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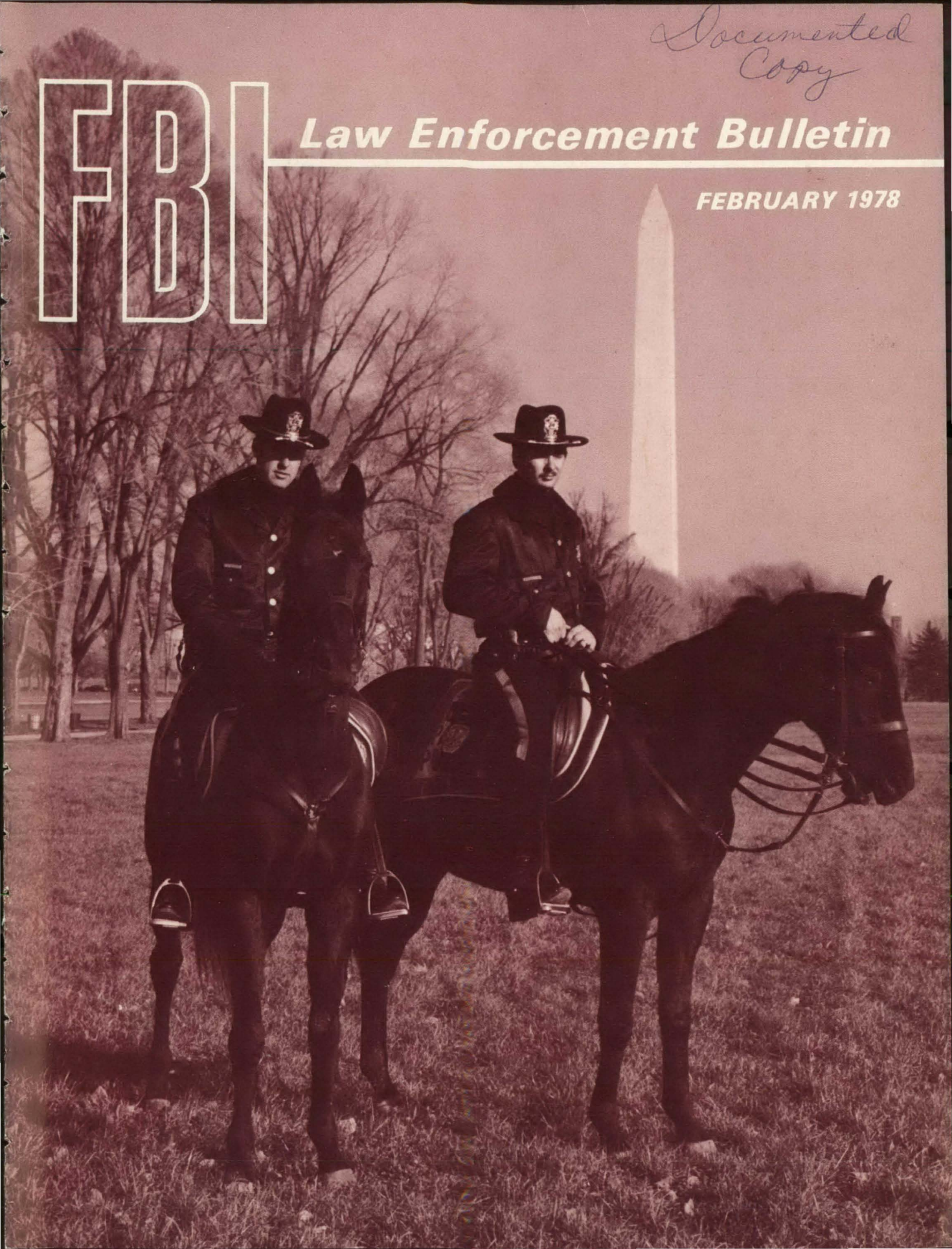
FBI Law Enforcement Bulletin

FEBRUARY 1978



FBI Law Enforcement Bulletin

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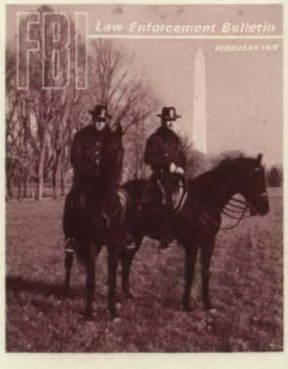
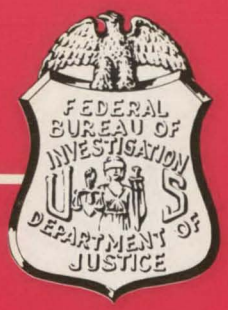
THE COVER

February's cover features officers of the U.S. Park Police at the grounds of the Washington Monument. The monument is a memorial to the great American patriot we honor this month. (William T. Wolf photograph)





IN THE SPIRIT OF WASHINGTON AND LINCOLN—

"Our history is replete with the names of patriots who paid the supreme sacrifice in winning and protecting our priceless heritage . . . . We of law enforcement share in this noble cause. We must not only help preserve the high ideals of our great Republic but we must also be certain that there is no invasion of the rights and liberties of the individual from any source."

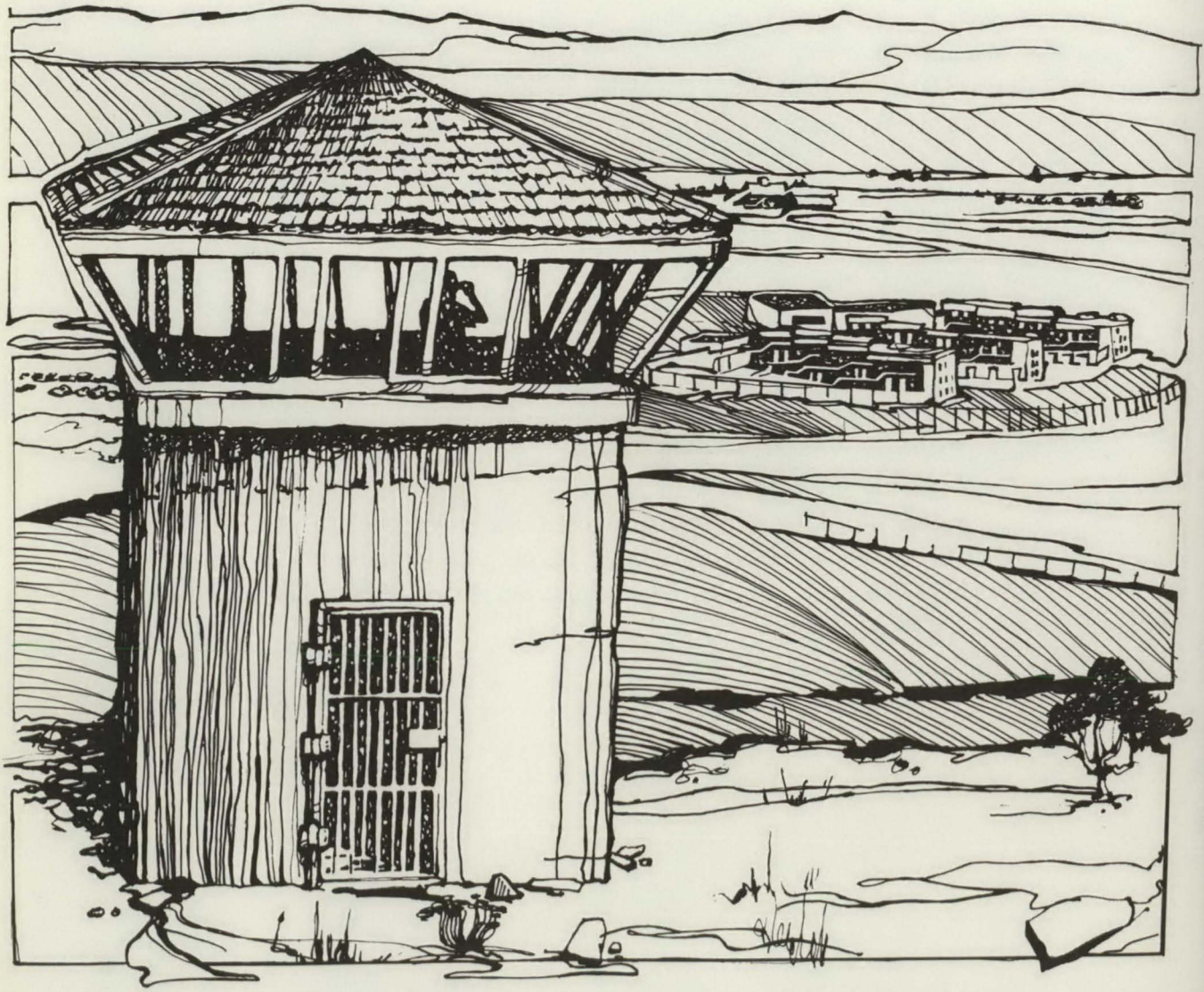
J. Edgar Hoover
July 1, 1962

"On [the FBI] badge is the figure of a woman, blindfolded, holding a set of scales. The scales are perfectly balanced—meaning that in our Nation under law there is equal justice for all . . . . [A]s I look at the future of the law enforcement profession I think of the balance of the scales of justice—that we, in the FBI and in all of law enforcement, have the sacred responsibility of protecting the rights and security of society as a whole; yet, at the same time, meticulously protecting the rights of every single individual."

Clarence M. Kelley
November 29, 1973

CORRECTIONS

Building A Small Prison With Modern Concepts



"The concept of creating separate housing units, each with a staff complement and regulatory strictures predicated upon the degree of security required, came into effect."

By
ROGER W. CRIST
Warden
Montana State Prison
Deer Lodge, Mont.

For 20 years, attempts had been made to replace the State of Montana's 100-year-old territorial prison with a new facility, and at a cost of $300,000, no less than five major studies had resulted, without exception, in recommendations that a new prison be built. Finally, $5.5 million was appropriated for the project.

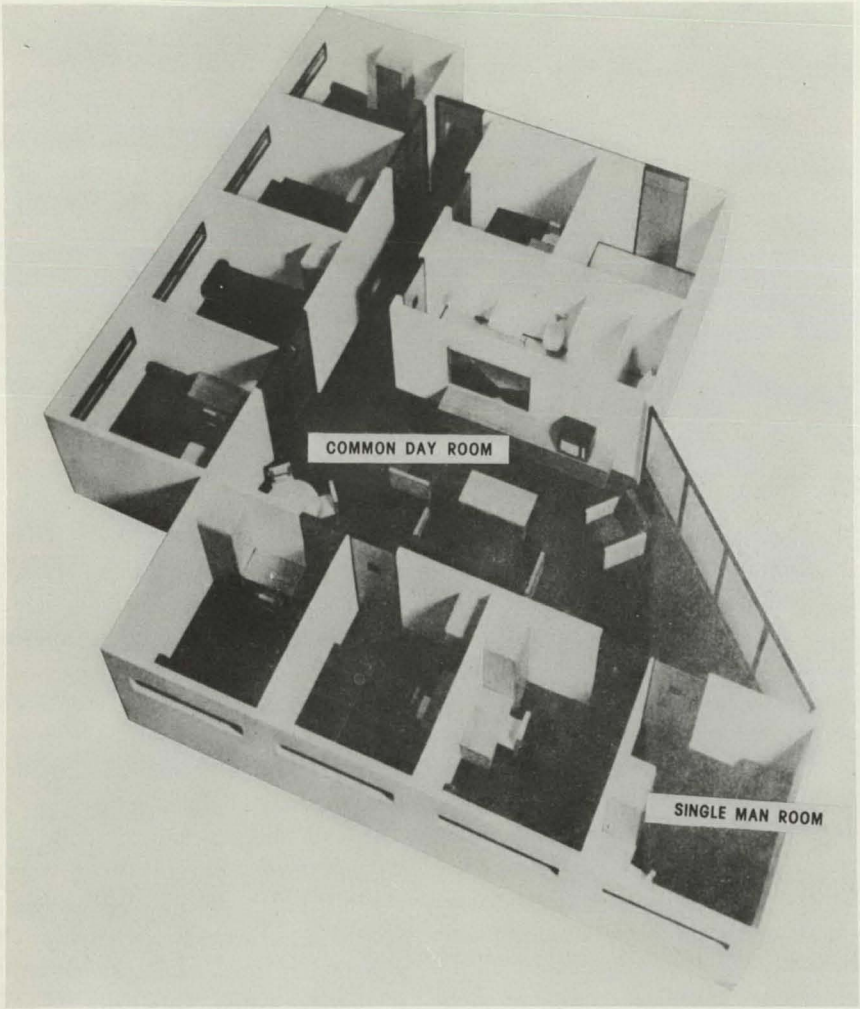
Considering the relatively limited amount of money allocated, prison administrators recognized from the outset that the architects responsible for designing the new prison were faced with an extremely difficult task. And actually, the project would have been impossible had authorities been unable to remodel and add on to three existing buildings on prison-owned land. Basic roads, existing utilities, and support buildings, such as warehouses, a slaughterhouse, and a dairy and motor vehicle center, were ultimately to be incorporated into the new facility. Still, a great deal of innovative thinking and planning were required.

