

FBI LAW ENFORCEMENT BULLETIN

FEBRUARY 1981

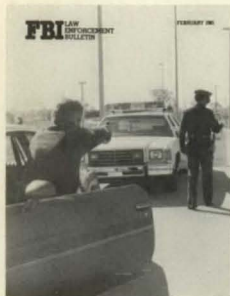


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FEBRUARY 1981, VOLUME 50, NUMBER 2

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**Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535**

William H. Webster, Director

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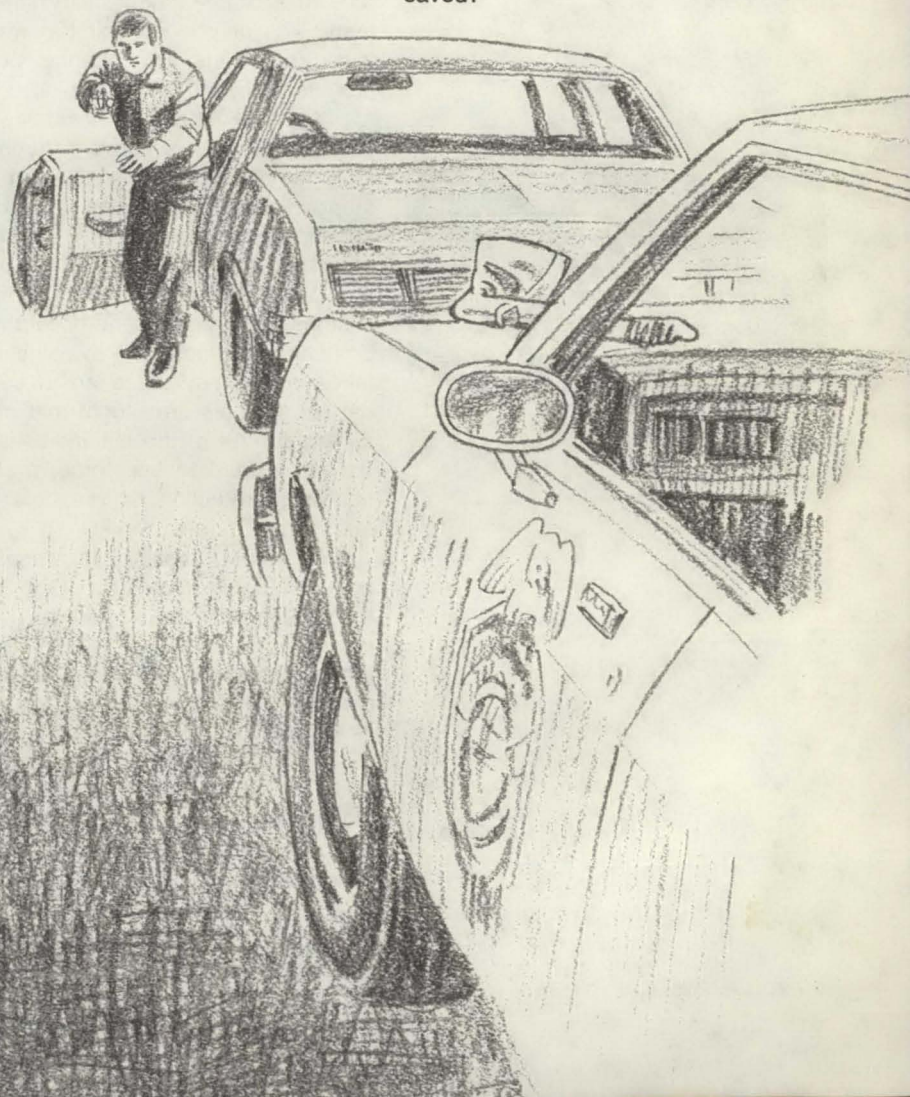


Police Officer Survival During Traffic Stops

By William J. Thomas, *Director*
And Frank W. Boyer, *Instructor-Coordinator*
Division of Law Enforcement Training
Kentucky Department of Justice
Bureau of Training
Richmond, Ky.

Another sad chapter has been written in the history of violence in the United States. Nationwide, in 1979, 106 law enforcement officers were slain while performing police duties.¹ Assaults upon police officers seem to be spreading like cancer in our turbulent society.

Are these annual statistics inevitable? Does commonsense suggest there is room for improvement? Will a reappraisal of police practices contribute to a reduction of these violent conflicts which, all too often, result in police and violator injuries and death? If we could minimize or eliminate our mistakes, could some of these lives be saved?





Mr. Thomas



Mr. Boyer

The Kentucky Department of Justice, Bureau of Training, recently sought to answer these questions during a case-by-case study of police injuries and death. An attempt was made to reconstruct the actual occurrences to determine those factors which directly contributed to serious or fatal injury. In addition to reviewing these case histories, instructors interviewed street policemen, shared experiences with each other, and researched available material, which was scarce. The contributing factors derived from the study became the foundation for an "officer survival" training program, established by the Bureau of Training, which was designed to teach officers to handle difficult confrontations in a professional manner.

The training program is presently being taught to over 3,000 Kentucky police officers. Successful completion of at least 40 hours of annual inservice training is mandated for all officers who receive a State-funded salary supplement. The purpose of this pay incentive program is to enhance police professionalism through training.

The survival course includes practical training in answering disturbance calls, handling felony-in-progress calls, stopping and approaching vehicles, conducting custody and building searches, and planning raids. In addition, officers study survival statistics, clandestine weapons, and body armor. Emphasis is placed on avoiding mistakes which may place an officer in danger. Officers are taught that maintaining control of the situation will reduce the need to use force, thereby affording protection to suspects and arresting officers as well.

As a direct result of this research and training program, new and safe techniques were developed for everyday police practices. Developing those techniques began with a look at survival statistics. For example, our research indicated that nationwide in 1979, 6,329 police officers were assaulted and 15 slain during traffic pursuits and stops.² Also, our research in Kentucky revealed that 79 assaults and 1 death resulted from traffic stops made during

1979. It seemed logical, then, to review the "traditional" traffic stop to determine where we were most vulnerable.

For many years, police officers have been trained to use one or two methods for vehicle stops. The first method requires the officer to position his vehicle 10 feet to the rear and 3 feet to the left of the stopped vehicle. The second method calls for the officer to park the cruiser directly behind the violator's car, which permits normal traffic flow and decreases vehicular congestion. When using either of these stops, the officer is instructed to communicate a description of the vehicle and its occupants, the license number, and location where the stop occurs. Thereafter, the officer typically retrieves a hat and flashlight in preparation for leaving his vehicle.

When approaching the violator, the officer is taught to check the vehicle trunk to ensure it is secure, check the rear seat and passengers, and then, if all is clear, to approach the violator. Most officers have been taught to stand slightly behind the driver's side door, which affords protection from a sudden opening of the door and which requires the offender to turn around if he intends to assault the officer. Also, we have been taught to watch the violator's (and passengers') hands while they rummage through their clothing, purse, glovebox, or console in response to the question, "May I see your operator's license, please?"

Once the officer obtains the license and explains the reason for stopping the violator, he moves to the location where the citation will be written. The officer then turns his back to

the violator and walks back to his police cruiser. In some communities, it is common practice to allow the violator to sit in the police cruiser while the citation is being completed. In any event, most police officers complete the citation in the front seat of their cruiser, with the dome light on if at nighttime.

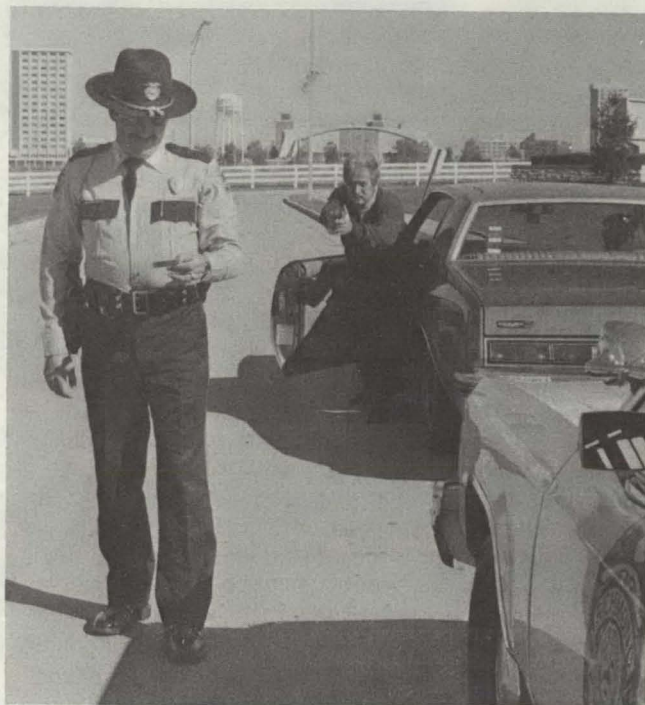
After the citation is complete, the officer again leaves the cruiser to approach the violator. Some have to stop to record the vehicle tag number because they parked too close to see it while seated in their cruisers. Many officers admitted being less careful during this second approach, having been lulled into a false sense of security after the initial encounter.

Finally, the officer returns to the rear of the violator's door, explains the citation and court requirements, obtains the violator's signature, and returns to his cruiser. As he walks back, with citation in hand, he may be carrying the only piece of evidence which later may be used to place the violator at this location and time. How many times was the officer in this traffic stop vulnerable?

- 1) When the officer first makes the stop, searching for items before exiting his police unit;
- 2) While approaching the suspect vehicle;
- 3) While the violator's (or passengers') hands were removed from the officer's sight, in order to find an operator's license;
- 4) As the officer returns to the cruiser with his back turned;
- 5) While sitting in the cruiser writing the citation;
- 6) During the second approach to deliver the citation;
- 7) While engaged in a second encounter with the violator; and
- 8) When he turns his back to return to the cruiser, signed citation in hand.



One method of a traditional traffic stop is for the officer to park his cruiser directly behind the violator's car.



When returning to his cruiser, with back turned to the violator, the officer becomes vulnerable to potential attack.



By requesting the violator to step back to the police cruiser, the officer can keep the violator and any occupants of his car constantly in view, thereby protecting himself from attack.



When writing the citation, the officer should face the violator from a distance of 8 to 10 feet, using peripheral vision to observe any movement by the violator or the occupants in his car.

These eight points of vulnerability are not omnipresent, or all inclusive, in all traditional traffic stops. Furthermore, they do not indicate that this method should never be used. The Bureau of Training advocates continued use of the traditional stop during inclement weather, when stopping the handicapped, or in any circumstances where the officer feels reasonably secure in his personal safety.

We recognize, however, that these are extraordinary times. Police officers and violators, by the thousands, are being injured, assaulted, or killed every year during traffic pursuits and stops. Police survival in the 1980's can be enhanced by a willingness to review routine practices and accept the responsibility to establish policies consistent with police officer and violator safety.

In those cases where a police officer has an explainable justification for feeling that his safety is in jeopardy, the Bureau of Training advocates a traffic stop which considers a higher threat level. These circumstances should represent possible danger signals to the officer.

Whenever an officer observes a violation under such circumstances and decides to make a traffic stop, he should roll the driver's side window down for three reasons. First, it enables him to hear better when approaching an incident; second, it enables him to return fire more easily from a cover position while still seated in the car or from behind the front door; and third, it prevents eye and other injuries which may occur from broken glass fragments.

Next, the officer locates his flashlight and ticket book and dons his hat, if required. Once the officer has completed these steps, he is ready to make the stop. He activates the emergency equipment and communicates to the radio dispatcher the vehicle and occupant description, license number, and location where the stop occurs. Rather than returning the microphone back to its holder, he places it to the left side of the steering column for ready access should an emergency occur.

The positioning of the cruiser is important. When the violator stops his car, the officer pulls directly behind the violator. As his vehicle approaches a distance of 15 to 20 feet to the rear of the suspect vehicle, he turns his steering wheel to the left and offsets his left front end 1½ to 3 feet outside of the left side of the violator's car. With the vehicles stopped in this position and the emergency equipment still operating, the officer immediately positions himself outside the cruiser, behind the driver's side door, which places the left front wheel of his vehicle between the officer and the suspect. At this point, the officer should have his ticket book in his off hand and his flashlight under his arm, with his gun hand free. The suspect is then requested to exit his vehicle on the driver's side to produce his operator's license or other identification. Particular caution should be exercised when dealing with obviously inebriated subjects who may stagger into passing traffic.

In addition to the increased distance, the officer has the added advantage of being behind cover while still able to keep the violator's hands in sight. All other car occupants are instructed to remain seated in the suspect vehicle.

After the operator locates his license, the officer then courteously requests him to step back to the officer's cruiser. As the violator approaches, the officer watches his hands, and when the suspect is within 8 to 10 feet of the officer, the officer closes the cruiser door and takes three or four steps backward, facing the suspect as he moves to the rear of the police unit. He directs the violator to move to the rear of the cruiser and remains in a position to look over the violator's shoulder to observe the occupants still in the suspect vehicle.

