



FBI

February 1988

Law Enforcement Bulletin



*Director Sessions Meets the New FBI
National Academy Associates' President*

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FBI

Law Enforcement Bulletin

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Washington, DC 20535

William S. Sessions, Director

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Penny Falls: Friend or Foe?

"A penny falls device erroneously leads a player to believe that the game can be beaten by virtue of the player's skill."

By

WILLIAM L. HOLMES

Special Agent

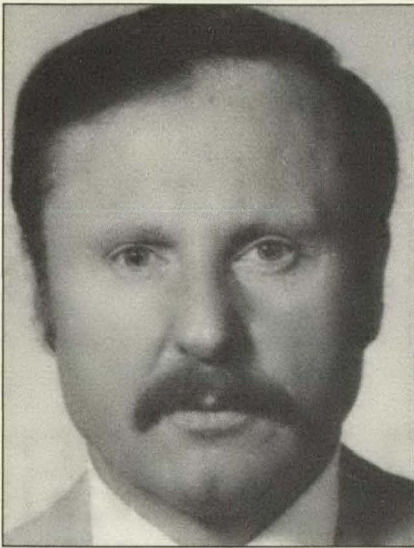
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Special Agent Holmes

Fast profits with little risk are an enticement for all age groups, regardless of sex, race, religion, or socioeconomic status. Thus, it is not surprising that the business world might want to take advantage of this phenomenon. The gaming industry, as an example, is fully cognizant of such hopes and motivations. This industry learned long ago that games of chance offer greater lure and a greater sense of excitement to players than mere games of skill.

In the past, manufacturers of games of chance catered to a restricted market, such as legal casinos. In order to expand this market, games were designed or modified in an attempt to comply with local demands or criteria.

Some of these new games appeared to run afoul of the law, thereby initiating a controversy as to their legality. Thus, it became incumbent upon the gaming industry, law enforcement community, and judicial systems to distinguish a game of skill from a game of chance. Acceptable and enforceable standards needed to be developed.

Skill Versus Chance

Broadly speaking, one might say that games of skill are "friendly" contests which allow a player's ability to influence the final outcome of the game. For example, in a game of Pac Man,[®] the player's manipulation of a lever, relative to an image on a video screen, will dictate how successful that player will be. The more-successful, i.e., skillful, player will be able to avoid the "monster" image and extend the time of play.

Games of chance, on the other hand, are based on laws of probability and are not appreciably influenced by the skill of the player. In a game of chance, winning combinations, ran-

domly selected, determine the outcome of play. For example, when rolling a pair of dice, a "7" will appear 6 times out of every 36 rolls of the dice, over an extended period of play. Theoretically, the laws of probability dictate the frequency an event will occur in a series of events. Once the dice leave the player's hand, the player has no control over what number will appear when the dice come to rest. Therefore, skill does not influence the final outcome of play.

One might, therefore, expect that a game of skill would differ in basic characteristics from a game of chance. However, the gaming industry has developed some games that on the surface appear to be games of skill which, in reality, contain characteristics peculiar to a game of chance. Thus, a "friendly" game in effect becomes a "foe," unbeknownst to the player. An example of this sort of game is the penny falls device.

A penny falls device erroneously leads a player to believe that the game can be beaten by virtue of the player's skill. This game has several features which encourage this erroneous assumption. For instance, an outwardly visible, movable "shooter" or coin chute gives the impression that a player can aim a coin with consistent accuracy. Also, there is a "stop" button which interrupts the sweep-arm cycle. Finally, a player can control the rate of feeding coins into the machine. These features, used alone or in combination with other features, are employed by a player continuously while playing the game. Since these operational features are used frequently, singly or in combination with other features, this leads a player to believe that the outcome of play is determined by the manipulation of these various components.

"There are several hidden characteristics of penny fall devices which are not readily apparent to the player and which reduce the potential win ratio."

Additionally, there are several non-observable features which affect the operation of a penny falls device. These features are described later in this article.

Therefore, both overt and covert features on a penny falls device turn what appears to be a game of skill, a "friendly" game, into a game of chance, violating norms of fair play and legal statutes.

Developmental History

In keeping with trends set by other manufacturers of gaming devices, devices are named after a particular play characteristic, an operational procedure, or a design feature. This is true of a penny falls device. "Penny falls" is a generic term which applies to several devices, including the money pusher and gravitation device, having the same components, such as the sweep-arm, coin chute, coin mass, raised lip, playing surface, or side slots. One such device, money pushers, which was first manufactured in 1962, has an arm which sweeps across a playing surface, pushing coins over the front edge of the surface through a chute and into a tray or hopper. These coins (winnings) are retrieved by the player.

A gravitation device has a design feature which uses gravity to move coins. Coins inserted into a coin chute are propelled by gravity toward the playing surface. Coins forced over the front edge of the playing surface are also influenced by gravity.

With the advent of video games and their resulting popularity, manufacturers began naming their games after events or movies, as well as functional characteristics. For example, some of the most popular video games are "Star Wars" (named for the movie of the

same name), "Skywalker" (named for a role in the movie Star Wars), "Slash Down" (named for the splash down of the space capsule), and "Moonrakers" (named for the moon landing).

Other penny falls models were named for functional characteristics, i.e., "Flippa Winna" (after the coin delivery method) or "Silver Falls" (for the rotating drum between two playing surfaces imitating a water fall of coins). Devices currently used in casinos, which provide more winning opportunities, are the "Flip-it," "Silver Shooter," or "Whirl Win."

"Flip-it," a penny falls device currently used in Nevada casinos, features baskets which offer players more opportunities to win.

The penny falls popularity guaranteed the manufacturer of the devices, Crompton, Limited, of England, a large share of the English market, as well as the Canadian market. However, Crompton did not have authorized dealers in the United States but realized the great marketing potential.

In 1976, an attempt was made to introduce Crompton penny falls into the United States and application was made to the Nevada Casino Control Commission.² Allegedly, this application was denied by the commission because of the extremely high retention



"The accumulated coin mass on the front portion of the playing surface is the most important element of a penny falls device."

ratio (house percentage) of the device. The penny falls devices in use in the United States prior to 1976 came primarily from Canadian sources.

In 1979, representatives from Crompton, Limited, again applied to the Nevada Casino Control Commission for permission to install penny falls devices in Nevada casinos. Crompton had made modifications to the earlier devices, reducing the retention ratio considerably. These modifications provided more winning opportunities for the player and complied with the suggested 15-percent retention ratio. Thus, permission was granted.

Types of Penny Falls

Basic physical characteristics of the earlier penny falls were retained when the current devices were being developed. However, now there are two types of penny falls devices, one with a single-level playing surface, the other with a multilevel (two or more) playing surface. Each type may have either a single player position or multiplayer positions.

The current penny falls devices have three methods of coin delivery. One model of the device contains an elongated coin chute located in front of and above the playing surface. A second method is through a coin chute located at the top rear of the device, which allows the inserted coin to travel down the rear wall of the device. On another device, a coin inserted at the front of the device drops onto a rotating drum which propels the coin toward the rear of the device. These last two coin delivery methods are usually found on the multilevel devices.

Physical Characteristics

A penny falls contains six basic physical characteristics — playing sur-

face, raised lip on the front of the playing surface, an accumulated mass of coins or tokens, side slots, sweep-arm, and shooter or coin chute.

Each playing surface constitutes a player position. One or more playing surfaces are encased in a cabinet with a large glass or plexiglass front. A playing surface will vary in size, depending on the model, and contain or support all of the physical characteristics, except the shooter.

At the edge of each playing surface is a raised triangular lip. This lip reduces the forward movement of the coin mass and is a major element in the skill versus chance concept and design of a penny falls device.

An accumulated mass of coins or tokens will extend from the raised lip at the edge of the playing surface back to a point on the playing surface where the forward motion of the sweep-arm cycle ends. This coin mass will vary in density (layers of coins) with the method of play. Each level of a multilevel device will contain an accumulated mass of coins with the same characteristics as the coin mass of a single-level device.

On each side of the playing surface is a narrow slot approximately 3 inches long. Coins forced through these slots drop onto the bottom of the device. On multilevel devices, these slots will appear only on the bottom-level playing surface.

The number of coins that pass through these slots, relative to the number of coins played, determines the retention ratio (house percentage). These slots are not readily apparent to the player. They are either blocked from view by prizes on top of the coin mass or from the coin mass itself.³

Each playing surface bears a sweep-arm, located on the rear portion

of the playing surface, which moves in a continuous cycle for a predetermined distance and length of time. This sweep-arm is used to move newly deposited coins forward toward the accumulated coin mass.

The sweep-arm also has several variations. Earlier single-level playing surface models used a rectangular sweep-arm. The multilevel penny falls created a need for a new sweep-arm configuration. This new sweep-arm is in the shape of "paddles" or "fingers," which operate with staggered time cycles.

Imbedded in the glass or plexiglass front, over each playing surface, is an elongated coin chute or shooter. Each shooter has limited side-to-side mobility and is slanted downward toward the playing surface.

Two other coin delivery methods have been previously described; however, regardless of the shooter configuration, the end result is to deposit a coin on the uppermost playing surface to begin the sequence and object of play.

Object of Play

The object of play is to force the maximum number of coins over the front edge of the playing surface into the win chute, using the least number of coins possible; in other words, to win a large profit for a small investment with little risk.

A player begins play by inserting a coin into the shooter. The insertion of this coin is timed so that the coin drops onto the playing surface in a vacant area created by the backward movement of the sweep-arm. The coin is inserted into the shooter in a vertical position (on edge) and exits in the same position.

The side-to-side mobility of the shooter allows the player to direct the newly deposited coin to a specific area of the playing surface but is limited to the area between the coin mass and the sweep-arm. The sweep-arm, moving in a continuous cycle, will force the newly deposited coin into or onto the accumulate coin mass. As the coin is pushed forward, it will cause the coins it comes in contact with to move forward and/or to the side.

As the affected portion of the coin mass is pushed forward, it may or may not cause some of the precariously balanced coins on the front edge of the playing surface to fall into the win chute. Coins falling into the win chute are retained by the player.

On the surface, the player's goal should be met without great difficulty after a few practice plays. Unfortunately, some of the other features of the game prevent this from happening.

Impeding Factors

According to Webster's *New World Dictionary*, the word "impede" means to obstruct or delay progress. Impeding factors are used to minimize or eliminate the effect an element of skill may have on the final outcome of play or an event. There are several hidden characteristics of penny fall devices which are not readily apparent to the player and which reduce the potential win ratio. These include screw heads, texture of the playing surface, triangular lip, an accumulated mass of coins, prizes placed on top of the coin mass, and side slots.

Screw Heads

The first penny falls contained two screw heads on the front portion of the playing surface and were usually positioned beneath the accumulated coin mass. An operator could raise the screw heads slightly to protrude above

the playing surface, thereby impeding the forward movement of the coin mass and causing the coins to "pile-up" and increase the density of the coin mass.

A newly deposited coin forced into the coin mass by the sweep-arm will encounter resistance created by the unequal distribution of the coins, as well as the density of the coin mass. The circular shape of the coin and these uneven forces will cause the newly deposited coin to move (rotate) in the direction of least resistance. This reaction produces two results which tend to minimize the effect skill may have on the final outcome of play. First, the screws in the center of the playing surface cause a denser concentration of coins.⁴ A greater resistance will occur in this area; thus, the newly deposited coin will tend to move toward the sides of the playing surface, forcing coins into the side slots. Second, these unequal forces will cause a coin to move in an

A toy bulldozer is one example of the different types of "sweep-arms" currently used in penny falls devices. Prizes such as belt buckles are placed in the device to restrict the forward movement of the coin mass.



