley . . . combines training/office/classroom space into one complex that increases training effectiveness."



An operational building houses the Instructional Technology Services Unit (audio-visual staff). Education and Communication Arts Unit conducts media training in classroom and studio space behind Biograph Theatre marquee.

obtained from a Des Moines, IA, FBI drug case completes the pool hall.

A fleet of cars, also seizures from FBI and DEA cases, augments the regular government vehicles used to support practical exercises. This fleet includes a Lincoln Continental, a Jeep, an older Mercedes-Benz, and a sporty Mercury Capri. When not being driven, these vehicles are parked throughout the complex to simulate a congested downtown area. Street signs, benches, trash cans, a pay telephone booth, and U.S. Postal Service mailboxes also add to the streetscape.

Advanced tactical training requirements influenced the design of the two apartments at Hogan's Alley. The interior hallways and room designs present complex tactical challenges, and the type of construction allows aggressive assault and arrest techniques. Thick, painted plywood walls permit trainees to use guns shooting paint pellets or wax bullets. This rough construction makes maintenance simple by limiting cosmetic damage and allowing easy repainting of the interiors.

Operational buildings within the complex provide space for the Instructional Technology Services Unit (the audio-visual staff) and the Training Services Support Unit (the plumbers, electricians, carpenters, etc., who maintain the FBI Academy). In order to eliminate disruption of daily operations, no practical exercises take place inside these buildings. However, the architectural style is similar to other parts of the facility, and arrests, surveillances, and crime scene searches often occur around the parking lots and exteriors.

Support employees who occupy these operational buildings add the pedestrian and vehicular traffic which is always present in a downtown area. In addition, FBI Academy instructors occupy office space throughout the actual training complex. In this way, cars are always parked on the street, and people are moving about. The Pastime Bar, one of the buildings in the facility, is open as a delicatessen for breakfast and lunch. Customers provide additional casual traffic to create realistic tactical concerns for trainees during

their practical problem exercises.

The FBI Practical Applications Unit (PAU) manages the facility and schedules all training events. PAU responsibilities include developing scenarios that make full use of the potential of Hogan's Alley and augment the New Agent Training Program by administering practical problem exercises to New Agent trainees. The PAU Practical Exercise Coordinator assigned to each New Agent class works closely with the New Agent Training Unit to evaluate the performance of each trainee.

Simple surveillance and arrest problems begin the practical exercise training for FBI New Agents. The PAU uses formal lesson plans containing instructional objectives to standardize training. The complexity of each practical exercise increases as trainee knowledge and experience increases. Each scenario is designed to ensure that the practical exercise is a positive training experience, consistent with the trainee's stage of development.

One of the major practical exercises in the New Agent Training Pro-

gram is a bank robbery/moot court problem. Trainees in the class are grouped into teams, and each investigates a separate aspect of the robbery. The scenario is designed to include interviews, crime scenes, and arrest/search situations that focus on specific issues. Trainees must document their actions with appropriate paperwork as if this were a real case and must live with their mistakes on the witness stand in a moot court. Experienced assistant U.S. attorneys act as defense counsel in a suppression hearing held 1 week later to review evidence obtained during the practical exercise. Under intense questioning, each trainee testifies to his or her part of the investigation. The entire bank robbery/moot court exercise is as true to the actual situation as possible.

The PAU implemented a pilot project using contract role players. Before this, faculty at the FBI Academy served as role players in addition to their regular duties. Contract role players confront trainees with unfamiliar faces and react in ways that are more spontaneous and representative of the general population. This also results in a cost savings, when compared to the cost of faculty role players. Since this project has been successful in increasing training effectiveness, a permanent contractor is being selected to provide these role players.

In addition to the basic training exercises, the FBI and DEA also conduct advanced inservice training at Hogan's Alley. Courses dealing with crime scene search and photography techniques, advanced tactical training, technical training, and others are scheduled on a regular basis. From February 1987, until December 1987, PAU scheduled over 76,108 students hours, representing

524 separate training events.

The facility also serves as a laboratory for research and development of new equipment and techniques. Robot tanks, explosives detectors, cameras, and other devices have been tested at Hogan's Alley. The installation of ample conduit-to-contain telephone lines and other electronic cables simplifies the installation and testing of video, telephone, and other electronic equipment. Limited closed-circuit television has been installed in several locations as a training exercise for technical personnel. These installations are excellent training events for the students, permit new equipment to be tested, and remain in place to allow instructors to monitor future activities.

The potential of this type of facility

is limited only by the imagination of the employees who are responsible for its use and development. The first phase of this project has been an exciting time at the FBI Academy. Staff and trainees have captured the spirit of Hogan's Alley and have fully participated in the remarkable progress that has been made in such a short time. Innovative scheduling procedures permit maximum use of the facility, often by several classes or groups at the same time.

The FBI Academy is eager to share its experience in the Hogan's Alley project and is interested to learn of similar training facilities. Correspondence should be directed to the Training Division, FBI Academy, Quantico, VA, 22135, Attention: FBI Practical Applications Unit, (703) 640-6131. **FBI**

Crime Stats

January Through June 1988

Crime known to law enforcement agencies rose 1 percent in volume during the first half of 1988, as compared to the same period in 1987. The increase, recorded by the FBI's Uniform Crime Reporting Program, was measured by a Crime Index of selected offenses for which law enforcement agencies nationwide provided data.

Violent crime, as measured by the Index, increased 5 percent in volume. Among violent crimes, aggravated assault showed the largest increase, 7 percent. Forcible rape and robbery each increased 1 percent, while murder showed no change.

The property crime total increased 1 percent. In this category, reported motor vehicle thefts were up 8 percent,

and larceny-thefts increased 1 percent. Burglaries declined 2 percent in volume, and the arson total remained stable.

Geographically, three of the four regions of the Nation showed increases in the Crime Index totals during the first 6 months of 1988 over the first half of 1987. The increases were 4 percent in the Northeast, 2 percent in the South, and 1 percent in the West. A decline of 2 percent was experienced in the Midwest.

The Crime Index total decreased 1 percent in the Nation's rural areas and in cities outside metropolitan areas. The suburban areas experienced no change, while cities with populations over 50,000 recorded a 3-percent rise.

The Acquisition of High Technology Systems by Law Enforcement

"... police agencies throughout the world are entering an era in which high technology is not only desirable but necessary in order to combat crime effectively."

By
MATT L. RODRIGUEZ
*Deputy Superintendent
Police Department
Chicago, IL*

EDITOR'S NOTE: This article has been excerpted from a presentation made by the author at the International Police Exhibition Conference in London, England, in September 1988.

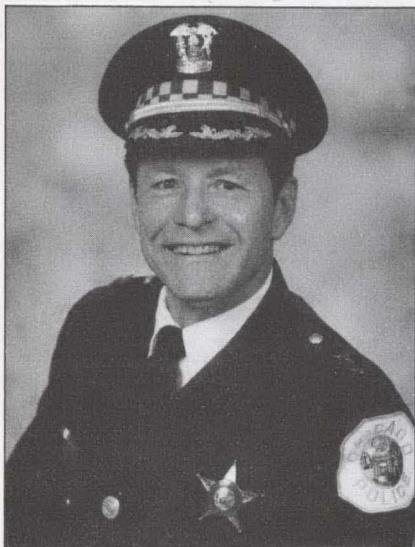
The world's law enforcement executives and managers are today faced with making significant and difficult decisions regarding the acquisition of high technology. Some will silently allow central government engineers, programmers, and other specialists to make police technological acquisitions for them, with little or no law enforcement input.

The various departments around the globe are at different levels of technological deployment. Yet, police agencies throughout the world are entering an era in which high technology is not only desirable but necessary in order to combat crime effectively.

As applied to law enforcement, high technology can be divided into four historical phases. The first is the pre-high technology state of development. The next phase is first-generation technology, primarily computerized information storage, retrieval, and transmission. The third phase is second-generation technology, resulting in computerized pattern recognition, computer technology applied to problem identification and solving, and auto-

mated fingerprint identification systems, as well as noncomputer technological advances, such as lasers and robotics. The fourth phase is future technological developments, such as DNA identification, parallel processing, and artificial intelligence. This generation of high technology will, by no means, be the last to cross the law enforcement horizon.