At this point, the officer cautiously accepts the violator's license in the hand that still holds the ticket book. Upon receiving the license, the officer moves directly back to a position approximately 8 to 10 feet from the violator, facing him, and writes the citation, using his peripheral vision to observe any movement made by the violator or others in the car. The officer should ask the violator to keep his hands in sight and explain that this is necessary for his protection, as well as the officer's.

If an arrest is necessary, the officer secures the first suspect and may either call for backup assistance or secure each additional suspect in the same fashion as the first.

When the citation is completed, the officer returns the operator's license and citation to the violator, still keeping his gun hand free. He obtains the violator's signature and then directs the subject to return to his vehicle, using the curb side of the police cruiser. The officer waits until the violator has reached his auto and left the scene before returning to his cruiser.

In the traditional traffic stop, eight points of vulnerability were listed. How many of these were reduced or eliminated by the higher threat-level stop?

- 1) *When the officer first makes the stop, searching for items before exiting his police unit.*

Once an officer has mastered the sequence of events, including rolling down the driver's side window, locating his ticket book and flashlight, putting on his hat, setting the emergency equipment into operation, and radioing information to headquarters, all of which should occur before the vehicles come to a complete stop, time spent searching for items or using the radio should be significantly reduced.

- 2) *While approaching the suspect vehicle.*

The officer will not have to leave cover to approach the violator, and his vulnerability at this point will be substantially reduced.



Proper positioning of a cruiser can give police officers additional protection during a traffic stop.

- 3) *While the violator's (or passengers') hands are removed from the officer's sight, in order to find an operator's license.*

The violator will be requested to produce his license while still outside his automobile, which is parked approximately 15 to 20 feet away. If the violator pulls a weapon, distance and cover are on the officer's side. Statistics over the past 10-year period have shown that 47.5 percent of all police officers were shot at a distance of 0 to 5 feet from their assailants, while less than 5 percent have been shot from a distance of 20 to 30 feet.

- 4) *As the officer returns to the cruiser with his back turned.*

In the higher threat stop, the officer is never going to turn his back to the violator. Everything that happens during the new stop is within view of the officer—the violator, the violator's vehicle, and any occupants therein.

- 5) *While sitting in the cruiser writing the citation.*

The vulnerability of the officer sitting in a cruiser while writing a citation is completely eliminated by the fact that the officer does not return to his cruiser until the suspect has left the scene.

- 6) *During the second approach to deliver the citation.*

There is no second approach to the vehicle to deliver the citation after it is written, so this vulnerable step is eliminated.

- 7) *While engaged in a second encounter with the violator.*

Since the officer does not return to the suspect's vehicle, the danger associated with the second encounter between the officer, the suspect, and passengers is eliminated.

“Police survival in the 1980's can be enhanced by a willingness to review routine practices and accept the responsibility to establish policies consistent with police officer and violator safety.”

- 8) *When he turns his back to return to the cruiser, signed citation in hand.*

Once again, since the officer does not deliver the citation, he never turns his back to the violator or the passengers in the vehicle; therefore, his vulnerability is substantially reduced.

Certainly, eliminating all danger in police activities is an unreasonable expectation. However, training police officers to recognize danger signals and to use discretion in selecting either the traditional, higher threat-level, or felony traffic stop that provides the officer with important alternatives to age-old police procedures is not an exercise in paranoia. All too often, departmental policy or inadequate training restricts the police officer's ability to select the most appropriate traffic stop, and consequently all stops are more perilous.

Public education is also an important consideration when changing past police practices. The Bureau of Training invites local reporters to attend the training sessions so that motorists may be informed on what to expect. While most citizens will cooperate when requested, they need to be told not to become alarmed when they are stopped for a traffic violation and required to leave their vehicle. The fact that a few refuse to comply should alert any clear thinking officer to act with due caution.

There is no way of measuring the value of the new traffic stop at this time. Some point out that valuable evidence may be missed if an officer does not observe the contents of stopped motor vehicles. However, it is generally believed that these observations, and the percentage of arrests that result, are not worth the additional danger involved.

While it is too early to determine whether assaults upon the police will be reduced by using this traffic stop, most officers who use it report that it is working well. Naturally, there was an initial resistance to change, but officers in Kentucky who were taught to use different traffic stops, as the circumstances dictate, are not complaining of problems with public acceptance.

To date, we have not experienced the loss of a police officer who was taught the new technique, and here in Kentucky, we are keeping our fingers crossed.

FBI

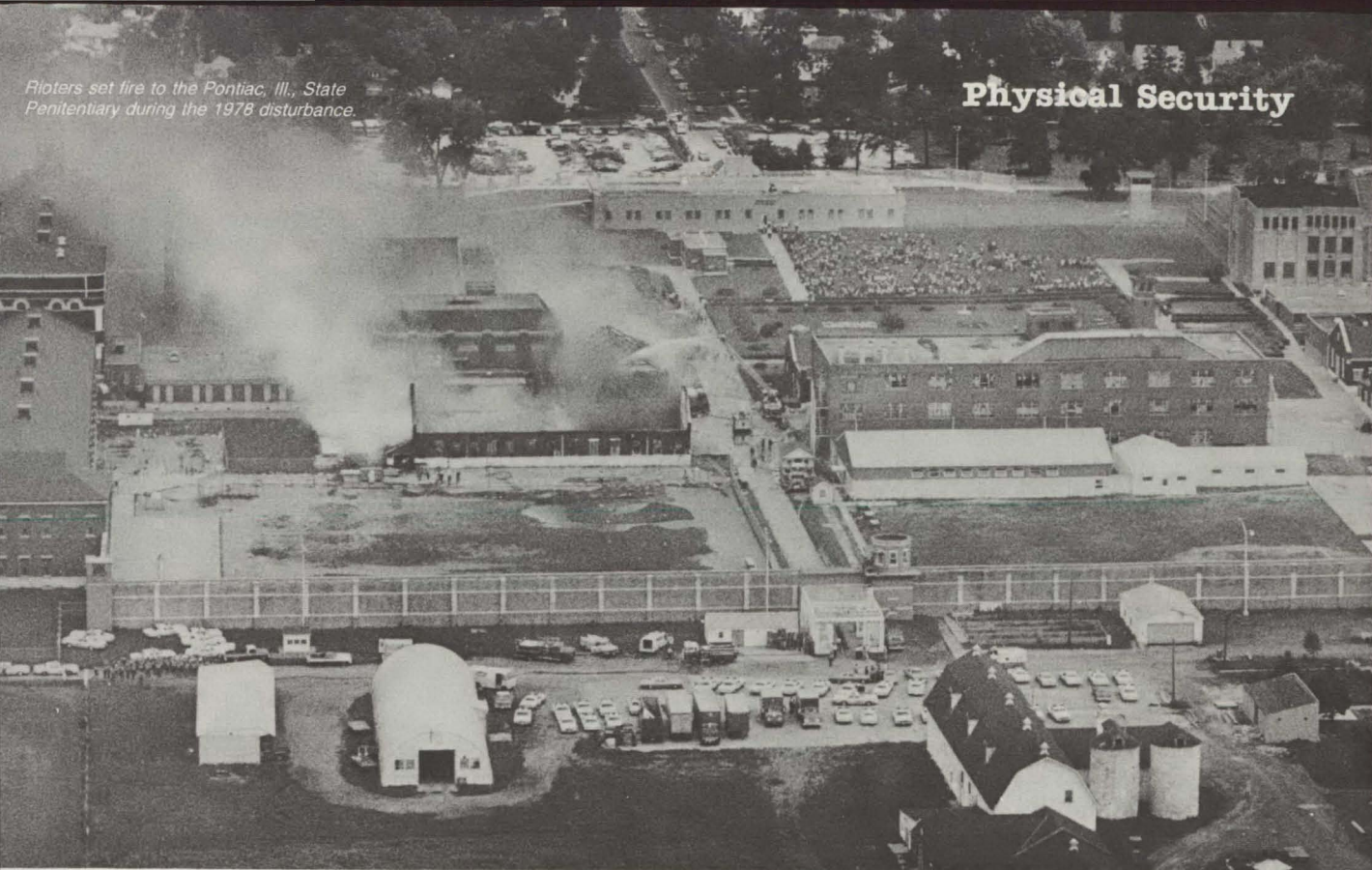
Footnotes

¹ Federal Bureau of Investigation, *Crime in the United States—1979*, (Washington, D.C.: U.S. Government Printing Office, 1980).

² *Ibid.*

Rioters set fire to the Pontiac, Ill., State Penitentiary during the 1978 disturbance.

Physical Security



Police Planning for Prison Disturbances

"TROUBLE AT THE PRISON."

Unfortunately, this statement seems to be heard more frequently in recent years. It causes great stress to any police commander or official whose jurisdiction includes a correctional facility. Prisons in Attica, N.Y., Pontiac, Ill., and Santa Fe, N. Mex., are just a few where loss of life and huge financial losses have recently been experienced.

By Capt. Charles McCarthy
*Department of Law Enforcement
Illinois State Police
Pontiac, Ill.*

As opposed to the campus disorders and rock festivals of the late 1960's and 1970's, the police role in prison disturbances in recent years seemed well-defined. The environmental boundaries and the type of people being dealt with are established well in advance of any outbreak. While many police officers were yelled at and spat upon by irate students on campuses, the persons involved in prison situations are of a different sociological and psychological makeup. This factor gives rise to a definite point that should

be addressed first by a police commander—problem of prison mystique. Simply stated, the prison mystique is the feeling one gets when going within the walls or fence for the first time—or the tenth. The metallic clang of gates and doors, the glum stare of the inmates, comments uttered or shouted by people who have nothing significant to lose as a result of their actions are factors which, coupled with the feeling of being enclosed in a hostile environment, add to the feeling of uneasiness. To alleviate this uneasiness, supervisors and their troops were taken on guided tours of

prisons within their jurisdiction. In the event any of the officers would have to enter the grounds, they would be familiar with salient trouble spots and would know where to go when directed by a command officer. As expected, many officers whose patrol areas encompassed the prison lived in the vicinity but had never set foot behind the walls. They were completely unfamiliar with the buildings or potential trouble spots.

This program met with great acceptance by our officers and the facility staff and later was extended to members and supervisors of response teams that would support a police commitment to the facility. Each tour served three purposes:

- 1) It exposed the officers to the prison mystique and allayed some of the fears associated with it;
- 2) It made the prison staff aware that preparations were being made in the event of a problem requiring our assistance; and
- 3) It made the prison population aware that the next time outside assistance by police was necessary, the incident would not be as chaotic as some in the past due to lack of familiarity with the facility.

Response Team Callup

One problem of any unexpected large-scale police action is the callup of the people involved. This plan requires that all personnel supply both primary and alternate phone numbers where they can be reached. A callup exercise is also beneficial for planners, as it gives a rough idea what percent of the force can be assembled and the approximate amount of time it will take for the group to be deployed.

Most often, two questions are asked: How long will it take you to get to the prison and how many officers can be provided? We have found that callup exercises enable planners to answer these questions with some accuracy. A periodic update of the telephone listing of personnel is also essential for an efficient callup.

“... failure on the part of the unit commander to address a potential problem could result in a loss of professionalism that could be detrimental to the entire operation.”

Historians

With a prison disturbance or any significant police action comes the inevitable inquiry, “What happened?” It is repeatedly asked by the governor’s office, legislators, news media, concerned reform groups, and grand juries soon after a disturbance starts and usually continues for many months, sometimes years. In an effort to answer this question in a professional manner, a team of four “historians” has been established. These officers are usually the first to arrive at a disturbance and the last to leave. Their equipment consists of a video tape recorder, audio tape recorder, and written logs; their function is to record everything during the disturbance. Generally, they are stationed in the vicinity of the unit commander or where operational activities are centered. Every statement, decision, and even general conversation should be recorded, regardless of how insignificant it may seem, and then written down in the log in chronological order.

In the aftermath of chaotic disturbances, the historian is essential in order to recall times, commitments, and actions that will eventually serve as the basis for reconstruction presentations. These officers normally report to the public information officer; however, during a disturbance, they work independently. Personnel assigned to this detail should be well-trained in the use of recording equipment and should understand that it is essential to report objectively the actions that occur.

Troop Control

While each facility and level of disturbance dictates the amount of manpower needed and method of deployment, the smaller the basic work unit, the easier it is to control. Our organizational chart has a basic work unit consisting of four troopers to one supervisor (corporal), with two of these units answering to a sergeant. In comparison to the 6 to 1 control ratio for other disturbances, a ratio of 4 to 1 is considered more favorable in view of the limited space involved and the high degree of fire control needed.

Each supervisor should be equipped with radio communication. It is believed that close communication and supervision can eliminate many of the criticisms of the handling of past disturbances. There should be close scrutiny of supervisors and troopers to determine whether they remain calm under stress. Any irregularities or changes in behavior should be acted upon immediately; failure on the part of the unit commander to address a potential problem could result in a loss of professionalism that could be detrimental to the entire operation.