"It was necessary that the new Montana State Prison be all things to all people."

It was necessary that the new Montana State Prison be all things to all people. With the small State population, low tax base, and comparatively small inmate population, there would be no way that a number of institutions could be built economically to house prisoners categorically. The new prison had to be designed to include maximum, close, medium, and minimum security inmates. The concept of creating separate housing units, each with a staff complement and regulatory strictures predicated upon the degree of security required, came into effect. This idea, the responsible living concept as it is called, utilizes the housing unit design in such a way that the more responsibility an inmate is able to accept, the more freedom he will have.

One problem that had plagued the old Montana State Prison was the inability to logically segregate inmates—the old from the young, the aggressive from the nonaggressive, the sex offenders from the nonsex offenders, and the criminally sophisticated from the nonsophisticated. The new Montana State Prison, therefore, was designed to include a maximum security, close security, medium security, and minimum security building. The maximum security building, which is architecturally traditional, is comprised of five separate units ranging in size from a 4-man unit to a 14-man unit. The close security, medium security, and minimum security buildings are identical in terms of physical construction. Each has three stories, with four eight-man units per floor. Each three-story building is connected to its own one-story commons building by a cement wall, a geographical divider which surrounds the security unit and its commons building. The ornamental wall creates a separate yard for each housing unit, separating them from the main yard. This yard gives the inmate a choice. Should he not want to involve himself with the entire inmate population at the big recreation yard which is located outside of the ornamental wall and away from the security units, he may remain in his own unit area out-of-doors in the unit yard. As previously mentioned, each floor of the three-story housing unit is broken down into four eight-man units. A unit consists of eight single rooms that come out on a common dayroom. The unit has common sanitary and shower facilities, as well as a common counseling room. Using the institution's classification system and this type of design, a maximum amount of separation, based on each inmate's ability to assume responsibility for his actions, has been effected.

Officials wanted to provide a comfortable, free-style visiting environment for responsible inmates, but saw a need also to insure tight security



during visiting periods for those who could not accept the responsibility. This was accomplished by building a large open visiting room where inmates classified as close, medium, and minimum security could visit quite freely. Maximum security inmates now visit in the maximum security building under strict security procedures, and the building is constructed in such a way as to deny them access beyond the visiting room. Close, medium, or minimum security inmates, after checking with an officer, are allowed to go to an outside visiting area adjacent to the visiting room. Inmates in the general population who have attempted to smuggle contraband into the institution, the sexually aggressive, or those prone toward violence receive their visits in the special security area adjacent to the free visiting room. In effect, inmates are being shown that they can enjoy a great deal of flexibility in visiting, if they conduct themselves in a responsible manner. If they can't, their visits will be held in the security area.

Prison officials wanted to enable treatment staff to be involved with the security staff in a unit treatment-management approach. The four separate housing units based on the security classification enabled treatment personnel to retain the traditional administration building and enter the commons building with its easy access to the housing units. The treatment staff, working in conjunction with the security staff, could then become part of the treatment-management team that would in effect run the unit. A unit classification team made up of both treatment and security staff would administer all matters pertaining to the unit. Where their recommendations crossed unit lines, the recommendations would have to be approved by the institution classification committee. It was felt that a certain degree of autonomy should be given to the staff actually working the unit, but precautions have been taken to preclude the development of four small separate institutions in a haphazard manner.

"[A] certain degree of autonomy [is] given to the staff actually working the unit, but precautions have been taken to preclude the development of four small separate institutions in a haphazard manner."

Facilities for treatment, individual therapy, group therapy, and religious, vocational, academic, and recreational programs were needed. Toward meeting this need, almost all of the treatment rooms in the institution have been arranged in such a way that they would serve as multiple use rooms. In other words, no single academic teacher occupies a classroom exclusively. Instead, the classroom is used variously by academic teachers, vocational education teachers, self-help group leaders, and college program personnel. Likewise, the principle has been carried over to the housing unit with each housing unit enjoying a large multipurpose room located in the commons building adjacent to a specific living area.

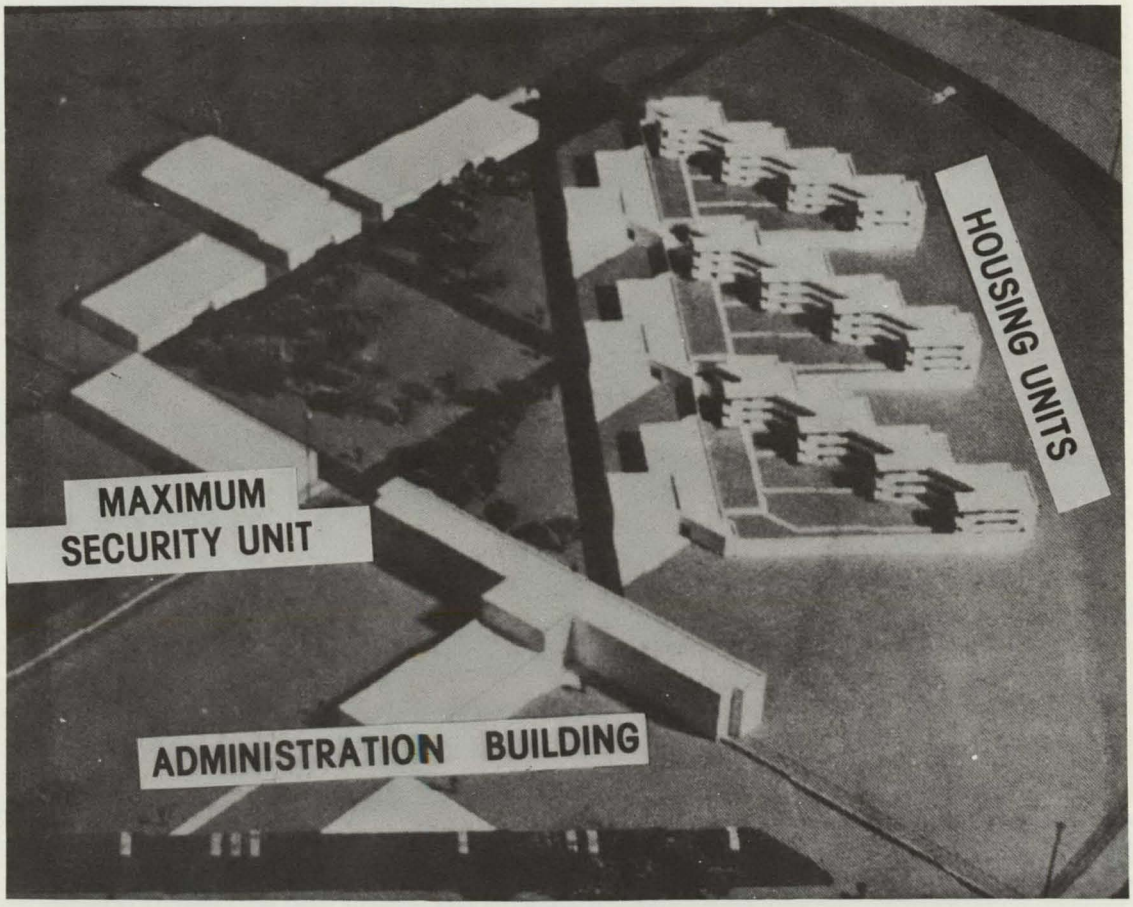
Officials wanted to encourage increased contact between key staff, line staff, and inmates, and as a consequence, the institution was designed

so that no interviews would be held in the offices of the warden, deputy warden, associate warden of security, director of classification and treatment, or business manager, which are all located outside of the security perimeter. When key people conduct interviews, they must enter the security perimeter and hold these interviews in all-purpose rooms within the prison proper. These rooms have been set up in the commons buildings which are attached to each security unit. Through this arrangement, key staff members come in contact with line staff and inmates, as well as the interviewees.

"Adequate perimeter security was a major consideration."

"[T]he responsible living concept . . . utilizes the housing unit design in such a way that the more responsibility an inmate is able to accept, the more freedom he will have."

Adequate perimeter security was a major consideration. In the old institution, seven towers were in operation. But by strategically locating a single tower on a high hill overlooking the new institution, it was possible to reduce the number of towers from seven to one. Since it takes five men to man one tower, 24 hours a day, 7 days a week, this design freed 30 staff members to work on the grounds in direct relationship with the inmates. Incorporated within the plans are two cyclone fences which are equipped with an intrusion device and separated by a medial bramble wire barrier. A motorized patrol maintains radio contact with the institution as it safeguards the prison perimeter. Additional security is provided by a staff accoutered with walkie-talkie radios, open intercoms in five control centers as well as the tower, and red signal lights on the roof of each building that will alert staff to emergencies in that building. Contributing also to security of the facility is a telephone communications system. If, for instance, any phone is left off or knocked off the hook, the control center will be alerted immediately. By dialing two numbers in an emergency situation, 21 phones



Inmates' visiting room.

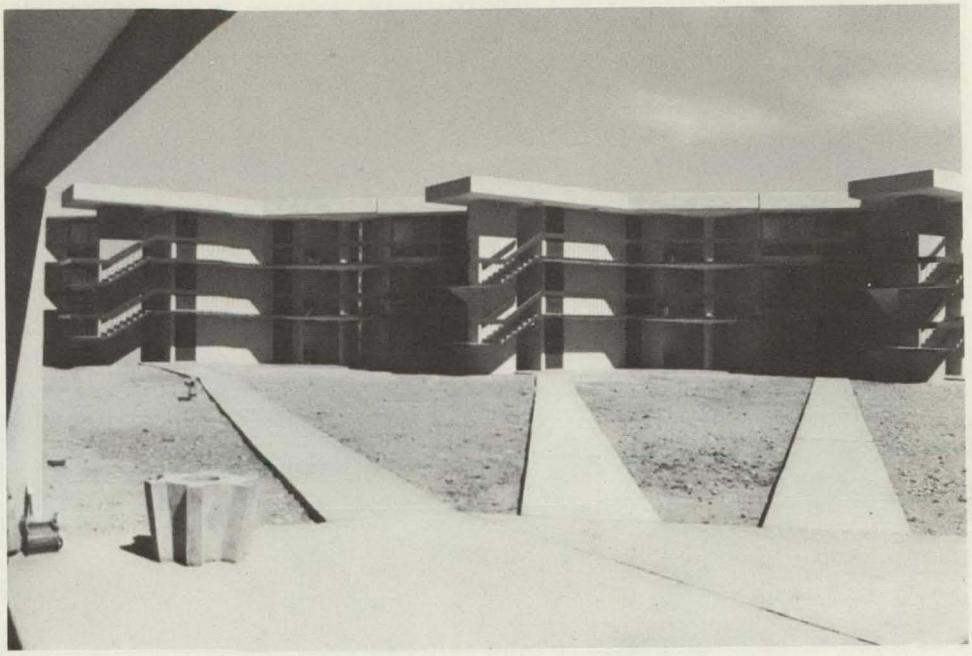
will ring in the homes of key staff, even though one or more phones may be in use.

The geographic location of the institution, which is in the middle of a 40,000-acre ranch, provides an inherent security feature.

Adequate space where staff could get together in a comfortable environment away from work and away from inmate contact was totally lacking in the old facility, and this had led to a situation in which social workers tended to take their coffeebreak in the social service department with other social workers. Teachers similarly tended to take their breaks in the school with other teachers. Consequently, the staff had not been communicating adequately among the disciplines. Naturally, officials wanted to allocate space enabling the staff to meet before going to work and provide an informal environment in which psychologists, security staff, chaplains, maintenance staff, social workers, teachers, and accountants would meet and exchange ideas. This was arranged by constructing coffeebreak areas in the staff dining room and in a staff room located in the new administration building.

It was necessary that the institution be accommodated to its environs. The outstanding feature of the environment was a mountainous region rising to 10,000 feet just west of the institution. Planners wanted a colorful institution but realized that if all of the buildings were painted different colors, the result could be a circus-like appearance. On the other hand, if all buildings were painted the same color, regardless of the particular color selected, it could become a monotonous "institution color." The problem was solved by painting the buildings a variety of colors on a continuum from light cream through beige and sand colors to a dark brown color used exclusively for trim. This

Dining area in food services building.