"Strategy used in playing a penny falls is limited to the choice of where the coin should be aimed and how many coins should be inserted at any one time."

unpredictable manner, which minimizes the effect of a player's skill.

Playing Surface

A sweep-arm pushing a coin over a smooth or polished surface will tend to move the coin in a straight line. If the texture of the surface is coarse, the coin will tend to move forward in an erratic and unpredictable path; the rougher the surface, the more erratic the path of the coin.

An uneven playing surface will come in contact only with portions of a coin. When a weight is added to the coin (prizes), there is an unequal distribution of increased friction between the coin and playing surface which causes the coin to deviate from its intended path. When an uneven surface is coupled with a mass of accumulated coins and prizes, the forward movement of a newly deposited coin becomes even more unpredictable.

Triangular Lip

The front edge of each playing surface contains a triangular lip which is raised slightly above the playing surface. This raised lip reduces the forward movement of the accumulated coin mass and produces a "piling-up" effect, similar to that which occurs with the screw heads. This piling-up gives the illusion of delicately balanced coins on the front edge of the playing surface. A denser accumulation of coins will occur at this point, a result of the raised lip. In reality, the denser the coin mass, the greater the resistance, and the less likelihood of the coins dropping over the front edge into the win chute.

Coin Mass

The accumulated coin mass on the front portion of the playing surface is

the most important element of a penny falls device. The interaction of the coin mass with the other components, as well as the play characteristics, creates a game with an inherent retention ratio. A coin mass will have from two to several layers (density) of coins, depending on the method of play. This coin mass, extending from the front (lip) of the playing surface to a point on the playing surface where the forward motion of the sweep-arm cycle ends, is caused by the friction between the coins and the playing surface. This friction is directly proportional to the number of layers of coins and the size, weight, and number of prizes, tokens, or chips added to the coin mass.⁵

Imposed Impediments

These are add-on features which can take the form of prizes, chips, and/or large weighted tokens. For each item added, the retention ratio will increase and is directly proportional to the size and weight of the added components. The added weight increases the friction between the layers of coins and the playing surface. This increased friction requires more force to move the accumulated coin mass. The weight and mass (size) of the newly deposited coin has not changed; therefore, when it is forced into the heavier coin mass, it will tend to move in the direction of least resistance, i.e., to the sides of the playing surface.

Strategy

Strategy is a thought process which, when used in conjunction with motor skills and the operational components of the game, will affect the final outcome of a game. Strategy used in playing a penny falls is limited to the

choice of where the coin should be aimed and how many coins should be inserted at any one time. Using several coins for one play is called "loading."

Loading

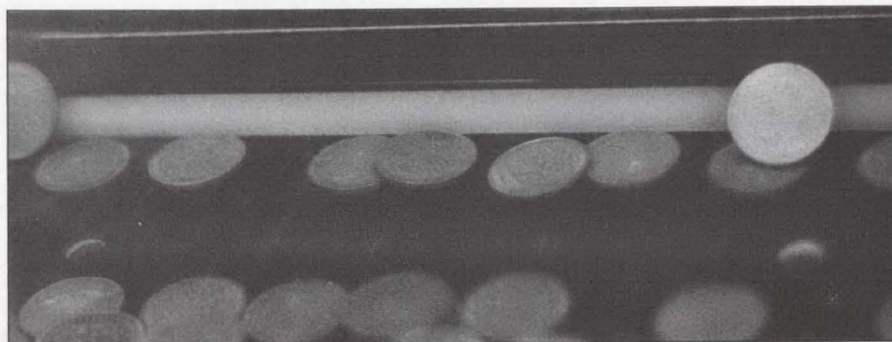
With penny falls, the term "loading" refers to the insertion of multiple coins into the device while the sweep-arm is in the stop mode. "Random loading" and "concentrated loading" are variations of this practice.

Random loading means depositing several coins so that they will fall in a random pattern across the entire width of the playing surface while the sweep-arm is stopped at the rear of its cycle. When the sweep-arm begins to move forward, it will force the newly deposited coins into the accumulated mass of coins at several points. This distributed force may cause more of the precariously balanced coins to fall into the win chute than would normally occur.

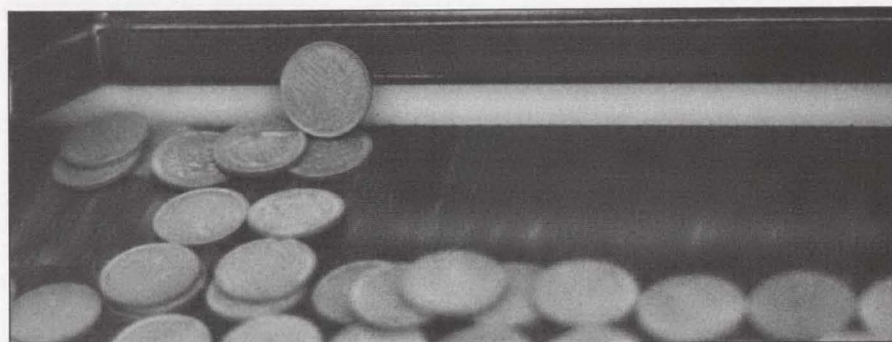
Initially, this method of playing may yield a return of coins equal to or greater than the initial number of coins played. However, the return to the player will be reduced the longer this method is used. Before the player can again win a large number of coins, there must be a buildup of coins on the front edge of the playing surface. When this buildup of coins reaches its saturation point, the coins will be forced into the win chute. This buildup effect will occur in cycles and will dictate the win ratio of the player.

Concentrated loading means depositing several coins into a concentrated area of the playing surface when the sweep-arm is stopped at the rear of its cycle. The player attempts to deposit these coins directly in line with an area on the front edge of the playing surface containing the largest accumulation of coins.

"Random loading" is the depositing of several coins across the width of the playing surface in an attempt to move the entire accumulated coin mass forward.



"Concentrated loading" is the depositing of several coins in one area on the playing surface in an attempt to force a specific accumulation of coins into the win chute.



It is important to note that if a one- or two-coin strategy was used prior to the concentrated loading method, the accumulated coin mass will be one or two layers deep. The density or layers of the coin mass then determines the win ratio over an extended period of play.

When the sweep-arm moves forward, it will force these newly deposited coins into the coin mass at one point. Due to the heavier weight of the multiple coins, it will force all the coins in front of them forward, thus forcing several coins into the win chute. If this method of play is continued, the player will have a higher win ratio than with the single coin strategy. This higher win ratio is only temporary, and after a period of play, will return to the same win ratio, proportionally, as in the single coin play.

A unique characteristic of the penny falls device is that the number of coins in the coin mass will remain fairly constant and will seek its own level of density relative to the method of play. For example, if 10 coins are used in the concentrated loading method each and every play, the accumulated mass will have a density of several layers, while the front portion will contain one or two layers. The combined weight of the 10-coin play will easily move the lighter two-layer mass of coins forward. As the percentage of the coin mass containing four layers increases, the force required to move this also increases. When the entire mass of coins has a density of four or more layers, the 10-coin play will yield the same return, proportionally, as the single coin play when the density of the coin mass was one or two layers.

Stop Buttons

A "stop button," which interrupts the sweep-arm cycle, was added to several models of penny falls devices in approximately 1978. This stop button allows the player to stop the sweep-arm at any point in its predetermined cycle and facilitates the use of the loading strategy during play. It provides a longer length of time for the insertion of one to several coins, as well as aiming the shooter.

Shooter

The shooter or coin chute, which gives the player limited control, is used to implement a player's strategy. A coin is inserted into the shooter, in a vertical position, by the player. The player aims the shooter at a specific area. At this point, player control ceases. Once the

"...the penny falls device remains one which is based predominantly on chance."

coin exits the shooter, it lands on the playing surface, on end, and rolls, hitting the sweep-arm and/or coin mass, until it comes to rest. Where the coin finally comes to rest cannot be controlled or predicted by the player.

The shooter is only one of six basic elements of the penny falls device. The true nature of a device is dependent on all of its component parts and their interrelationship and not on any single element.

Retention Ratio

Retention ratio, also referred to as "house percentage," is the percentage of coins inserted into the device relative to the number of coins retained by the device. All gambling devices, i.e., games of chance, have a house percentage which is dictated by the game and the operational and play characteristics of the device.

Factors which are inherent in penny falls guarantee the operator a predetermined retention ratio, over an extended period of play, of approximately 35 percent to 45 percent. When "imposed" factors are used by the operator, the retention ratio increases dramatically, approximately 55 percent to 65 percent.⁶

A true amusement device, one in which skill predominates, does not have a "retention ratio," inasmuch as nothing is returned to the player except the "extension of play." This extension of play may take the form of "free games" or "replays" which are awarded for a predesignated point/score accumulation or, as in Pac Man, the awarding of additional grids which increase in difficulty until the player is defeated by the grid.

A true amusement device requires a skillful player to manipulate balls, le-

vers, buttons, etc., relative to a field of play, the result of which significantly affects the final outcome of play.

A prime example to illustrate the "skill" versus "chance" aspect of a device is the pinball machine. If the device has "flippers," the device is a game of skill, inasmuch as the player can keep a ball in play by manipulating the flippers. The length of time of play is dependent on the manipulation of the flippers relative to the ball in play.

A "bingo" pinball machine does not have flippers; therefore, the result of play is dependent on the design characteristics (gravity) of the game. The player cannot influence the path of the ball which precludes the element of skill from affecting the final outcome of play. It is alleged that "body english" is an act of skill which will influence the final outcome of play. Body english is defined as hitting the device slightly to change the path of the ball as it rolls down the playing surface. The effect of body english can be neutralized by setting the "tilt" mechanism to a very sensitive mode. In this mode, a player would not be able to alter the path of the ball without tilting the device; therefore, bingo pinball is not a game of skill. The point accumulation is a result of chance.

Current Trends

Manufacturers of penny falls devices are constantly striving to design a device which will earn acceptance by the judicial system and law enforcement community, while also continuing to attract players.

Multilevel Devices

Since approximately 1980, a new concept in the design of penny falls devices has been the use of multilevel playing surfaces. On these versions,

sweep-arms have a different design configuration than those previously mentioned. A single sweep-arm configuration may use several "finger-" or "paddle-" shaped arms to push newly deposited coins forward. When the top-level sweep-arm is in the extreme forward position of its cycle, the lower-level sweep-arm will be in the extreme rear position of its cycle. This alternating movement allows the coins forced over the edge of the top level to be picked up at the lower-level sweep-arm and pushed into the lower-level mass of coins.

Other features were introduced to take advantage of the shooter location. For example, on the "Flip-A-Winna," a spinning drum (located below the shooter), bearing ribs or fingers, rotates in a direction away from the player. As the newly deposited coin hits the spinning reel, it is propelled up against the back of the device, above the second-level playing surface. This coin falls onto the second level and is picked up by the sweep-arms and forced into the top-level mass of coins, which may force coins over the edge of the top-level playing surface onto the lower-level playing surface.

A device identified as the "Silver Falls" has the shooter located at the top of the device. A coin inserted into the shooter travels down the vertical rear surface of the device, bouncing off pegs imbedded in the vertical surface, randomly spaced, and lands on the upper-level playing surface. Sweep-arms force this newly deposited coin into the mass of coins, forcing some over the edge. A spinning drum is positioned between the two playing surfaces. The drum spins in a forward direction and propels the coins forced over the edge of the top level onto the lower-level

playing surface. The lower-level sweep-arm then performs its normal function.