Special Planning

Every facet of disturbance planning is important. One important logistical consideration is selecting a suitable assembly area where personnel can form tactical units and be briefed. In

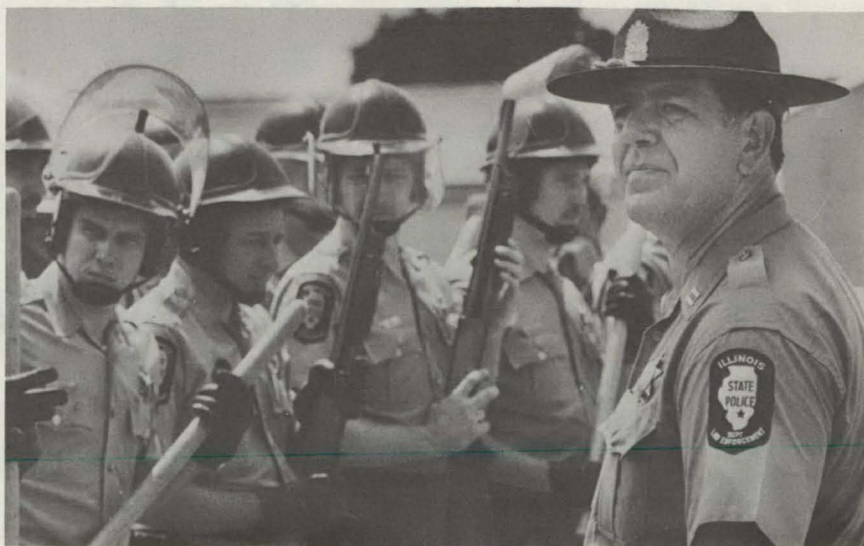
choosing this site, thought should be given to the security of vehicles left behind, transportation of personnel to the prison, feeding and housing persons for an extended period of time, if necessary, and accounting for personnel on the detail. While this last point appears routine, during the 1978 Pontiac disturbance, a man who was actually on vacation was assigned to the detail. Considerable effort was needlessly expended in trying to account for the man. This could have been avoided by using a formal roster for accountability.

The use of a predetermined site also enables storage of supplies and other equipment that otherwise might have to be transported great distances. The installation of phone jacks and immediate access to additional telephones also add to an efficient operation.

Another factor that caused some uneasiness among troopers was uncertainty about personnel manning guard towers. It was determined that where possible, select members of the police unit would also man the towers. Police and prison personnel later conducted target practice from the towers.

Involvement of Local Agencies

It should be emphasized that another source of manpower are local agencies in whose jurisdiction the prison is located. Traffic control, crowd management, handling the families of both guards and prisoners, and many other support duties are important to the overall success of an operation. These tasks should be coordinated and carried out with the cooperation of local agencies.



Captain McCarthy

Of prime importance is the coordination of fire departments whose personnel may have to enter the facility to fight fires or evacuate the injured. Care must be given to provide these units with adequate protection inside the prison. Of course, the particulars of any plan involving local participation have to be coordinated with the respective agencies at the time of inception and execution.

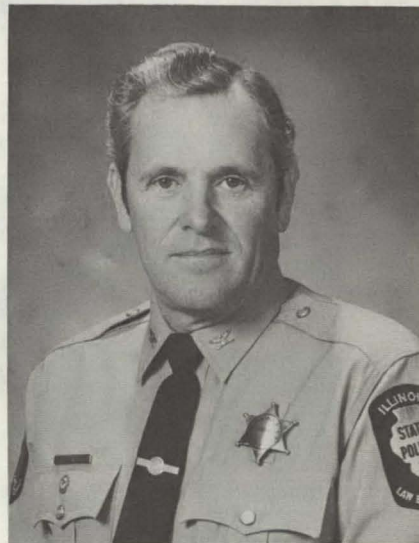
Summary

While the list of planning points can extend indefinitely, there are two philosophies that should govern all disturbance planning:

- 1) The plans should be flexible. If a plan is too rigid and part of it cannot be implemented, it oftentimes puts the commander back to a position of having no plan at all; and
- 2) Everyone involved should be familiar with the plan in its entirety. The extent of familiarity can be measured, in part, by asking any member of a response unit to identify the location of specific points within a facility.

Disturbance plans can be as elaborate or as simple as the commander and his staff deem appropriate. However, the success of an operation ultimately depends on the interpretation and implementation of those plans by firstline supervisors and troopers.

FBI



*R. J. Miller
Chief of Police*

Commercial Crime Prevention Can Earn Insurance Discounts

By D. P. VAN BLARICOM

Chief of Police
Police Department
Bellevue, Wash.

EDITOR'S NOTE: Mention of commercial firms in articles in the FBI Law Enforcement Bulletin is sometimes necessary for clarity, but such mention should not be construed as an endorsement by the FBI.

Chief Van Blaricom



As the city of Bellevue grew from a small suburban community into a major business and population center, the social problem of crime, not surprisingly, grew with it.

The first concentrated effort to affect positively commercial losses by "hardening the target" began in 1971, when a single police officer was assigned to contact personally each of the then approximately 1,000 business establishments in the city and advise them on methods of crime prevention they could reasonably adopt. Because burglary was the most prevalent crime with which we were concerned, initial emphasis was placed on building security; however, it soon became evident that business managers were also interested in shoplifting and check or credit card losses.

After a period of nearly a year, all of the businesses had been contacted, and there was a slight reversal in the number of commercial burglaries, while other crimes continued to rise. Consequently, the essentially ad hoc program was considered to have been a modest success; however, changes of assignment among the department's staff caused this particular crime prevention approach to be discontinued in favor of other priorities.

Crime prevention became an accepted policing method in 1975, when a fully staffed unit was permanently established in the police department. Initially, we concentrated our efforts on rapidly escalating residential burglaries. The directed response to that problem was to take a coordinated

home protection program into the neighborhoods where we actively encouraged residents to improve locks, mark property for identification, and organize block watches. People were extremely cooperative in following suggestions to make their homes more secure, and accordingly, we experienced not only an end to the steadily rising residential burglary rate but a 38-percent decline in such incidents followed over the succeeding 18 months as well.

Commercial burglary, however, continued to increase, and believing we could apply similar methods to achieve the same success with our now over 4,000 business establishments, we initiated a commercial crime prevention program in 1978. By this time, armed robbery had become a frequent occurrence and was included among the other regularly encountered crimes of burglary, shoplifting, check or credit card fraud, and internal theft by employees. The program was structured so as to have participating business managers attend a 1-day seminar that would advise them on how to cost effectively enhance their overall security against potential criminal loss by applying proven crime prevention techniques. After the seminar was conducted, officers made onsite inspections of each participant's store to make specific recommendations on reducing crime in that particular working environment.

The program was initially offered to the local business community by inviting every establishment in a selected area to attend the same seminar as a group of neighboring commercial in-

terests with presumably common problems. An extremely low attendance of only 19 percent of those invited immediately indicated the need for a redesigned format to increase participation. We next presented the program in two half-day sessions with the hope that smaller businesses, which could not afford to have a person away from their shops for a full day or did not have the full range of crime problems, could more readily participate; however, this tactic produced no real improvement in attendance. We next decided to direct invitations to businesses of a particular type (i.e. restaurants, retail clothing stores, etc.). Some slight improvement resulted, but attendance was still unacceptably low at 22 percent. It was obvious that if we did not motivate substantially more voluntary participation, the commercial crime prevention effort was going to fail. (The one notable exception to this pattern was banks, which had been experiencing a rash of robberies. A bank security training program was specially developed, and of the 35 banks in the city, 32 eagerly participated, with some retraining their employees as many as three times over a year's period.) Most frustrating was the fact that those businesses who were represented at the seminars and who implemented the recommended security precautions *did* experience a reduction in criminal loss! Yet, we still could not develop any interest among the majority of the business community to let us help them prevent crime in their own stores. We did not know whether the problem was simply one of apathy or a general belief that nothing could really be done. It was imperative, however, that we find a solution quickly—we could not continue to fund an unsuccessful program.

Finally, we began thinking like our prospective clients and reasoned that perhaps the only way to influence a business person was with the cornerstone of democratic free enterprise—a "profit motive." We contemplated where we might show a clear savings on the business manager's ledger sheet and decided that since our efforts were calculated to reduce risk, the most likely concurrent reduction would be in insurance costs. Drawing

from a similar concept of lower auto insurance premiums for nondrinking drivers, we wondered why similar rate adjustments could not be made for businesses that participate in a proven crime prevention program. Surely it is unfair for those who attempt to protect their establishments against criminal loss to continue sharing higher insurance costs with those who choose to remain vulnerable, especially when the better alternative is freely available from their local police department. It can even be argued that loss reduction from crime prevention is either a wind-fall profit for the insurer or actually serves to subsidize crime by helping cover the losses of those businesses that do not implement their own loss reduction strategies.

The next step was to contact 11 major insurance companies writing commercial business in this region to explore our new idea with them. After observing the operation of the crime prevention program and studying the proposal of insurance credits for participating businesses, three of the largest companies agreed to consider up to as much as a 25-percent premium reduction in their commercial rates, depending upon a business establishment's efforts to enhance its security. A letter was distributed to all participants advising them of the insurance companies' decision to lower the rates for all those involved in the crime prevention program.

Although it is too early to predict complete success, an increased attendance of 44 percent was recorded at a recent seminar, and we think that we may have learned a valuable rule for establishing a cooperative relationship between America's businesses and other agencies. When the private sector's participation in a public program is needed, an economic incentive should be introduced and both will be better served.

Dear Bellevue Business Owner:

In an effort to encourage Bellevue businesses to engage in proven crime prevention techniques, we contacted the major local insurance underwriters to explore the possibility of crediting the premiums of those who participate in the Bellevue Police Department's Commercial Crime Prevention Program.

We are pleased to announce that three companies have advised us that they will take such participation into account in setting their rates for individual businesses and they are (in alphabetical order):

Safeco Insurance Companies
State Farm Insurance Companies
Unigard Insurance Group

As a further economic incentive to becoming fully involved in "hardening the target" against criminal loss within your own business, you may wish to obtain a premium quote from one of these companies after completing our program.

While we cannot, of course, recommend a particular carrier, we do want Bellevue businesses to be aware of this community's responsibility to protect itself from crime and we appreciate the support that the insurance industry has given to our mutual effort of enhancing your business' security.

Sincerely,

D. P. Van Blaricom
Chief of Police

The attempt to enhance the security of our business community ranged from being initially frustrating to eventually becoming satisfying. To those who would try to implement similar commercial crime prevention programs in their own communities, it is suggested that far more progress may be made at the outset by starting with the fundamental business equation of "profit and loss."

FBI

Film and Video Tape Piracy

A GROWING EPIDEMIC

By Richard H. Bloeser

Director

Film Security Office

Motion Picture Association of America, Inc.

Los Angeles, Calif.

Former Special Agent

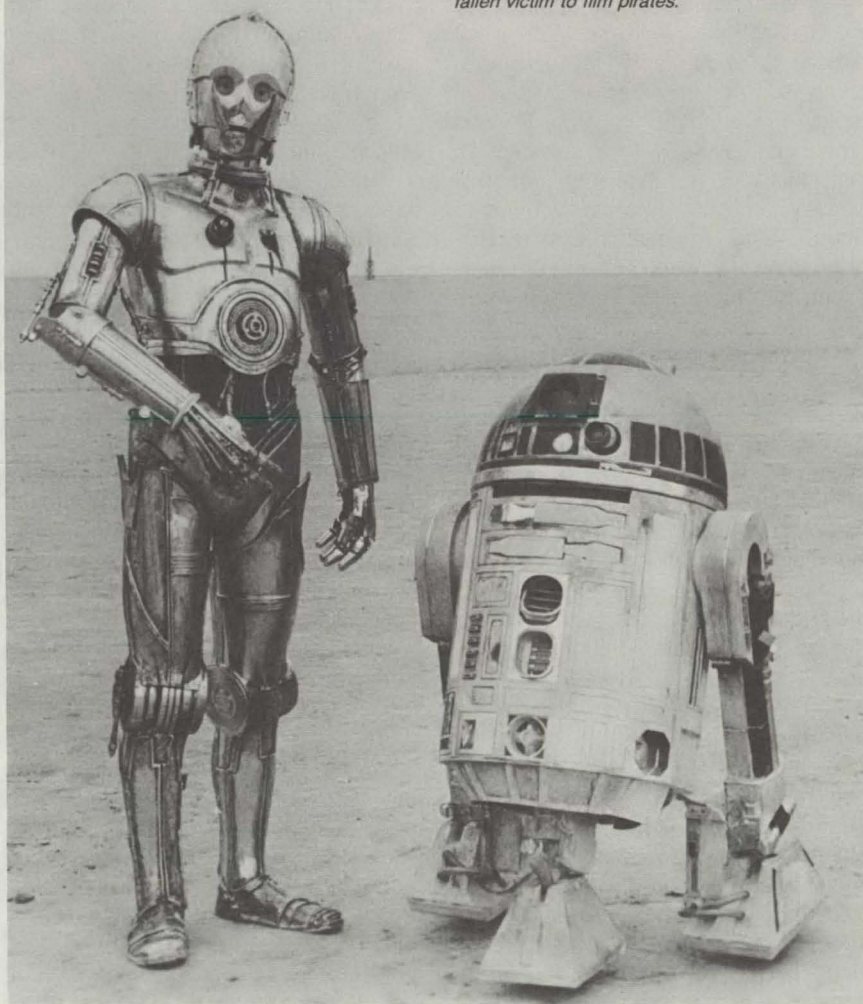
Federal Bureau of Investigation

In 1680, pirates sailed the Spanish Main in their galleons, brandishing cutlasses and flintlock pistols and plundering gold, silver, jewels, and other treasures from merchant ships and government vessels alike. In 1980, the galleons have long since sunk to the bottom of the sea, the cutlasses and flintlocks are on display in museums, and the gold and other treasure buried and forgotten on some Caribbean island.