A significant number of police agencies are still in the first or pre-high technology phase. Some have just entered the second or high technology arena. The few that embraced high technology early have used it for some time and are comfortable with it. A very small number of departments are presently in transition from the second phase of law enforcement high technology. They are once again experiencing the uncertainty and indecision common to generational transition as they move into the third phase of high technology. The law enforcement agencies that have entered phase four worldwide can be counted on one hand. The reason for this has to do with the



Deputy Superintendent Rodriguez

relative uneasiness so many police decisionmakers feel about high technology. Why is this such a common element at **all** stages of technological development?

FACTORS AFFECTING HIGH TECHNOLOGY DECISIONMAKING

The Rapidly Evolving Technological Environment

The rate of change in technology today is precipitous and accelerating rapidly. Just when most administrators believe they have a grasp on technology, it changes. By the time the latest hardware is in operation, it has been overshadowed by newer developments. The period between "state-of-the-art" and "obsolete or out-dated technology" is shrinking.

In the early part of this century, the Chicago Police Department installed a police call box system. This allowed the foot patrolman to communicate with his station and his supervisor with him. The call was from a fixed installation on a telephone line dedicated to police communications. This technology remained functional for over 6 decades and was still used in the early 1970's in a limited capacity.

In the United States, police radios were installed shortly after World War II. This technology is still the primary source of police communication almost 40 years later. Today, by contrast, some computers installed 10 years ago have become obsolete. This rapid rate of change exerts pressure on the modern administrator to make decisions regarding technology within a time frame unheard of in the recent past. Executives and managers must not only de-

cide **what** to buy, but just as importantly, must decide **when** to buy. At what stage of development of a certain high-tech product or system should the modern executive opt to "buy in" to new technology?

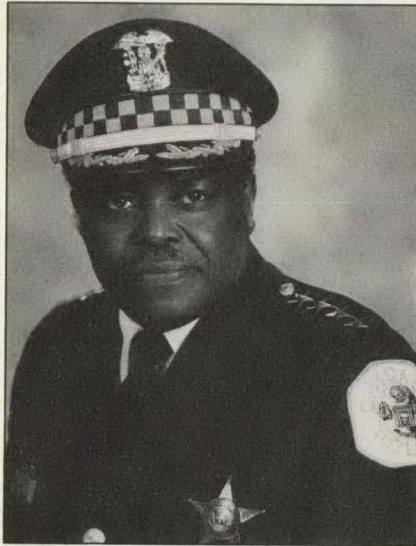
The Personal Experience and Technological Knowledge of the Decisionmaker

Most of today's top law enforcement managers have achieved and excelled in a pre-high technology environment. However, they have no visceral feel for high technology, as do today's young professionals, and often feel inadequate and unprepared to make decisions regarding technology. In addition, the law enforcement environment is often not conducive to ready acceptance of new technological advancements. Resistance to change is often more formidable than in other fields or professions in the same high technology environment.

Historically, law enforcement presents an image of reliance on the personal/subject/investigative/evaluative techniques of the individual investigator. Reliance on technology tends to diminish this shared mystique and self-image of the police. This perception can result in a subliminal or even conscious resistance to change, especially as it relates to the adoption of technology.

Uncertainty as to the Future

Not only must today's police executives and managers become familiar with the technology available today, but they must also become knowledgeable as to what developments are under way or planned within the high-tech industry. In order to forecast with any



Leroy Martin
Superintendent of Police

accuracy what future high-tech needs will be, police administrators must develop a perception of what the relatively long term, as well as the immediate future, will bring in the way of technology.

It is important to be aware that the environment in which these decisions are to be made is not static. It has a dynamism of its own. Our world is ever-changing and is doing so at a rapidly increasing pace. Society existed for 10,000 years with a primary agricultural base. Little more than 100 years ago, industry supplanted agriculture as the dominant means of producing wealth; already, the mass production industry is stepping aside to the informational society.¹

Further complicating the administrator's dilemma is the object of law enforcement's efforts—society. What will society be like in 10 years? In 20 years? In 50 years? Today's administrator must try to determine what legal, economic, and other sociological developments can be logically inferred from today's trends. Many police executives and managers tend to shy away from the area of forecasting, thinking it of dubious value. However, the agency's future technological needs can only be estimated in terms of the agency's continuing mission, goals, objectives, resources, and the expected needs of the community served.

The Relative Immaturity of the High Technology Industry

What we presently conceive as high technology has only been with us for a few decades. Vacuum tube computers, such as Univac, which occupied whole rooms were considered a marvel less than 40 years ago. The micro-chip is a relatively recent innovation. The high-tech industry is still in the infant

stage of development, and as with any infant, this lack of maturity presents problems of its own.

This is especially evident in the incredible, and often impossible, promises of vendors. In order to sell a system or product, some vendors intimate that their product can be made to deliver whatever is desired. This problem is partially caused by the proliferation of many companies trying to gain a foothold in the high-tech industry. In order to survive in high-tech's highly competitive atmosphere, there is an inclination to promise more than can be delivered now, in the hope that future development will enable the vendor to make good on the promise within a time frame acceptable to the customer. Because of this relative industry immaturity and the administrator's awe, the management principles that ordinarily serve as a foundation for other disciplines are not always distinct in the gray area of an emerging industry.

Prevalence of Multiple Correct Options

The high-tech industry is unique in that most decisions involve answers "not totally wrong," but a choice between alternative right options. This prevalence of multiple correct options can serve as a source of frustration for many administrators. No one system or computer is "the right one." The decisionmaker is really concerned with choosing the optimal system or determining which alternative gives the greatest rate of return for the resources invested.

CONCEPTUAL FRAMEWORK

The decisionmaking process appropriate to the acquisition of high tech-

"... executives and managers must be careful not to abdicate decisionmaking responsibility on the premise of technological ignorance."

nology hardware and systems is, in fact, the same one used on a daily basis by administrators in other areas of police work. Basically, it consists of defining the problem or need, identifying available resources, and deciding how best to apply those resources to obtain the desired result.

Police executives and managers are comfortable applying this process on a day-to-day basis, while making decisions that affect the lives and security of both the citizens and police officers within their jurisdictions. These same administrators might decide—and convince their government and citizenry—that their force needs a new headquarters building. They will move forward confidently on a multimillion dollar project that involves determining the location by considering present and future transportation and local environmental conditions, designing a building to meet present and future needs and possible department configurations, and identifying and evaluating the many other elements necessary to bring the project to a successful conclusion. The agency, the government, and the community will be constrained by these decisions for 25 to 50 years.

When compared to a decision of this magnitude, one that is readily embraced by a police administrator, the acquisition of high technology should be reassessed by police decisionmakers, so that it can be placed in its proper perspective.

ALTERING THE MANAGEMENT PERSPECTIVE

Coping with the Rate of Change

Since high technology is changing at an ever-increasing rate, the determination of when to enter this contin-

ually more sophisticated and perpetual flow of products is an important one. But, modern executives and managers cannot afford to be intimidated by this rate of change. While we can learn by awaiting the results of the experience of others, there will never be a period of certainty when the correct decision becomes obvious. What is certain is that administrators cannot wait until the last stage of development of a product before buying it, because the last stage is obsolescence.

In order to diminish the risk inherent in deciding when to purchase, executives and managers must determine whether it is worthwhile to forego the benefits available today in anticipation of even greater benefits becoming available tomorrow. Some of the benefits of postponing purchase can include learning from the experience of others, obtaining more sophisticated equipment, and the expectation of the availability of future resources, etc.

One cost of postponement might be a higher monetary expenditure. Then again, advances may realistically diminish them; this has been the trend for over 2 decades. Loss of potential benefits available today, foregone agency experience and expertise, and frustratingly, judgmental error in trying to acquire the "ultimate product" are other cost factors.

Conversely, the benefits of purchasing in the present include having an operational system in place and obtaining the desired result immediately, taking advantage of today's usually lower costs, the internal and external prestige of being a leader in the field, developing a better understanding of future needs, and having an "in-place system" upon which to build.

In determining when to buy, the administrator must bear in mind that all systems or products eventually become obsolete. The best scenario, if possible, would be to purchase high technology that answers today's needs and simultaneously serves as a nucleus upon which to build the system that answers tomorrow's needs.

Developing Personal Experience and Knowledge

There is no substitute for experience and knowledge. While it is not necessary, or even very desirable, for police executives and managers to become experts in high technology, it is incumbent for every administrator to become familiar with the basics of high technology as applied to police operations. This perspective can be set by taking an historical look at law enforcement technology—where it has been and where it is today. As stated earlier, high technology in the field of law enforcement can be viewed in four phases.