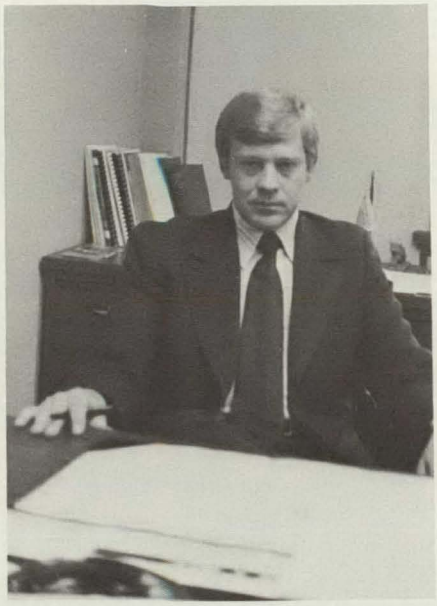
Ninety-six-man housing unit. This type of building is used for close security, medium security, and minimum security inmates.

approach offered the desired continuity, and no single color became either offensively conspicuous or superfluous.

The Law Enforcement Assistance Administration (LEAA) and the Montana Board of Crime Control, the agency in Montana responsible for administering LEAA funds, had an important role in establishing the new Montana State Prison. Through these agencies, officials obtained assistance from both the LEAA Regional Office in Denver and the National Clearinghouse on Correctional Architecture. The well-equipped library and education complex at the new institution which cost over $200,000 was supplied through Crime Control Commission funds. The advice and financial assistance these agencies provided is very much appreciated, and their interest and support throughout the entire project was outstanding.

Warden Roger W. Crist

Director Lawrence M. Zanto
Department of Institutions
State of Montana



Montana, like all States, has experienced an extreme population increase. When the planning of the new institution began, there had been a steady 5-year downward trend in terms of prison population and an actual count of 249 inmates. Since that time, the population has more than doubled to a current population of 533. In 1975, there was a 10-percent population increase, and in 1976, a 29-percent population increase. The new prison was designed and built to house 334 inmates. This means that while the new institution is occupied by 333 men, 200 men have had to be retained in the old territorial prison that officials had hoped to abandon. To alleviate crowding, the Montana State Legislature appropriated $3.8 million from the general fund in 1977 to add a celled, close security housing unit for 200 more inmates.

Search by Consent

By
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Special Agent
Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

PART III

Parent and Child

Frequently, a mother or father or both consent to a police search of the family dwelling house, which yields evidence incriminating a son or daughter residing therein. The question is whether or not a parent is empowered to give such consent. The response of the courts has been almost uniform. The consent is valid, and any evidence found admissible, so long as there is common access to the place or thing searched. A child living in the family home thus assumes the risk of a police search authorized by his parents.

The Federal decision of *United States* v. *Peterson*, 524 F. 2d 167 (4th Cir. 1975), cert. denied 423 U.S. 1088 (1976), is illustrative. Following a bank robbery in Alexandria, Va., six subjects returned to the home of the seventh co-conspirator's mother. Investigation led police to the residence where they sought and obtained consent to search from the mother. A search of an upstairs bedroom shared by her son, a defendant, and two brothers produced incriminating evidence. Though the son did not personally participate in the robbery, the government contended he was a co-conspirator who helped plan the crime and permitted the other defendants to use his mother's home as a "staying area before the robbery and as a sanctuary afterwards."

A major issue before the court in *Peterson* was the lawfulness of the mother's consent. Though the defense attack was aimed principally at the voluntariness of her consent, the court discussed at length the power of the mother to permit the search, and concluded that she possessed the requisite authority to consent:

> "At the time of the search, she had access to and complete control of the entire premises, including the bedroom used by her children. . . . Given the nature of the home as a family dwelling and the fact that the mother, as owner and head of the single-

family household, designated what use, if any, could be made of the premises including the bedroom in question, we think it was 'reasonable to recognize' that the mother had the authority 'to permit the inspection in . . . [her] own right.' . . . [Her] access and control over the entire premises . . . vested her with sufficient authority . . . to consent to a search of the room as against the rights of the codefendants. . . ." *Id.* at 180–181.

The Supreme Court of South Carolina reached a like result in *State* v. *Middleton*, 222 S.E. 2d 763 (S.C. 1976), vacated on other grounds 50 L. Ed. 2d 69 (1976). The defendant, charged with rape and armed robbery, was arrested. Two days after the crimes were committed and while the defendant was still in custody, police officers obtained from his father a consent to search a bedroom located in an apartment "provided and also occupied by his parents." The defendant, unmarried, shared the bedroom with a younger brother. Incriminating evidence was found, seized, and received in evidence. The court ruled that: (1) The key to a valid third-party consent is "common authority" over the premises; (2) the father possessed such authority in this case; and (3) his voluntary consent to the bedroom search therefore was lawful.

Other recent decisions which exemplify the general approach of the courts to parental consent are: *Owens* v. *State*, 300 So. 2d 70 (Fla. App. 1974), appeal dismissed 305 So. 2d 203 (Fla. 1974) (mother may consent to search of son's bedroom); *People* v. *Johnson*, 329 N.E. 2d 464 (Ill. App. 1975) (father residing with son may consent to search of commonly used bathroom); *State* v. *Johnson*, 319 So. 2d 786 (La. 1975) (mother with common authority over house may consent to search directed against son); *State* v. *Forbes*, 310 So. 2d 569 (La. 1975) (mother who is head of house and who had regular access to son's room could validly consent); *Chase* v. *State*, 508 S.W. 2d 605 (Tex. Crim. App. 1974), cert. denied 419 U.S. 840 (1974) (parents' consent to search rooms of 17-year-old son approved); *State* v. *Kelsey*, 532 P. 2d 1001 (Utah 1975) (mother's informed consent to search of 19-year-old son's bedroom shared with brothers is lawful). Note that age is not the critical factor—the legal status and position of the child controls. A child who has been emancipated should be considered a tenant in possession. For example, a child who works and is self-supporting, and who pays a regular rental to his parents for a room in the family home, would be afforded the constitutional protection to which a tenant, roomer, or renter would be entitled. (See Tenant.)

Three circumstances arise occasionally that should raise the caution flag for officers seeking consent to search a family home.

First, where a child has been granted sole and exclusive use of an area of the family house, the "common occupancy-joint possession" principle of *United States* v. *Matlock*, 415 U.S. 164 (1974), does not apply. The parent is no longer one who "possesses common authority" over the room and thus may not authorize "in his own right" an entry and search of the room by police. A case in point is *People* v. *Nunn*, 304 N.E. 2d 81 (Ill. 1973), cert. denied 416 U.S. 904 (1974), where the Illinois Supreme Court held that a mother could not lawfully consent to the search of a room in the family home set aside for the exclusive use of her 19-year-old son who had told the mother not to allow anyone to enter the room.

Second, though a parent generally can consent to a search of all the rooms of a family dwelling, including those occupied by a child residing therein, this authority may not extend to personal property located within the dwelling, such things as brief cases, suitcases, diaries, shaving kits, jewelry cases, handbags, wallets, etc. The question in each instance is whether the child retains sole and exclusive control over the personalty, that is, whether he has a reasonable expectation of privacy in the article searched. The distinction between consent to search a room and consent to search an item of personal property discovered inside is drawn in *Reeves* v. *Warden*, 346 F. 2d 915 (4th Cir. 1965) (mother who was tenant in daughter's home was without authority to consent to search of dresser in room occupied exclusively by son). See also *State* v. *Johnson*, 513 P. 2d 399 (N.M. App. 1973) (defendant's brother-in-law could consent to search of his premises, including areas occupied by defendant, but could not authorize a search of duffel bag possessed exclusively by defendant).

Third, police officers sometimes confront a situation with the roles reversed, that is, where a child is asked to consent to a search of the family home directed against a parent. The general view seems to be that a child residing in the family dwelling house provided by his parents does not possess common authority over the premises or effects within, and consequently cannot consent to their search. In short, the constitutional protection belongs to the parents, and in their absence may not be relinquished by a

"The general view seems to be that a child residing in the family dwelling house . . . does not possess common authority over the premises . . . and consequently cannot consent to their search."

child. *State* v. *Malcom*, 203 A. 2d 270 (Del. Super. Ct. 1964) (16-year-old son); *Padron* v. *State*, 328 So. 2d 216 (Fla. App. 1976) (16-year-old son); *May* v. *State*, 199 So. 2d 635 (Miss. 1967) (15-year-old son).

Other Family Members

In the absence of a parent, can anyone else grant consent to search premises for evidence incriminating a child residing therein? While the answer to this question is by no means as clear as in the case of parents, the courts have sustained searches undertaken with consent of grandparents, aunts, cousins, brothers, and sisters.

Where a person resides permanently or temporarily in a home owned and occupied by his grandparents, or an aunt and uncle, the rule relating to parental consent is applicable. If the grandparent (or aunt or uncle) has control over the premises and there is common access to the place or thing searched, the consent of the grandparent binds the grandchild. *Addison* v. *State*, 243 So. 2d 238 (Fla. App. 1971) (search of room in grandmother's house occupied by 19-year-old grandson who was guest, lawful based on her consent); *Pennington* v. *State*, 478 S.W. 2d 892 (Tenn. Crim. App. 1971) (consent to search house in which nephew resided part-time was proper where given by aunt who lived in house and was in charge of the premises); *State* v. *Plantz*, 180 S.E. 2d 614 (W. Va. 1971) (warrantless search of premises of defendant's grandparents upon their consent valid against defendant who was residing there temporarily and was assigned no area of exclusive use).

As to siblings, the general approach taken by both Federal and State Courts has been to permit the search of premises jointly occupied. For example, in *Loper* v. *State*, 330 So. 2d 265 (Miss. 1976), officers investigating a recent rape went to the home of defendant, where he lived with his brother and mother, who was a joint owner of the property. The brother consented to the search of the backyard of the residence. Officers found there a pistol stolen from the victim at the time of the rape. The pistol was admitted into evidence at the defendant's trial.

On appeal, the defendant argued that his brother had no authority in the presence of his mother to consent to the search. The argument was rejected. The Mississippi Supreme Court, citing *United States* v. *Matlock*, 415 U.S. 164 (1974), held the consent valid, reasoning that the yard was available for the common use of all occupants, and any person having joint access or control of the yard for most purposes could authorize the entry and search by the officers. To hold otherwise "would have the incongruous effect of granting one brother standing to object on the basis of his relationship to the premises, while denying the other the authority to consent based on an identical relationship. Such a paradox would be devoid of logic." The court also noted that there was no indication that the backyard was in any manner "the exclusive personal domain" of the defendant. *Loper* v. *State*, *supra*, at 267.

Consent searches by brothers and sisters have been sustained frequently by both Federal and State courts. See, e.g., *United States* v. *Boston*, 508 F. 2d 1171 (2d Cir. 1974), cert. denied 421 U.S. 1001 (1975) (search of jointly occupied apartment validated by consent of defendant's sister); *United States* v. *Mojica*, 442 F. 2d 920 (2d Cir. 1971) (brother, with whom defendant shared premises, fully competent to consent to search of area not specifically set aside for defendant's use); *People* v. *Robinson*, 116 Cal. Rptr. 455 (Cal. App. 1974) (defendant's sister lawfully consented to search of living room of her apartment where defendant was staying); *Lanford* v. *People*, 489 P. 2d 210 (Colo. 1971) (en banc) (consent of stepbrother held lawful); *Radkus* v. *State*, 528 P. 2d 697 (Nev. 1974) (sister staying in defendant's house with express permission had authority to consent to search thereof).

Employer and Employee

A consent search undertaken in the context of the employer-employee relationship raises two distinct problems: (1) Whether the employee can bind his employer by inviting police to search business premises; and (2) whether the employer may consent to the search of business premises (and personal property located therein) for evidence incriminating the employee. Decisions approving and condemning both such searches can be found. The result depends to a great extent on the particular facts of a case. Hence, it is difficult to formulate a general rule. Nonetheless, it is possible to describe the important factors considered in judging the validity of the consent.

Courts have approved the police search of a business establishment directed against an employer based on consent obtained from his employee. The key to the lawfulness of the consent is the degree of authority over the premises possessed by the employee. When an employer confers upon his subordinate authority to control, supervise, or otherwise exercise dominion over the business premises, he has for all practical purposes given up any reasonable expectation of privacy in the premises (but not in his personal belongings located inside). Accordingly, he cannot be heard to claim later that his fourth amendment rights were violated when the subordinate permitted police to search.

In *United States* v. *Grigsby*, 367 F. Supp. 900 (E.D. Ky. 1973), an employee of the defendant invited FBI

"[W]hile the employer may permit police to search common areas within the business building . . . he may not grant such authority as to places or things reserved for the exclusive use of the employee . . . ."

Agents into a building belonging to the defendant and housing sound and recording equipment being used to violate Federal copyright laws. He also volunteered to escort them through the building. An Agent later testified that the employee was the sole occupant of the premises and was "apparently the person responsible for the activities being conducted in the building and had obvious control over the premises."

In response to the defendant's argument that the employee lacked authority to consent to the entry and search, the court held that "an employee, who concededly has a legal right to use the business premises, clothed with the apparent indices of control may consent to a warrantless search of the premises." The employer assumes the risk that his employee, so empowered, may "allow someone else to look inside."