The pirate, however, still exists today. His weapons are no longer the cutlass and pistol; instead, they are the film projector, the video camera, and video cassette recorder. His booty no longer consists of gold and jewels but of something equally valuable—the current copyrighted motion picture. Piracy still exists on the high seas, usually in the form of an oil tanker captain and his crew watching a pirated video cassette of “Star Wars.” The modern-day buccaneer is known as a film or video pirate.

Film and video tape piracy, most commonly associated with violations of the copyright law, are among the fastest growing white-collar crimes not only in the United States but throughout the non-Communist countries of the world. Although copyright infringement is the basic violation involved in film/video piracy, other Federal and local violations are frequently committed by the “pirate.” Burglary, theft, smuggling, mail fraud, fraud by wire, interstate transportation of stolen property, conspiracy, pornography, income tax evasion, and other crimes are often a part of piracy operations.

Star Wars, a multimillion dollar production, has fallen victim to film pirates.



The Congress of the United States has designated the FBI as the agency responsible for the investigation of violations of Federal copyright law. However, in view of the many facets of film/video piracy, other Federal and local authorities should be alert to the threat posed by this new type of buccaneer. It has been estimated that the motion picture industry in America alone is losing as much as \$700 million a year because of piracy activities. Private business, however, is not the only victim of piracy. Governments throughout the world are losing millions of dollars a year in taxes, customs duties, and other revenues that the pirate seldom pays.

Until a few years ago, most prosecutors and law enforcement officials were completely unfamiliar with copyright law or the problem of film/video piracy, causing confusion and reluctance to investigate or prosecute violations of the copyright law, a condition which still exists today in some jurisdictions. Violations of copyright law are not difficult to investigate or prosecute, and frequently such investigations will produce evidence of violations of other more serious crimes.

A review of the basic elements of the copyright law may help to dispel any confusion or reluctance to initiate prosecutive action against a film/video pirate. Title 17, U.S. Code, as revised January 1, 1978, grants to the copyright holder certain rights, including the *exclusive right to sell, duplicate, or publicly perform or exhibit* the copyrighted product. In the case of motion pictures or television programs, the motion picture companies, which are usually the copyright holders, have the exclusive right to sell or rent their pictures, duplicate the films, or exhibit the films publicly. These exclusive rights also include the right to license others to rent, duplicate, or exhibit publicly the copyrighted films. The basic elements of film/video piracy are, therefore, the unauthorized sale, rental, duplication, or public exhibition of copyrighted motion pictures.

Federal copyright law provides for both civil and criminal penalties, and those convicted of criminal copyright infringement could receive a sentence of up to 1 year in prison, up to a \$25,000 fine, or both for the first offense. Subsequent offenses could bring a prison sentence of up to 2 years, a fine of up to \$50,000, or both.

Title 17, U.S. Code, sec. 509, also provides for the seizure and forfeiture of all illegal or infringing copies of films or video cassettes, as well as for the seizure and forfeiture of all equipment used or intended for use in the reproduction, manufacture, or assemblage of infringing copies.



Mr. Bloeser

Prosecution for criminal copyright infringement can be initiated where there is evidence that the film/video pirate, without authorization, willfully sold, rented, duplicated, or exhibited for commercial advantage copyrighted motion pictures. Civil penalties for copyright infringement include either statutory or actual damages. Statutory damages as high as \$50,000 can be awarded at the discretion of the court if infringement is found willful.

With growing evidence that organized crime is moving into the film/video piracy field, stronger measures are going to be necessary to curtail the spread of this lucrative white-collar crime. Legislation is presently pending before Congress to increase the penalties for criminal copyright infringement, including making the first offense a felony under certain conditions and raising the maximum fine that can be levied.

When an examination is made of the profits obtained by some pirates in the United States and abroad, it is not difficult to understand why organized crime is now interested in film/video piracy. For example, in 1978, Federal authorities in New York arrested an individual involved in the shipment of illegally duplicated motion pictures to South Africa. An examination of records seized from the film pirate determined that more than \$600,000 worth of pirated films had been shipped to South Africa during a 7-month period. Since only partial records were obtained, it was impossible to evaluate the entire piracy operation, but sources estimated that the pirate was grossing at least \$3 million a year.

Recently, Scotland Yard raided a video piracy operation that was a major supplier of illegal video cassettes to the Middle East. Records seized during this search indicated that the pirates involved were grossing almost \$100,000 a week when they were raided.

The massive number of arrests and raids conducted by the FBI in February 1980, in connection with the MIPORN sting operation which involved both pornography and film piracy, further emphasizes the growing interest of organized crime in film/video piracy. As profits to the pirate continue to grow and as the piracy market expands, the interest of the organized criminal element throughout the world is expanded.

In 1975, the Motion Picture Association of America (MPAA), a trade association composed of the major motion picture producing companies, became concerned at the mounting reports indicating the magnitude of the losses to the industry and Government tax revenues as a result of worldwide piracy operations. Consequently, the MPAA created a Film Security Office (FSO) in Hollywood, Calif., to act as liaison with law enforcement in devising and improving security measures at all motion picture facilities and to coordinate industry efforts to combat film piracy. Thereafter, a branch of the FSO was established in New York, a Continental Film Security Office was opened in Paris, and a Far East Asia Office was

opened in Hong Kong. In the United States, the FSO is staffed by former FBI Agents, the Paris office is under the direction of a former official of the French National Police, and the Hong Kong office is headed by a former official of the Royal Hong Kong Police. In 1980, additional offices will be opened in London, England, and Johannesburg, South Africa.

The first order of business for the FSO in the United States was to identify the enemy facing the motion picture industry. In 1975, the most visible pirates were those trying to hide behind the name "film collector." The legitimate collector strives to pursue his hobby within the boundaries of the law. Unfortunately, there are many others who are not adverse to stealing, illegally duplicating, or selling film prints to increase the size of their personal collection or pocketbook.

In 1977, the FSO conducted a survey of advertisements appearing in various film collector publications during the year 1976, where copyrighted films were offered for sale by "film collectors." It was determined that more than \$60 million worth of films were illegally offered for sale during that year. As a result of numerous prosecutions during 1975 to 1979, the number of dishonest collectors now seems to have declined. However, in a recent collectors publication, both collectors and brokers for collectors were offering to sell more than \$100,000 worth of copyrighted motion pictures.

A second major category of film pirates involves those individuals engaged in the wholesale shipment of illegally duplicated films, usually in 16-mm format, to various countries in the Middle East, South Africa, or South America.

For economic and purely logistical reasons, new films are usually exhibited first in the United States and Canada, with other English-speaking countries receiving the films soon after. Films designated for non-English speaking countries are usually re-released for exhibition at a later date. Because there may be a time lag in the release of films for exhibition in other countries, it is possible that a new film might not reach South Africa for several months after release in the United States. This situation is exploited by the pirate. South Africa has very strict censorship laws, and films that might be acceptable for general viewing in the United States could be banned in South Africa. Theaters are not allowed to operate on Sundays. South Africa has only one government-operated television channel that telecasts only 5 hours a day from 6:00 p.m. to 11:00 p.m., and government policy requires that on a rotating basis, half of the programs be in the Afrikaans language and half in English. As a result, a tremendous market has developed involving the rental of 16-mm prints or video cassettes of motion pictures for home use. The pirate is quick to take advantage of this market and supply films and video cassettes that might be banned by the government or that may not yet be legitimately distributed in South Africa.

A similar situation exists in many countries of the world where strict censorship exists or television and theatrical entertainment are limited. The Middle East, a major market for pirated motion pictures, is another prime example of this condition. Consumers in these areas not only are oil-rich sheiks who will gladly pay a premium price for a new American film but also American multinational corporations who have hundreds of personnel based at construction sites, oil fields, and other facilities lacking entertainment.



Seized tapes are reviewed for identification and to ascertain whether the tape includes copyright information.

In the Caribbean and most South American countries, television is still very limited, and new motion pictures may not be shown for months after being shown in the United States. Again, the pirate is only too willing to fill the demand for entertainment by those who can afford a film projector or video cassette recorder.

There seems to be an insatiable demand for American entertainment throughout the non-Communist world. There have also been reports that pirated video cassettes have been shipped to areas under Soviet jurisdiction. The pirate who illegally duplicates and sells to the overseas black market undoubtedly poses a great threat to the motion picture industry, as well as creating major problems for law enforcement throughout the world.

Film/video piracy is a worldwide problem. The International Criminal Police Organization (INTERPOL), with more than 125 member nations, unanimously adopted in 1977 a resolution designated to combat motion picture and sound recording piracy. Law en-

forcement authorities in England, France, Italy, Netherlands, Sweden, Israel, Australia, Hong Kong, Malaysia, Philippines, Fiji, and other countries have taken aggressive action against film/video pirates with numerous arrests and seizures.

In 1979, at least 37 individuals were convicted in the United States of copyright infringement and related violations. Twice as many persons are currently awaiting prosecution for film/video piracy after being arrested by law enforcement personnel. The FBI seized more than 12,000 illegal video cassettes from pirates during 1979.

Beginning in the early 1970's, technology drastically changed the character of film piracy. The video cassette recorder in 3/4-inch format, a very expensive machine ordinarily found only in television studios and video laboratories, was becoming more accessible to the pirate and to the affluent collector. Pirates soon learned how easy it was to video tape motion pictures from public or pay television or to make video copies of film prints. Formerly, a film pirate would have to steal or "borrow" a film long enough to have a duplicate print or negative made by an unscrupulous film laboratory. Such an illegal duplicate would cost about \$200. In addition, the duplicating process was lengthy and could only be done in a fairly sophisticated laboratory. A blank 3/4-inch video cassette, however, could be purchased for \$24.00 and a video copy of a stolen or "borrowed" print could be made using relatively simple equipment that could be set up in a spare bedroom. The only time involved in duplicating was the time required to run the film through a projector focused on a video camera which was, in turn, attached to a video recorder. If the film was 2 hours long, it took only 2 hours to make a video copy which could then be used as a "master" to make an indefinite number of other copies.

In 1975, the video cassette recorder in 1/2-inch format was offered to the public at an affordable price, causing a wave of video tape piracy. In an effort to stem the tide, Universal Studios and Walt Disney Productions brought a civil suit against the Sony Corp. and others to prevent the sale of video cassette recorders for home use.

"Film and video tape piracy . . . are among the fastest growing white-collar crimes"

In October 1979, a Federal district court in Los Angeles rendered a decision in favor of the Sony Corp. and the other defendants. In the decision, which was very narrow in scope, the court held that video taping copyrighted programs from public TV for *private, noncommercial home use* is not a violation of copyright law. The court specifically stated that no decision was being made as to the legality of taping pay or cable TV or as to the legality of taping for others for outside the home. The case has been appealed by Universal Studios and Walt Disney Productions. Obviously, video taping from TV for resale or commercial use *is* a violation of Federal copyright law.

The home video cassette recorder has made it possible for anyone with a TV and a video recorder to become a pirate. The serious pirate will subscribe to cable or pay television to obtain more current films and will purchase additional video recorders to allow mass production. The dedicated professional pirate will go one step further and develop methods to steal or "borrow" first-run motion pictures to enhance the quality of the product he is selling. The more current the film, the more demand by the consumer of pirated material.

Another major task facing the FSO at its inception involved educating the public and law enforcement to correct certain misconceptions surrounding the production and distribution of motion pictures. Without an understanding of the problems inherent in the distribution of films, it is difficult to comprehend the causes for the phenomenal growth of film/video piracy in recent years.

In 1979, the average production cost of a new feature film by a major motion picture company was \$8.48 million for each film. Distribution expenses can add millions more to the total cost of a film. History reveals that about one out of every five films produced actually makes a profit or even recovers production costs. It is, therefore, vitally important to the motion picture industry to protect film produced from the film/video pirate. Revenues diverted to the pirate not only are revenues lost to the production company and the Government but also adversely affect the future employment of the thousands of persons involved in the production and distribution of motion pictures.