All of these devices have side slots on the lower-level playing surface. Coins forced into these slots are retained by the device (i.e., house percentage).

The "Flip-it," "Silver Shooter," and "Whirl Win" are types of penny falls devices which are currently used in legal casinos only. The addition of "baskets" or "target holes" mounted on the back of these devices increase the player's chances of winning. These alterations resulted in a greater player win ratio but did not change the nature of the game itself; it remains a game based predominantly upon chance.

Some of the "Flip-it" devices currently used in Las Vegas casinos contain an additional enticement. A slot machine configuration is mounted on top of the Flip-it cabinet. When a player succeeds in getting a coin into the top target "basket," mounted on the rear vertical wall of the device, the slot machine is activated. This slot machine operates in the same manner as the other slot machines on the casino floor, except for the method of activation.⁷

Wedges and Ledges

When a device contains the characteristics of a penny falls, i.e., shooter, sweep-arm, playing surface, raised lip at edge of playing surface, accumulation of coins, and side slots, it is predominantly a game of chance. However, it is acknowledged that the use of a "shooter" and or a "stop button" is a skillful act which may promote "accuracy" and "strategy" (loading) in and of themselves. However, if these factors are only two of several factors that constitute a single game, accuracy

and strategy are not the predominant factors; therefore, the nature of the game is still one of chance.

A new "gravitation" device, identified as "Wedges and Ledges,"⁸ was introduced into the Los Angeles area in 1983. This device incorporated some of the characteristics of the penny falls device; however, the design eliminated the side slots and added seven "wedges" (partitions) to each playing surface. There are four player positions per device. "Wedges" divide each playing surface into eight "channels" approximately 2 1/2 inches wide. Each wedge is tapered; the thin end is adjacent to the spot where the forward motion of the sweep-arm cycle ends. Coins forced up on these wedges will fall into one of the channels.

These wedges effectively limit the sideward movement of the coins forced into the accumulated coins, as well as the coin mass itself. Since the lateral movement of the coins has been restricted, the primary direction of the coins will be forward, toward the win chute. The interaction of the coin mass within each "channel," in conjunction with the newly deposited coin(s), constitutes the major portion of play of the Wedges and Ledges device.

With the elimination of the side slots and the addition of the wedges, the Wedges and Ledges device relies more on the use of the shooter and strategy of play. Strategy, in this instance, is defined as determining which channel has the most precariously balanced coins at the leading edge of the playing surface and then attempting to force these coins over the edge. These restrictions and modifications make Wedges and Ledges more a game of skill than one of chance.

For a reward, a player receives a ticket (or token) for each coin forced

into the win chute. A coin-counting mechanism counts the coins as they fall through the win chute and dispenses a ticket for each coin won. These tickets cannot be exchanged for money, only for prizes. A player may realize a potential return on monies inserted into the device of approximately 75 percent to 104 percent.

The payoff feature of the Wedges and Ledges turns the device into a merchandising tool. The owner/operator makes his profit based on the difference between the purchase price of the prizes (merchandise) and the value assigned to each prize for redemption by the player. The profit potential is approximately 30 percent.

This profit potential can be regulated by the operator by adjusting the value of the prizes. An increased redemption value increases the profit margin. A decreased redemption value decreases the profit margin. This adjustable profit margin does not affect the nature of the device itself.

Payoff Methods

A "direct coin payout" is the most popular method of reimbursement. A player uses a coin to operate the device and receives coins for a successful play.

Another method of payout is to allow a player to deposit coins on the playing surface, and upon completion of a successful play, receive tokens. A coin-counting mechanism at the base of the win chute counts the coins that fall into the win chute and dispenses the same number of tokens to the player. These tokens may be replayed or they may be redeemed for prizes.

Prizes on the playing surface that fall into the win chute are retained by

Service Recognition Award

The Association of Former Agents of the U. S. Secret Service, Inc. (AFAUSSS) will again present an annual cash award (or donation to a charity of the honoree's choice) to a deserving law enforcement officer, alive or deceased, for exemplary performance in any aspect of law enforcement work.

Any sworn full-time officer below the rank of chief, who is serving in a city, county, State, or Federal law enforcement agency in the United States, is eligible for nomination. Exceptional achievement in any law enforcement endeavor, including but not limited to extraordinary valor, crime prevention, drug control and prevention, investigative work, traffic safety, juvenile programs, community relations, training programs, and innovative approaches to law enforcement, qualifies an individual for nomination. The act or incident for which the nomination is made must have occurred since July 1, 1987.

Law enforcement personnel may be nominated by any source, but must have the endorsement of the chief of police or agency head. Each nomination must also be accompanied by a brief statement of specific circumstances involving the distinguished law enforcement performance, supplemented by supporting documentation such as departmental citations, letters of commendation, newspaper clippings, or copies of reports.

The review and final selection of the winner will be announced at the annual conference in the fall. Letters of nomination must be received no later than June 30, 1988, and mailed to:

Association of Former Agents
of the U. S. Secret Service, Inc.
P. O. Box 31073
Temple Hills, MD 20748-0073

the player. Larger and/or colored tokens are usually used with these prizes and may be redeemed for larger prizes.

Large weighted chips may be used in conjunction with prizes on the playing surface. In this mode of play, only large weighted chips may be redeemed for prizes. The other tokens won must be replayed as before.

A penny falls device may also be equipped with a ticket-dispensing mechanism which dispenses a ticket for every coin that falls into the win chute. This method of payoff is usually used in conjunction with coins. Tickets won by the player are redeemed for prizes. The number of tokens needed to redeem a prize have a much lower value than the prizes offered for redemption.

There are several payoff methods used by operators of penny falls to circumvent local gambling laws. For example, if an element of a local statute states, "No monies may be an integral element of a game of device . . .," tokens will be used instead of coins. If a statute implies that "no coin operated game or device may be operated . . .," a player will purchase tokens from the operator and use the tokens to operate the device in lieu of coins.

Summary

A penny falls device contains features which imply that skill can influence the final outcome of a game. Use of these features, i.e., movable shooter and stop button, tend to ignore the fact that they must interact with other operational and play characteristics during play of the device.

In determining the nature of a device, whether it is based on skill or chance, a common mistake is to evaluate one or two characteristics of play independent of the operation of the game itself. This type of testing procedure leads to an invalid conclusion as to the true nature of the device. A device must be tested or evaluated under the same operating conditions as would normally occur when on location, i.e., carnival, arcade, etc.

Inasmuch as the use of the movable shooter, stop button, and application of strategy do not appreciably affect the final outcome of play, the penny falls device remains one which is based predominantly upon chance. **FBI**

Footnotes

¹The first manufactured "penny falls" device required the use of the English penny, hence the name "penny falls."

²Communication from Kent County Constabulary, Fraud Investigation Department, Police Headquarters, Sutton Road, Maidstone, Kent (November 1980); record from Nevada Casino Control Commission bearing names and dates of applicant regarding penny falls devices.

³Recently, operators of penny falls devices have been charged with theft by deception, as well as operating a gambling device, by local police departments. The deception charge was based on the hidden side slots and their true function. To preclude a charge of this nature, operators are labeling these slots; however, labeling these side slots does not change their function or effectiveness.

⁴The newer models of penny falls devices, both single and multilevel playing surfaces, do not contain screws imbedded in the playing surface.

⁵Movement of the newly deposited coin usually affects the bottom layer of the coin mass more so than the other layers of coins, especially when prizes are used.

⁶Testing by author of penny falls devices identified as "Mighty Payloader." A target area of 2-inch square was used to test for accuracy revealing a 42-percent accuracy rate (February 1980).

⁷Author observed and played the Flip-it device in the Las Vegas casinos (July 1986).

⁸Testing by author, Redondo Beach, CA, of the "Wedges & Ledges" device (April 1984).

Stress — A Major Enemy of Law Enforcement Professionals

“A manager’s attitude to the work situation or environment will directly affect, positively or negatively, the stress level of subordinates.”

Most of what has been written about stress is directed toward an individual’s analysis of stress in his own life and the ways in which he might diminish the stress that has a destructive effect, recognizing, of course, that stress can have both positive and negative effects.

But let’s examine the part a manager plays in creating unhealthy stress among his staff, the symptoms of such stress, and some measures that might help relieve stress among the staff.

The public calls upon the law enforcement person to serve as pastor, doctor, psychiatrist — and at the same time, be prepared at a moment’s notice to lay down his life in service. The officer is then expected to accomplish a mood swing to loving husband or wife, understanding parent, school supporter, and community volunteer.

To some degree, this has always been the case for those who choose law enforcement as a career. But it has been only in recent years that stress created by such a dichotomy has been recognized as a causal factor affecting personal and mental hygiene.

Law enforcement tends to impose a higher degree of stress and a multi-

plicity of stressful situations on the individual than do most other professions. Studies have shown those in law enforcement experience a higher rate of suicide than the national norm.

People involved in law enforcement are constantly exposed to other people’s problems, as well as their own; separating their public and private lives is not always easy. In fact, it may grow more difficult as the law enforcement professional moves up on the career ladder. As responsibility for subordinates is added, his concerns are compounded by those of the people managed.

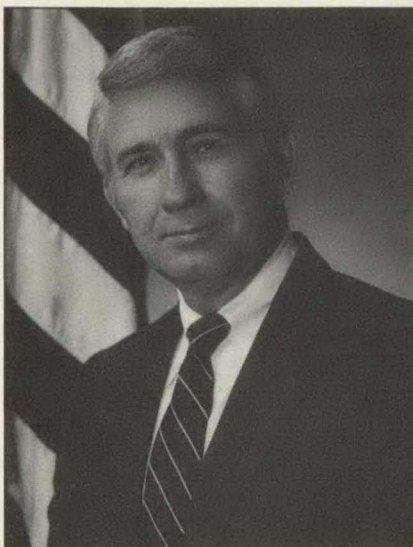
The person opting for career advancement is faced with the stress brought about by protecting and serving the public, the private stress experienced in family or social life, and the institutional stress created in moving ahead. Much has been written regarding executive stress, and the rising young executive should avail himself or herself of this information.

Obviously, the individual has a personal responsibility to insure that he is managing his own stress. Equally important is giving consideration to the

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EDITOR’S NOTE:

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Dr. Colwell

amount of stress he is causing others as he meets his professional responsibilities, while moving through the managerial ranks.

A Role Model

The police executive, by his position, causes people under his management to react in unique ways. The manager or executive reacts to his subordinates also, but what is important here is that subordinates tend to key on the persons for whom they work. A manager's attitude to the work situation or environment will directly affect, positively or negatively, the stress level of subordinates.

Evaluating the attitudes and actions of subordinates in three areas will provide valuable information to the executive regarding the level of stress and its extent experienced by subordinates. These areas are emotional, behavioral, and physical. Symptoms may materialize in very noticeable, visual ways, or they may be hidden.

Virtually everyone exhibits emotion by degrees of intensity as a result of various stresses brought to bear. The most rational of beings must be able, periodically, to experience intense emotional episodes.

But, if an employee exhibits a particular type of emotion with sustained intensity and with significant frequency, and the emotion tends to last an extended period of time, a stressful situation may be causing the inordinate behavior.

Prolonged, intensive apathy may be a clue that a person is experiencing stress difficulty. A mood swing to apathy by a reasonable, well-adjusted person may suggest a problem with which the individual is unable to cope.

Signals of Stress

There are other emotional signs a manager may encounter. The executive may have an employee who, over the years, is well-organized, is at his duty station on time, and habitually sees a job through. All of a sudden this person becomes jumpy, restless, and is easily distracted.