The first, or pre-high technology phase, may actually be a misnomer. In their day, both the integration of the automobile into police work and the adaptation of radio communications were technological innovations. Although they seem commonplace today, yesterday's administrators were making decisions not unlike those demanded today.

The second phase has been identified as the integration of the first generation of computer technology to police work. This stage is primarily concerned with information storage, retrieval, and transmission. This phase can be exemplified by networking remote computer terminals, both stationary and mobile (in vehicles), which can

"What must be determined is how today's needs will evolve into tomorrow's needs and what technology will be available to meet these needs."

access and input information stored in a mainframe computer bank. Examples would include Chicago's "hot desk" system, which informs the inquirer if an individual has an outstanding arrest warrant, a valid driver's license, or other pertinent enforcement information of value to the police officer. This system is interfaced with the FBI's National Crime Information Center (NCIC), which provides the same type of information on a national scale and in parts of Canada.

The third phase, involving second-generation law enforcement technology, concerns itself with computerized pattern recognition, such as an automated fingerprint identification system. This includes the direct read/digitized transmission of fingerprints, computer-aided dispatch systems, and a myriad of systems for developing computerized crime patterns and geo-coding crime information. This phase includes noncomputer advances, such as laser technology in crime scene processing, robotics (especially in regard to bomb removal), use of cellular phones, the development of psychological profiles, and numerous other scientific advances.

The last phase is concerned with future technology or technology which is on the horizon. An example would be the DNA identification process being pioneered in England. Others include the advent of parallel-processing and some forms of artificial intelligence.

It is not necessary for police executives and managers to become experts in technology. Expertise and guidance are available. Some countries have organizations dedicated to furthering law enforcement automation. In the United States, the National Institute

of Justice does a commendable job in setting standards and guidelines, disseminating information, and assisting in funding.

The administrator must, however, become personally familiar with the general area of high technology. The important thing is that executives and managers must be careful not to abdicate decisionmaking responsibility on the premise of technological ignorance. The skills and experience developed as administrators are what is needed for successful decisionmaking. Administrative accountability is not diminished because the executive and manager has a limited understanding of technology. It is necessary to understand the potential, not the rudiments, of the technology. Administrators should use the same business principle approach they use in other areas of police operations.

Demystifying the Future

After familiarizing oneself with today's technology, the administrator must attempt to determine what developments are under way or planned by industry. This can only be done effectively by establishing a liaison to determine in which direction industry is moving. This need not be a personal liaison; an executive and manager need only have knowledgeable personnel on staff. Their function would be to make industry aware of law enforcement's needs, as well as getting a grasp on what industry believes is possible in the way of technology. Administrators should apply the same degree of enthusiasm to gathering information of technological advances as they apply to gathering or networking information on crime, criminals, and factors contributing to crime.

There generally is little problem determining what is needed today. Areas that would profit by automation or the application of high technology are usually highly visible or pointed out by personnel at all levels. What must be determined is how today's needs will evolve into tomorrow's needs and what technology will be available to meet these needs.

What is necessary is to determine present short-term needs and future long-range needs and to understand how they interrelate. It is also important to understand how the technology acquired today can be used or adapted to meet tomorrow's needs. Today's needs are generally self-evident, but tomorrow's needs remain an uncertainty. However, by becoming knowledgeable about present trends and sociological forecasts, they can be anticipated with a reasonable degree of accuracy.

In the area of law enforcement, Special Agent William L. Tafoya of the FBI's Training Academy at Quantico, VA, recently applied a sophisticated forecasting method, the Delphi technique, in an effort to determine the scope and role of American law enforcement into the 21st century. Briefly, the Delphi technique was developed by Olaf Helmer and Norman Dalkey in 1953 at the Rand Corporation in Santa Monica, CA. Devised to address a specific, highly specialized military problem, to quote SA Tafoya, "It is a structured group process undertaken in a way that maximizes the likelihood of reaching consensus and identifying dissensus. The principal characteristics of the method are: 1) Anonymous structured exchanges between members of a panel 2) experts who are furnished with 3) controlled feedback

and 4) statistical group response between iterations of propositions posed by a moderator using a series of questionnaires." ² The important thing about the Delphi technique, however, is the anonymity of responses. This enables law enforcement experts to express their views freely without fear of any of the negative consequences of conventional group dynamics, and yet, receive timely feedback and input from other experts on that panel.

SA Tafoya applied this technique to the area of law enforcement by developing chronological forecasts using a panel of law enforcement management experts during a 15-month study. This panel reached a consensus that in the United States, the following events, among others, would occur near the times given:

- 1) By 1990, computer-related crimes will increase in number by more than 50 percent over the 1984 rate.
- 2) By 1995, community involvement and self-help (e.g., community policing) in local policing will become common practice in more than 70 percent of the Nation.
- 3) By 1995, university/ professionally conducted research will have a direct and positive influence on the development of crime reduction strategies.
- 4) By 1995, acts of political terrorism in the United States will increase in number more than 50 percent over the 1984 rate.
- 5) By 1997, state-of-the-art high technology will be routinely used in crime reduction.

6) By 1999, urban unrest and civil disorder (of the 1960's and 1970's variety and magnitude) will take place throughout America.

7) By 2000, computer-based instruction will become the standard for training in more than 70 percent of all police agencies.

8) By 2000, more than 70 percent of the "invasion of privacy" law suits will successfully demonstrate inadequacies of and inaccuracies in police computerized files.

9) By 2000, crimes committed using high technology will become so complex the police will be unable to do more than take initial reports.³

These consensus forecasts show a positive correlation with concerns voiced during the 36th annual convention of the Atlantic Association of Chiefs of Police held in St. John's, Newfoundland. While the discussion centered on problems pertaining to Canada, they are similar to expected occurrences in the United States and other countries. Among the developments foreseen are:

- 1) The development of a national strategy to curtail the supply and demand for illicit drugs.
- 2) Labor conflicts will become violent. "Unemployment and labor disputes in days to come will produce more violent reaction and will require police intervention."
- 3) Citizens will take action themselves through frustration and a perception of inadequate protection.

4) The standardization of information exchange through automation will present greater opportunity for information theft. Protection of private information will be a challenge for the police.

5) Overall crime will decrease with the reduction of the 18-30 high crime group. However, the general population will be older and the perception and fear of crime will increase.

6) Citizens will be more critical of, and will want to be more involved in working with, the police.⁴

The similarity of these Canadian findings with the conclusions of SA Tafoya's study tend to corroborate the likelihood of these developments taking place in the United States, Canada, and other cultures in parallel stages of social and technological development. Developing countries could also use the Delphi technique to forecast events in their countries as well. But, no matter what stage of development a country is in, it can be expected that high technology will play an even greater role in police services.

Compensating for the Industry's Immaturity

As stated earlier, many administrators have been led to expect incredible and impossible returns on their technology investment. This is not only because many managers are adrift on an ever-changing sea of technology but also because many high technology people are themselves uncertain as to their systems' abilities and potential. There has been an avalanche of computer products and companies. The

"... it is vitally important that today's forward-looking law enforcement administrator maintain a conceptual view that continually relates to past, present, and future."

competition between these products and companies has led to confusing claims and promises. The executive and manager can clarify the situation by dealing with only reputable companies with an established track record.

The same cost/benefit analysis used for other investments should be applied to high technology. The administrator should see solid performance measures before investing and must demand cost justification and measurable benefits in understandable terms. More importantly, executives and managers should tell the industry what is needed and desired. Once this is known to the industry and resources are applied to accomplish what is needed, it would be unusual for the industry not to deliver in a reasonable amount of time.

Rethinking Multiple Correct Options

Instead of serving as a source of frustration, the prevalence of multiple correct options can be looked upon as a challenge. While a product or system, once acquired, may prove to not meet fully ever-changing requirements in a dynamic environment, it would be unlikely that the soundly acquired nucleus of a system, purchased with tomorrow's needs and technology in mind, could not be modified as required. What is important is that the first step be taken and that a general direction be established which can be followed and extended by the acquiring agency.