The court noted three significant factors to be considered in determining the third party's (employee's) authority to consent: (1) His legal and possessory rights to the premises; (2) his relationship to the subject of the search (employer); and (3) the circumstances as they objectively appear to officers at the time of the search. *Id.* at 902. This same formula was adopted more recently in *United States* v. *Phifer*, 400 F. Supp. 719 (E.D. Pa. 1975), where the court sustained the search of an airplane on authority of an employee's consent.

Other cases illustrating circumstances wherein an employee may lawfully consent are: *United States* v. *Murphy*, 506 F. 2d 529 (9th Cir. 1974) (per curiam), cert. denied 420 U.S. 996 (1975) (where employee given key to warehouse by employer, defendant had "sufficient dominion" over the premises to grant consent to search; search not unreasonable where employer put the premises under immediate and complete control of employee); *United States* v. *Sells*, 496 F. 2d 912 (7th Cir. 1974) (per curiam) (employee having common authority over junkyard could lawfully consent to search thereof; evidence obtained may be used against employer-defendant).

The contrary view may be seen in *United States* v. *Block*, 202 F. Supp. 705 (S.D. N.Y. 1962) (considering his age, experience, responsibilities, and activities, employee, who was handyman in retail store, did not have authority to consent to search of the store basement, where evidence incriminating employer was found); *People* v. *Smith*, 204 N.W. 2d 308 (Mich. App. 1972) (secretary's consent could not waive the constitutional rights of her employer as to employer's private office); *State* v. *Cundy*, 201 N.W. 2d 236 (S.D. 1972), cert. denied 412 U.S. 928 (1973) (employee without specific or delegated authority to authorize a warrantless search of employer's premises may not bind his employer by consenting to search) (dictum). What distinguishes these decisions from those above is the degree of control over the premises conferred upon the employee. There is also the hint that some courts will look less favorably on the consent where time and opportunity were available to obtain a warrant prior to the search. *United States* v. *Block*, *supra*, at 707.

Whether an employer may consent to the search of business premises for evidence incriminating his employee generally depends upon where the search is conducted. Cases before and after *Katz* have held that while the employer may permit police to search common areas within the business building, *United States* v. *Gargiso*, 456 F. 2d 584 (2d Cir. 1972) (superior with equal right of possession to place searched), he may not grant such authority as to places or things reserved for the exclusive use of the employee, i.e., where the employee has a "reasonable expectation of privacy."

An early Federal case addressed this problem and concluded, even before the *Katz* decision, that a government office employee possessed a constitutional right of privacy in a desk reserved for her exclusive use. The court noted:

> "Her official superiors might reasonably have searched the desk for official property needed for official use. . . . Her superiors could not reasonably search the desk for her purse, her personal letters, or anything else that did not belong to the government and had no connection with the work of the office. *Their consent did not make such a search by the police reasonable.*" *United States* v. *Blok*, 188 F. 2d 1019, 1021 (D.C. Cir. 1951) [emphasis added].

In 1968, the Supreme Court held in *Mancusi* v. *Deforte*, 392 U.S. 364 (1968) that a union official had standing to object to warrantless search of the union office which he shared with others, and the seizure of union records therefrom. It is not clear from where inside the office the records were taken. But the Court seemed to recognize an employee does have some

expectation of privacy in his business office. And a stronger argument could be made for his "private desk," *Id.* at 377 (White, J., dissenting) and "files and drawers used exclusively." *Id.* at 377 (Black, J., dissenting).

Two other Federal decisions are instructive: *United States* v. *Kahan*, 350 F. Supp. 784 (S.D. N.Y. 1972), aff'd in part, rev'd in part 479 F. 2d 290 (2d Cir. 1973) (defendant's supervisor could not consent to the search of a trash basket located next to or under employee's desk and reserved for his exclusive use); *United States* v. *Millen*, 338 F. Supp. 747 (E.D. Wis. 1972) (president of law firm could not consent to the search of a lockbox set aside for the personal use of a member of the firm).

Where the facts suggest the employee does not have exclusive control or possession of the area of business premises searched, a contrary holding will result. Examples are: *United States ex rel. Williams* v. *Commonwealth of Pennsylvania*, 378 F. Supp. 1295 (E.D. Pa. 1974) (valid consent from principal of school to search storage and boiler rooms yielding evidence incriminating employee of school; areas searched not under sole dominion of employee); *Quaglione* v. *State*, 292 A. 2d 785 (Md. Ct. Spec. App. 1972) (part-time employee of store had no right of privacy in storage area of department store; consent of store manager to search such area lawful; evidence seized admissible against employee). Cf. *Braddock* v. *State*, 194 S.E. 2d 317 (Ga. App. 1972) (consent of truck owner-employer to search vehicle valid against driver-employee where latter has no reasonable expectation of privacy in truck).

Finally, the terms and conditions of the employment contract may dictate the degree of privacy an employee may expect in a desk, locker, or office. In *United States* v. *Bunkers*, 521 F. 2d 1217 (9th Cir. 1975), cert. denied 423 U.S. 989 (1975), a postal employee convicted of mail theft complained that her fourth amendment right was infringed when evidence was seized from her assigned locker without warrant upon authority of the post office manager. The court rejected the argument, pointing out:

> "Bunkers' voluntary entrance into postal service employment and her acceptance and use of the locker subject to the regulatory leave of inspection and search [Part 643, Postal Manual] and the labor union's contractual rights of search upon reasonable suspicion of criminal activity amount to an effective relinquishment of Bunkers' Fourth Amendment immunity in her work connected use of the locker." *Id.* at 1221 [emphasis added].

See also *State* v. *Robinson*, 206 A. 2d 779 (N.J. Super. Ct. 1965).

Principal and Agent

Closely related to the consent search problem of an employer and employee is that concerning a principal and agent. An agent is one who acts for or in place of another by authority from him; he is a substitute, a deputy, appointed by a principal with power to do the things a principal may do. Black's *Law Dictionary* 85 (4th Ed. 1951). As such, the authority of an agent to act for his principal is generally broader than that of an employee acting for his employer. While an employee may also be an agent, the former is less likely to possess the authority necessary to validate a consent to search directed against his superior. See *United States* v. *Ruffner*, 51 F. 2d 579 (D. Md. 1931) (mere employee, as distinguished from agent, not empowered to consent). The problem is whether an agent can grant consent to search the premises of his principal.

". . . authority to consent depends upon the extent to which [the agent] has been given the right to possession and authority to act for his principal . . . ."

A principal having the right to possess premises may appoint another to act in his stead for a special purpose or for all purposes. The agent thereby may exercise a right to limited possession or full possession of the premises according to the terms of the agency agreement. His authority to consent depends upon the extent to which he has been given the right to possession and authority to act for his principal, and where such authority exists, the agent's consent permits a search of the premises binding on the principal as well as himself. For example, the general manager of a corporation's regional office might be an agent cloaked with the power to permit inspection of the company's office and books. On the other hand, a real estate agent appointed by an absentee home owner for the sole and exclusive purpose of maintaining the property might have such limited authority as to preclude a consent to search.

In *Akin Distributors of Florida, Inc.* v. *United States*, 399 F. 2d 306 (5th Cir. 1968), cert. denied 394 U.S. 905 (1969), defendant corporation was convicted of allowing foods shipped in interstate commerce to become adulterated, a violation of Federal law. Responding to the argument that evidence was seized following an illegal entry and search, the court held the company's agent had sufficient authority to permit the search and his consent was given freely and voluntarily. See also *In re Fried*, 161 F. 2d 453 (2d Cir. 1947), cert. denied 331

U.S. 858 (1947) (consent of general manager of company to search plant and examine its business records lawful); *Reszutek* v. *United States*, 147 F. 2d 142 (2d Cir. 1945) (superintendent's voluntary consent to search cellar of apartment building valid against owner); *Raine* v. *United States*, 299 F. 407 (9th Cir. 1924), cert. denied 266 U.S. 611 (1924) (consent to search ranch valid when obtained from one left in general control); *Brown* v. *State*, 404 P. 2d 428 (Nev. 1965) (sheriff's search and seizure authorized by consent of defendant's attorney). Cf. *United States* v. *House*, 524 F. 2d 1035 (3d Cir. 1975) (search of records with consent of accountant lawful where defendant taxpayer gave unlimited authorization to accountant to deal with IRS in connection with audit).

For the officer faced with the difficult task of deciding who, if anybody, has authority to consent to the search of business premises, the preferred approach is to obtain permission to search from the highest ranking person available. Thus, the resident manager of a store, warehouse, garage, or factory ordinarily would be the individual from whom the consent is secured. *United States* v. *Maryland Baking Co.*, 81 F. Supp. 560 (N. D. Ga. 1948). See also *Lake Butler Apparel Co.* v. *Secretary of Labor*, 519 F. 2d 84 (5th Cir. 1975) (president of defendant corporation empowered to consent to inspection of manufacturing plant by Federal safety and health law compliance officer); *United States* v. *Piet*, 498 F. 2d 178 (7th Cir. 1974), cert. denied sub nom. *Markham* v. *United States*, 419 U.S. 1069 (1974) (acting warehouse foreman had authority to consent to search of common storage areas within warehouse).

As to company business records, consent should be sought from the person authorized to have sole control of the office and records. This is generally the office manager, *United States* v. *Antonelli Fireworks Co.*, 155 F. 2d 631 (2d Cir. 1946), cert. denied 329 U.S. 742 (1946), but may be other officials of the firm. *Peel* v. *United States*, 316 F. 2d 907 (5th Cir. 1963), cert. denied sub nom. *Crane* v. *United States*, 375 U.S. 896 (1963) (consent from secretary-treasurer); *United States* v. *Culver*, 224 F. Supp. 419 (D. Md. 1963) (consent from corporation president).

Host and Guest

It is agreed that a guest or visitor, lawfully present, has a constitutional right to object to an unreasonable search of the premises when the fruits of the search are to be used against him. *Jones* v. *United States*, 362 U.S. 257 (1960); *United States* v. *White*, 268 F. Supp. 998 (D.C. 1966); *State* v. *Thibodeau*, 317 A. 2d 172 (Me. 1974). But this does not answer the question commonly posed in such cases: whether a voluntary consent to search, given by the host in possession of premises, is effective against the guest.

Prior to the *Katz* decision in 1967, the generally recognized rule declared that the host's waiver of the constitutional protection afforded his premises was effective against the guest or visitor. See, e.g., *Weaver* v. *Lane*, 382 F. 2d 251 (7th Cir. 1967), cert. denied 392 U.S. 930 (1968) (primary occupant of home lawfully consented to seizure of evidence from room being used by guest who was staying "a few days" until he found a place); *Burge* v. *United States*, 342 F. 2d 408 (9th Cir. 1965), cert. denied 382 U.S. 829 (1965) (tenant in possession gave valid consent to search of apartment binding on temporary guest); *United States* v. *White*, *supra* (lessee, principal user and occupier of premises, could give authorities consent to enter and search his premises, and evidence disclosed as a result thereof could be used against guest).

An exception to the general rule was recognized in *Reeves* v. *Warden*, 346 F. 2d 915 (4th Cir. 1965), where the defendant was not a temporary visitor but rather a more or less permanent guest in his sister's home. His mother, also a guest in the house, consented to a search of the room he occupied and a bureau located therein, both set aside for his sole use. The court found the search violative of the defendant's fourth amendment right. The mother was without authority to permit the search.

Has the holding of the Supreme Court in *Katz* changed things? Apparently not. In *United States* v. *Buckles*, 495 F. 2d 1377 (8th Cir. 1974), the defendant was convicted of transporting stolen securities (money orders) in interstate commerce. The evidence offered against him at trial consisted in part of a stolen money order found in a jacket located in the home of one Mrs. Eutzy. The jacket and money order were seized pursuant to her consent. The defendant and two of his companions were the overnight guests of Mrs. Eutzy at the time of the seizure. On appeal, the defendant claimed that the hostess' consent was improper.

" 'It has been held that a host can consent to a search of his premises occupied by a guest'."

The court disagreed, holding that the consenting party "had the primary right to the occupation of the premises. . . . It has been held that a host can consent to a search of his premises occupied by a guest." *Id.* at 1381 (citing *Weaver* v. *Lane*, *supra*; *Burge* v. *United States*, *supra*).