This condition is anxiety. It frequently presents itself, from an emotional standpoint, as restlessness, agitation, and insecurity. Stress can cause the individual to develop a feeling of worthlessness.

There are other emotional responses which, when present out of norm, the manager must be sensitive to: The person who becomes overly defensive of his position; one who is overly sensitive to comments whether personal or work related; a person who becomes argumentative or arrogant; a person who takes an insubordinate air or is outright hostile to both personal and institutional issues. All of these represent reaction to stressful situations.

Mental fatigue is also an emotional response to burdensome stress. An employee who becomes preoccupied with matters not work related during periods when his best effort should be directed toward work may be sending signals of stress.

Another emotional symptom of stress is the condition of overcompensation; the manager must be sensitive to the employee's working to the point of exhaustion.

Understanding the Signs

The foregoing only touches on the emotional characteristics which may be indicators of stress in subordinates. It

"The potential for the manager to be an inordinate stressor for his subordinates is considerable."

is difficult for the manager or executive to rely wholly on emotional indicators. One must look at other aspects of the individual's makeup in order to determine if the subordinate is under stress that is detrimental to his or her productivity.

There is an old saying that we should not judge people on what they say but rather on what they do. When a manager is observing his subordinates, there is some value in this statement. The employee who acts out a different agenda than the one he verbalizes may be under some form of stress.

Behaviorally, a person who is under burdensome stress may take up activities for which there is no precedent in his or her lifestyle. Examples of this are such things as serious abuse of alcohol, gambling, sexual promiscuity, and excessive borrowing.

In terms of behavioral characteristics, there are other elements of conduct which can lead to personal and professional disaster on the part of the employee. One may lose interest in personal appearance, ignore the constraints of working hours, or become accident-prone.

Antisocial Behavior

Of even greater concern is the individual actually violating the law, threatening his or her social freedom. These are all indicators of stress being manifested by antisocial behavior. The good manager is constantly alert to behavioral indicators which may be signals that a subordinate is experiencing stress and requires assistance.

There is a third area of which the manager should be aware, but unlike the foregoing emotional and behavioral

characteristics, it is more difficult to detect.

A person under stress, while maintaining an emotional and behavioral equilibrium, could exhibit an inordinate amount of stress through physical reaction. A person who develops a sense of preoccupation with illness (hypochondria) is unquestionably giving signs that he is under harmful stress. An employee's preoccupation with illness is a distress signal and should be monitored by the responsible executive.

The efficient manager will check leave records. People who suddenly begin needing more sick leave than in the past may have problems totally unrelated to the reasons given for having taken leave. Illness complaints and abuses of leave policies are easily identified, and to some degree, lend themselves to documentation.

What is more difficult to perceive on the part of the good supervisor is the frequency with which employees suffer minor physical problems: Inability to sleep, erratic appetites, headaches, or gastrointestinal difficulties. These changes or dysfunctions of the metabolic process are not generally observable, and subsequently, may go undetected by even a responsible manager.

The executive who has a close working relationship with his immediate subordinates is in a much better position to identify physical difficulties and is, in turn, better able to lend assistance within the limits of his or her abilities.

Prevention

Whether sheriff or chief, the senior executive is in an ideal position to develop as healthful an environment within the agency as is possible. The

executive who is sensitive to the potential of damaging stress factors will attempt to develop support systems which allow for the easing of those stresses which are most harmful to the individual, as well as the agency.

The agency must provide escape mechanisms for its personnel. These mechanisms take on different forms and not all of them will be accepted.

A substantial number of agencies employ professional counselors; and while this practice, when first adopted a few years ago, met with resistance, it has now become an accepted support system for agencies' personnel.

Obviously, not every agency can easily engage the services of professional counselors on a full-time basis.

Physical Fitness

Another remedy that an agency can develop is a formal physical fitness program. Research has shown that exercise is a good reducer of stress. By developing a formal program, it is more likely that the agency's personnel will participate.

Along this same line, developing an intramural-type sports program can accomplish similar goals. Sports activities do not have to be limited to the more common activities such as basketball or softball but can also include tennis, swimming, etc.

An activity which has caught the imagination of many is aerobic exercise. Instituting an aerobics exercise class may be a useful tool for reducing stress.

It has been shown that diet can play a significant role in stress reduction. Such elementary things as cholesterol reduction, salt reduction, and

"The good manager is constantly alert to behavioral indicators which may be signals that a subordinate is experiencing stress and requires assistance."

diminishing the amount of intake of such things as alcohol and coffee can affect the severity of stress experienced.

Another proven activity which acts as a stress reducer is meditation. Researchers have found that practicing meditation, yoga, or some similar relaxing exercise is beneficial.

A manager may not be able to initiate such activities, but he can develop an environment which brings to his staff's attention ways to reduce stress.

Friendly Communication

A very personal way in which the manager can begin to develop feelings of acceptance and appreciation on the part of his employees is to develop lines of friendly communication. The manager communicates formally as a nec-

essary element of his job. Employees expect this.

A manager may consider communicating by a handwritten note expressing appreciation for a good piece of work. This is not a formal commendation, but rather an indication that the manager has recognized excellence in a very special way.

The manager must educate himself in the area of stress management before he can begin to evaluate the impact he has on his own subordinates in regard to stress. While the manager may have reached his position of responsibility with a certain executive style, it does not mean that he will continue to succeed with the same style.

Self-evaluation must be a constant procedure if the manager is to be productive. In this regard, it is suggested

that the good manager be flexible and able to change his relationship to subordinates.

The potential for the manager to be an inordinate stressor for his subordinates is considerable. The good manager recognizes this potential and is able, through education, evaluation, and self-imposed change, to satisfy the needs of his subordinates.

Ask yourself, "Am I the type of manager for whom I would enjoy working and for whom I would feel impelled to produce my best?"

You should consider how much stress you cause others. You set the mood for the work environment. If you feel good about yourself, your competence, and your work force, those positive feelings will transfer to your subordinates.

FBI

Jackknife Handgun

A stainless steel jackknife designed in the shape and appearance of a small handgun is currently on the market. The knife is nearly 8 inches in length when full extended and has walnut-finished wood grips. It is carried in its own brown leather holster which can be clipped to a belt.

*Courtesy of the Knox County Sheriff's Department
Rockland, ME*



The Boss as Victim Stress and the Police Manager

"Stress that an agency administrator faces is no less a problem that must be effectively handled than any other organizational situation which he or she confronts."

By
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Within the last few years, the phenomenon of "police stress" has captured the interest of the law enforcement community, and to some degree, the imagination of the public. In the media, television shows like "Hill Street Blues" reflect the pressures and tensions in the daily life of a law enforcement officer; movies, with stars like Clint Eastwood and Paul Newman, glorify "the job" while depicting to a small degree the stress and strains experienced by the street officer or the hero detective.

With the contemporary emphasis on stress in the work place, many departments have turned their attention to the physiological and emotional hazards of police work¹ and have begun developing stress management programs to combat the problem.² For the most part, however, the primary focus of such programs has been the street officer.

A number of reasons have brought about this direction. The line law enforcement officer is, of course, the most visible representative and comprises the largest segment of the law enforcement community. Police associations and unions, normally representing entry-level positions, have raised the level of concern for the officers whom they represent. Supervisors and managers have recognized that continuing stress on the officer charged with carrying out the day-to-day operations of the department can, without resolution, decrease efficiency and effectiveness of the department and increase both community complaints and internal dissatisfaction.

Sadly, however, such programs have not been as effectively expanded to others within the law enforcement family. Civilian workers, particularly dispatchers, have long been ignored in the development of stress management

programs; yet, at the same time, they experience stress which is just as traumatic, although perhaps not directly as life-threatening, as that of sworn officers. Specialty units, including homicide and SWAT, have likewise been overlooked in the development of programs which adequately and directly meet their unique needs.

There is another group within the law enforcement organization which has been traditionally ignored in dealing with the issue of police stress — the police manager. For too long, the "bosses" have taken a "back seat" in identifying their sources of stress, isolating practices by which they may cause or experience stress, recognizing warning signs within themselves and in their employees, and developing techniques to better handle stress. Although other researchers have focused on management stress in other areas,³ this article attempts to recognize



Chief Sewell

sources and signs of stress and offer a plan of action for the police manager.

Defining Stress

Since "stress" is a buzzword of the 1980's and has been used in a number of ways, it may be best to first define the term as it is applied in this article. Some experts in psychology have broadly applied the term to "anything which places an extra demand on you,"⁴ while others have limited it to "environmental situations which, to the extent they are perceived or experienced, require behavioral adjustment."⁵ Everyday working terms may offer the most concise and commonly understood definitions — pressure, tension, fear, frustration, worry, conflict, change. Each of these create a mental picture of the emotional and physiological state "stress" brings about in people.

Stress can, of course, be good. Some degree of physical and emotional response, such as that experienced by athletes, is necessary to "psych up" someone to do a job well. The attention of this article, however, will focus on the negative aspects of stress, negative effects which occur where demands of the working environment exceed existing abilities, where clear obstacles exist to fulfilling strong needs or values, and where fear and frustration affect an individual. The focus will be on maladaptive effects of stress — those occurring when an individual's stress response is elicited too frequently or sustained for too long and where recovery to a relaxed state is a slow process.

It is generally accepted that a person's perception of any situation is based upon experience and background. Consequently, what is stress to one person may not be to another. The real impact on the individual depends on the duration, intensity, and fre-

quency of the stress-causing event or situation, as he or she perceives it, as well as pre-stress preparation of the individual. Thus, for managers to effectively handle job stress, they must first understand and then mentally prepare to deal with the problem.

Sources of Stress for Managers

Preliminary research has already begun to identify sources of stress on the police manager. Kroes, Hurrell, and Margolis, for instance, found that "many police administrators and supervisors were experiencing stress problems that were different from those experienced by patrolmen, yet equally menacing."⁶ Conducting interviews of 12 captains and 13 lieutenants on the Cincinnati Police Department, they found that these administrators sensed their major stress as coming from administration (e.g., higher echelon support), equipment/manpower (e.g., adequacy of equipment of manpower), community relations (e.g., public apathy/ignorance and citizen complaints/demands), and courts (e.g., court scheduling problems and judicial leniency). Work ambiguity and work overload were their major concerns, with community relations, relations with superiors and subordinates, and work conflict also classified as "bothersome." Additionally, several of these administrators identified "taking disciplinary actions against subordinates" and "new administrative assignments" as specific stressors which concerned them. Finally, the researchers concluded:

"The most significant stressors seemed to be a result of the administrator being in the position of the 'man in the middle' while complex demands were being made upon him from the community, his superiors, and subordinates."⁷

"...for managers to effectively handle job stress, they must first understand and then mentally prepare to deal with the problem."

In their study of 20 police chiefs and sheriffs at a National Executive Development Institute, Hillgren, Bond, and Jones separated sources of stress into inherent line (events encountered as part of the routine job function) and administrative organization (problems resulting from the police agency or the criminal justice system) stressors. In this study, police executives were randomly divided into three groups and instructed "to consensually identify stressors believed to be affecting their line personnel and which they perceived to weigh heavily on them as chief administrators."⁸

Two of the findings in this study were particularly important. First, as other researchers have indicated, the source of much police officer stress, even for the "bosses," begins within the police agency and its policies and procedures. Second, there is a "marked similarity between the sources of stress identified by police officers for themselves, and those identified by chief administrators for themselves,"⁹ a finding similar to that in the research of Kroes, Margolis, and Hurrell. With these studies as a starting point, a number of specific sources of stress for police administrators can be identified.