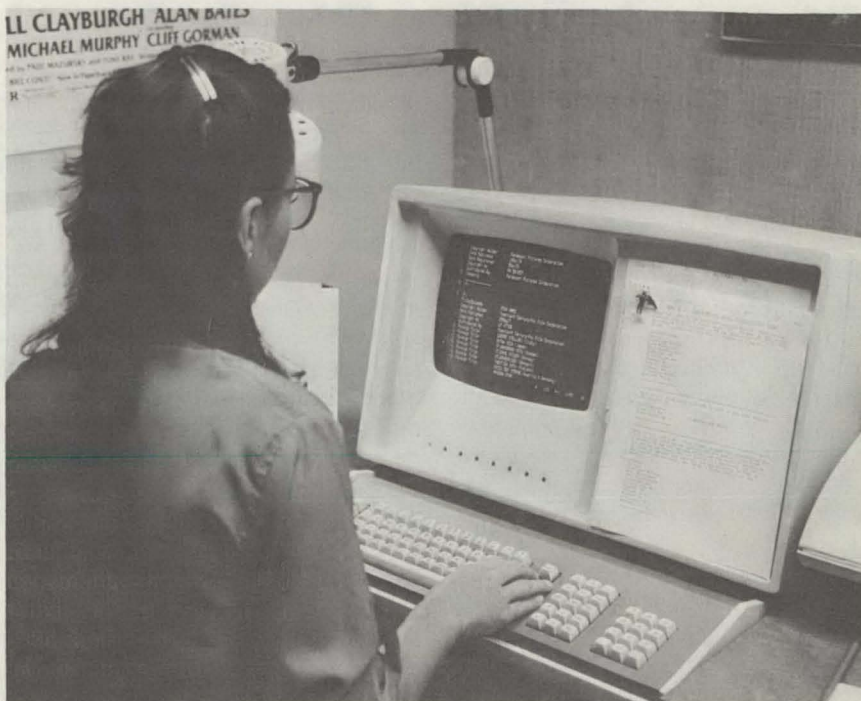
Contrary to popular belief, opportunities for piracy do not usually begin at the studio where the film is produced, for normally during the production of a motion picture there are actually two separate parts to the film—image and soundtrack. These two parts are not permanently mated until production is completed and a film laboratory is designated to make positive film prints, usually in 35-mm format, for exhibition in theaters. The film laboratory, after producing a specified number of positive film prints, sends the prints to a regional film storage company, commonly known as film exchange or branch exchange. The film exchange then delivers the films to various area theaters for exhibition.

In modern times, it has been the general policy of the major motion picture studios *not to sell* their films outright but merely to *license or rent* them for exhibition. When a film is licensed for exhibition at a theater, the theater owner does not buy the film but merely rents it for a specified time. At the conclusion of the rental period, the film is usually returned to a regional film exchange for further distribution. The theater owner does not have the right to sell or duplicate the film he has rented. He is authorized only to exhibit the film under the conditions of his license.

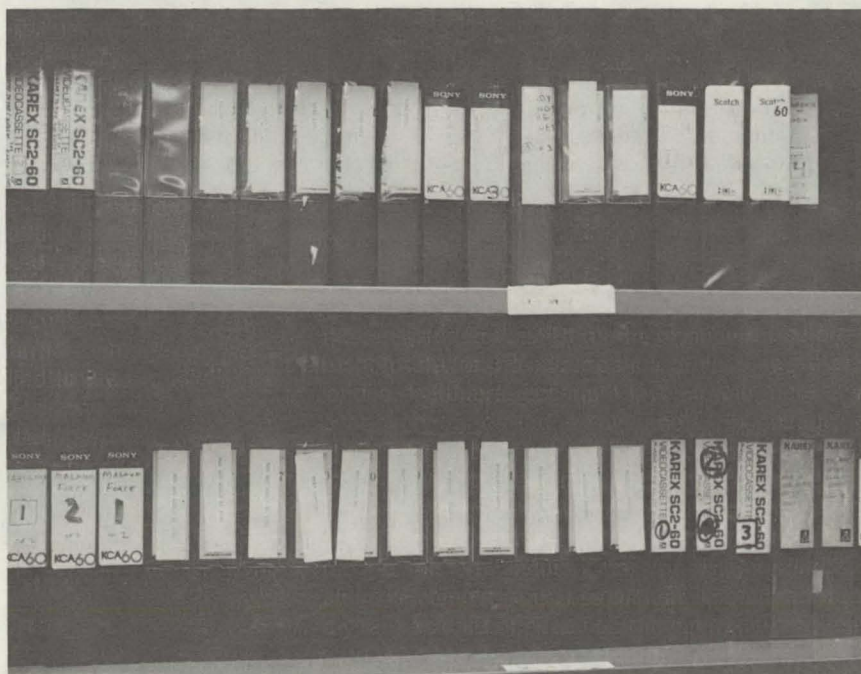
After a new film has completed its first-run exhibition in theaters, most motion picture producing companies will authorize the licensing of the film in 16-mm format to the airlines, television, the military, merchant and passenger ships, hospitals, penal institutions, schools and colleges, churches, multinational corporations for use by their personnel in remote or overseas areas, and to various civic groups for what is termed nontheatrical exhibition. Unfortunately, such licensing also presents the pirate with a myriad of opportunities to obtain copies of films for the purpose of illegal duplication.

During the last few years it has become more and more common for nontheatrical exhibitors to be licensed films in video cassette format as well as 16-mm prints. These video cassettes are usually in 3/4-inch size. However, in the case of television licenses, 2-inch reel-to-reel video tape is sometimes used.

More recently, a number of the major motion picture companies have entered the "home video" market and have authorized the sale or rental of their films in 1/2-inch video cassette format only. A legitimate video cassette purchased for home use may not be duplicated or exhibited publicly. As an example, an owner of a bar or restaurant who buys a legitimate video cassette may exhibit the cassette in his home, but he may not legally exhibit that cassette in his bar or restaurant for the benefit of his customers even though there is no charge made for the exhibition. Such exhibition would be legal if proper license were obtained from the copyright holder or authorized distribution company.



Film copyright data is entered into in-house computer.



Pirated tapes that have been seized are later destroyed.

Similarly, a multinational corporation that buys a legitimate video cassette of a copyrighted film may not legally make duplicates of the cassette for distribution to overseas personnel, nor may they legally exhibit the cassette for the benefit of their employees even though no charge is made for the exhibition.

The doctrine of "first sale" is an exception to the exclusive right granted to the copyright holder to sell his material. If a video cassette or film is legitimately purchased from someone having authority to sell, the purchaser may then legally resell that *particular* cassette or film, but the purchaser may *not* duplicate or exhibit the cassette or film publicly. An example of "first sale" would be the individual who purchases a copy of a book that has been copyrighted. The purchaser may resell the book, but he may not legally make copies of the book or make a public reading or other performance of the book.

Since the establishment of the Film Security Office in 1975, security measures within the motion picture industry have been changed and improved considerably. However, as in any commercial enterprise, the integrity of the employees is a determining factor in the success of any security system. Despite stringent security and inventory procedures, a dishonest and determined employee at a film laboratory could devise a method to smuggle copies of a new film out of the laboratory. A dishonest trucker transporting a shipment of new films from the laboratory to a regional film exchange could delay delivery of the film long enough for an accomplice to make master video copies of the new films. The unscrupulous warehouseman at the regional film exchange or the projectionist at a local theater have opportunities to steal films or "borrow" them long enough to make master video copies.

Film/video piracy has many faces. It could be the enterprising individual who rents pirated films or video tapes to camp or resort managers for the entertainment of their clients. It could be the friendly neighborhood pirate who rents or sells pirated films or cassettes to bars and restaurants in his area.

The pirate who is most accessible to the public could be a local video hardware dealer—the individual who sells video recorders, television sets, or other electronic equipment. Unfortunately, hardware dealers sometimes deal in pirated video cassettes in order to promote the sale of hardware. Many such dealers start out by merely selling video tapes they have purchased from a local pirate. They are, in effect, acting as the retail distributor for the pirate who is wholesaling or perhaps manufacturing. Too often, the video hardware dealer discovers that it is cheaper and more profitable to buy single video copies from the wholesaler to use as master tapes and then make duplicate copies using the equipment in his store. The dealer then becomes a manufacturer and the chain of production and distribution continues.

Piracy could take the form of the crew of a fishing boat, an oil tanker, an offshore oil rig, a cruise liner, or a remote construction camp, who have rented or purchased pirated films or video cassettes. Perhaps they video taped copyrighted programs from television for use on their vessels or in their camps instead of legitimately renting the films from an authorized distributor. Such exhibitions would be considered for commercial purposes, and therefore, criminal infringement of copyright.

Piracy is engaged in by many American multinational corporations for the benefit of their overseas personnel. Some companies buy pirated material in the United States and ship it to their personnel in various underdeveloped countries. Some multinationals buy pirated films or video tapes from foreign sources in Saudi Arabia, Kuwait, or the United Arab Emirates. The more enterprising corporations have set up video laboratories in the

United States—sometimes within their own corporate offices—and video tape extensively off television. The pirated tapes are then shipped to personnel abroad.

As a part of its extensive effort to curb film/video piracy, the MPAA has placed warning notices in various trade publications informing corporate executives, retailers, electronic dealers, construction companies, oil companies, commercial fishermen, and others of the perils of film/video piracy. In addition, the MPAA is currently offering a \$5,000 reward for information leading to the arrest and conviction of individuals engaged in piracy.

Film/video piracy can be likened to a disease which has reached epidemic proportions. The motion picture industry is taking all possible preventive measures to guard against the spread of the disease, but law enforcement will also have to take all possible punitive measures against the film/video pirate before the disease can be controlled or eliminated. **FBI**

Certainly all aspects of film/video piracy cannot be covered in this article. However, the Film Security Office of the Motion Picture Association of America, in its function as liaison between the motion picture industry and law enforcement, is available to furnish any information or assistance necessary in combating film/video piracy. Any questions regarding copyright law, copyright status of films, film distribution, search warrants, availability of witnesses from the studios, obtaining evidence for prosecution, or any other matters concerning the motion picture industry can be obtained by contacting:

Film Security Office
Motion Picture Association of America, Inc.
Suite 520
6464 Sunset Boulevard
Hollywood, Calif. 90028
(213) 464-3117
In New York contact:
522 Fifth Ave.
New York, N.Y. 10036
(212) 840-6161

Managing Promotions and Resulting Conflict A Realistic Approach

One significant area that the multi-million dollar criminal justice "industry" has in common with the private sector is personnel. Both continually strive to select and promote the best qualified personnel to positions of increased responsibility, while safeguarding against losing qualified personnel currently in line or field positions. Whether one seeks vertical or lateral advancement in a law enforcement career is an individual decision. Regardless of choice, each person will be faced with managing conflicts resulting from career goals.

There are three general conflict-generating areas in the career promotion process:

- 1) Not receiving a desired promotion;
- 2) Receiving a promotion (though undesired); and
- 3) Receiving a *desired* promotion.

In both the private and public sectors, promotions and conflict have historically gone hand-in-hand. Notwithstanding, this paradox will be of even greater concern to the middle managers and line supervisors of the 1980's and 1990's, as the post-World War II "baby boom" members move into junior-level supervisory ranks, nationwide. In fact, by 1985, the number of persons in the 35-39 year-old age group may increase by as much as 49 percent over the 1976 level!¹ In basic terms, increasingly competitive promotion and retention standards will be exacted on the career development of the upcoming generation of law enforcement professionals.

By NORMAN C. COUNS
*Special Agent
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Los Angeles, Calif.*

The Role of Conflict in Promotions

It is reasonable to reject the notion that all organizational conflict is inherently bad, for competition and conflict often benefit the organization.

Auren Uris delineated three types of competitive conflicts within the promotion process:

- 1) Conflict between individuals;
- 2) Conflict between groups; and
- 3) Conflict between an individual and his own best record.²

Uris believes that "conflict" is a matter of semantics, and as such, is not destructive. "... conflict at work is destructive and undesirable. But substitute the word 'competition' for conflict and we have something to talk about."³ Uris further sees several desirable outcomes of promotional conflict: Increased alertness to duty, better team cooperation, and greater responsiveness to leadership.⁴

Machiavelli would no doubt support the appropriateness of conflict in the promotion process. He endorsed the use of guile and deceit in competition and had little concern for conventional morality. In their study, however, Gemill and Heisler discovered that "Machiavellianism is significantly correlated with high job strain, low job satisfaction, and (lower) perceived opportunity for formal control."⁵ Morality aside, use of such tactics are, at best, arguable. Extending this somewhat jaundiced view, it can be inferred that tension, conflict, and frustration will not only affect those "passed over" for promotion but will also affect *successful* promotees who both *wanted* and *did not want* their promotions.

"It is reasonable to reject the notion that all organizational conflict is inherently bad, for competition and conflict often benefit the organization."

Failing to Obtain the Promotion

Edward Rosemann categorized those who fail to obtain promotions as "wandering, withdrawing, wailing, worrying, and warring."⁶ Such characterization may be appropriate in some instances, but it does overlook a significant minority who eventually succeed despite temporary blockages.

In many cases, the alert supervisor will detect both obvious and subtle "trail signs" of subordinates' career problems. Without effective feedback, the conscientious law enforcement person has greatly reduced chances of improvement in needed areas. When a superior detects unfavorable signals—"title only" promotions, reduced responsibility, exclusion from training schools or special assignments—it is not necessarily time for the victim to update the resume, but it is time to take control of the deteriorating situation and seek counsel and/or an explanation for the problem at hand.