Other post-*Katz* decisions from the Federal courts which support the view that a host is authorized to consent to a premises search aimed at securing evidence against a guest are:

Bowles v. *United States*, 439 F. 2d 536 (D.C. Cir. 1970) (en banc), cert. denied 401 U.S. 995 (1971) (visitor in someone else's home is not protected by the fourth amendment from the risk that the owner will consent to the entry of the police; guest has no right to demand the hostess make her home a sanctuary); *Pasterchik* v. *United States*, 400 F. 2d 696 (9th Cir. 1968), cert. denied 395 U.S. 982 (1969) (hostess "fully empowered" to consent to search of bedroom within her home where defendant-guest left personal effects); *United States* v. *Reed*, 392 F. 2d 865 (7th Cir. 1968), cert. denied 393 U.S. 984 (1968) (defendant's stepfather had authority to consent to search of room in his home temporarily occupied by defendant and girlfriend); *United States ex rel. Perry* v. *Russell*, 315 F. Supp. 65 (W.D. Pa. 1970) (transient occupants of one-room apartment cannot preclude right of primary tenant to authorize or consent to search).

State courts have adopted a similar approach. See *Jones* v. *State*, 333 So. 2d 210 (Ala. Crim. App. 1976) (search of bedroom occupied by guest lawful upon consent of host); *State* v. *Cromeans*, 472 P. 2d 42 (Ariz. 1970) (mere guest may not object to warrantless search of premises where one with possessory right consents; "all the recent cases are to the contrary"); *State* v. *Grandmaison*, 327 A. 2d 868 (Me. 1974) (lessee in possession may lawfully consent to search aimed at guest); *State* v. *Thibodeau*, *supra* (while guest had standing to object, host-tenant had sufficient control of premises to bind guest by his consent to search); *Varner* v. *State*, 518 P. 2d 43 (Nev. 1974) (parents' consent to search room occupied by son lawful where son merely a guest at sufferance of parents who retained full right of control over premises); *Mares* v. *State*, 500 P. 2d 530 (Wyo. 1972) (rule seems well-established that mere guest on premises of another may not object to warrantless search where owner has given consent thereto).

The majority of cases appears to sanction searches of premises made with consent of the host. However, courts have recognized that such authority does not extend to areas reserved for the exclusive use of the guest or to his personal effects. *Reeves* v. *Warden*, *supra*; *Holzhey* v. *United States*, 223 F. 2d 823 (5th Cir. 1955); *United States* v. *White*, *supra*.

The issue of whether a temporary guest may consent to the search of his host's premises has been considered, but rarely. The better view is that the guest acquires no possessory right in the premises which supersedes the right of the host. *United States* v. *Pagan*, 395 F. Supp. 1052 (D.P.R. 1975), aff'd 537 F. 2d 554 (1st Cir. 1976), is illustrative. In *Pagan*, the Federal court held that "the weight of authority stands firmly against consent" by a temporary guest to a search of the host's house. The guest has "neither actual or implied authority to act as agent for the defendant [host] and consent to the search."

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 result can be different where the guest is something more than a transient visitor. In *United States* v. *Turbyfill*, 525 F. 2d 57 (8th Cir. 1975), the consenting party had been staying in the house of the defendant "for several weeks and had the run of the house. He was an occupant of indefinite duration rather than a casual visitor." The court concluded that such a person had common authority over and joint possession of the residence and had authority to authorize entry to the premises.

Secondary School Officials and Students

In recent years, crime spawned on city streets has spilled over to the classroom. It has brought not only fear and trepidation to parents and students, but also problems of control for school officials and law enforcement officers.

School officials are primarily responsible for maintaining order and discipline in secondary schools. The discharge of this duty means at the same time the investigation of criminal offenses—possession of narcotics and weapons, receiving stolen property, etc. Once the disciplinary problem becomes a criminal matter, law enforcement officers are frequently contacted for advice and assistance. It is essential at this point that officers be mindful of the constitutional issues which can arise pursuant to the schoolhouse search.

It is quite clear from both Federal and State court decisions that a student is entitled to the protection of the fourth amendment in his person, effects, and school locker. The New York Court of Appeals, reflecting the general view in a 1974 decision, concluded:

> "High school students are protected from unreasonable searches and seizures, even in the school, by employees of the State whether they be police officers or school teachers." *People* v. *D.*, 315 N.E. 2d 466, 467 (N.Y. 1974).

See also *Picha* v. *Wilgos*, 410 F. Supp.

1214 (N.D. Ill. 1976) (student possesses settled, undisputed constitutional right against unreasonable search in the school environment).

In the context of a consent search, the issue is whether a student in the school environment can give up the protection he enjoys in his person, effects, and locker by permitting police or school officials to search. A related and no less important problem is whether a school official may consent to a police search of the student's property.

So long as his decision is the result of a free, voluntary choice, the student, like any other individual, can consent to a police search. For example, in *State* v. *Stein*, 456 P. 2d 1 (Kan. 1969), a student suspected of burglary was confronted by police at his high school. In the presence of the principal, he was asked for consent to open his locker. He agreed and further authorized the officers to look through the contents found inside. A key was uncovered which led to the later discovery of property taken in the burglary. In considering the student's consent, the Kansas Supreme Court found there was nothing to suggest it was "coerced or other than voluntary," and noted:

> "We think it clear from the record that Stein agreed to the search without a word of complaint or objection and in a setting which is not to be equated with the aura of oppressiveness which often pervades the precincts of a police station." *Id.* at 2–3.

The burden of proving the voluntariness of the consent rests with the State, and it is probably fair to say that this burden increases as the age and maturity of the student diminishes.

Suppose in *State* v. *Stein, supra,* it was the school principal who consented to the police search of the locker. Would such consent be lawful? The answer may be found in an oft-cited New York Court of Appeals decision.

Detectives with a search warrant describing two students and their lockers went to a local high school, where they presented the order to the vice principal. The students were summoned and searched, but nothing evidentiary was found. A subsequent search of the defendant-student's locker, however, yielded marihuana. Though the warrant was later found defective, the trial court refused to suppress the evidence, concluding that the seizure was justifiable on an independent ground, that the vice principal had consented to the search of the locker. The court of appeals agreed.

In *People* v. *Overton*, 229 N.E. 2d 596 (1967), vacated and remanded 393 U.S. 85 (1968), reheard and approved 249 N.E. 2d 366 (1969), the New York court was presented with two issues: (1) Whether the school official could authorize the search of a student's locker; and (2) whether his consent was voluntary.

Regarding the official's right to consent, the court pointed out that the students provided school authorities with their locker combinations and were "well aware" that school officials possessed duplicate combinations. Furthermore, regulations had been issued concerning what could be kept in the lockers, with the school reserving the authority to "spot check" to insure compliance. The court concluded that while the students may have the right of exclusive possession with respect to their fellow students, they have no such rights as against school authorities. And because of the nonexclusive nature of the locker (i.e., joint possession), the school official is empowered to consent to the search by police officers. *People* v. *Overton*, 229 N.E. 2d at 598. The court also held that given the distinct relationship between school authorities and students and the hazards inherent among teenagers in a school environment, the authorities have an affirmative obligation to investigate charges that students are using or possessing narcotics.

As to the claim that the vice principal's consent was involuntary, the court, after examining all the relevant facts, rejected the argument and found his decision free of coercion. *People* v. *Overton*, 249 N.E. 2d at 368. The *Overton* decision was cited with approval in a later New York decision, *People* v. *Jackson*, 319 N.Y.S. 2d 731 (App. Div. 1971).

What *Overton* teaches is that a State may justify a school locker search by police based on consent of a school official where a policy has been adopted, promulgated, and practiced in which the school withholds from a student the total and exclusive right to possession of the locker. This nonexclusivity may be demonstrated by publishing an appropriate school regulation, by securing an agreement or understanding from the student at the time of the issuance of the locker, and by retaining duplicate combinations or locker keys. It should be noted that *Overton* deals only with the school locker problem and would not justify the search of the student himself or items in his possession, at least not on the basis of "joint possession" or "nonexclusivity."

Overton is consistent with the line of Supreme Court decisions applying the "assumption of risk" principle to searches undertaken with third-party consent. Where two or more persons (student and school official) mutually possess and exercise common authority over a place or thing (school locker), each assumes the risk that one of the joint possessors will consent to its search. *Frazier* v. *Cupp*, 394 U.S. 731 (1969). (See also Joint Tenants and Common Occupants).

(Continued Next Month)

Seattle Police Department's "*Decoy Squad*"

Seattle's Decoy Squad

"[T]he crimes specific section is a flexible group, operating primarily during nighttime hours in high-crime areas or in areas where certain types of specialized crimes are occurring."

By
THOMAS C. MARTIN
Special Agent
Federal Bureau of Investigation
Seattle, Wash.

AMID the noise and jostle of a sidewalk society, a derelict, clutching a bottle-shaped paper bag beneath his rumpled coat, weaves his way along Seattle's Skid Road in the Pioneer Square District. It is the first week of the month, and a tan window envelope, carelessly prominent in his coat pocket, reveals some of the State-provided funds with which he has begun his night on the town. Mumbling to himself, the decrepit old man staggers into the doorway of a boarded-up hotel, and pulling his collar up around his face, curls up in the corner to sleep off his apparent inebriation.

Farther down the street, a husky youth, whose faded bluejeans and boots identify him as possibly an off-duty longshoreman or itinerant cowboy, balances himself on a pair of wooden crutches. His bandaged head and abrasion scabs attest to a recent fight of which he was not necessarily the victor. A torn pay envelope, readily accessible for his evening's enjoyment, protrudes from his jacket pocket.

Still another young man walks slowly through the district, mentally recording the details of his surroundings. Glancing into the doorway, he notes the sleeping man and the tempting welfare envelope. The old man appears to sleep soundly in his convenient doorway, oblivious to his surroundings. The youth hesitates only momentarily, then leans over and takes the envelope from the man's pocket. Upon opening the envelope, he notices it contains only two $1 bills. As the youth searches through the old man's remaining pockets for more money, two men emerge from the shadows, arrest him, and take him into custody. The derelict is awakened, helped off to a waiting police car, and taken to the police station as a victim.

Only minutes after emerging onto the street, the young man on crutches is approached by a large man who, shouting epithets, knocks him to the ground and snatches his pay envelope, paws brusquely through his clothing for still more money, and threatens to beat him further unless he relinquishes all valuables. Two apparent idlers in the vicinity step from an alleyway and intervene, brace the assailant against the wall, handcuff him, and take him away to jail. The crippled man is helped up and taken along for a statement.

Both the "cripple" and the "derelict," as well as their two-man backup teams, are police officers and members of the "Decoy Squad" of the Seattle Police Department's Crimes Specific Section.

The Decoy Squad

The problem involved the robbery, and often beating, of the aged and infirm residents of Seattle's Skid Road by strong-arm assailants and "jack-rollers." Victims of such crimes, being in genuine fear of retribution, rarely report the incidents or appear in court to testify against their assailant. In order to combat the problem, the widely used "decoy" concept was adopted. Of course, there are many variations of this concept, but to utilize it effectively, an adroitness in the art of disguise is essential. The difficulty is to transform youthful, vigorous policemen in their twenties into aging derelicts.

"The problem [which had faced the crimes specific section] involved the robbery, and often beating, of the aged and infirm residents of Seattle's Skid Road . . . ."

The commander of the crimes specific section, whose teenage son was then attending a dramatic arts class at a local high school, contacted the school dramatics teacher for advice. The teacher enthusiastically conducted a crash course in old-age makeup and provided a few acting

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techniques to assist the officers in making their roles convincing. Now, one corner of the commander's desk holds a makeup case containing various lengths and colors of hair for instant beards, mustaches, and sideburns, wax pencils, cement for sticking on false beards, and nose putty to create misshapen bone structure. Gauze bandages and iodine are used for obvious "injuries"; crutches convey "victim" helplessness and therefore attract street muggers. Assorted used clothing was purchased from local nonprofit retail outlet stores, and careful observation of the gait and behavior of the real victims provided the remaining background for the roles the "decoy" officers were to play.

With the commander acting as "makeup man," the decoy squad arrives early for its 7 p.m. to 3 a.m. shift and immediately begins its transformation. The success of the disguises is noted not only in the success of the squad's operation, but in the frequency with which "good Samaritans" counsel potential victims to take care of themselves, to conceal and secure their money, and help them to a safer location.