Dependence on Others

The position of the law enforcement officer often requires extreme independence and the ability to rely on oneself; at the most common level, one depends on only one's partner for backup and support. In the position of administrator, however, one must learn to depend on subordinates and support staff to accomplish the defined mission. Especially in large departments, it is mentally and physically impossible for senior administrators to know and do

all; they must instead develop a dependence on others which runs contrary to their basic training as a police officer. Perhaps Harry Truman's commentary on the Presidency best captures the essence of being a police chief: "I sit here all day trying to persuade people to do the things they ought to have sense enough to do without my persuading them . . . That's all the powers of the President amounts to!"

Concerns for Personnel and Their Needs

In performing his/her daily activities, the street officer and the detective are each concerned about equipment, supplies, and support which directly and individually pertain to them. While they may feel some ties with other officers, the concern over the needs of others is not a major priority. For the administrator, the focus changes. Instead of being concerned over one shotgun, one case, one patrol vehicle, and one partner, the administrator finds himself concerned for the wellbeing and resource needs of the multiple officers under his command.

Lack of Resources

In many governmental agencies, recent years have seen the era of "cut-back management." For many of us, departments are now operated with increased demands, increasing street crime, increasing citizen concerns, and fewer personnel and fiscal resources. The lack of available resources, including salary and benefits, and competition with other governmental agencies over limited revenue obviously hamper the ability of the administrator to do the job and can cause a significant degree of stress.

Increased Community Demands and Pressures

Again, the last several years have seen an increase in demands for police activities, particularly as concern about real or perceived crime in the streets increases. Especially in our larger cities, community pressure to assure professionalization of police, prevent discriminatory and abusive practices, and provide a prompt and complete response to citizens have increased pressures on and expectations directed toward administrators.

Impact of the External Bureaucracy

The police manager, especially the agency's chief administrator, must also react to controls, regulations, demands, and even paperwork imposed by outside sources, such as courts, prosecutors, or State or Federal government, which are difficult to influence and often impossible to predict. The many mandates from outside the department often place the police manager in a position which allows little flexibility of response and discourages managerial creativity and productivity.

Political Nature of the Job

The very nature of law enforcement is, of course, political. Police officers at all levels always have been placed in positions where they must deal with competing demands within a complex political environment. For the administrator, the political nature of the job is magnified by the number of high profile cases, number and power of special interest groups, and number of members of the appropriate governing body. Especially where administrators are not protected by civil service status, the political nature of the job can, of course, result in termination.

"The important first step in successfully dealing with managerial stress is recognizing of the problem."

Sedentary Nature of the Job

Law enforcement is, through our perception, an action-oriented profession. Street officers particularly perceive themselves to be the "glory guys," able to take quick and effective action against the criminal hordes. For the administrator promoted through the ranks, the sedentary nature of the job takes its toll. Instead of being a radio car operator, one becomes a "desk jockey," increasingly handling papers and less able to respond in the physical manner expected of the professional and which discharges the adrenalin inherent to stressful situations. The result is heart attack, ulcers, and other diseases associated with a lack of cardiovascular exercise and a stressful vocation.

Lack of Preparation for the Job

Traditionally, in law enforcement, the greatest degree of professional development has been devoted to street officers and investigators, preparing them to deal with the day-to-day operational tasks which they must confront. Especially in small departments, little effort has been given to prepare administrators and supervisors for the demands of their positions, and too many administrators still perceive themselves as "top cops" instead of modern managers. The position of police administrator requires a significant degree of training and flexibility to meet changing job requirements. Without effective preparation and development, administrators, like their operational counterparts, are ineffective and incapable of meeting the demands placed upon them.

Conflict with Employee Organizations

Over the last 25 years, there has been a significant increase in the num-

ber of employee organizations representing law enforcement officers as their collective bargaining units. Because of unfair management activities in the past and the lack of career protection for law officers, these organizations have grown in strength and power as they have proved their effectiveness in an agency. Especially for new administrators, there is often a conflict between the executive acting as an agent of change and the organization which tries to protect the status quo, too often in the mistaken belief that the chief will again become too powerful. The conflict within and between ranks can become a major source of stress.

Difficulty of Effecting Lasting Change

A major frustration for administrators is their perception of their inability to effect lasting change in an organization. With the limited tenure of police administrators and with the demands of the political environment, change is slow to occur and the actual effect may not be known for years. By then, the administrator's frustrations have built, and too often, he has left for other horizons. Although a problem within many professions, the long lead time necessary to put changes into effect is especially disappointing for law enforcement administrators whose prior training and experience has developed in them a mindset on the need to be decisive and to act quickly.

Separation from the Subculture

For most officers, the involvement with and camaraderie of one's peers are critical parts of the law enforcement experience. The ability to associate off duty with one who has shared similar

life experiences and who generally views the profession in a similar manner contributes to the maintenance of the police subculture. As one progresses upward in the administrative hierarchy, however, the number of one's direct peers is reduced. Because of the responsibilities associated with their rank and assignment, many managers find fewer officers with whom they can comfortably and in confidence share their experiences, concerns, emotions, and problems. Likewise, comrades from a manager's days in patrol or investigations may be reticent to discuss fully their opinions of administrative actions or to include managers in their social or even professional activities. The lack of someone to whom you can talk — a sudden limitation on the "brotherhood of the badge" — can be one of the greatest shocks of promotion.

Dealing with the Manager's Stress

The important first step in successfully dealing with managerial stress is recognizing of the problem. Many managers fail to notice tension, pressure, and anxiety; others accept that it is part of the way of life for a police manager. In either case, stress can psychologically, and more likely, physiologically take its toll. To begin to confront stress effectively, one must, as in dealing with any administrative problem, acknowledge its existence and effect and then begin to develop a program of stress management.

Second, the development of a unique problem of stress resolution and management for administrators is critical. While many administrators have hurried to improve the capability of their officers to deal with the stress of law enforcement, only a few have recognized the need for their own stress

management programs. Such programs should include components which emphasize the importance of proper diet and nutrition, physical fitness and exercise, and psychological fitness in handling the stress of police management.¹⁰

As part of the program of stress management, it is important that an administrator learn to use leisure activities to relieve stress. Recreational outlets, including sports, hobbies, and social functions, are alternatives to the stressful life of a manager. Periods of rest and relaxation, including regular vacations, are imperative to allow the body an opportunity to recharge, preparing itself for stress in the days to come.

Third, preparation for management positions is as critical a step in professional development as is the preparation of investigators and technicians. The training of supervisors and managers, whether in a classroom or through on-the-job experience, should begin prior to an officer's promotion. Creativity in training, including the use of temporary administrative duty assignments, intradepartmental management internships, and interdepartmental exchange programs, can offer new, and perhaps, more effective methods of career development and preparation for future managers.

Fourth, perhaps one of the greatest frustrations experienced by any manager is the feeling that he or she has no control over time. Time management is, in effect, no more than successful management of the manager by himself. While many of the demands upon a manager's time may be imposed by others, the majority of time constraints and demands come from within ourselves. Successful time management simply requires a manager to organize, prioritize, and structure his

time in order to more effectively and efficiently get things done.¹¹

Finally, as one progresses up through the ranks, it becomes critical to develop new peer groups with whom one can discuss problems and share confidences. The problems one manager must confront have often been experienced by others, and it is helpful to be able to draw from that experience and to learn from their successes and failures. While not a complete substitute for the camaraderie of "working cops," professional associations at the local, State, and national levels offer police administrators an opportunity for communication, discussion, and fellowship which they may otherwise lack.

Summary

In summary, then, a police manager, especially the chief administrator of an agency, is as much victim of stress as the officers under his or her command. While many of the stressors of line personnel may be physical in nature, the manager's stress translates into organizational pressures, administrative frustrations, psychological tension and fear, and nonviolent interpersonal conflict. Yet, the results of either can be deadly, and diseases of the body and mind strike boss and street cop equally and as quick.

Much administrative attention in recent years has been devoted to enabling the line officer to better handle the pressure of the street. With this training, with physical activity on the street which allows for the discharge of emotions, and with improved selection procedures, personnel in the lower ranks seem increasingly able to handle line-of-duty stress.

It is time to devote the same time, efforts, and energies to the resolution of stress experienced by police administrators. Effective management re-

quires the ability to anticipate, understand, and control organizational and community problems. Stress that an agency administrator faces is no less a problem that must be effectively handled than any other organizational situation which he or she confronts.

FBI

Footnotes

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⁶William H. Kroes, Joseph J. Hurrell, and Bruce Margolis, "Job Stress in Police Administrators," *Journal of Police Science and Administration*, vol. 2, No. 4, 1974, p. 381.

⁷*Ibid.*, p. 287.

⁸James S. Hillgren, Rebekah Bond, and Sue Jones, "Primary Stressors in Police Administration and Law Enforcement," *Journal of Police Science and Administration*, vol. 4, No. 4, 1976, p. 447.

⁹*Ibid.*

¹⁰For suggestions on effective programs, see, for example, Harry Levinson, *Executive Stress* (New York: Mentor Executive Library, 1975); Alfred Goodloe, Jane Bensahel, and John Kelly, *Managing Yourself: How to Control Emotion, Stress, and Time* (New York: Franklin Watts, 1984); Executive Health Examiners, *Stress Management for the Executive* (New York: Berkley Books, 1985); James D. Sewell, "Stress Management for the Police Manager," *The Florida Police Chief*, vol. 12, No. 3, 1986, pp. 56-65; James T. Chandler, "The Demoted Police Executive," *Law and Order*, vol. 33, No. 8, 1985, pp. 29-31.

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Crisis Management

A Command Post Perspective

"Crisis management has always been one of the most complex issues facing law enforcement...."

By
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It is 2:00 a.m. and an extortion payoff is about to go down. The radios in the command post are crackling with bursts of information when suddenly you hear, "We have shots fired, one down, we have another one down. . . ." What do you do?

Crisis management has always been one of the most complex issues facing law enforcement and frequently one of the most misunderstood. As a result, it is mismanaged far too often. Very few who chose the law enforcement profession came in to ride a desk. We wanted to be where the action is, to be involved. As law enforcement managers or executives, our place is generally in the command post, usually for the duration of the crisis.

We have all seen it happen hundreds of times at nearly every level of law enforcement. As a major case begins to develop, one of the first things we tend to do is to inundate the area or

the crime scene with manpower. How many times have we heard, "Get everybody on the street!"

Proper planning must begin prior to the emergency, whatever it may be. Without a plan, personnel are kept on the street, frequently conducting uncoordinated investigations or even duplicating investigations. After a 24-hour period, the result is exhausted personnel and no fresh reserves. Rather than planning, some law enforcement executives and managers insist on being at the scene to "see for themselves" and provide "hands on" direction. In today's highly technological world, there is less reason for this to occur as often as it has in the past. However, proximity of the command post to the crisis site is desirable because it provides the on-scene commander immediate access to key personnel and facilitates communication.

Several years ago, a massive ar-

rest situation dealing with motorcycle gangs and involving scores of police and FBI Agents was carried out without incident, while command officials remained in the command post in the event policy and command decisions were needed. This was possible because closed-circuit television cameras had been installed during the night prior to the raids. When the raids began, the television signals were microwaved back to the command post. This enabled command personnel to have access to communication equipment while viewing what was developing on the scene. Because of previous planning, adequate communication was available to diverse law enforcement groups, on-scene commanders were available for consultation with headquarters, and ranking individuals were available for informed decisionmaking.

At times, it may be necessary for a command official to leave the command



SAC Walton

post and actually be on the scene, although these are the exceptions rather than the rule. It is the talented law enforcement executive who can discern the difference and act accordingly.