After receiving a promotional passover, a thorough situational analysis is in order. At this point, J. C. Urban urges the nonpromotee to resist the urge to retreat, but to remain flexible in outlook to best reduce resulting anxiety.⁷

While there is no easy way to accept and recover from a passover, the anxiety can be reduced by thinking beyond the immediate crisis and by grasping a longer term strategy. Better yet, the passover victim should have already formed a personal contingency plan to help cope with such a crisis in his career.

Receiving a Promotion (But Not Wanting It)

In 1972, Paul Diesel studied the problem of unwanted promotions and concluded that management should consider whether given employees *want* promotions as part of their selection criteria.⁸ In other words, he recommended an optional "up or out" program for the management-oriented.

Diesel's notion seeks to minimize the Peter principle victim who, according to Peter, "... tends to rise to his level of incompetence."⁹ Diesel further sees no wrong in developing a reward system for those people who are content to do a good job where they currently are—those who harbor no vertical ambitions.¹⁰ This notion, possibly anathema to top management, pragmatically acknowledges that not every person in the field has the aptitude or the desire to aspire to the commander's desk.

The traditional American work ethic generally presumes the desire for greater power and responsibility by the gainfully employed. There are, nevertheless, many personnel who daily cope with the problem of doing their job well, while competing for promotions they do not want. For obvious reasons, however, they are fearful of openly expressing their true feelings, as doing so would be construed adversely. This fear is augmented by uncertainty over what will ultimately happen to the individual who dares refuse a promotion.¹¹ Furthermore, in some organizations (not limited to law enforcement), "... turning down a promotion is tantamount to telling senior management that they made a mistake in selecting you for the promotion."¹²

There are three broadly observable reasons for voluntarily avoiding promotions. First, there is complacency or a general sense of contentedness with the status quo. Second, we see insecurity—a lack of self-confidence or even a fear of failure and resulting loss of self-esteem. Finally, the “peaking mentality” can occur. This, more often observed in senior personnel who are professionally content, is the desire to stay at a level of perceived maximum achievement and personal challenge. Here, one feels that the cost/benefit tradeoffs do not warrant continued advancement.

The World War II “baby boom” generation of law enforcement personnel—those now in their 20’s and early 30’s—will face similar career decisions with increasing frequency during the next 2 decades, because:

“Declining rates of . . . growth and an ever-increasing number of candidates have heightened the competition for managerial positions. The top of the pyramid is expanding much more slowly than the middle.”¹³

In light of the impending career “crunch” facing this group during the 1980’s, younger management-oriented police and investigators should train, carefully plan, and declare important career goals to their respective personnel offices to help prevent possible midcareer disappointment later on.

The Peter Principle is a driving force behind one’s experiencing promotional stress. In effect, Peter forces people to strive for and attain positions for which they are not suitable and/or do not want. As a corollary to Peter, James Healy, in 1973, proposed the “Paul Principle”:

“For every employee who arises above his level of incompetence, there are several whose talents are not utilized.”¹⁴

“If conducted early enough, serious career planning can help one to anticipate relevant costs to promotion and to weigh the cost/benefit trade-offs of whatever path one has chosen.”

Law enforcement agencies have, in recent years, made a concerted effort to correct this problem by using women and other minorities in increasing numbers to fulfill undercover assignments and in supervision. Every person on a given unit, detail, or squad has unique talents that could possibly be job-relevant. To be effectively used, however, management must first have a “bank” that documents the talents or special skills of its personnel and then have a willingness to match mission needs with available skills.

One’s immediate superior plays a large role in encouraging career development by the subordinate. Too often, supervisors tend to “recognize only the currently used, and observable, talents of their subordinates.”¹⁵ In practice, this generates conflict as the employee becomes less motivated, more disgruntled, and internalizes such treatment in a way that could endanger his field performance.

The intangible pressure toward upward mobility is a central factor generating promotional conflicts. Healy stated that “the root of the problem may well be the premium society has placed on personal advancement.”¹⁶ Upward mobility creates a two-edged sword—it causes conflict when one is promoted unnecessarily and/or when one’s career goals are blocked. Promotion boards nationwide could well appreciate the following thought as they screen for the next generation’s leadership:

“. . . the great tragedy . . . is that someone who is good at a job is not allowed to do it; he is promoted by the ‘hierarchical’ system into a job he cannot do.”¹⁷

Getting a Desired Promotion

With the promotion passover, undesired promotions, and Peter/Paul theories outlined, it is appropriate to examine conflict resulting after one receives a *desired* promotion. The conflict areas include: Selection criteria, effect on former peers, “trapdoors,” and domestic problems.

Promotional criteria for the successful candidate can be divided into two areas—covert and objective. The covert criteria, inherently vague and subjective in nature, includes an officer’s demeanor, attitude, personality, and even spousal influence. Objective criteria are easier to define. Gemill and DeSalvia have suggested the following be used:

- 1) Managerial proficiency;
- 2) Public image; and
- 3) Political proficiency.¹⁸

In a later study, they found more specific modal indicators of the successful promotee:

- 1) Accomplishments;
- 2) Ability to sell ideas;
- 3) Meets deadlines;
- 4) College graduate; and
- 5) Effective communicator.¹⁹

Although selection criteria can, and do, vary with each situation, Gemill’s general criteria are among the most popularly held notions on the topic of what constitutes promotability. Nevertheless, in both highly competitive profit and nonprofit organizations, candidates not only will find they must overcome demanding objective promotion standards but that there is also a certain “X” factor necessary that makes a decisive difference in one’s

career success. Discovering this factor is, in itself, a source of conflict. Here, the covert selection criteria enter into the process. Personality characteristics, such as leadership ability, aggressiveness, loyalty, self-confidence, and perseverance, can serve as promotion "kickers." On this notion, Auren Uris found that conflict results even when one *does* discover that "X" factor:

"Yet, as the cards are stacked, aggressiveness becomes the determining factor for promotion. (As a result) the need to regard one's colleagues as competitors creates a continuing brake on harmonious relations."²⁰

While today's law enforcement professional must excel in job performance to qualify minimally for any career advancement, another problem lurks—one is sometimes too good to lose to a better position in the organization.²¹ Here again, promotion conflict is a two-edged sword. For optimal progress, one need be professional about their job, but being "too good" (i.e. "indispensable") may stifle advancement. Where the important dividing line is between "good" and "too good to promote" depends on both the individual and his own detail or department. However, progressive personnel policies now encourage all employees to maximize their job potential without fear of career stagnation. Aggressive personnel officers can effectively monitor individual achievement and career development, benefiting both departmental efficiency and employee job satisfaction.

"No career path in law enforcement can be without conflict; however, serious forethought and planning for career contingencies may reduce job strain and improve career peace-of-mind."

Conflict, then, occurs in selecting promotional criteria to be used, in striving to meet these standards, and finally, in any resulting "over-achieving" of standards. Once promoted, the officer or supervisor will face a new set of conflicts in the management of former peers.

Conflict may occur when an officer (agent, deputy, etc.) leaves a set of former peers (e.g., classmates, partners, etc.) to become their managing superior. This situation is often encountered in law enforcement organizations which espouse merit promotion from within. In such instances, not only may resentments develop, but the affected individual may be required to change his areas of interest, conversation, and avocation to accommodate the new pressures dictated by the promotion.²²

The new supervisor may also encounter difficulty in dealing with those subordinates who were passed over for the same position. If not dealt with positively, these persons can "pick arguments, block proposals, and become obstructive simply out of spite."²³ To cope with this problem, the new supervisor should quickly strive to create an office atmosphere of impartiality and objectivity in human relations.

In coping with a promotion, the "new boss" may fall prey to trying to maintain old ties as they were prior to

the promotion. In trying to remain "one of the guys," however, a new promotee may only create an air of weak leadership. As a better alternative, McClelland suggests the use of "power" to be a more effective manager.²⁴ In his study, McClelland noted that such "power managers" have fewer conflicts, gain greater maturity, and are less distracted about their futures.

The third area of postpromotion conflict occurs when the new promotee discovers that he has stepped into the proverbial "can of worms" that was not earlier foreseen. How the new promotee handles this adjustment will set the tone for the rest of his tenure, as subordinates will closely be watching how their new boss copes with the problem.²⁵ Unfortunately, too few departmental guidelines dictate that full disclosure of relevant information be made to the new promotee:

"... it is the rare firm which will candidly discuss the trapdoors which its managers tumble through during their first few weeks or months on the job."²⁶

The new promotee would, therefore, be well-advised to tactfully sound out his predecessors and coworkers, if possible.

A fourth conflict area in the promotion process occurs when an unpopular person is selected for the job. Several valid reasons for such sentiment include perceived incompetency, jealousy, fear, or personal dislike. This presents an immediate problem to the appointer or promotion board. In some instances, an unpopular choice can be recalled or withdrawn. More frequently, however, objections are ignored. Therefore, appointers should offer unqualified backing to their selectee to counter resistance. Charles Denova proposed several steps as a checklist:

- 1) Pave the way—check before hand;
- 2) Sell the choice;
- 3) Show where you stand;
- 4) Clearly back the promotee; and
- 5) Expect mistakes and ride the waves out.²⁷

The fifth and final area of concern is the effect of the promotion race on the candidate's homelife. Recent years have shown a motivational shift away from purely "dollar" work incentives to include a broader "quality of life" analysis of the work environment. With double-digit inflation now a way of life, salary is still important. Nevertheless, Berkwitz detected this subtle shift occurring, reflecting changing career values within the general work force:

"What the middle manager wants is not primarily more money—but more meaning to his corporate life. Like the student, he fears being immobilized in a monolithic structure."²⁸

Recent divorce statistics suggest that as the law enforcement professional climbs the career ladder to whatever goals have been set, his family and personal life may suffer. Fortunately, this problem is now coming under closer scrutiny by concerned social scientists. In a recent analysis on this problem, E. Jerry Walker, writing in the *Harvard Business Review*, acknowledged this:

"... the climate of the times, however, seems to presage a change in those corporate policies that tacitly deny the existence of the ... family."²⁹

Domestic conflicts constitute a significant influence on the promotee's morale, attitudes, performance, and even job retention. Historically, the family relationship has always been subjected to sacrifices required by a law enforcement career. Additionally, these relationships have often been underestimated as a field performance factor. There is currently more reason for optimism, however, as increasing research is conducted on employees' homelife and its significant role in on-the-job performance.

“The intangible pressure toward upward mobility is a central factor generating promotional conflicts.”

Conclusion

The law enforcement professional's climb to job fulfillment carries both costs and rewards. If conducted early enough, serious career planning can help one to anticipate relevant costs to promotion and to weigh the cost/benefit trade-offs of whatever path one has chosen. No career path in law enforcement can be without conflict; however, serious forethought and planning for career contingencies may reduce job strain and improve career peace-of-mind.

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Footnotes

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²³ Ibid., p. 44.

²⁴ D. C. McClelland and D. H. Burnham, "Good Guys Make Bum Bosses," *Psychology Today*, December 1975, p. 70.

²⁵ Charles R. Day, "Things They Didn't Tell Me About the New Job," *Industry Week*, July 18, 1977, p. 67.

²⁶ Ibid.

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A Crime Prevention Program for the Handicapped

By William E. Perry, Jr.

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Police Department
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After more than a year of planning and organization, the New York City Police Department (NYPD) inaugurated its crime prevention program for the handicapped on June 2, 1980. The idea for this specially designed program first took hold when a local crime prevention officer, working with an agency for the blind in his precinct, asked the NYPD's crime prevention section if materials were available that could be distributed to the blind. At that time, the answer was "no!" However,

the question sowed the seed. Why not develop and incorporate into the ongoing crime prevention program materials that would address the handicapped public?

Initially, staff members met with representatives of the major agencies in the city serving the handicapped to seek their opinions on the idea. Not only was their response most enthusiastic, but they also volunteered their technical assistance with the project. At that point, two officers of the crime prevention section were assigned to develop the program, in addition to continuing their regular duties of conducting seminars and security surveys, lecturing, producing and distributing safety material, and media liaison.

Numerous agencies associated with the handicapped were consulted, and a nationally known fast-food chain contributed money to defray part of the cost. As the program took shape, it was seen as having a twofold purpose. Primarily an information and education program directed toward the handicapped, it would also serve to heighten police awareness and sensitivity when dealing with this special public. Thus, the program encompasses materials and services for handicapped persons, as well as training and information for police officers.

Components of the Program

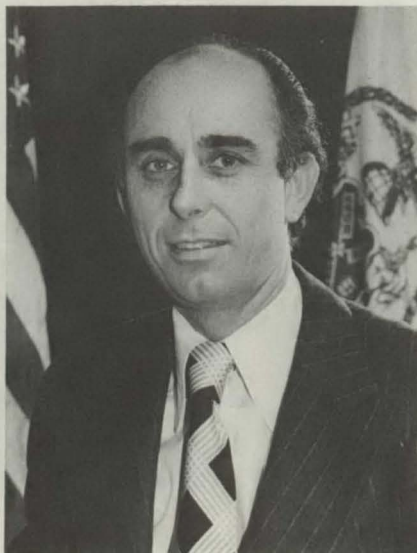
In an effort to reach as many of the handicapped as possible, several items were incorporated into the program.