CONCLUSION

It is extremely important that administrators become personally aware of and involved in evaluating their personnel resources. Those who are en-

gaged in the agency's computer and other technological programs are of particular concern. Wherever possible, the administrator should strive to make certain that the agency is employing the best available talent in this area, and most importantly, that they are personnel who can relate law enforcement needs to "state-of-the-art" technology. To the chief executive officer, this must be a continuing vigilance.

Administrators must develop innovative approaches to acquiring the most advanced expertise available, so that sophisticated knowledge in some of the more difficult decisionmaking areas of technological acquisition is properly used. It has been the experience of the Chicago Police Department that the finest and most experienced experts in the private sector are more than willing to participate in these processes, when approached in the proper manner. As an example, in the department's highly successful acquisition of an automated fingerprint identification system, a private sector overview committee was enpaneled. These experts from the private sector were called upon to offer insight, advice, and evaluation at all the major steps in the acquisition of this costly, highly sophisticated technological system.

The department is presently well into the design and acquisition of a computer-aided dispatch system. Expectations are that the communications system will be completely revolutionized which, only a few short years ago, was called one of the most advanced in the Western Hemisphere. The design is presently being formulated with the expectation that it will be a stepping stone to a period of policing in which computerized reporting will be effective and

operational. One of the first elements in this process was the search for and appointment of an appropriate private sector oversight committee. Again, these experts were extremely willing to participate and provide their collective expertise.

Finally, no matter what techniques are used, it is vitally important that today's forward-looking law enforcement administrator maintain a conceptual view that continually relates to past, present, and future. Such executives and managers must have the ability to "create a vision" or "project an image." This conceptual perspective must be based on acquired knowledge of law enforcement, total experiences and learning regarding technology, and evaluation of the intelligence information garnered regarding the trends of technology for the future. All of these factors need to be synchronized with evaluations based upon experience, intelligence, and research regarding the future needs of law enforcement.

Throughout this continuing process, police administrators must be prepared to "plug in" modifications where necessary, based upon expected changes in the technological trends and the sociological directions of the agency's constituency. Looking at these problems from an anticipatory perspective will prove to be of assistance in the acquisition of high technology systems.

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Footnotes

¹Alvin Toffler, *The Third Wave* (New York: William Morrow, 1980).

²William L. Tafoya, "Into the Future . . . Looking at the 21st Century," *Law Enforcement Technology*, September/October 1987, pp. 16-60 and 82-86.

³*Ibid.*

⁴"Criminal Justice," *The Americas*, vol. 1, No. 1, February/March 1988.

Documents and Compulsory Self-Incrimination

Fifth Amendment Considerations

"... the fifth amendment privilege against compelled self-incrimination protects the contents of documents from disclosure only in extremely limited circumstances."

In an 1886 decision, *Boyd v. United States*,¹ the U.S. Supreme Court held that a court order directed to the owners of property which was the subject of a forfeiture action, commanding them to produce an invoice that was to be used as evidence against them, violated their fifth amendment right not to be compelled to be witness against themselves. The Court stated, "... any compulsory discovery by ... compelling the production of [a defendant's] private books and papers, to convict him of crime or to forfeit his property is contrary to the principles of a free government."² This broad statement was later interpreted by some courts to bar, on fifth amendment grounds, the government from introducing the *contents* of a defendant's documents against him in a criminal case.³ In other cases, the *Boyd* case was held to be a blanket prohibition of commanding a defendant, by subpoena or court order, to *produce* documents to be used against him in a criminal prosecution.⁴ Recent Supreme

Court decisions have made clear that neither of these interpretations is entirely correct.

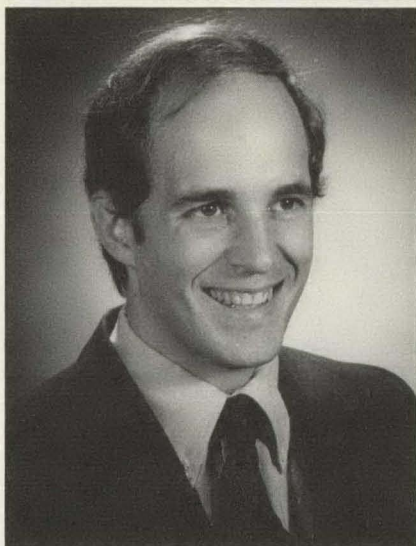
The fifth amendment serves as a bar to the introduction into evidence of the contents of a defendant's documents only in extremely limited circumstances. A defendant's fifth amendment right not to be compelled to produce a document is also quite narrow. This article will examine cases of the U.S. Supreme Court restricting the reach of fifth amendment protection for defendants challenging the admission into evidence of the *contents* of their documents. It will also discuss the circumstances under which a defendant may successfully challenge a court order to *produce* documents that are in his possession.

Circumscription of Fifth Amendment Privilege Relating to Contents of Documents

In the *Boyd* decision, the U.S. Supreme Court relied upon the fifth

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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.



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amendment provision commanding that "... no person ... shall be compelled in any criminal case to be a witness against himself ..." as grounds to bar the use of the documents in question against the Boyds. In subsequent cases, the Court proceeded to limit in three significant ways this use of the fifth amendment privilege to prevent the admission of documents into evidence. First, the application of the privilege was restricted to the documents of natural persons, thus denying the privilege to the records of collective entities such as corporations. Second, the privilege applicable to the contents of documents was limited to records the *creation* of which had been compelled, thus denying privilege where documents were voluntarily prepared. Third, in the narrow remaining area of privilege where the preparation of documents of natural persons had been compelled by the government, the application of the privilege was restricted to documents the contents of which were testimonial, thus allowing a person to be compelled to prepare a document not containing testimonial statements. Each of these limitations on the application of the privilege will be considered in turn.

Denial of Fifth Amendment Privilege to Collective Entities

In many criminal prosecutions using documentary evidence, the documents are those of collective entities such as corporations rather than the documents of individuals. The U.S. Supreme Court has restricted fifth amendment protections to persons, and thereby significantly circumscribed the sweep of the *Boyd* decision. In *United States v. White*,⁶ the Court stated that the "constitutional privilege against

self-incrimination is essentially a personal one, applying only to natural individuals."⁶ In *White*, the Court relied on a previous decision, *Wilson v. United States*,⁷ which held that the records of a corporation were beyond the scope of any fifth amendment privilege. This rule applied regardless of whether it was the corporation or its officers that were the intended target of the prosecution.⁸ This denial of a fifth amendment privilege to corporations is apparently absolute, applying to the records of extremely small corporations,⁹ as well as the records of corporations that have been dissolved.¹⁰

The Supreme Court has also ruled that unincorporated associations and organizations possess no fifth amendment privilege against compelled self-incrimination.¹¹ Noting that extension of fifth amendment protection to organizations would "... largely frustrate legitimate governmental regulation of such organizations,"¹² the Court stressed the importance of such regulation as follows:

"... [the] scope and nature of the economic activities of incorporated and unincorporated organizations and their representatives demand that the constitutional power of the federal and state governments to regulate those activities be correspondingly effective. The greater portion of evidence of wrongdoing by an organization or its representatives is usually to be found in the official records and documents of that organization. Were the cloak of the privilege to be thrown around these impersonal

“... the ‘constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals.’ ”

records and documents, effective enforcement of many federal and state laws would be impossible. The framers of the constitutional guarantee against compulsory self-disclosure, who were interested primarily in protecting individual civil liberties, cannot be said to have intended the privilege to be available to protect economic or other interests of such organizations so as to nullify appropriate governmental regulations.”¹³

Thus, no fifth amendment privilege is available to “... an organization which is recognized as an independent entity apart from its individual members.”¹⁴ In applying this rule, the Court requires that the group in question “... be relatively well organized and structured, and not merely a loose, informal association of individuals. It must maintain a distinct set of organizational records, and recognize rights in its members of control and access to them.”¹⁵ The Court has applied this “collective entity rule” to unincorporated labor unions,¹⁶ political organizations,¹⁷ and partnerships,¹⁸ denying these organizations a fifth amendment privilege against compelled self-incrimination.