In prolonged cases involving such crimes as kidnapping, extortion, or aircraft hijacking, the place for command personnel is in the command post. If there is an injury to either a law enforcement personnel or defendant, barring extraordinary circumstances, the command officials should go to the scene to "plant the flag" of their agencies and exhibit concern for their personnel. The urge to leave the command post and thereby create a vacuum in the decisionmaking process should be resisted, and whenever possible, replaced by the tenacity that prolonged crisis management requires.

With the advent of concurrent drug jurisdiction in January 1982, transactional drug situations were an area fraught with potential danger for the FBI. Our experience over the years with fugitives, kidnappings, extortion situations, and the like provided the FBI with an experience base, but it was an experience base that had not dealt with the subculture of narcotics traffickers. As a result, planning became graphically more important than merely reacting to situations as they developed. One method used by a number of FBI offices is a formalized documented plan, prepared by the line supervisor and submitted for review to the command personnel before it is placed into effect. While it may seem to some that this is just another method of generating additional paper, it is not. It forces the line supervisor and the personnel who are going to carry out the plan to look for

potential eventualities that, without prior planning, they would merely react to.

The following is an example of a transactional order, as applied to drug matters. However, similar plans can be formulated for nearly any arrest or search situation involving potential danger or which are manpower intensive. Obviously, there are other situations which would require more detailed and complex information, and this order is meant to be a handy sample, not a comprehensive model.

Transactional Order

In order to insure the proper coverage of the transactional situations whereby an undercover Agent/police officer is purchasing narcotics or dangerous drugs, the following policy will apply:

- 1) The line supervisor or the person designated by him/her is responsible for planning, execution, and followup of any transactional situation, absent the presence of anyone higher in the chain of command.
- 2) If the anticipated transaction involves a large sum of money, narcotics, or is potentially dangerous, it is the responsibility of the supervisor or designee to discuss and provide their immediate command-level supervisor with a formally documented operational plan.
- 3) The operational plan will consist of either a five-paragraph order, a basic assignment chart, or both, depending on the complexity of the operation.

"Generally speaking, the smaller the command post in terms of personnel, the better the command post."

Upon completion of the assignment chart and plan, it will become a permanent part of the investigative file.

- 4) The line supervisor or designee will confer during the planning stage with his/her counterparts in charge of support units, i.e., surveillance, technical components, or officials of other law enforcement agencies involved in the operation. The

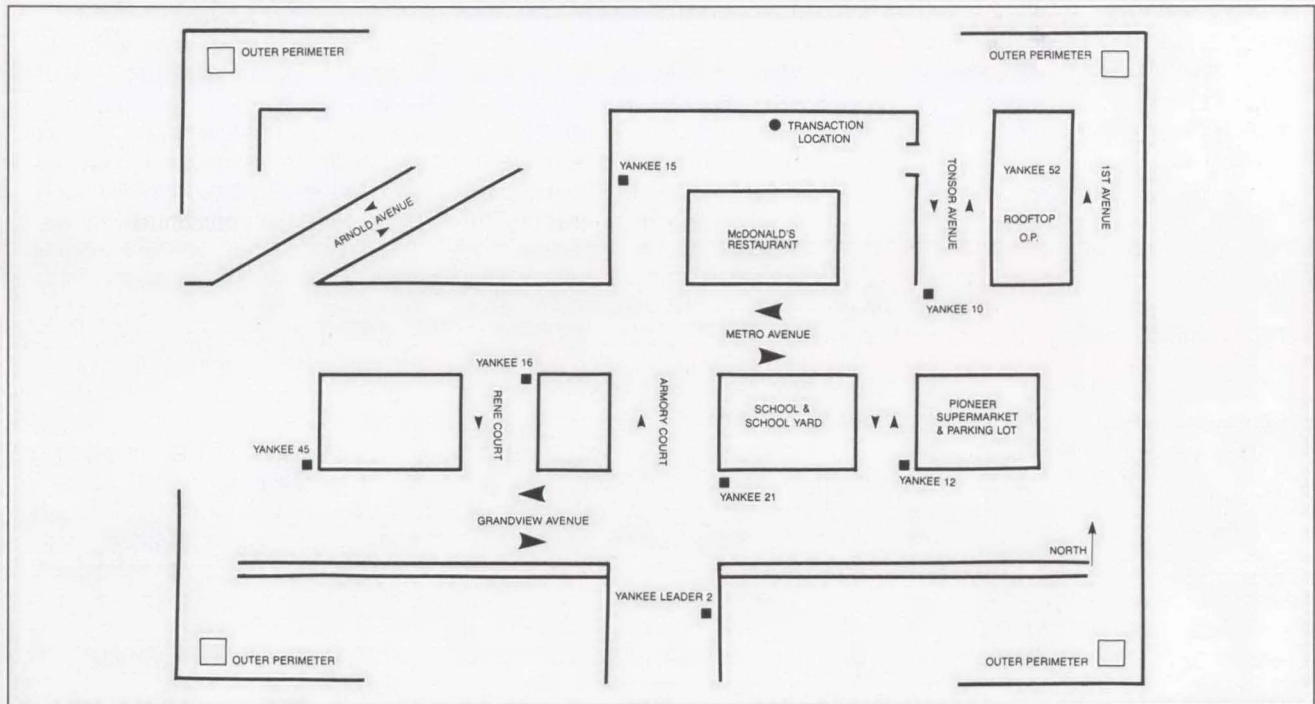
line supervisor will insure that all personnel covering the transaction are familiar with the assignments and what their role will be if contingency situations arise. In addition, either during the briefing or at the staging area, all participants will assemble to insure they know the identity, clothing, and the role of each of the participants. **THERE SHOULD BE NO SURPRISES!**

- 5) With the exception of undercover Agent/police officer and their immediate support, all personnel involved in the transactional coverage will have "POLICE" or "FBI" raid jackets and they will be worn prior to the arrests or raids in the public area. This will serve to identify the participants to off-duty police and other law enforcement personnel who may be in the area and not involved

Assignment Sheet

TEAM DESIGNATION CALL SIGNS	TEAM MEMBERS	VEHICLE	SPECIAL EQUIPMENT	ASSIGNMENT	RADIO CHANNELS
Yankee Leader 2	ASAC John Johnson	Car YL2 White '87 Buick	Car Phone (Open Line to CP)	Overall Control of Operation	A-5
Yankee 21	Supervisor Jones Squad 1 Supervisor Smith Special Ops.	Car C-10-1 Blue '84 Olds Two Door	Shotgun	Outside Perimeter	A-5 PVT
Yankee 15	SA Wilson Sgt. Lewis, DPD	C-10-5 White '86 Ford LTD	Shotgun	Escort UCA to Buy Area and Provide Immediate Backup	A-5 PVT
Yankee 16	SA Gardner SA Hermann	C-10-2 Tan Rental, '86 Buick, Ohio Plates	Recorder for T-4 Transmissions Hand Held Radio For OPS Channel	Tape Conversation Between UCA and Subject	T-4 on B-4 A-5 PVT
Yankee 45	SA Green, DEA	DEA 9-14 '84 Blue/Tan Ford T-Bird	Field Test Kits	Obtain Evidence From UCA. Primary Arrest Team in Event of Crisis	A-5
Yankee 12	Det. Williams, DPD Det. Wood, DPD	'85 Black Mercury '86 Cougar Rental	Ram Pry Bar	Liaison with Local Precinct. Secondary Arrest Team	A-5
Yankee 10	SA Bisk	C-2-1 '86 Red Cadillac Rental		1. Fisure of Subject's Home 2. Fisure to Site	A-5
Yankee 52	SA Harper SA Peters (Tech Agent)	C-6-2 '87 Green Chevy Van	Video Equipment	Video Tape Buy Contact Point with Special OPS Plane/CP	A-5 C-7

Schematic of Transactional Site



in the transaction. The line supervisor will insure similar attire is available for support units, if any are on the scene.

An example of the five-paragraph order as it applies to a simple narcotics transaction situation is as follows:

—**SITUATION:** Brief background of case and anticipated transaction. Complete description of undercover operatives, to include clothing.

—**MISSION OR OBJECTIVE:** What will be done. Statement that undercover operatives will offer no resistance. Affirmative statement as to whether undercover operatives will identify themselves upon completion of trans-

action, depending on the scenario formulated prior to execution of the plan.

—**EXECUTION:** General overall scenario followed by specific assignments for all personnel involved. Contingency arrest teams should also be identified and placed.

—**ADMINISTRATIVE:** Chain of command, case Agent, or police officer who has case assigned, file number of case. Identity and telephone number of assistant U.S. attorney, district attorney. Telephone numbers for contingency options, local precinct telephone numbers, location, and directions to nearest hospital.

—**RADIO COMMUNICATIONS TO BE USED:** Call signals, channels, voice privacy, or codes to be used.

Naturally, in a simple buy-bust situation, as shown in the schematic of the transactional site, the command post would actually be the automobile of the on-scene commander, Yankee Leader 2, with communication capability to personnel on the scene and at the office. When a command post is activated because of a prolonged or major undertaking, it becomes the nerve center for crisis management. The first decision the law enforcement executive should make is WHO will be assigned to the

"...the law enforcement executive [should] have confidence in his or her personnel. . . . They should be told what their mission is, not how to perform it."

actual command post and define their respective roles. All too often this decision is not clearly articulated, and as a result, the number of people in the command post grows as the crisis gains momentum. Generally speaking, the smaller the command post in terms of operational personnel, the better the command post.

Who *should be* present in the command post? The ranking law enforcement executive responsible for the overall matter at hand, barring extraordinary circumstances, should be in the command post. Assisting him should be a surveillance coordinator, a technical coordinator, and an Agent or police officer tasked with maintaining a contemporaneous log of the instructions given, the radio traffic, and investigative developments. If the particular crisis has the potential of developing into a prolonged matter, such as a kidnapping or extortion, the number two ranking law enforcement executive should be held in reserve. In the event the crisis extends beyond 24 hours, he or she can step in, thereby eliminating a decision-making vacuum and exhausted leadership.

If the particular crisis is being worked jointly with another agency or police department, as is frequently the case, the ranking police officer or at least an officer empowered by his department to speak and make decisions on behalf of the department should be in the command post and be available for consultation.

Ideally, a command post should have a separate switchboard with direct inward dial capability into the command post, bypassing the standard office switchboard or private branch executive (PBX). In addition, a minimum of

two Agents or police officers should be in the command post for the purpose of placing and fielding incoming telephone calls at the direction of the on-scene commander.

Equally important to have present in the command post is the principal legal adviser, who could handle legal questions as they arise. Is it necessary to obtain a third-party search warrant prior to entry? Do we have enough probable cause for a search warrant? As these questions arise on the street, they should be promptly answered. As mentioned previously, care must be taken to prevent too many people from being in the operational command post. SWAT commanders, hostage negotiators, media representatives should be in close proximity to the command post and the on-scene commander, but not actually in the operations center, as a general rule.

Law enforcement has increasingly become more and more specialized during the past several years. We now have legitimate experts in a number of different fields—technical, support, surveillance, etc. It is important for the law enforcement executive to have confidence in his or her personnel and recognize the services they perform. They should be told what their mission is, not how to perform it. Many managers believe it is their responsibility to make surveillance assignments and physically place their resources because they are in charge. All too often, the law enforcement executive has little real knowledge or expertise in the area in which he is making decisions. Clearly, the plans and tactics to be used by these technical assets should be presented to the on-scene commander and ultimately approved by that com-

mander. However, if you have a SWAT team or a technical coordinator, tell them what you want done, not how to do it.