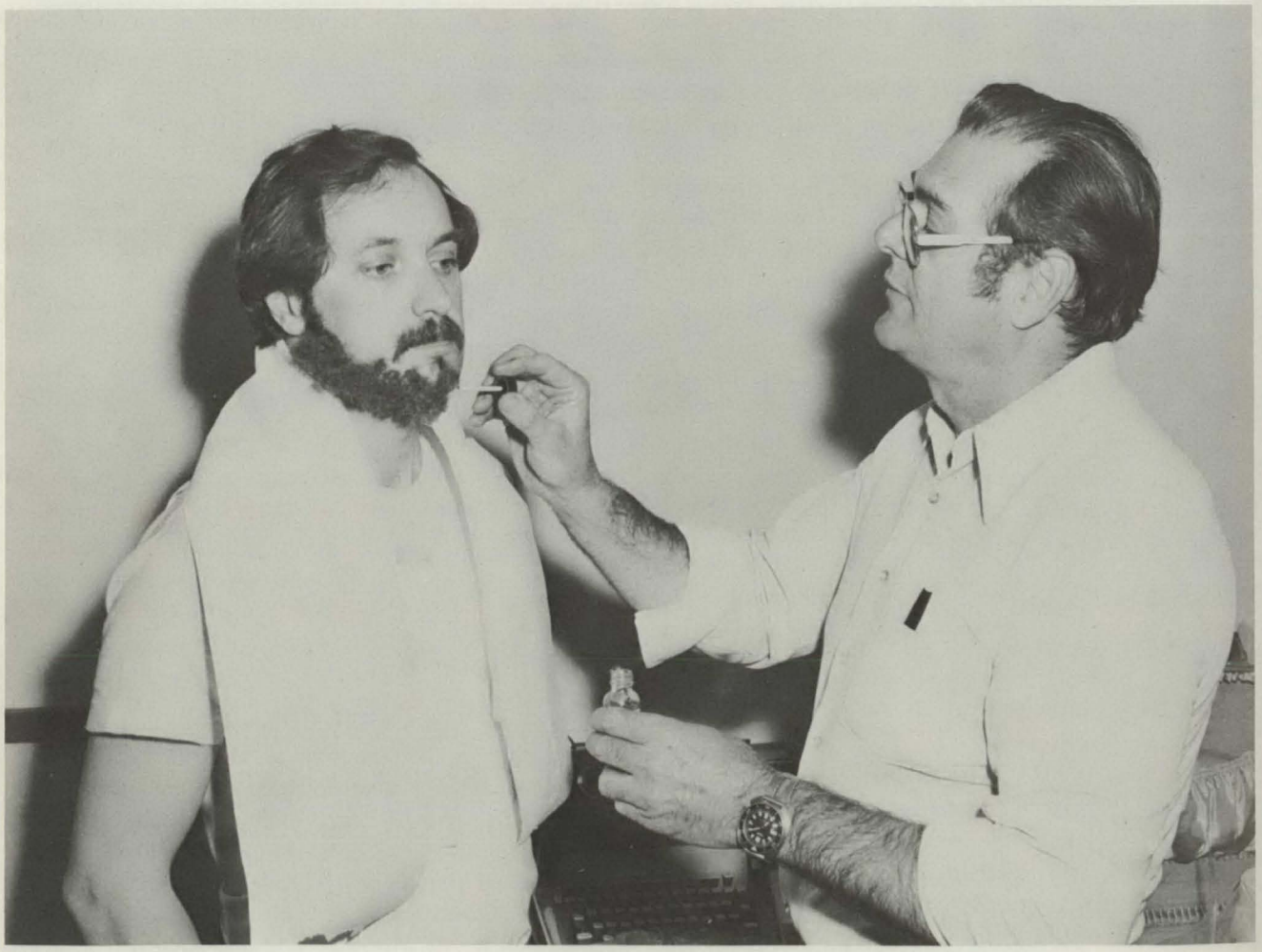
"[O]ne corner of the commander's desk holds a makeup case containing various lengths and colors of hair for instant beards, mustaches, and sideburns, wax pencils, cement for sticking on false beards, and nose putty to create misshapen bone structure."

History of the Crimes Specific Section

In the early 1960's, a small squad was formed as a part of the Patrol Division of the Seattle Police Department to concentrate on certain felony cases. This squad grew to over 40 and was expanded into a tactical unit operating as a backup for various types of patrol activities, including the control of violent street demonstrations.

Later, the parameters of the squad's duties were refined, and the number

Makeup man, Lt. Larry E. Holder, glues a beard on Officer Leon O. Libby, transforming him into a bum.



of its personnel was reduced to its present complement of 14 officers, 3 sergeants, and 1 lieutenant, commanding.

Today, the crimes specific section is a flexible group, operating primarily during nighttime hours in high-crime areas or in areas where certain types of specialized crimes are occurring. It serves as a backup unit for other divisions within the department, sometimes as a stakeout unit, or sometimes as a safety backup for undercover agents. It is also utilized to saturate an area in which a dangerous fugitive has been observed.

Firearms training is emphasized, and each officer is expected to qualify as an expert on the pistol range and to remain in top physical condition. The officer is further trained in the use of various types of special weapons. Safety of the officers is paramount, and all decoys are equipped with underwear-type bulletproof vests.

"The success of the disguises is noted not only in the success of the squad's operation, but in the frequency with which the 'good Samaritans' counsel potential victims to take care of themselves, to conceal and secure their money, and help them to a safer location."

Scope of Responsibilities and Activities

Areas in which the crimes specific section has become proficient utilizing both uniform and plainclothes patrol, and which comprise the bulk of its activities, are as follows:

Crowd Control (Uniform and Plainclothes)—Utilizing techniques obtained through training, the section controls crowds during and following parades, street festivals, and other public events.

Unusual Operations Procedures—Its duties include undercover, decoy, backup of under-

Noontime traffic in Seattle's Skid Road.

cover agents, bicycle patrol, and other unusual procedures as exigencies demand.

"Each crime situation is examined in an effort to determine the best method of attack, such as saturation by uniformed officers, use of decoys, bicycle patrol, stakeout, or other, perhaps yet untried, techniques."

Augment Traffic Control Officers and Criminal Investigators—Additional duties include stakeouts, intelligence activities, vice operations, apprehension of dangerous fugitives, prostitution suppression (uniform and plainclothes), and decoy operations, such as the antijackroller operation.

Chief Robert L. Hanson, Seattle Police Department

Responsibility for VIP Protection—The section performs liaison and planning, as well as providing a trained security team for local and visiting dignitaries upon request. The section has cooperated with Federal protective agencies, including the U.S. Secret Service, U.S. Department of State, and the FBI, in guarding the President and Vice President of the United States, and other federally protected foreign dignitaries and heads of state.

A "jackroller" bends over his intended "victim" in an abandoned doorway as a Seattle police officer rehearses with another member of the decoy squad in his role as a derelict.

High Crime Area Saturation—It coordinates with the crime analysis unit to evaluate areas wherein a high concentration of criminal activities, such as burglaries, stickups, jackrolling, prostitution, muggings, and car cloutings, are occurring. Each crime situation is examined in an effort to determine the best method of attack, such as saturation by uniformed officers, use of decoys, bicycle patrol, stakeout, or other, perhaps yet untried, techniques.

The work of the section is as flexible as the imagination and enthusiasm of the members and its commander make it.

Wounding Effects of Blank Ammunition

By
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For several years, firearms instructors and firearms enthusiasts have been aware that blank cartridges are labeled "dangerous" and should be used with caution; however, there appears to be almost a complete lack of informative data regarding blank cartridges. A study of books and magazines dealing with firearms and ammunition will sometimes contain one sentence or one small paragraph warning of the dangers of blank cartridges at close ranges.

In April 1977, Oklahoma City police personnel conducted a series of preliminary tests with blank ammunition at the police department's pistol range. A police photographer recorded the results of the tests in which Remington .38–caliber blanks, .22–caliber blanks (starter caps), and Winchester-Western 12-gage shotgun blanks were used.

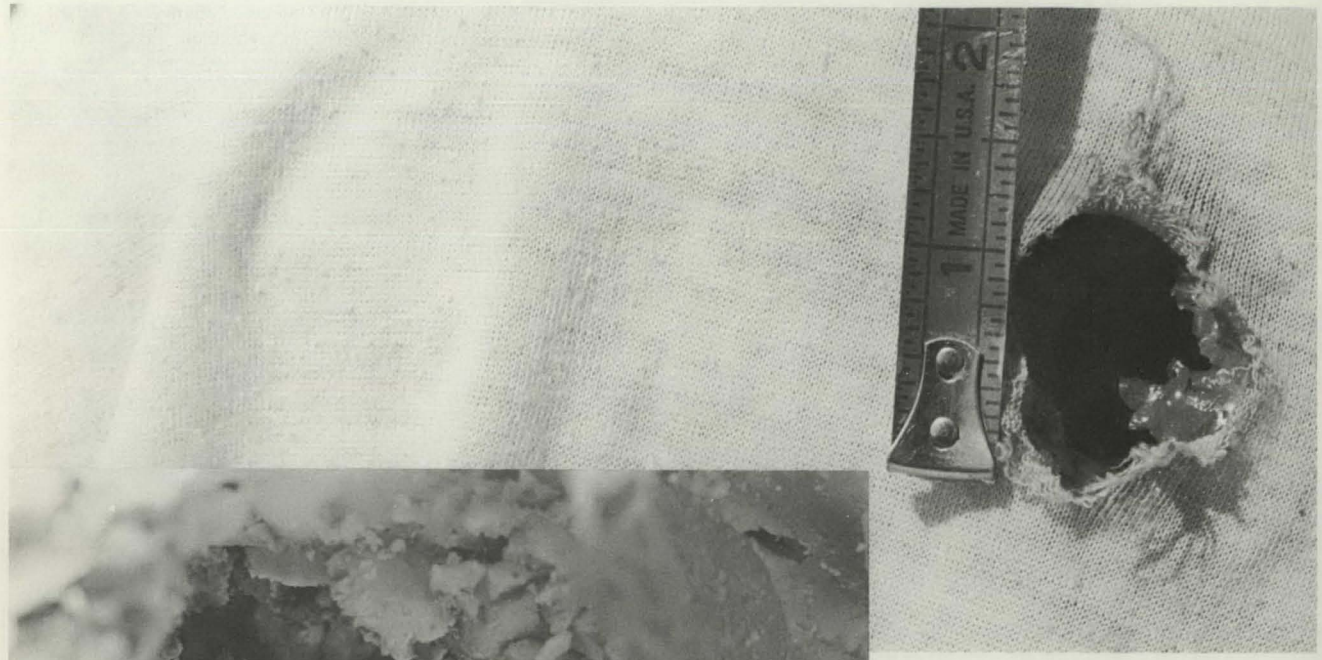
Test material consisted of solid beef fat wrapped in a plastic bag and covered with a white cotton T-shirt. It is believed that beef fat gives a fairly good indication of the wounding effects of a cartridge and bullet, in comparison with test results obtained by use of ordnance gelatin. It is further assumed that the human body is no more resistant to wounding effects than the beef fat used in these tests, if bone structure is discounted.

One Shot—.38-Caliber Blanks

As illustrated in figures 1 and 2, one .38 Special blank cartridge fired from a revolver with the barrel in contact with the beef fat resulted in gases from powder combustion and wadding penetrating to an approximate depth of 2½ inches. Visual inspection of the 1½-inch diameter hole disclosed scorching of the fat, but the wad was found intact.

With the muzzle of the revolver barrel held at 2 inches from the beef fat, the shot penetrated approximately 1½ inches, which would be capable of causing a serious wound to the hu-

"The safety rule, 'Never point a weapon at anyone unless you are justified in killing that person,' still applies, no matter what type of cartridge is used."



Figures 1 and 2. Result of one contact shot from .38-caliber blank.

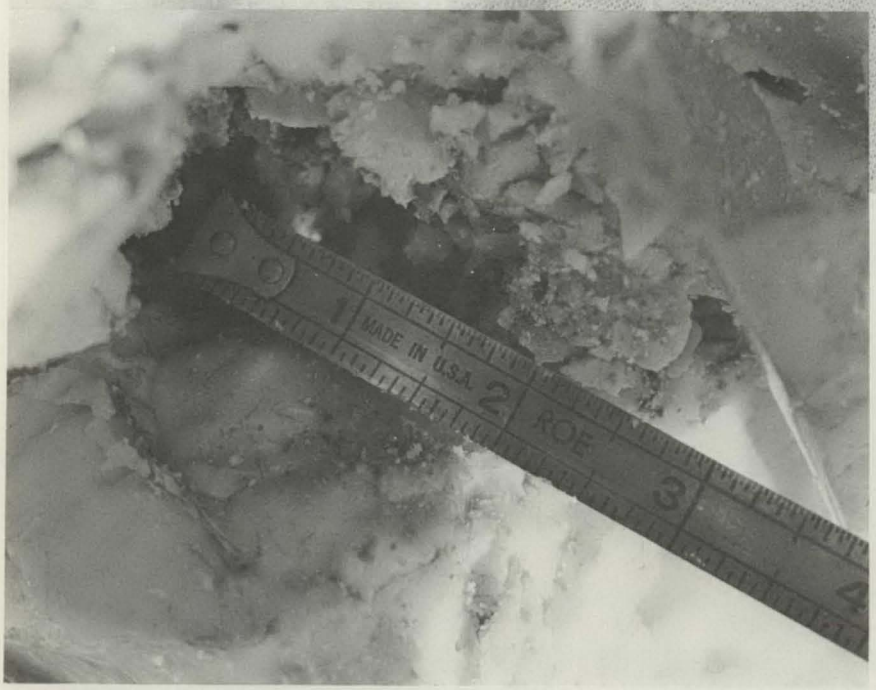


Figure 3. Effect of a .38-caliber blank fired from 2-inch distance.

man body. (See fig. 3.) A shot fired at 6 inches penetrated an impressive 1 inch, and one fired at a distance of 12 inches has a wounding effect which could blind a person. (See figs. 4 and 5.)