Denial of Fifth Amendment Privilege to the Contents of Documents Voluntarily Prepared

In *United States, v. Doe*,¹⁹ the U.S. Supreme Court asserted a second substantial limitation on the use of the fifth amendment privilege as a bar to the admission of documentary evidence. The Court held in *Doe* that a person's right against being compelled to incriminate himself did not make privileged the contents of that person's tax records that were in his possession. The Court

noted that the “... Fifth Amendment protects the person asserting the privilege only from *compelled* self incrimination. [citation omitted] Where the preparation of business records is voluntary, no compulsion is present.”²⁰ A logical extension of the Court's reasoning eliminates the validity of any claim of fifth amendment protection for the contents of documents voluntarily prepared or created. Justice O'Connor, writing separately in *Doe*, addressed the issue as follows:

“... the Fifth Amendment provides absolutely no protection for the contents of private papers of any kind. The notion that the Fifth Amendment protects the privacy of papers originated in *Boyd v. United States*, but our decision in *Fisher v. United States*, sounded the death knell for *Boyd*. ‘Several of *Boyd*’s express or implicit declarations [had] not stood the test of time,’ and its privacy of papers concept ‘ha[d] long been a rule searching for a rationale ...’ Today’s decision puts a long overdue end to that fruitless search.”²¹ (citations omitted)

Consequently, the contents of a document would be protected only where an individual was compelled by the government to create the document.²²

Denial of Fifth Amendment Privilege to Contents of Documents Not Testimonial in Nature

In a 1988 case, *Doe v. United States* (*Doe II*),²³ the Supreme Court further circumscribed the fifth amendment privilege relating to the contents of documents. In this case, the target of a grand jury investigation was ordered to execute consent forms empowering foreign banks to disclose any account records relating to him they

might possess. The target asserted his fifth amendment privilege not to be compelled to incriminate himself and declined to comply. Consequently, he was held in contempt and appealed.

In *Doe II*, the Court conceded that the “... execution of the consent directive at issue in this case obviously would be compelled, and we may assume that its execution would have an incriminating effect.”²⁴ The Court observed, however, that the fifth amendment privilege against compelled self-incrimination applied only to testimonial communications, to “... acts that imply assertions of fact.”²⁵ Amplifying this requirement, the Court noted that “... in order to be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information.”²⁶

The Court then examined the language of the consent directive in question and found it communicated no factual assertions. The consent did not acknowledge that an account in a foreign financial institution was in existence or that it was controlled by the signer of the consent, and also failed to indicate whether documents or other information relating to the signer were present in the foreign bank. It did not even identify the relevant bank. Though noting the existence of “... very few instances in which a verbal statement, either oral or written, will not convey information or assert facts,”²⁷ and thus be testimonial, the Court nonetheless held the consent directive in question non-testimonial and upheld the lower court's sanction of contempt.

In summary, the fifth amendment privilege against compelled self-incrimination protects the contents of documents from disclosure only in extremely

"... a threshold requirement to successfully asserting a fifth amendment privilege claim is that the claimant of the privilege is being compelled to either act or speak."

limited circumstances. First, the document in question must be the record of either an individual or his sole proprietorship. Second, the creation or preparation of the document must have been compelled by the government. Finally, the contents of the document must be testimonial in nature. It is therefore important for investigators to understand that once the government legally obtains a document, the fifth amendment privilege against compulsory self-incrimination will rarely impede the introduction into evidence of the contents of that document in a criminal prosecution. The next section will explore the extent to which a person can be compelled to *produce* that document.

Fifth Amendment Privilege Against Compulsion to Produce Documents

As judicial decisions limited fifth amendment protection for the contents of documents, courts began to explore what protection the fifth amendment might provide to persons against being compelled by the government to bring forward or *produce* documents in their possession. In *Fisher v. United States*,²⁸ the U.S. Supreme Court observed that the act of handing over documents in response to a subpoena or summons might constitute a testimonial communication in and of itself privileged under the fifth amendment. The Court stated that the "...act of producing evidence in response to a subpoena nevertheless has communicative aspects of its own, wholly aside from the contents of the papers produced. Compliance with the subpoena tacitly concedes the existence of the papers demanded and their possession or con-

trol by [the recipient of the subpoena]. It would also indicate the [recipient's] belief that the papers are those described in the subpoena."²⁹ Consequently, under certain circumstances, a person may successfully resist *producing* documents in his possession based upon the fifth amendment privilege against compulsory self-incrimination.³⁰

Since the *Fisher* decision, the Court has marked the boundaries of this use of the privilege. In order for such a fifth amendment objection to be valid, three requirements must be satisfied. First, the person objecting must be the one under subpoena or court order to act. Second, the action being compelled must be testimonial in nature. Finally, the person being compelled must be acting in a personal rather than representational capacity.

Person Claiming Privilege Must Be Placed Under Compulsion to Act

In *Andresen v. Maryland*,³¹ the U.S. Supreme Court noted that a threshold requirement to successfully asserting a fifth amendment privilege claim is that the claimant of the privilege is being compelled to either act or speak. In *Andresen*, a search warrant was executed on the defendant's business premises, and documents were seized as evidence. The Court rejected a claim of fifth amendment privilege, stating that Andresen "...was not asked to say or do anything. The records seized contained statements that [Andresen] had voluntarily committed to writing. The search for and seizure of these records were conducted by law enforcement personnel."³² Thus, where a search warrant is used, freeing the defendant of compulsion to do anything

but step aside, no fifth amendment privilege is violated.

Claims of fifth amendment privilege have likewise been rejected where subpoenas or summonses were employed in instances when the persons directed to act were someone other than the defendant.³³ For example, in *Couch v. United States*,³⁴ an Internal Revenue summons was directed to the defendant's accountant, directing him to produce records of the defendant in the accountant's possession. Enforcement of the summons was approved, since the summons did not require the defendant, the person claiming privilege, to do anything.

A similar result was reached in *Fisher*, where a summons was served on Fisher's attorney directing him to produce Fisher's records that were in the attorney's possession. Because the attorney, not Fisher, was being compelled to act, Fisher was held to have no valid fifth amendment objection to enforcement of the summons. It should be noted that some other sort of privilege might apply in some circumstances, such as the attorney-client privilege. A discussion of such privileges is beyond the scope of this article.

The Compelled Act of Production Must Be Testimonial

A subpoena for documents is a court order directing a specific person to bring before a court or other forum certain specified documents. The Supreme Court requires that in order for a communication to be privileged under the fifth amendment, it must be testimonial. Thus, if a recipient of a subpoena for documents is to successfully assert a fifth amendment privilege, it

must be shown that his act of delivery is a testimonial communication, that the delivery will "explicitly or implicitly, relate a factual assertion or disclose information."³⁵

As the Supreme Court noted in *Fisher*, the act of delivering documents in response to a subpoena can have certain testimonial aspects even where the subject of the subpoena gives no testimony;³⁶ through the act of production, the subject of the subpoena indicates a belief that the documents delivered are those specified in the subpoena. Delivery is also indicative of the fact that the documents were in the control of the person delivering them. Such implied assertions often constitute evidence of critical importance to a criminal prosecution and will likely be assumed by courts to be incriminating in fifth amendment terms.³⁷ It is, therefore, important for investigators to understand that where a subpoena for documents is directed to a suspect or defendant, that person will likely be able to successfully claim that the act of handing over the documents constitutes compelled self-incrimination. To overcome this potential fifth amendment objection, investigators should consider the feasibility of obtaining a search warrant to seize such documents, as occurred in *Andresen*.

The Person Compelled Must Be Acting in a Personal Capacity

In *Braswell v. United States*,³⁸ the Supreme Court approved the compulsion of the president of a small corporation to produce corporate documents in his possession, even though his act of production would tend to personally incriminate him. The Court held that no fifth amendment privilege was applica-

ble because the president would be acting as a representative of the corporation, rather than in a personal capacity, when delivering the corporation's documents. As noted earlier in this article, the corporation could assert no fifth amendment privilege because of its status as a collective entity. Consequently, where a person holds records of a collective entity, he may be compelled by the government to produce them.

The Court in *Braswell* did provide something of a shield for the person compelled to act in a representative capacity by holding that the act in question shall be deemed to be the act of the collective entity rather than of the person.³⁹ In other words, the jury at the defendant's trial will not be told that the defendant produced the documents.⁴⁰

Conclusion

Where a subpoena or court order is used to direct a suspect or defendant in a criminal case to hand over documents in his possession, and the documents sought are not those of a collective entity, the suspect or defendant may successfully resist compliance with the order based upon his fifth amendment privilege against being compelled to be a witness against himself. When confronted with this prospect, an investigator may choose to use a search warrant, thereby circumventing a fifth amendment privilege claim.⁴¹ Where a search warrant is not a viable option, the Supreme Court has suggested that the use of a statutory grant of immunity to bar the government from presenting evidence that the defendant delivered the documents will eliminate the incriminating consequences of the

act of production.⁴² Although such a grant of immunity presents significant concerns for the prosecution, it is a means of acquiring the documents in question over a fifth amendment privilege claim.