1) *Large Print Booklets*—Two booklets are available. "A Guide to Crime Prevention for Blind and Visually Impaired Persons" (English and Spanish versions) contains tips on how to avoid becoming a victim of a crime, describes the court process, and gives information on available victim services. "An Ounce of Prevention" (English and Spanish versions) is directed toward physically handicapped persons and sets forth safety tips, advice on equipment care, legal rights, and available government and private agency services. In addition, these two editions have been printed in Braille and have been recorded on audio cassette tapes in English and Spanish for those who do not read Braille. The books and tapes are available in special and public libraries.

Deputy Commissioner Perry



*Robert J. McGuire
Police Commissioner*



2) *Crime Prevention Lectures*—On request, officers of the crime prevention section offer crime prevention and crime resistance techniques to handicapped groups.

3) *Security Surveys*—Crime prevention officers will conduct security surveys, on request, of homes and businesses of handicapped persons. A report of the officer's findings, ordinarily given to owners in writing, will be given to blind persons on cassette tape.

4) *Special Telephones*—In the lobby of police headquarters, a special telephone for the handicapped, providing wheelchair access and sound amplification, has been installed. In addition, other such phones are being installed in various public buildings throughout the city.

5) *Training for Police Officers*—Police officers are instructed on how to deal with hearing-impaired persons with whom they might have contact. The training material consists of a video tape dramatization and narration, plus an instructor's guide. Copies of this training material, prepared by the crime prevention section in collaboration with the police academy, have been distributed to precincts and special units throughout the city.

6) *Recruit Instruction*—Six hours of classroom instruction on how to deal with the handicapped has been incorporated into the curriculum for recruits at the police academy. Visual aids, demonstrations, and role-playing techniques are used.

7) *Sign Language Courses*—The New York Society for the Deaf awarded four scholarships to police officers to learn sign language, and the Cabrini Medical Center offered a free course in basic sign language to police officers.

8) *Auxiliary Police*—The auxiliary police of the New York City Police Department admit handicapped persons into membership and employ their services in radio communications and administrative and clerical duties.

Also, the auxiliary police offers its members a voluntary 8-week course in basic sign language, which is taught by an auxiliary police sergeant.

9) *Telephone Information Service*—The New York Society for the Deaf has volunteered the use of its 24-hour telephone service to enable police officers to obtain information when assisting the handicapped.

Conclusion

The development of the program was timely. More and more, handicapped groups are bringing their special needs and demands to the government's attention. An example of the national and worldwide notice now being taken is the fact that the United Nations has designated 1981 as the International Year of Disabled Persons. The deputy director of the United Nations' Division for Economic and Social Information, who learned of the program, has indicated the desire to disseminate the material developed by the New York City Police Department to other agencies around the world.

Even though the program is still in its early stage, rich rewards in terms of

personal satisfaction and pride in accomplishment have already been reaped. The program has been so well-received by the handicapped community that the funding source has offered more money to expand the program. Above all, the program demonstrates the NYPD's concern with meeting the special needs of the many different publics that compose this great city.

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As the mayor of New York spoke, an interpreter for the deaf communicated his words in sign language, while an oral interpreter sat in the audience communicating with lip readers.



During opening ceremonies, Police Commissioner McGuire presented an award to one of the outstanding contributors to the program. The plaques awarded were made by handicapped students, 16 to 21 years of age.



THE PRIVACY PROTECTION ACT OF 1980

By Larry E. Rissler
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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.

One of the more significant contributions of the United States to the science of government is the concept of separation of powers. The American Constitution created three distinct branches of Federal Government, each with specified duties and responsibilities. In the criminal law context, the role of the executive branch is undisputed. It is to investigate, identify, and prosecute those suspected of criminal activity. The traditional role of the legislative branch has been in matters of substantive criminal law, while the judicial branch has decided issues relating to procedural criminal law. That is to say that Congress has sought to identify those forms of personal conduct which should be subject to criminal sanction. This process, of course, is accomplished by enacting criminal laws and affixing punishments to them. The role of the courts has

been to establish rules and procedures for the collection of evidence by executive branch officers. This has largely been done through interpretation of the fourth amendment's prohibition against unreasonable searches and seizures.

Put another way, it has been the responsibility of the legislature to determine what constitutes criminal conduct and the task of the judiciary to establish how investigations and prosecutions of offenders must proceed. However, from time to time, Congress has asserted itself in the procedural criminal law area and has sought to direct the means by which law enforcement officers obtain evidence.¹ Several recent statutes are illustrative.

For example, in 1976, as part of the Tax Reform Act,² Congress established a detailed procedure for Federal officers to follow when attempting to obtain tax return information in nontax-related criminal investigations. Two years later, in the Right to Financial Privacy Act,³ Federal investigators were prohibited from examining depositors' financial records maintained by banks unless one of five separate procedures is used. (An earlier Supreme Court decision had found no constitutional bar to the government's access to financial records.⁴) And last year, two proposals were introduced which, if passed, would have created procedures governing access to medical records maintained by hospitals and toll records kept by telephone companies.⁵

In the provisions of yet another law, the Privacy Protection Act of 1980 (hereinafter Act), Congress has legislated the means by which State and Federal officers obtain criminal evidence from the news media.

Background

The Privacy Protection Act was Congress' response to the U.S. Supreme Court's 1978 decision in *Zurcher v. Stanford Daily*.⁶ *Zurcher* involved the execution of a search warrant against the premises of an innocent third party, the student newspaper of Stanford University, in an attempt to seize photographs of a demonstration which had occurred earlier at a local hospital. Several officers had been injured by the demonstrators, and it was believed the Stanford Daily, which had covered the incident, possessed photographs which could assist in identifying the officers' assailants. No members of the paper's staff were suspected of criminal conduct.

The search warrant was executed by four police officers who searched desks, filing cabinets, photo labs, and waste baskets located within the newspaper's offices. Locked drawers and rooms were not opened. No photographs were located. Approximately 1 month later, the Stanford Daily and members of its staff filed a civil suit in Federal court against the officers who had executed the warrant, the chief of police, and several other officials, alleging that the search had violated the fourth amendment's prohibition against unreasonable searches and seizures. The trial court and court of appeals ruled in favor of the Stanford Daily, reasoning that the fourth amendment "forbade the issuance of a warrant to search for materials in possession of one not suspected of crime unless there is probable cause to believe . . . that a subpoena duces tecum would be impracticable."⁷ It was further held that where the innocent object of a search is a newspaper, first amendment interests are involved, and a search warrant is permissible only if the government can clearly show that important materials will be destroyed or removed and a restraining order would be futile.

The U.S. Supreme Court later reversed. In an opinion joined by six members of the Court, it held that the fourth amendment does not bar the use of a search warrant for premises occupied by a person who is not a



Special Agent Rissler

“. . . the purpose of the Act is not merely to protect materials used to prepare an existing or anticipated publication, but also those prepared for the purpose of publication. . . .”

suspect in the crime under investigation. As long as probable cause exists to believe that evidence is located in the place to be searched, a search warrant may be properly issued. The majority reasoned that evidence might be lost if the law required subpoenas to obtain evidence in the hands of third parties. As stated by the Court, “the subpoena duces tecum, offering as it does the opportunity to litigate its validity, could easily result in the disappearance of the evidence, whatever the good faith of the third party.”⁸

The Court also found that the fourth amendment’s preconditions for the issuance of a search warrant (probable cause, need to describe specifically the place to be searched and things to be seized, overall requirement of reasonableness), when applied with “particular exactitude,” are adequate to safeguard the first amendment interests which are endangered when the place to be searched is a press office.

The opinion concluded by noting: “The (f)ourth (a)mmendment does not prevent or advise against legislative or executive efforts to establish nonconstitutional protections against possible abuses of the search warrant procedure. . . .”⁹

The *Zurcher* decision was not a departure from established law. It did not extend the government’s authority to search and seize to new sources of evidence. On the contrary, the Court characterized the lower court’s decision restricting the use of search warrants against third parties as “remarkable,” without “direct authority,” and a “sweeping revision of the fourth amendment.”¹⁰ Nevertheless, the opinion was quickly criticized by many segments of the press. One leading newspaper denounced it as “a first step toward a police state.”¹¹ Another urged immediate action by Congress to “enact added protections for individual privacy and press freedom.”¹² Within days, legislation was introduced to limit warrant-authorized searches of the premises of those engaged in activities protected by the first amendment. A month later, congressional hearings began to determine the impact of *Zurcher*. And in 1980, Congress passed Public Law 96-440, the Privacy Protection Act of 1980. It was quickly signed by the President and became effective on January 1, 1981, against the United States. (It will take effect 1 year later against State or local governments.) Because the Act creates a civil cause of action for damages against the United States, a State or local government, and certain State law enforcement officials who violate its provisions, all local, State, or Federal officers should be familiar with its language.

Stated briefly, the Act makes it unlawful for Federal, State, or local officers investigating a criminal offense to search for or seize “work product” or “documentary” materials possessed by a person in connection with, or with a purpose of, disseminating a public communication in or affecting interstate or foreign commerce.

What is Protected?

The Act affords protection to two distinct categories of potential evidence. One is work product materials, the other documentary materials. Work product is defined as materials (other than contraband, fruits, or instrumentalities) created in anticipation of communicating such materials to the public. They must be possessed for the purpose of public communication and include mental impressions, conclusions, opinions, or theories of the person who prepared or authored them.¹³ Obvious examples would be notes and drafts of an article made by a reporter or the photographs sought in the *Zurcher* case. To qualify as work product, the material need not have been prepared or authored by the person in possession. Thus, unsolicited material, such as a report revealing government corruption made by a “whistle blower” and mailed to a newspaper for possible publication, would constitute work product.

Because the purpose of the Act is not merely to protect materials used to prepare an existing or anticipated publication, but also those prepared for the purpose of publication, materials qualify as work product even though the plans to publish are subsequently abandoned. For example, assume an author prepares research notes and writes a paper which is later rejected for publication. The notes and article would still receive work product protection because they were gathered and prepared for the purpose of dissemination to the public.

Conversely, the fact that an item *was* published does not necessarily mean that materials used to prepare it will receive work product protection. If the materials were originally held for purposes other than publication, they would not be considered work product. Examples would be data used to prepare business records or documents required to be filed with the government and which later happen to be published. Another example would exist if a citizen was photographing an event when a crime occurred, and he later sold the photographs to a newspaper or magazine. The photos would not qualify as work product because at the time they were taken the citizen did not intend to disseminate them to the public. (They may, however, be protected as documentary materials.)

Documentary materials are defined as materials (other than contraband, fruits, or instrumentalities) upon which information is recorded. It includes printed materials, photographs, motion picture films, negatives, video and audio tapes, and mechanically, magnetically, or electronically recorded cards, tapes, or discs¹⁴ held by a person in connection with the purpose of making a public communication.

The precise contours of the distinction between work product and documentary materials will ultimately have to be defined in the courts. But for now, a reasonable reading of the Act indicates that work product includes notes or other materials made by an author himself containing his mental impressions, conclusions, or opinions, made while preparing a public communication. It would also include the communication itself prior to publication or broadcast.

Documentary materials would appear to include data and materials supplied to or collected by a person who intends to draft a public communication. It is likely they would have been routinely prepared by other individuals with no intent to publish and thus contain no "impressions, conclusions, opinions, or theories of the person . . ."¹⁵ intending to make the public communication.

When Is a Search Warrant Permitted?

Despite acknowledgment in the Act's legislative history that officers occasionally may be uncertain whether items sought constitute work product or documentary materials,¹⁶ the distinction between the two appears to be very important. Because work product involves the creative, mental process, the Act affords it a higher level of protection than documentary materials by imposing a general no-search rule. When the items sought are documentary materials, a subpoena-first rule is generally applicable.

The no-search rule for work product materials simply means that government officials may not search for or seize work product unless one of two conditions exist. First, a search warrant may be obtained if "there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate. . . ."¹⁷

Thus, if the possessor himself is violating the law and the materials relate to that violation, a search warrant is permitted. It should be noted, however, that this exception does not apply if the offense of which the possessor is suspected is the receipt or possession of the materials sought. The reason for not including receiving and possessing offenses in the exception is that without it "reporters' investigations of such areas as government corruption where whistle blowers' evidence is so important"¹⁸ would be chilled. (Note, however, that if the receipt or possession of the documents constitute an offense under an existing *espionage* law, a search warrant would be permissible.)

Second, a search warrant for work product materials may be obtained if there is reason to believe that an immediate seizure is necessary "to prevent the death of, or serious bodily injury to, a human being."¹⁹ The standard "reason to believe" as used in this exception is less demanding than the "probable cause" standard required for the issuance of a warrant, but higher than mere suspicion.²⁰

It should be emphasized that these are the only two conditions which will justify the issuance of a search warrant for work product materials. If an attempt to obtain documents with a subpoena *duces tecum* is unsuccessful, even in the face of a contempt citation, a search warrant is nonetheless prohibited.