Thought should also be given at the very beginning of the crisis for backup communication capability. In an emergency, the radios almost unfailingly malfunction. Equally frustrating is undisciplined radio traffic. Backup communication capability can be as simple as an open line from a pay telephone at the scene to the command post, a second radio functioning on a different frequency, or as sophisticated as real time monitoring from the command post with closed-circuit television that is micro-waved from the arrest or search site to the command post. This technique is also an excellent source of material for the critique that should occur after every command post exercise.

How important is this critique? A critique insures that you and your forces are not destined to keep making the same mistakes repeatedly. Each command post crisis management exercise is fundamentally the same—the issues and principals remain constant. The inability, for example, of not being able to communicate because some of your resources are in the subway, and it has always been that way, is not reason enough to accept that situation. Something can be done about almost any eventuality, if the proper persons are tasked with finding the answer. But before anything occurs in the command post, the proper place to start is with a plan. This will prevent you from finding yourself in a position where you have to react to events, rather than making the events occur.

FBI

The Electronic Communications Privacy Act

Addressing Today's Technology

(Part 1)

In our fast-moving society, criminals will always take advantage of all available communications facilities to conduct their illegal activity. Not only do they use telephones to participate in fraudulent business transactions or drug deals, but they also use more-sophisticated communication devices, including paging devices, which deliver a signal or message to their users; cellular telephones, which can be transported in cars and briefcases; and electronic communication systems, which transmit a message from one computer terminal to another.

It is, therefore, incumbent upon law enforcement officers to have both practical knowledge as to how these communication devices and services work and an understanding of how they can lawfully access, or intercept, communications made over these systems. Similarly, police officers need to know the legal requirements to obtain information related to the use of these communications facilities, such as telephone toll records and nonpublic information concerning the name and location of a subscriber to a communications service.

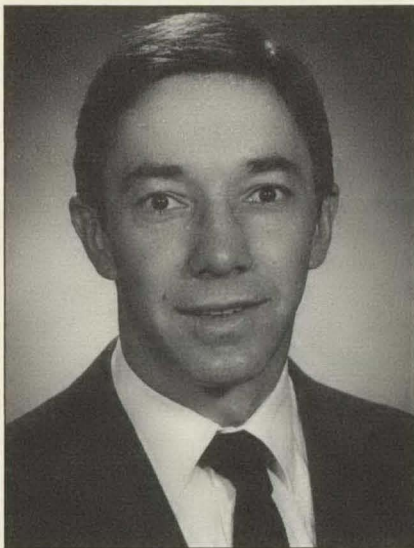
The Electronic Communications

Privacy Act of 1986 (the ECPA)¹ significantly alters the procedure that Federal, State, and local law enforcement officers must follow to intercept communications during the course of their transmission and to acquire transactional information of those communications, such as telephone toll records. For these reasons, law enforcement officers must understand the impact of the ECPA on their investigative efforts in the communications area.

The ECPA consists of three distinct provisions. First, it amends the law of nonconsensual interception of wire communications (wiretaps) and oral communications by a concealed microphone or electronic device (bugs). Second, it sets forth specific procedures for obtaining authorization to use pen registers (telephone decoders), which record the numbers dialed from a telephone, and trap and trace devices, which ascertain the origin of a telephone call. Third, it proscribes the procedure law enforcement officers must follow to obtain certain stored communications and records relating to communications services, such as telephone toll records and unlisted telephone subscriber information.

By
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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.



Special Agent Fiatal

It is the purpose of this three-part article to acquaint the law enforcement officer with: 1) The reasons for passing this new Federal legislation; 2) significant provisions of the ECPA, which apply to Federal as well as State and local law enforcement activity; and finally 3) the effect of those provisions on Federal, State, and local investigative procedure.

The first part of this article will discuss those problem areas that led to the passage of the ECPA. Part two will specifically address that portion of the ECPA which changes the law of non-consensual wiretapping. Part three will consider those portions which refer to law enforcement's use of pen registers and trap and trace devices and the acquisition of stored communications and information pertaining to the customers of communications services.

ELECTRONIC SURVEILLANCE PRIOR TO THE ECPA

Prior to the passage of the ECPA, a law enforcement officer who planned to conduct electronic surveillance, such as wiretapping or bugging, had to proceed under two legal constraints that remain in effect today. First, the fourth amendment prohibits "unreasonable searches and seizures."² Second, Title III of the Omnibus Crime Control and Safe Streets Act of 1968³ (title III), or its State counterparts which either adopt the provisions of title III or set forth their own requirements, regulate the use of electronic surveillance.⁴ To date, 31 States have enacted such counterparts,⁵ which must be at least as restrictive as the provisions of title III.⁶

Fourth Amendment Considerations

The Supreme Court, in the landmark case of *Katz v. United States*,⁷ which involved electronic surveillance in the form of a concealed microphone used to intercept a conversation, defined a search for purposes of the fourth amendment. In *Katz*, Agents of the Federal Bureau of Investigation, having reason to believe Katz was using a certain public telephone to transmit waging information interstate, placed a surreptitious listening and recording device on top of and outside the phone booth without the benefit of prior court approval. The Agents thereafter intercepted Katz' end of his telephone calls made from that location and used them against Katz at his subsequent criminal prosecution.

Abandoning earlier decisions which equated a search with a physical trespass onto an individual's property, the Supreme Court determined that a search, for purposes of the fourth amendment, was any governmental intrusion into a person's legitimate, or reasonable, expectation of privacy, since that constitutional provision "protects people, not places."⁸ The Court further determined that a search is reasonable by fourth amendment standards if it is conducted pursuant to search warrant or if it fits into one of the few specifically established exceptions to the general requirement of a warrant, such as a search incident to arrest, a motor vehicle exception search, or an emergency search. Finding the Agents' activity to constitute a search, the Court deemed it unreasonable as it was not executed pursuant to a search warrant and did not fall into one of the exceptions to this requirement as recognized by prior decisions of the Court.

"The Electronic Communications Privacy Act of 1986 . . . significantly alters the procedure that Federal, State, and local law enforcement officers must follow to intercept communications . . . and to acquire transactional information"

The Supreme Court has also determined that when one of the parties to a conversation consents to have that conversation monitored, that activity does not constitute a search by fourth amendment standards.⁹ For example, law enforcement officers may have the consent of one of the parties to a conversation to permit them to electronically survey, or intercept, that conversation. The nonconsenting party voluntarily exposes the information to the consenting party and assumes the risk that the consenting party may disclose the conversation to the police. The consenting party might accomplish this by either repeating or transmitting the information to the officers or recording it by the use of a surreptitious device. Therefore, the police officer need not obtain a search warrant in order to comply with the fourth amendment when one of the parties to the intercepted communication consents to its interception.

Title III or Its State Counterparts Requirements

Title III and its analogous State statutes provide that a law enforcement officer must obtain prior court approval before he aurally intercepts a wire communication or an oral communication involving a reasonable expectation of privacy, absent the consent of one of the parties to the communication.¹⁰ The officer complies with title III or its State counterparts by following prescribed procedures to obtain the appropriate wiretap or bug order that permits the interception.

These procedures require the application for the order to include certain data. First, it must contain sufficient information to establish probable cause that an individual is committing or is

about to commit certain specific criminal offenses and that the individual is also using the telephone to be tapped or the area to be bugged to transmit communications about that offense. Second, it must particularly describe the offense being committed, the individual (if known) whose communications are to be intercepted, the type of communication to be intercepted, and the phone to be tapped or the area to be bugged. Third, it must explain that other more traditional and less-intrusive investigative techniques, such as the use of informants, undercover officers, search warrants, physical surveillance, or grants of testimonial immunity, have been tried and failed or why they would be unlikely to succeed or be too dangerous. Finally, it must list all previous applications for interception of communications of the same individual or for the same phone to be tapped or area to be bugged.¹¹ Once obtained, the order is effective for a time period not to exceed 30 days.¹²

New Technology and Varying Judicial Interpretations Necessitating Additional Legislation

Since 1968, however, when title III became effective, the types of communications facilities and their technological sophistication have changed dramatically. Today, even the simple telephone call is seldom transmitted exclusively over wire. Frequently, a telephone call, at some point during its transmission, travels through microwave radio transmissions and sometimes is even transmitted via satellite. Fortunately, the provisions of title III covered such situations, as they prohibited, absent prior judicial approval, the nonconsensual aural interception of

wire communications transmitted in whole or part through the wires.¹³ These technological advances, however, created many other issues involving law enforcement's use of electronic surveillance and acquisition of information relating to communications which were unaddressed by title III. Since they were not specifically addressed by statutes, they received varying judicial treatment in State and Federal courts, and this created some confusion for law enforcement investigative procedures. Each of these technologically advanced communication devices is discussed in turn below.

Cellular and Cordless Telephones

The cellular telephone is a prime example of a technologically advanced communication facility which has rapidly gained increased public popularity. An individual can easily transport a cellular telephone device in a motor vehicle or briefcase. Any call made from such a device travels, by radio wave, to the nearest receiver maintained by the cellular telephone company. The call is thereafter transmitted, again by radio waves, to the central receiver of the cellular telephone company, where it then enters the wires of the public telephone company for further transmission to a land-line, or traditional, telephone. Although title III did not specifically address calls from a cellular to a land-line phone or from a land-line to a cellular telephone, these calls are at least transmitted in part by wire and therefore deserved title III protection.¹⁴

The same rationale, when applied to the calls to or from a handheld cordless telephone, suggests that they deserve title III protection, but closer examination reveals that protection to be unwarranted. A handheld cordless

"The Supreme Court has . . . determined that the user of a telephone has no reasonable expectation of privacy in the numbers dialed from that phone."

phone transmits and receives communications sent by radio waves to and from a base unit maintained in the user's residence, where the call thereafter travels through the wires of the telephone company. A handheld cordless phone, unlike the cellular phone, has limited range, as the radio transmissions to and from such a device are ineffective beyond a relatively short distance. Additionally, persons who are not intended parties to the conversation can easily intercept these transmissions by using a similar device or an AM-FM radio receiver, which happens to be located nearby. Warnings on the boxes of newly purchased handheld cordless phones even advise the purchasers that other persons can easily overhear their conversations made over that device.

This ease of interception dramatically contrasts with the need to use a comparatively sophisticated interception device to overhear calls to and from a cellular telephone. For these reasons, although a portion of any such communication to or from a handheld cordless phone travels in part over wire, at least two State courts have rejected the necessity of obtaining a wiretap order to intercept communications to and from this device,¹⁵ as there is little if any reasonable expectation of privacy in such transmissions.

Paging Devices

The paging device is another example of a communication facility whose use has not only become increasingly popular but also in certain format has outdistanced traditional title III concepts. The paging device emits a message which the provider of the paging service has transmitted over radio

waves to the pager. These paging devices are of three types: 1) Tone-only pager, 2) voice pager, and 3) digital display pager.

A person who wishes to alert the possessor of a tone-only paging device simply calls the paging service company and leaves a message. The paging service company in turn transmits a simple radio signal to the tone-only paging device, causing the device to beep. This beep alerts the possessor of this type of pager to contact either the paging service company for the message or a predetermined place or individual.

Traditional title III provisions required the law enforcement officer to obtain a wiretap or bug order when he *aurally* intercepted a wire or oral communication.¹⁶ An aural interception involves the interception of a communication understood and comprehended by the human ear or a communication involving the human voice. Congress did not intend the unnamed title III to address nonvoice communications. Therefore, if a police officer intercepted the tone transmitted to a tone-only pager, he did not aurally intercept a spoken communication, and therefore, was not required to comply with the provisions of title III or its State counterparts. Additionally, inasmuch as an individual has no reasonable expectation of privacy in the transmission of a mere tone over radio waves, the law enforcement officer did not have to obtain a search warrant to intercept transmissions made to a tone-only pager because this activity is not a search by fourth amendment standards.