The Supreme Court has recognized the importance of documentary evidence in criminal prosecutions. Its recent decisions regarding the fifth amendment privilege have made apparent the relatively few limits that privilege places on government efforts to gain custody of documents for use as evidence in a criminal prosecution.

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FOOTNOTES

- ¹ 116 U.S. 616 (1886).
- ² *Id.* at 632.
- ³ See *Gouled v. United States*, 255 U.S. 298, 306 (1921).
- ⁴ See *Ballmann v. Fagin*, 200 U.S. 186 (1906).
- ⁵ 322 U.S. 694 (1944).
- ⁶ *Id.* at 398.
- ⁷ 221 U.S. 361 (1911).
- ⁸ *Id.*
- ⁹ *Braswell v. United States*, 108 S. Ct. 2284 (1988).
- ¹⁰ *Grant v. United States*, 227 U.S. 74 (1913).
- ¹¹ *United States v. White*, *supra* note 5.
- ¹² *Bellis v. United States*, 417 U.S. 85, 90 (1974).
- ¹³ *Supra* note 5, at 700.
- ¹⁴ *Supra* note 12, at 92.
- ¹⁵ *Id.* at 92, 93.
- ¹⁶ *Supra* note 5.
- ¹⁷ *Rogers v. United States*, 340 U.S. 367 (1951).
- ¹⁸ *Supra* note 12.
- ¹⁹ 465 U.S. 605 (1984).
- ²⁰ *Id.* at 610.
- ²¹ *Id.* at 618 (Justice O'Connor, concurring).
- ²² *Id.* It is noteworthy that a statute requiring the keeping of records or the filing of a form (a tax return for example) is not government compulsion to create the contents of the records or form. Consequently, to preserve one's fifth amendment privilege, a person must file the required form, omitting the contents of the form withheld based upon the privilege, and stating the fact that the contents have been withheld based upon the privilege. See *United States v. Sullivan*, 274 U.S. 259 (1927); *Garner v. United States*, 424 U.S. 648 (1976).
- ²³ 108 S. Ct. 2341 (1988).
- ²⁴ *Id.* at 2346.
- ²⁵ *Id.* at 2347.
- ²⁶ *Id.*
- ²⁷ *Id.* at 2349.
- ²⁸ 425 U.S. 391 (1976).
- ²⁹ *Id.* at 410.

³⁰ It should be noted that the fifth amendment is not the only potential obstacle to the use of a subpoena to obtain documentary evidence. The subpoena must comply with fourth amendment "reasonableness" standards as well. Generally, subpoenas have been approved for nonprivate business records, but may not prove effective where more-private records or papers are sought. See *United States v. Bennett*, 409 F.2d 888, 896-897 (2d Cir. 1969).

³¹ 427 U.S. 463 (1976).

³² *Id.* at 473.

³³ *Fisher v. United States*, *supra* note 31.

³⁴ 409 U.S. 322 (1973).

³⁵ *Supra* note 25.

³⁶ *Supra* note 29.

³⁷ *Supra* note 24.

³⁸ *Supra* note 9.

³⁹ *Id.* at 2295.

⁴⁰ *Id.*

⁴¹ *Supra* note 31.

⁴² *Supra* note 19.

BOOK REVIEW

Assault on Violence: You Need Not Be A Victim, by Alastair Segerdal, Arcadia-Ford Publishing, Keyston Road, Riverside, WA 98849, 230 pp., \$7.95 (paperback), \$16.95 (cloth binding), plus postage.

Beginning with a fascinating review of the most famous serial murderer in history, England's century-old Jack the Ripper case, this book is an excellent exposition and analysis of the problems of serial violence in today's America. As the foreword notes, Dr. Segerdal's work "is about the hitherto hidden violence that is now being studied, and more importantly, publicly discussed: serial murderers, rapists, child molesters, and spouse abusers."

This author, like his father before him, is a long-time student of the criminal process. He explains how the incidence of violent crime can be reduced with newly developed crimefighting tools and citizen cooperation. These may mark the beginning of the end of our ever-broadening spiral of violence. *Assault on Violence* shows how law enforcement meets the challenges of today's serial violence against our citizens, especially our women and our children.

FBI Academy personnel, in partnership with local law enforcement,

have spearheaded research at *how*, not *why*, violent crimes are committed. Much of this research has been disseminated to law enforcement practitioners through the *FBI Law Enforcement Bulletin* and other criminal justice journals, but this is the first time this information has been gathered together in a format suitable for the thinking public. As recent research, the 1950's Ten Most Wanted Program, and most recently, the television show "America's Most Wanted" demonstrate, public cooperation is definitely needed to fight crime.

With chapters on violent criminal profiling, the crime of rape, abuse of children, and violence against spouses in the American home, this author then covers "pampering villains and ignoring victims" in a chapter headed "Let's Hear It For The Victims." The following chapters cover police and community cooperation, science and the efforts against violence, plus the connection between violence and drugs.

The author concludes by noting "how pallid and dull human nature would be without a spot of healthy aggression in our veins. But *criminal* violence—that we must never learn to accept. Each time we do so, we die a little as a great and caring nation."

By Thomas J. Deakin, J.D.

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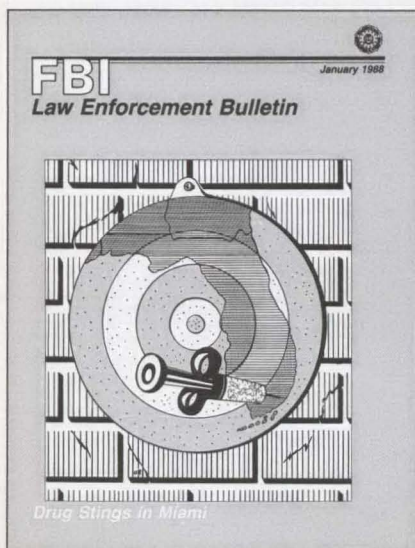
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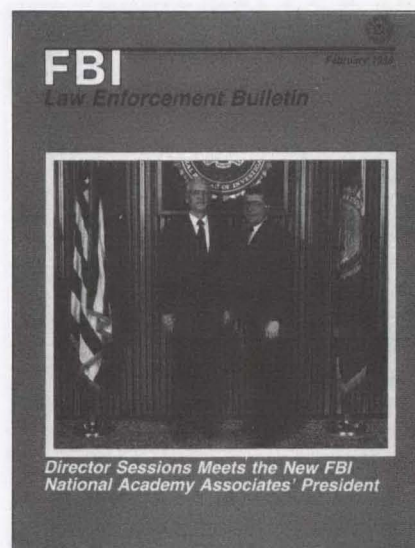
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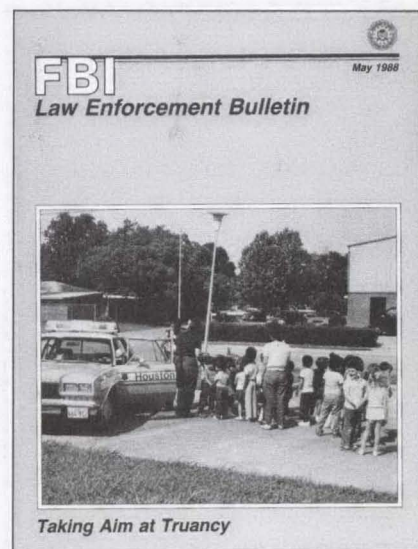