When the items sought are "documentary materials," the Act creates four exceptional circumstances which would permit issuance of a search warrant. In addition to suspect and life-in-danger exceptions identical to those outlined for work product materials, the Act creates two other "subpena-first" exceptions. Under one, a warrant may

“. . . the Act makes it unlawful for Federal, State, or local officers investigating a criminal offense to search for or seize ‘work product’ or ‘documentary’ materials. . . .”

be obtained if there is reason to believe that the advance notice given by a subpoena would result in destruction or concealment of the documentary materials sought.²¹ An example would be if a reporter had previously obstructed an investigation or announced that he would destroy the materials rather than comply with a request or subpoena. Others might exist if there was a close personal relationship between the suspect and the possessor of the documents or if the suspect himself had access to the materials sought. And finally, a search warrant is permissible if the subpoena process has been tried, the documentary materials have not been produced, and either all appeals have been exhausted or a further delay would threaten the interests of justice.²² (If a warrant is sought under the interests of justice exception, the possessor of the materials must be allowed to file an affidavit challenging the issuance of the warrant if he believes the materials are not subject to seizure.)

Who Can Bring Suit?

The statute's protection is extended to all who possess "a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication. . . ." ²³

The effect of this broad language is to reach almost everyone engaged in first amendment pursuits. Obviously included are employees of the institutional press (newspapers, radio, and television stations), but the Act is broad enough to also include academicians, authors, filmmakers, and photographers. The only limitation is the requirement that the person possess the materials with the purpose of making a public communication for dissemination in (or affecting) interstate or foreign commerce.²⁴ Although the term "public communication" is not defined in the Act, it is the intent of Congress that the phrase include any communication distributed to the general public or available upon simple request.²⁵ This would clearly cover publications by major newspapers or magazines, as well as books, and electronic broadcasts. It would also appear to include publications by small town newspapers, professional journals, and possibly "political campaign materials or a press conference." ²⁶

It should be noted that no criminal sanction attaches for violating the Act. Instead, a civil cause of action for damages ²⁷ (in Federal court) has been created for a "person aggrieved" by a search in violation of the Act. Actual damages are specified by the statute, with a minimum amount of \$1,000 to be awarded.²⁸ The court may also award reasonable attorney's fees. By giving civil relief only to a "person aggrieved," the statute effectively eliminates as a potential plaintiff the criminal suspect incriminated by the seized evidence. This is consistent with the bill's purpose of protecting only innocent third parties who are engaged in first amendment activities.

Using the facts of the *Zurcher* case as an example, it would be the staff members of the Stanford Daily who could bring suit, not the demonstrators to whom the evidence related. It is also clear that a violation of the Act would provide no basis to a criminal defendant for the exclusion of evidence.²⁹

Who Can Be Sued?

The Act allows a person aggrieved by a search and seizure in violation of the Act to sue for damages. If the search was conducted by Federal officers, the suit will be against the United States.³⁰ A suit against the Federal employee personally is not provided for by the Act. Because of this and the fact the Act provides for no exclusionary sanction, in order to deter Federal investigators from violating its provisions with impunity, the Act requires the Attorney General to establish procedures for an administrative inquiry after a determination that an employee has violated the Act.³¹ A provision for an administrative sanction against such employee is mandated, if warranted. The exact mechanics and sanctions of this procedure will not be known until the Attorney General's guidelines are formally adopted. Again, this provision is applicable only in regard to Federal officers.

When the violation is by an officer employed by a State, and that State has waived its sovereign immunity from civil suit, the action must be brought against the State.³² However, if the State has not waived its sovereign immunity, the action will be against the State officer personally.³³ In that event, the Act specifies that the employee may assert as a defense his reasonable good faith belief in the lawfulness of his conduct.³⁴ However, if the suit is against the government (Federal, State, or local), the government may not assert as a defense the reasonable good faith belief of its employee.³⁵ In other words, strict liability attaches when the defendant is the government.

If the violation was committed by an employee of "any other governmental unit," the suit shall be against that government.³⁶ "Any other governmental unit" includes a municipality, county, territory or possession, the District of Columbia, or the Commonwealth of Puerto Rico.³⁷

Conclusion

It is important to emphasize what the Privacy Protection Act of 1980 does and does not do. It does not prevent the government from obtaining documentary evidence possessed by the news media. It simply establishes the means by which that evidence may be obtained. As noted earlier, officers may make simple requests or seek subpoenas duces tecum for the production of the desired materials. It does prohibit the use of search warrants against individuals engaged in first amendment pursuits who are not suspected of criminal conduct unless one of four narrowly drawn exceptions exist. It does not prevent the issuance of a search warrant for contraband, fruits, or the instrumentalities of crime.

It does not affect searches and seizures at the borders or points of entry into the United States in order to enforce the customs laws. It does not have any effect on searches conducted by private individuals. Nor does it affect seizures by government officials which arise out of civil matters, such as seizures of assets to satisfy debts or taxes owed to the government or examinations of records of regulated businesses.

Finally, the Act itself does not regulate the seizure of evidence from innocent third parties, such as doctors, lawyers, and clergymen, who are not engaged in first amendment activities. However, the Act does require the Attorney General to issue guidelines governing such seizures by *Federal officers*.

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Footnotes

¹ A major example is Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. Secs. 2510-2520), in which Congress regulated wiretappings and electronic eavesdropping on a Federal level. Of course, legislatures have traditionally directed many of the technical aspects of the seizure of evidence, such as the issuance, execution, and return of search warrants. See, e.g., Fed. R. Crim. P. 41.

² 26 U.S.C. Sec. 6103(j)(1).

³ 12 U.S.C. Secs. 3401-3422.

⁴ *United States v. Miller*, 425 U.S. 435 (1976).

⁵ See S. 503 and H.R. 5935, 96th Cong. 2d Sess. (1980); H.R. 8215, 96th Cong. 2d Sess. (1980).

⁶ 436 U.S. 547 (1978).

⁷ *Id.* at 552.

⁸ *Id.* at 561.

⁹ *Id.* at 567.

¹⁰ *Id.* at 534, 538.

¹¹ *Boston Globe*, 124 Cong. Rec. H5664 (daily ed. June 15, 1978).

¹² *The New York Times*, June 6, 1978, at A16, Col. 2.

¹³ Act, Sec. 107(b).

¹⁴ *Id.* at Sec. 107(a).

¹⁵ *Id.* at Sec. 107(b)(3).

¹⁶ See Report of the Committee on the Judiciary, U.S. Senate, No. 96-874 at 10. (Hereinafter Senate Report.)

¹⁷ Act, Sec. 101(a)(1).

¹⁸ Senate Report, at 11.

¹⁹ Act, Sec. 101(a)(2).

²⁰ See Report of the Committee on the Judiciary, U.S. House of Representatives, No. 96-1064 at 8. (Hereinafter House Report.)

²¹ Act, Sec. 101(b)(3).

²² *Id.* at Sec. 101(b)(4).

²³ *Id.* at Sec. 101(a).

²⁴ *Id.* at Secs. 101(a), 101(b). The authority for Congress to regulate State and local law enforcement is the commerce clause, U.S. Const. Art. I, Sec. 8. The Supreme Court has held that this clause empowers Congress to regulate activity which has an effect on interstate or foreign commerce. See *Perez v. United States*, 402 U.S. 146 (1971). There is little doubt that the dissemination of information affects interstate commerce.

²⁵ House Report at 6.

²⁶ *Id.*

²⁷ Act, Sec. 106(a).

²⁸ *Id.* at 106(f).

²⁹ *Id.* at 106(e).

³⁰ *Id.* at 106(a)(1).

³¹ *Id.* at 106(g).

³² *Id.* at 106(a)(1).

³³ *Id.* at 106(a)(2).

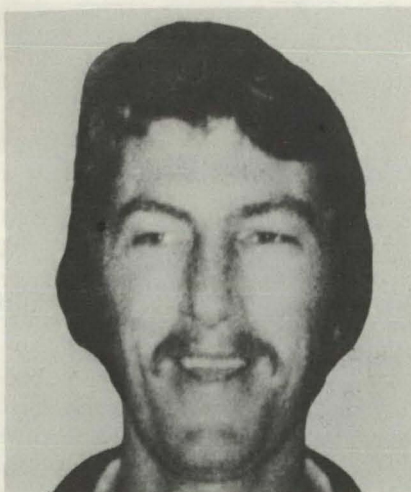
³⁴ *Id.* at 106(b).

³⁵ *Id.* at 106(c).

³⁶ *Id.* at 106(a)(1).

³⁷ *Id.* at 107(c).

WANTED BY THE FBI



Photograph taken 1975.

Gary Warren Schmidt

Gary Warren Schmidt, also known as Gary Chester Bruton, "Slim."

Wanted for:

Crime aboard aircraft—Hijacking; Kidnaping; Possession of weapons aboard aircraft; Use of firearms during commission of a felony.

The Crime

On November 24, 1975, Schmidt allegedly hijacked a privately chartered aircraft en route from California to Texas. He reportedly forced the pilot at gunpoint to fly and land on a beach in Mexico, where cargo was subsequently removed from the aircraft.

A Federal warrant was issued on December 11, 1975, at San Diego, Calif.

Description

Age 33, born June 21, 1947, San Bernardino, Calif.
 Height 6'8".
 Weight 225 pounds.
 Build Thin.
 Hair Brown.
 Eyes Hazel.
 Complexion Medium.
 Race White.
 Nationality American.
 Occupations Rock band promoter and truckdriver.
 Remarks In the past has worn Fu Manchu-type mustache.
 FBI No. 495 490 L2.

Caution

Schmidt hijacked an aircraft at gunpoint and should be considered armed and dangerous.

Notify the FBI

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

Classification Data:

NCIC Classification:

187004151418CO131512

Fingerprint Classification:

18 M 1 R 010 14 Ref: 1

L 3 W 000

1



Left index fingerprint.

**Change of
Address**
Not an order form

FBI

**LAW
ENFORCEMENT
BULLETIN**

**Complete this form and
return to:**

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

Name

Title

Address

City

State

Zip

Homemade Pipe Shotgun

An uniformed Seattle police officer approached a subject who was carrying what appeared to be a steel pipe. (See fig. 1.) The "pipe" was later discovered to be a homemade .12-gage shotgun, loaded and ready to fire. The weapon is fired by hitting the spring-loaded firing pin into the shell cap. (See fig. 2.)

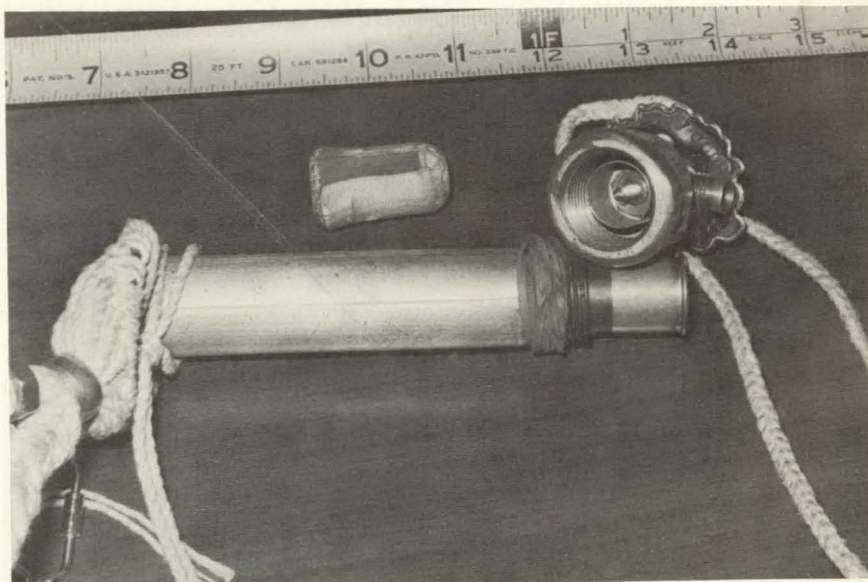


Figure 1

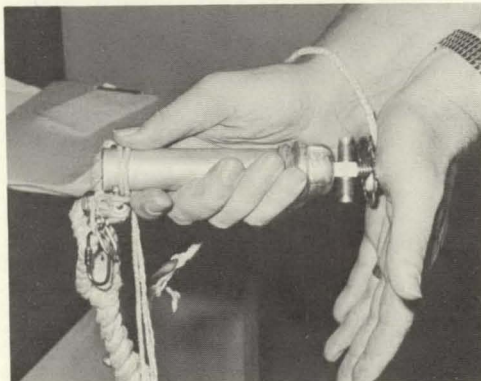


Figure 2



Washington, D.C. 20535

Interesting Pattern

The pattern shown is classified as an accidental whorl with an outer tracing. The location of the third delta above the pattern makes it unusual. The tracing is determined by tracing from the farthest left delta to a point opposite the farthest right delta, omitting the delta on top of the loop.