Two Shots—.38-Caliber Blanks

Inasmuch as a veteran police officer with the Oklahoma City Police Department died recently from wounds caused by two rapid fire .38–caliber blanks fired at pointblank range, it was decided to include testing of two shots for comparison purposes.

The results of firing two shots into the beef fat as rapidly as possible are illustrated in figures 6 and 7 with two rapid shots fired into a 3-inch thick-

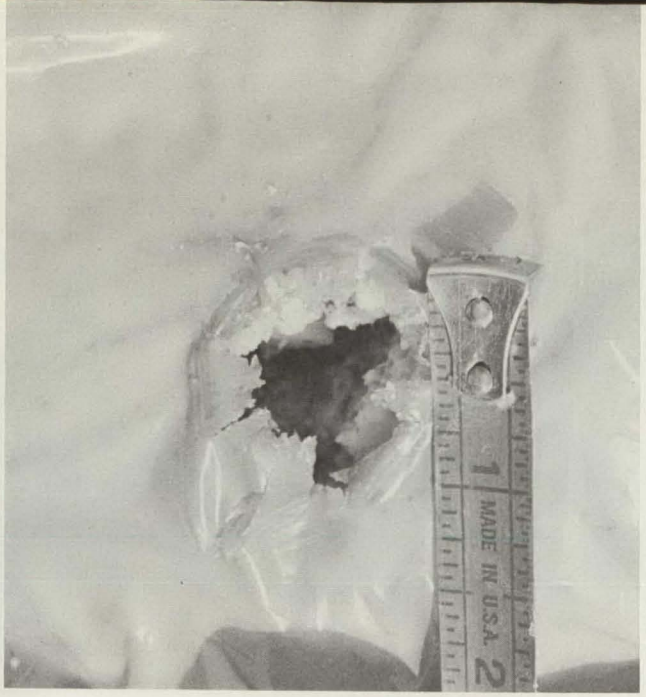


Figure 4. When fired from a 6-inch distance, a .38-caliber blank will penetrate 1 inch.

Figure 5. One shot fired from 12 inches with .38-caliber blank.

Figures 6 and 7. Width and penetration of two rapid fire shots with .38-caliber blanks.

ness of beef fat. After achieving complete penetration, the thickness was doubled. The 6-inch thickness was also completely penetrated by two rapid shots. Additional testing in the future could provide information concerning maximum penetration of two rapid fire shots.

An interesting phenomenon observed during the firing of two rapid shots with the muzzle of the revolver in contact with the beef fat was that during the actual firing of the weapon the barrel of the revolver entered the cavity approximately 2–3 inches. This was observed three different times during testing.

One Shot—.22-Caliber Blanks

Inasmuch as .22-caliber starter blanks are used for many athletic occasions, this cartridge was also tested. (See fig. 8.) When the muzzle of the revolver barrel was placed in contact with the beef fat, it created a depression in the fat approximately ¼-inch deep—certainly the equivalent of a painful wound. At a distance of 6 inches, the .22-caliber starter blank furnished no penetration of the white T-shirt and merely left a black powder residue on the shirt.

12-Gage Shotgun Blanks

Figure 9 shows the results of firing the 12-gage blank with the barrel in contact with the beef fat. It further illustrates the effects burning gases and wadding have upon the fat and shows the recoil of the shotgun. The report of this blank shotgun shell was extremely loud and the recoil considerable. Many pieces of beef fat can be seen in figure 9 as white particles flying in all directions. One piece of fat about 4 inches in diameter was blown approximately 15 feet to the left of the officer, and smaller pieces were blown as far as 12 yards behind

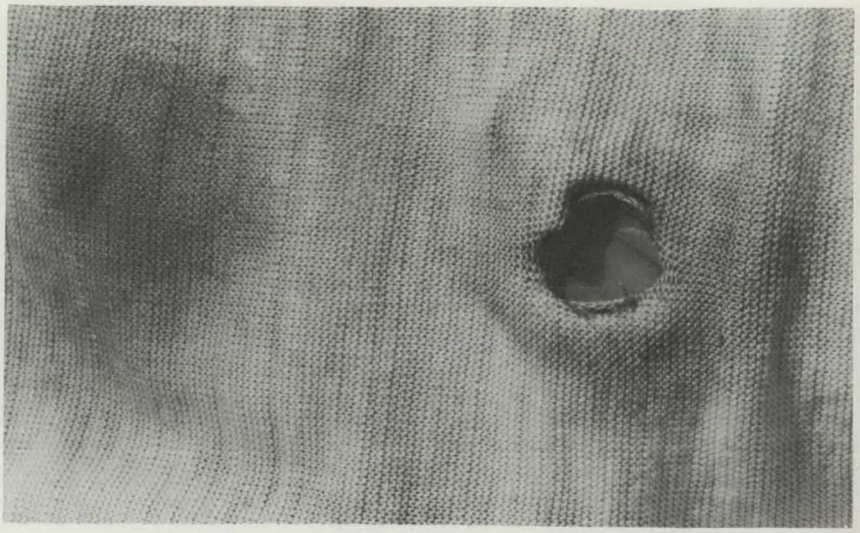


Figure 8. Powder burn on left is the result of a .22-caliber starter blank fired from 6 inches. Contact shot with .22-caliber blank creates a ¼-inch depression.

Figure 9. Contact shot with a 12-gage shotgun blank scattered small pieces of beef fat as far as 12 yards.

the officer onto the clothes of those observing.

The destructive results of the 12-gage blank can be seen in figure 10. The impression given observing officers was that a small explosive device had been detonated inside the 20 pounds of beef fat.

When fired from a distance of 6 feet, the 12-gage shotgun blank penetrated the beef fat approximately 1½ inches—thereby giving about the same penetration as the .38 Special blank when fired from a distance of 2 inches. (See fig. 11.)

Conclusion

The results of this informal testing of blank ammunition indicate that additional controlled experimentation is needed. None of the officers present would have predicted the penetration of two rapid fire .38 Special blanks or the destructive force of 12-gage shotgun blanks. Knowing that the blank cartridge contains no bullet, it is possible that many firearms instructors may greatly underestimate the harmful effects of burning gases and wadding from blank cartridges.

Figure 11. A penetration of 1½ inches resulted when a 12-gage shotgun blank was fired from a distance of 6 feet.

Figure 10. Destructive effects of 12-gage blank.

A discussion of possible "safe distances" of blank ammunition was held, and it was decided any attempt to list safe distances could be very misleading. Even though one test could provide information concerning a certain brand of blanks at a specified time, any change of brands or of powder and wadding, or possible humidity changes affecting the wadding, could lead to different and therefore dangerous results.

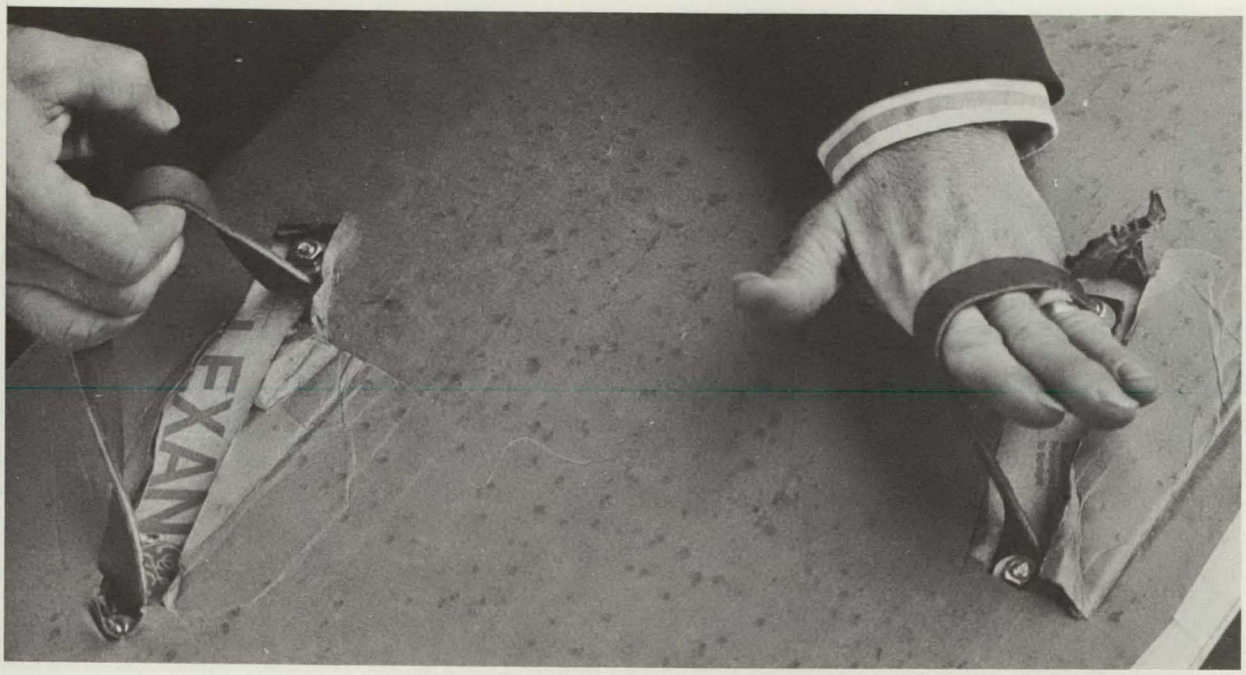
The death of one police officer from blanks proves the danger of blank ammunition. The safety rule, "Never point a weapon at anyone unless you are justified in killing that person," still applies, no matter what type of cartridge is used.

U.S. Park Police
Washington D.C.

IMPROVISED RIOT SHIELD

U.S. Park Police reported that hundreds of demonstrators protesting the recent visit of a foreign dignitary charged a police line near the White House in Washington, D.C. The rioters wielded 1⅛-inch hardwood dowels, 36 inches in length, which had been used to support placards during the demonstration that preceded the violence. Lumber, iron rods, and steel fenceposts from a nearby construction site were also used as weapons against officers, their horses, and opposing demonstrators.

After the rioters were dispersed, it was discovered that many of them had been carrying improvised riot shields covered with heavy cardboard to camouflage them as protest signs. These shields were fabricated of tough, durable 18- by 36-inch plastic sheets, ¼-inch thick, commonly used as a burglary resistant glazing material. Bolted to each shield were two heavy leather loop handles. By inserting one arm through the bottom loop and clasping the top loop with that hand, the other arm was free to swing the weapon. The shields were effectively used to push and strike officers and police horses. They also provided the rioters with protection from officers' riot sticks.



The protestor's placard fitted with removable dowel and leather loop handles . . .

. . . quickly becomes a formidable weapon.

How To Write Clearly In One Easy Lesson

By
ALBERT JOSEPH
President
Industrial Writing Institute, Inc.
Cleveland, Ohio

"Gobbledygook Has Gotta Go," a Government Printing Office pamphlet tells one and all. Dozens of other publications by various agencies urge Federal employees to write clearly and courteously, and almost every office has had at least one directive from the boss pleading for clear, simple letters and reports. Most government agencies try harder than most companies to improve their written communications. But we still get:

> "This office has become cognizant of the necessity of eliminating unnecessary vegetation surrounding the periphery of the facility."

[W]hen all the writer wanted to say, and should have said, was: "Please kill the weeds around the building."

This is not just a government problem. Intelligent adults everywhere write that way. Why? By far the most common reason is that they think they're suppose to, or they think the boss wants it that way—and often he does. Many times, however, people write in heavy language because they haven't thought out clearly what they're trying to say; the scholarly tone may conceal that they are really not saying much at all. Or, insecure employees may choose overscholarly language in an effort to impress someone. How pathetic that anyone should try to impress with words rather than ideas.

Five Principles of Clear Writing

These are not principles of *business* communication. They are basic to any kind of writing whether you are composing a letter or report, a Federal regulation, or the great American novel. They will help you write clearly, accurately, and fast. And they will give your writing a warm yet dignified tone.

1. Prefer clear, familiar words. Vocabulary is a tool, a means to an end, not an end in itself. While a large vocabulary is one of our greatest assets, use it graciously. Don't show off with it. You will certainly need some large words —especially technical or professional terms. But never use a large word when you can say the same thing with a small one. (For example, say "use" instead of "utilize," or "enough" instead of "sufficient.") Because you must

think more clearly to express an idea in small words, they produce clearer and more precise writing. And they are the ones which add beauty to the language—if you care about that.