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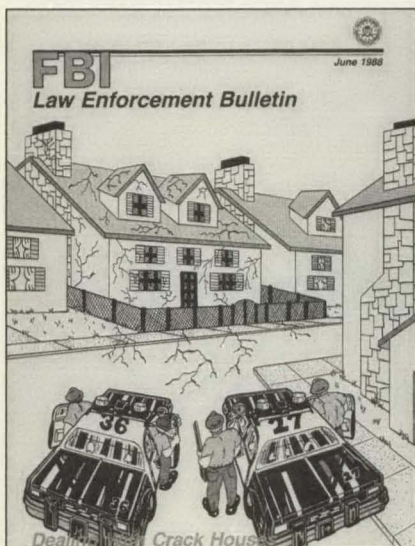
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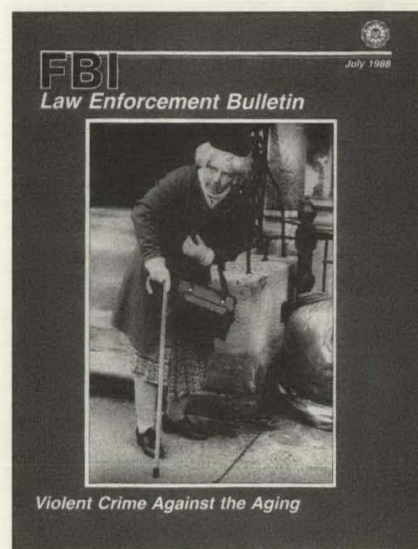
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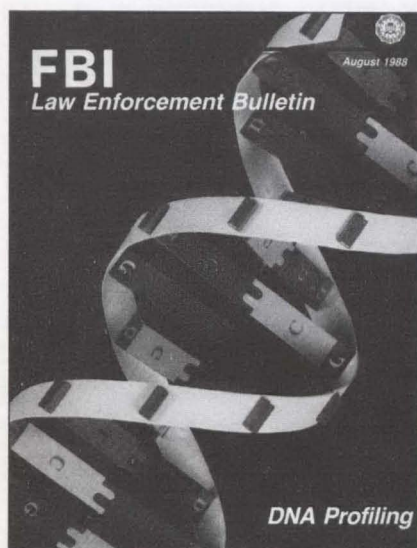
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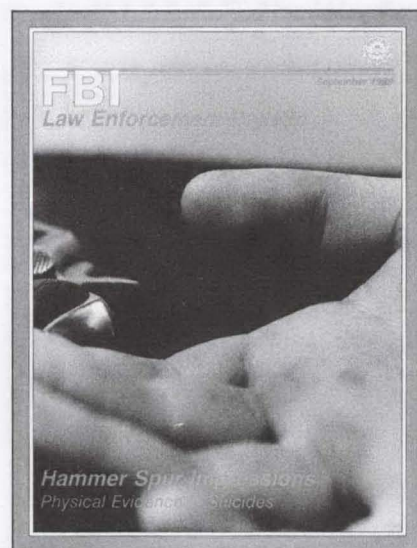
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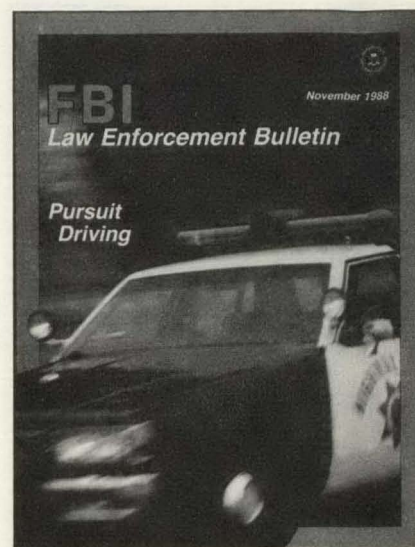
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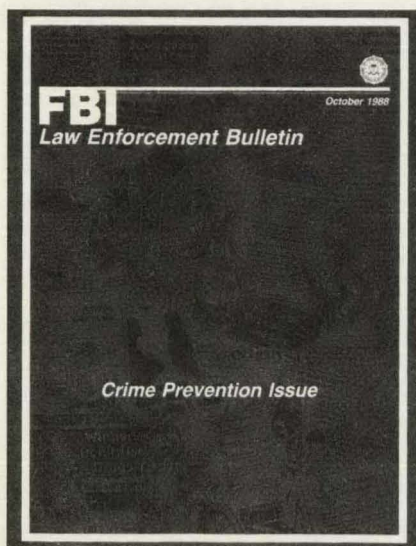


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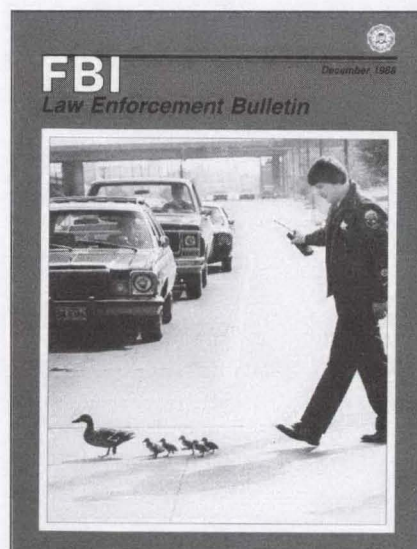
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FBI



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 and 1980 (right)

Lawrence William Fishman,

also known as Larry Fishman, Lawrence Fishman, Lawrence W. Fishman. W; born 8-29-51; Washington, DC; 5'11" to 6'; 160 to 180 lbs; med bld; short curly hair; brn eyes; med comp; occ-cab driver, public speaker, public health lobbyist, editor, research student, law clerk, lawyer; remarks: Wears glasses, has been treated for various mental disorders, has been known to frequent university facilities and obtain lodging in YMCA residences or communal housing near universities. Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

AAAAAAAA12PMAAAAAA10

Fingerprint Classification:

5 aA2a 12
1 A2a

I.O. 4967

Social Security Number Used: 214-52-6075

FBI No. 686 036 S5

Caution

Fishman is being sought in connection with the murder and wounding of two members of his family where the victims were allegedly shot with a 9mm automatic pistol. Fishman should be considered armed and dangerous.



Right thumb print



Photographs taken 1982 and 1983

Victor Manuel Gerena,

also known as Victor Ortiz, Victor M. Gerena Ortiz, Victor Manuel Gerena Ortiz. W; born 6-24-58; New York, NY; 5'6" to 5'7"; 160 to 169 lbs; med-stocky bld; brn hair; green eyes; dark/med comp; occ-machinist, security guard; remarks: Customarily wears light mustache, noticeably green eyes; scars and marks: One-inch scar on right shoulder blade, mole on right shoulder blade. Wanted by FBI for BANK ROBBERY, INTERSTATE FLIGHT—ARMED ROBBERY, THEFT FROM INTERSTATE SHIPMENT

NCIC Classification:

POTTTT1016DIAA032212

Fingerprint Classification:

10 O 5 Tt 16 Ref: 13
I 17 A 17

I.O. 4946

Social Security Number Used: 046-54-2581

FBI No. 134 852 CA2

Caution

Gerena is being sought in connection with the armed robbery of approximately \$7 million from a security company. He took two security employees hostage at gunpoint, handcuffed, bound, and injected them with an unknown substance in order to further disable them. Gerena is believed to be in possession of a .38-caliber Smith and Wesson revolver and should be considered armed and dangerous.



Right ring fingerprint



Photographs taken 1978

Seymour Pinckney,

also known as Seymour Pickney, Semore Pinckney, Seymore Pinckney, Seymour Seymour Pinckney, Seymour Pinkney. B; born 9-26-39; Newark, NJ; 5'10"; 195 lbs; med bld; blk hair; brn eyes; light comp; occ-brick mason, laborer, painter; remarks: Pinckney is reportedly a heavy vodka drinker. He may wear glasses, mustache, Afro wig, or toupee to disguise his appearance.

Wanted by FBI for UNLAWFUL FLIGHT TO AVOID PROSECUTION-MURDER; RAPE

NCIC Classification:

11050204071010010810

Fingerprint Classification:

11 S 1U III 7
S 1U OII

I.O. 4976

Social Security Number Used: 140-30-5344

FBI No. 63 832 G

Caution

Pinckney, a reported drug user, is being sought for the shooting murder of his common-law wife and stepdaughter and the rape of his own daughter and two additional stepdaughters. He is reportedly armed with a rifle and should be considered armed and dangerous.



Left index fingerprint

WANTED BY THE FBI



Photographs taken 1977, 1979 and 1981

David Richard Davis,

also known as Dave R. Davis, Dave Davis. W; born 9-27-44; Flint, MI; 6' to 6'1"; 180 to 210 lbs; lge bld; light brown to blond hair; blue eyes; ruddy comp; occ-farmer, fisherman, personnel supervisor, school teacher, scuba diver; remarks: He can convincingly present himself as a doctor, nurse, or pharmacist, is an experienced recreational sailor and a good paddle ball player. He has represented himself as a harpsichord player and has a fondness for the color of yellow. He reportedly speaks Spanish and French; scars and marks: Cut scar on top of head, scar on forehead near the hairline, surgical scars on lower back and lower abdomen, "hammerhead thumbs," very wide, with short very short nails.

Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

23TT1008072055131008

Fingerprint Classification:

23	L	1	T	II	7
	L	1	R	IOI	

I.O. 4944

Social Security Number Used: 380-44-0596

FBI No. 501 337 X10

Caution

Davis is being sought in connection with the murder of his wife by reportedly injecting her with a strong muscle relaxer. Consider Davis armed, dangerous, and a suicidal risk.



Right index fingerprint



Photographs taken 1980 and 1981

Carl Robert Patterson,

also known as Bob Patterson, Bobby Patterson, Bobby Joe Patterson, C. Patterson, Carl Patterson, Carl R. Patterson, Robert Patterson, Robert Patton, Wiley E. Rankin.

W; born 2-25-47 (true date of birth); 3-5-44; 2-25-48; Briceville, TN; 5'10"; 160 lbs; med bld; brn (greying) hair; blue eyes; med comp; occ-carpenter, construction foreman, lumber company employee; remarks: Reportedly has poor sight in one eye and normally wears nonprescription glasses, frequently wears a mustache and beard, may have curly hair and possibly dyes hair black. He frequents bars and associates with "Go Go" girls and prostitutes. He tends to suffer from bleeding ulcers when drinking heavy; scars and marks: Half-inch scar on right palm, scar mid-chest to naval, two small scars left side of back, metal pins in both legs.

Wanted by FBI for INTERSTATE FLIGHT-AGGRAVATED SEXUAL ABUSE

NCIC Classification:

17541109131212521013

Fingerprint Classification:

17	L	1	R	13
	M	1	Ur	

I.O. 4970

Social Security Numbers Used: 411-88-1938; 410-80-3290; 244-66-4493

FBI No. 708 626 F

Caution

Patterson is being sought for rape during which the victim was brutally raped and assaulted. Patterson may be armed with a .32-caliber revolver. Consider armed and extremely dangerous.



Right little fingerprint



Photographs taken 1980 and 1982

Joseph Jesse Espinoza,

also known as Joseph Espinosa, Joseph Jesse Espinosa, Joe Espinosa, Joe Espinoza, Joseph E. Espinoza, Joseph J. Espinoza, Joseph Jessie Espinoza, Joseph Espinoza, Joey Espinoza.

W; born 10-29-43; Los Angeles, CA; 5'10"; 200 lbs; large (muscular) bld; blk hair; brn eyes; dark comp; occ-manager of pornographic book and material stores and warehouses, operator of massage parlors; remarks: Usually has mustache, sometimes has chin whiskers or goatee, reportedly uses narcotics; scars and marks: Scar on left forearm; tattoos: Rose and woman's face in center of chest; words "LOVE" on right shoulder "MADRE" on right upper arm, "LOCO" on right hand between thumb and forefinger, "JOE" on inside left forearm, a devil with words "U.S. Paratrooper" on left shoulder, obliterated tattoo scar on left forefinger.

Wanted by FBI for ITAR-EXTORTION; ESCAPED FEDERAL PRISONER

NCIC Classification:

DODO151418PIPMPIPIPI

Fingerprint Classification:

15	O	24	W	OOO	18	Ref:	24
	I	20	W	MII			28

I.O. 4950

Social Security Number Used: 558-56-2837
FBI No. 479 082 P2

Caution

Espinoza, a prison escapee, is being sought in connection with extortion and attempted murder wherein he directed the shooting of the victim with a .357 magnum pistol. Consider Espinoza armed, dangerous, and an escape risk.



Right ring fingerprint

Interesting Pattern

The pattern being presented is classified as a loop with a ridge count of seven. It is unusual inasmuch as the ridges which appear between the innermost two looping ridges do not flow out or exhibit a tendency to flow out upon the same side from which these ridges entered.



Change of Address

Not an order form

FBI

Law Enforcement Bulletin

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, DC 20535

Name _____

Title _____

Address _____

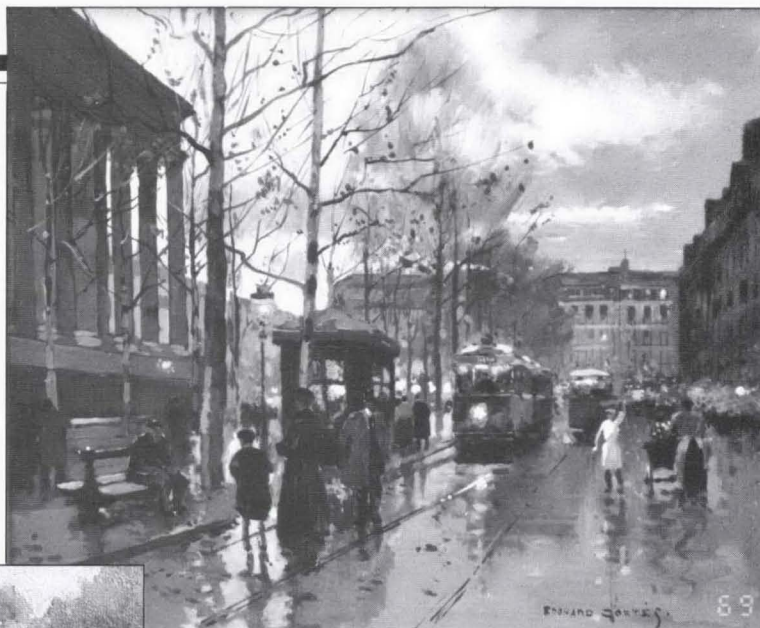
City _____

State _____

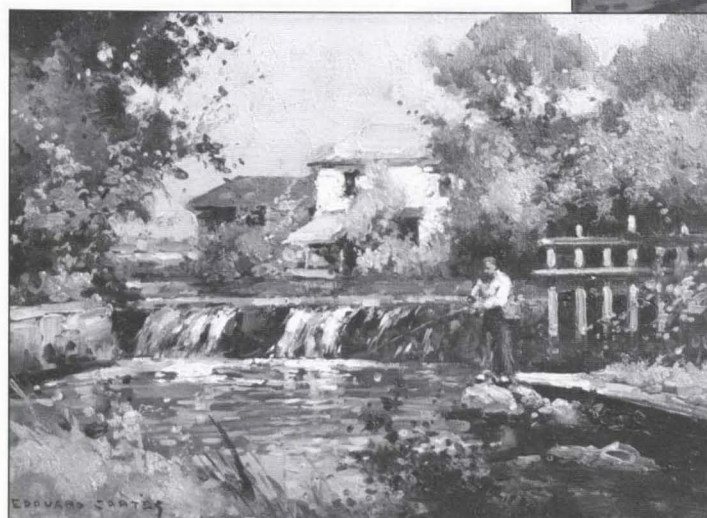
Zip _____

Major Art Theft

On January 26-27, 1988, these four valuable paintings by Edouard Cortes were stolen from an art gallery in Carmel, CA. The San Francisco Office of the FBI, (414) 553-7400, should be contacted if information concerning these paintings is obtained. Refer to file number SF 87A-40381. Inquiry may also be made to the National Stolen Art File, FBI Laboratory, Washington, DC, (202) 324-4434.



*Boulevard de La Madeleine,
18" x 21 1/2"*



Little Falls, 17 1/2" x 12 1/2"



*Place de La Concorde,
13" x 18"*



Place de L'Opera, 13" x 18"

Washington, D.C. 20535

Official Business
Penalty for Private Use \$300
Address Correction Requested

The Bulletin Notes

On June 23, 1988, Officer Shirley Peters of the Medford, OR, Police Department was working in the station house when the mother of a choking 3-year-old child called on the 911 emergency line. Officer Peters instructed the child's mother on how to perform the Heimlich Maneuver and resuscitate the child.

Four days later, on June 27, 1988, Officer Peters was involved in a similar situation when the mother of a 2½-year-old child called in, reporting that her child had stopped breathing, had no pulse, and was turning blue. Again, Officer Peters gave the mother instructions which enabled her to revive the child before death or brain injury could occur.

The Bulletin is pleased to join Officer Peters' superiors in recognizing her quick thinking and life-saving actions.



Officer Peters