2. Keep most sentences short and simple. Your writing should average between 15 and 20 words per sentence. (But mix them up; don't make every sentence between 15 and 20 words.) Better to express a complex thought in several short sentences than in one long one. Your reports and letters will be easier to write—and to read. Your ideas will be harder hitting. And you will be stuck less often. Don't worry about sounding choppy or childish unless you overshorten; there is that danger, however, if you average much below 15 words per sentence.

3. Prefer active voice verbs; avoid passives. Nothing makes writing more "blah" than the passive voice. Worse, it makes your style inaccurate because it fails to tell by whom. (Write: "Our engineers have estimated . . ." rather than: "It has been estimated . . ." or: "You must install the equipment . . ." rather than: "The equipment must be installed . . . .") Once you have recognized it, ask yourself "by whom?" The answer to that question should be the subject, and you are then in the active voice.

4. Get people into your writing. Don't drag them in artificially, but don't try deliberately to make your writing impersonal. The "third-person" style so prevalent throughout the government is hard to justify, except that "it has always been done that way." Poor justification. Pity the reader who is told: "This office should be duly notified upon receipt . . . ." Why not say: "Will you please notify us when you receive. . . ." Yes; you may even call yourself "I", but don't overdo it.

5. Use a conversational style. Write it the way you would speak it. You write: "Personnel assigned vehicular space in the adjacent area are advised that utilization will be temporarily suspended Friday morning." When someone asks what that means you say: "Please don't park in the lot next door Friday morning." What would be wrong with writing it that way? But caution: We tend to be careless in conversation. Your writing should be more concise, and grammatically correct. Use a conversational style—well, sort of, anyhow.

Hiding Behind Legislation

Timid (or lazy) civil servants often choose to quote directly from a law or regulation rather than tell what it means in simple English. Pity the poor taxpayer who writes your office for clarification of some regulation, and gets back: "Pursuant to the provisions of the 1964 act as amended . . ." followed by a quotation from the act.

"But," the civil servant may argue, "if the lawyers who wrote the act wanted it in clear, simple language, why didn't they write it that way?" Why didn't they, indeed? They probably should have. Who ever said that lawyers are better writers than anyone else? One would hope, however, that the specialist dealing regularly with the intricacies of a particular law would be able to discuss it accurately in lay language.

Legendary Bureaucratic Image

Face to face, a government employee is as likely as his or her industry counterpart to be capable, courteous. But most people's contact with others is through writing, and therefore our impression of others (and theirs of us) is created by writing.

"[M]ost people's contact with others is through writing, and therefore our impression of others (and theirs of us) is created by writing."

Civil servants, through their writing habits, may inadvertently create the impression they are uncooperative, indifferent, ineffectual paper-pushers.

A letter or directive will sound hostile if the writer uses cold and heavy language; the reader has no way of knowing that the writer was really trying to cooperate. It will sound indifferent if the writer relies on standard rubberstamp phrases instead of composing original statements; the reader has no way of knowing that the writer gave the matter careful attention. Worst of all, the writing will sound confused if the writer tries to use language he or she can't use well; the reader can't tell that the writer really understands.

Might we not argue convincingly, then, that greater cooperation—and therefore greater efficiency—would result if government employees would drop their preconceived style and write things in clear, courteous English?

How To Begin a Letter

The weakest part of most letters, and probably the hardest to write, is the first sentence. Try hard to avoid such standard cliche openings as "In response to . . ." or "With reference to . . . ." They're overworked, and create the impression that you didn't

put much thought into your opening but used rubberstamp wording instead. Worse, like most cliches, they withhold part of the information in that important briefing at the beginning.

"The weakest part of most letters, and probably the hardest to write, is the first sentence."

Here is an example of what's wrong. The briefing (past information) and the answer (new information) are in one monstrous sentence:

> "In response to your inquiry dated October 8, 1974, relative to authorization of the audit of the personnel records of your company by the wage and hour division, the Fair Labor Standards Act of 1938, as amended, provides that any business organization engaged in the sale of services or the sale, rental, or lease of products to any agency of the Federal Government may accordingly be subject to examination to insure compliance with all of the terms and provisions of the above-mentioned act. It is true, however. . . ."

Just breaking that into two sentences improves it dramatically:

> "This is in response to your inquiry dated October 8, 1974, relative to authorization of the audit of the personnel records of your company by the wage and hours division. The Fair Labor Standards Act of 1938, as amended, provides that any business organization engaged in the sale of services or the sale, rental, or lease of products to any agency of the Federal Government may accordingly be subject to examination to insure compliance with all of the terms and provisions of the above-mentioned act. It is true, however. . . ."

"One would hope . . . that the specialist dealing regularly with the intricacies of a particular law would be able to discuss it accurately in lay language."

But the wording is still heavy. Why not say:

> "This is in reply to your October 8 letter questioning the wage and hour divisions authority to audit the personnel records of your company. The Fair Labor Standards Act of 1938, as amended, states that any company doing business with any agency of the Federal Government may be examined to insure compliance with the act. It is true, however. . . ."

Not bad. (Notice, incidentally, how much more information "questioning" imparts than the cliche "relative to.") But it is still cold, stuffy, unnecessarily legal. And is the briefing necessary in this situation? Sometimes it isn't. Here is that same opening again, this time in clear, courteous, yet accurate English. And it is only half as long:

> "Yes; the wage and hour division does have authority to audit your personnel records. The law says we may examine the records of any company doing business with the Federal Government, to insure compliance with the Fair Labor Standards Act of 1938, as amended.

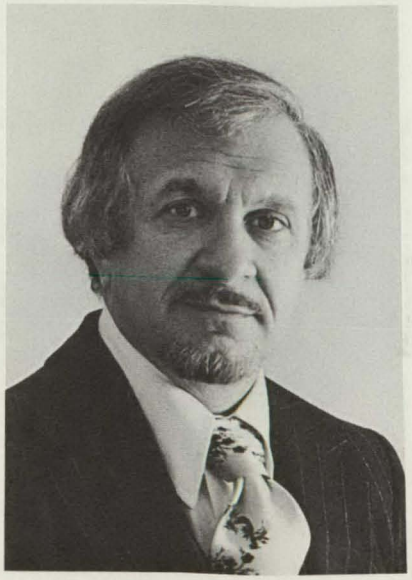
You are entirely right, however. . . ."

Don't Be Bound by Rules

Many writers lose effectiveness because they stick unflinchingly to formal rules. Some of the things you probably learned as rules, however, are just silly taboos.

"Many writers lose effectiveness because they stick unflinchingly to formal rules."

For example, you probably learned that you may not repeat words. Of course you may; it is far better than seeking synonyms. And you probably learned that you may not begin sentences with "and" or "but." But you may. The best and most dignified of writers have been doing it for centuries. The alternatives are long, smooth sentences or short, disjointed ones; what can be wrong with short, smooth ones?



Albert Joseph

This is not to suggest that good grammar need not conflict with clarity. And grammar is not a substitute for thinking; good grammar will not necessarily make your writing clear.

(The taboos in the paragraph above have never been rules, even though you may have learned they were.)

"Each of us can communicate better if we remind ourselves occasionally that language is just a transportation system for ideas—nothing more."

Each of us can communicate better if we remind ourselves occasionally that language is just a transportation system for ideas—nothing more. That is the only reason any culture ever created language. It is the only reason we write.

Bureau of Alcohol, Tobacco & Firearms

National Firearms Act (NFA) Firearms in Possession of Law Enforcement Agencies

The Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Treasury Department, reminds the criminal justice community that all firearms falling within the scope of title II of the Gun Control Act of 1968 (the amended National Firearms Act) must be registered to the possessor with ATF in order to be lawfully possessed.

Weapons covered by the NFA include machineguns, short-barreled rifles, short-barreled shotguns, destructive devices, and mufflers and silencers.

When registrations of firearms by governmental entities are approved, subsequent transfer of such firearms will be approved *only* to other governmental agencies for official use. Otherwise, such firearms must be destroyed or abandoned to ATF. Firearms registered in this manner *may not* be subsequently transferred to licensed firearms dealers or to individuals.

To determine if particular firearms in the possession of your agency are registered to your agency, a written request must be made on your official stationery to the Bureau of Alcohol, Tobacco and Firearms, Technical Services Division, NFA Branch, Washington, D.C. 20226. Additional information may be obtained by writing the preceding address, or calling telephone number 202–566–7371.

WANTED BY THE FBI

Photograph taken 1976. **Photographs taken 1973.**

CLAUDE LUKE CRADDOCK, also known as Lucas, Luke

Unlawful Interstate Flight To Avoid Prosecution—Murder; Attempted Murder; Armed Robbery; Aggravated Arson

The Crime

Craddock is being sought in connection with the shooting of a man whose body was later found in the burned remains of an automobile. A second victim, found nearby, had also been shot and badly beaten, but survived.

A Federal warrant was issued for Craddock's arrest in New Orleans, La., on August 17, 1976.

Description

Age	21, born March 10, 1956, Picayune, Miss. (not supported by birth records).
Height	5 feet 11 inches.
Weight	175 pounds.
Hair	Brown.
Build	Medium.
Eyes	Green.
Complexion	Fair.
Race	White.
Nationality	American.
Occupations	Escort, male model, travel agent, yacht transporting business.
Remarks	May have had major plastic surgery on face, and hair may be dyed black.
Social Security No. used	434-96-2554.
FBI No.	532,000 L6.

Fingerprint Classification:

14 O 29 W IOM 17
O 19 W IOO

NCIC Classification:

DOPI14PM17POPI171717

Caution

Craddock should be considered armed and extremely 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.

Right index fingerprint.

U.S. GOVERNMENT PRINTING OFFICE : 1977—O-252-417

FBI LAW ENFORCEMENT BULLETIN

FOR CHANGE OF ADDRESS ONLY—NOT AN ORDER FORM

Complete this form and return to:

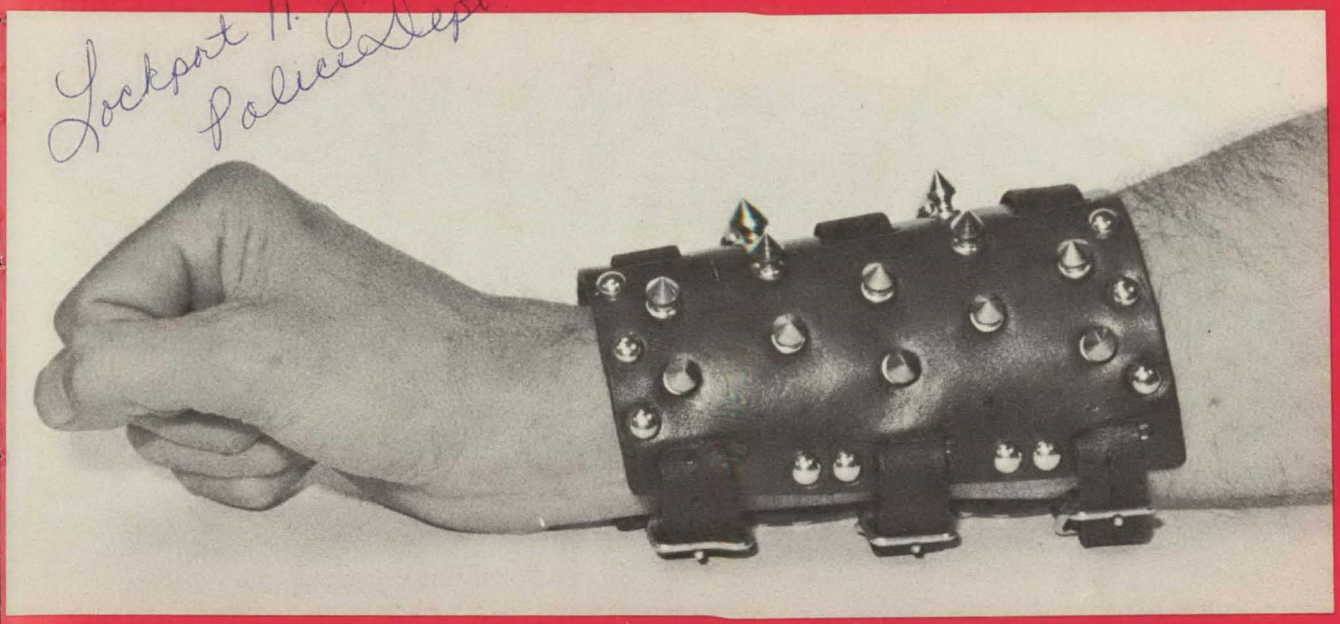
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

(*Name*) (*Title*)

(*Address*)

(*City*) (*State*) (*Zip Code*)

Up One's Sleeve!



The above-pictured studded wristband was recovered by a Lockport, N.Y., police officer during a routine traffic check. Easily concealed by clothing, this weapon could cause severe damage to an unsuspecting officer.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

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INTERESTING PATTERN

The above pattern presents no problem as to classification. It is classified as a double loop whorl with an inner tracing. The location of the two separate loop formations is most unusual.