The voice pager, however, does involve the transmission of a spoken communication. The person who

wishes to contact the possessor of this type of paging device calls the paging service and repeats a spoken communication, which is transmitted by the paging company over the air waves to the pager, allowing the possessor of the device to hear the spoken message. The nonconsensual interception of such a message involves the acquisition of a spoken communication, made at least in part through wire, necessitating title III protection. Nonetheless, one State supreme court which addressed law enforcement's interception of communications to a voice paging device believed that both the framers of title III and the State wiretap legislation did not intend them to cover the interception of communications to voice pagers.¹⁷

Finally, the digital display pager operates in a manner similar to the voice pager, except that the caller, after dialing the number of the paging service company, continues to dial a coded message, which the paging company transmits, by radio waves, to the intended pager. The paging device then displays the message. A police officer who intercepted a message to a digital pager did not intercept a communication protected by traditional title III standards, as the officer did not aurally intercept a communication. He acquired a numeric printout, rather than a spoken message. It would appear, however, that the individuals who either send or receive this coded signal possess a reasonable expectation of privacy in the message and deserve some type of legal protection.

Electronic Communications and Computer Messages

The interception of communications made over other types of techni-

cally advanced communications facilities, which do not involve the transmission of the human voice, sometimes known as electronic mail systems, was also outside the protection of traditional wiretapping statutes. There are numerous communications facilities that transmit written or typed messages and facsimiles of documents, drawings, or photographs, rather than spoken messages. The parties to these types of communications would nonetheless have an expectation of privacy in the electronic communication, just as they would in a telephone conversation.

Perhaps one of the most significant advances in communications technology, however, is the computerized communication system. In this type of system, an individual uses a computer terminal and modem to transmit written, digitized messages over wire and radio waves to another computer terminal. Under traditional wiretap law, however, the police officer was not required to obtain a judicial wiretap order to intercept communications made over these types of facilities, as the interception did not involve the acquisition of spoken messages. Nonetheless, the parties to such communications would appear to have the same expectation of privacy in these messages as they would in a common telephone call.

There were yet other matters concerning law enforcement's acquisition of information from public communication service providers that were unaddressed by any Federal legislation. Numerous communication service companies provide to the public what is sometimes called an electronic mailbox service. The customer of such a service may, if he wishes, transmit his comput-

erized message to an electronic mailbox, best described as an electronic mail drop, maintained by the service provider. Later, the intended receiver may access the mailbox through his computer and thereby retrieve the message.

Additionally, the companies who provide this service routinely electronically copy and store these messages for a period of time as a safeguard against the failure of the electronic mailbox system. The provider of the service would then be in a position to retrieve the stored communication for its customers if the computerized electronic mailbox crashed or failed. Again, neither title III, passed in 1968, nor any other Federal or State legislation governed law enforcement's access to these messages, which could contain valuable investigative information, while they were in electronic mailboxes or when they were copied and stored by the service provider, for purposes of later transmission to the intended recipient.

Computerized message companies also frequently provide another service to their customers whereby the customer may transmit records and information electronically, by the use of computers and modems, to the service provider, exclusively for storage purposes. For example, an individual could maintain records of criminal activity in the storage banks of this type of computer service company, rather than at his own business or residence, and still be able to retrieve them instantaneously through his computer terminal. Again, no statute addressed law enforcement's acquisition of these records while in the possession of the service provider exclusively for storage purposes.

Pen Registers and Trap and Trace Devices

Title III was completely silent regarding the government's use of pen registers, or dialed number recorders, and trap and trace devices. These devices allow police to acquire the telephone numbers dialed from a telephone or the number of a telephone from which a call originates. As the use of either device did not involve the interception of spoken messages, it did not bring into play traditional title III protections and procedure.¹⁸

The Supreme Court has also determined that the user of a telephone has no reasonable expectation of privacy in the numbers dialed from that phone.¹⁹ The user could reasonably expect that others, in particular the telephone company, would commonly use such devices for a variety of reasons, to include confirming proper billing information. Therefore, a law enforcement agency or department could use a pen register, through the cooperation of the appropriate phone company, without first procuring a search warrant. Similarly, when one dials a number on the telephone, he voluntarily provides the telephone company, a third party, the number of the phone he is dialing and assumes the risk that the telephone company may provide the number and location of the phone from which the call originated to the police.²⁰ Nonetheless, telephone companies frequently requested that law enforcement officers obtain some type of court order when seeking the telephone company's cooperation in using these devices. No law, however, proscribed the procedure to be followed in obtaining such an order.

"... the ECPA amends title III to require a law enforcement officer to obtain an extraordinary wiretap-type order to nonconsensually intercept electronic communications."

**Accessing Transactional Records
(Telephone Toll Records)**

Finally, law enforcement officers often find it useful in their investigations to obtain records from telephone companies of their customers' toll, or long distance, calls. These records are frequently used to determine other members of an organized criminal conspiracy, such as a narcotics distribution network. Similarly, the police, on a frequent basis, need to obtain from telephone companies nonpublic listing information, such as the name and address of the subscriber to a particular telephone number or the phone numbers of a particular subscriber. Again, no statutory standards governed law enforcement's acquisition of transactional records of communications services or information pertaining to the subscriber of a communications facility, when that information was not readily available to the public.

Faced with unaddressed or inconsistently addressed legal issues arising from these communications devices and records, Congress attempted to resolve these problems by passing the ECPA. Accordingly, the ECPA changes the law in three distinct areas which are of common significance to Federal, State, and local investigators. First, the ECPA amends title III to require a law enforcement officer to obtain an extraordinary wiretap-type order to nonconsensually intercept electronic communications.²¹ This includes the interception of messages sent to digital display pagers and messages sent from one computer to another. It also, however, specifically excepts the interception of various communications from this requirement; these exceptions include the interception of messages sent to a tone-only pager and the radio portion of cordless telephone conversations.

Secondly, the ECPA requires the law enforcement officer to follow specific statutory procedures before using pen registers, as well as trap and trace devices.²² He must obtain either a court order, by certifying to the issuing court that the device is necessary to his investigation, or consent from the user of the phone to which the pen register or trap and trace device is attached.

Finally, the ECPA addresses issues involving public communications service providers. It defines the procedure the police officer must follow when acquiring communications stored by a communications service provider for later transmission, such as computerized messages maintained in an electronic mailbox, or when acquiring computerized information electronically transmitted to a service provider exclusively for purposes of storage.²³ This particular section, however, also defines the requirements a law enforcement officer must meet to acquire certain information from a public communications service provider about their subscribers or customers. This type of information includes telephone toll records and nonpublic, or unlisted, subscriber information or that information disclosing the identity and address of the subscriber to a particular telephone number which is not available to the public. As law enforcement officers routinely access telephone toll records and unlisted information from telephone companies during the course of their investigations, they need to possess a thorough understanding of this particular section of the act.

Parts two and three of this article will examine these three distinct provisions of the ECPA.

FBI

(Continued next month)

Footnotes

¹Public Law 99-508.

²U.S. Const. amend. IV provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

³Public Law 90-351.

⁴18 U.S.C. 2516(2) requires States to enact their own specific enabling statute if they desire to implement the authority granted State law enforcement officers by title III to seek and obtain electronic surveillance orders from State judges.

⁵Report of the Director of the Administrative Office of the U.S. Courts on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications (Wiretap Report) at 2 (1986).

⁶See, *United States v. Geller*, 560 F. Supp. 1309 (E.D. Pa. 1983); *State v. Thompson*, 464 A.2d 799 (Conn. Sup. Ct. 1983); *Commonwealth v. Vitello*, 327 N.E.2d 819 (Mass. Sup. Ct. 1975); *State v. Siegel*, 292 A.2d 86 (Md. Ct. App. 1972).

⁷389 U.S. 347 (1967).

⁸*Id.* at 351.

⁹*United States v. White*, 401 U.S. 745 (1971).

¹⁰18 U.S.C. 2511. A few States, enacting legislation more restrictive than title III, either limit or prohibit consensual monitoring in the absence of prior judicial approval.

¹¹18 U.S.C. 2518(1).

¹²18 U.S.C. 2518(5).

¹³18 U.S.C. 2510(1).

¹⁴See *United States v. Hall*, 488 F.2d 193 (9th Cir. 1973).

¹⁵*State v. DeLaurier*, 488 A.2d 688 (R.I. Sup. Ct. 1985); *State v. Howard*, 679 P.2d 197 (Kan. Sup. Ct. 1984). It is noteworthy, however, that both these cases involved use of the intercepted handheld cordless phone communications as evidence against the party who used the handheld cordless phone. They did not address the situation where the intercepted conversations are used against the individual who used the traditional telephone in the land-line end of the conversation.

¹⁶Senate Report No. 1097, 90th Congress, 2d Session, at 90.

¹⁷*Dorsey v. State*, 402 S.2d 1178 (Fla. Sup. Ct. 1981).

¹⁸See, *United States v. New York Telephone Company*, 434 U.S. 159 (1977).

¹⁹*Smith v. Maryland*, 442 U.S. 735 (1979).

²⁰See, e.g., *United States v. Miller*, 425 U.S. 435 (1976); *United States v. White*, *supra* note 10.

²¹18 U.S.C. 2510-2520.

²²18 U.S.C. 3121-3126.

²³18 U.S.C. 2701-2710.

VICAP ALERT

The Salt Lake City Police Homicide Task Force is investigating the disappearances and homicides of females that have been occurring since the summer of 1983.

Any unsolved cases of missing or murdered females that may fit into the following categories could be considered part of this series:

- Disappeared from or killed at their place of business.
- Disappeared from or body found near a freeway.
- Any females shot with a .38- or .357-caliber handgun.
- Modus operandi is the same as in the following case histories:

Case #1 - 7/7/83

Victim: 26-year-old white female, 5'10", 145 pounds, blond shoulder-length hair. Victim was working as a clerk in a convenience store. She was counting money in the back room at about 11:30 p.m. when she was shot in the head with a .38- or .357-caliber lead bullet. No sign of sexual assault. Gillette, WY

Case #2 - 7/9/84

Victim: 17-year-old white female, 5'6", 120 pounds, sandy blond hair to middle of back. Last seen at 10:00 p.m. in downtown Salt Lake City. She had left her boyfriend and was hitchhiking home when last seen. Her body has never been recovered. Salt Lake City, UT

Case #3 - 6/21/84

Victim: 26-year-old white female, 5'7", 135 pounds, blond shoulder-length hair. Victim located at 6:00 p.m. on a paved snowplow turnaround along side U.S. Highway 189 approximately 29 miles south of Jackson, WY. Victim was shot

once in the chest and once in the head with a .38- or .357-caliber weapon. No sign of sexual assault or robbery. Wyoming Division of Criminal Investigation.

Case #4 - 2/8/85

Victim: 50-year-old white female, 5'5", 135 pounds, brown collar-length hair. Victim was located in her house, face down on her bed, shot once in the head with a .38- or .357-caliber handgun (lead bullet). No sign of forced entry, no sexual assault. Purse taken but recovered. Littleton, CO

Case #5 - 5/15/85

Victim: 19-year-old white female, 5'4", 145 pounds, auburn-colored, shoulder-length hair. Located in downtown Salt Lake City in industrial area. Victim had been stabbed numerous times in upper chest and back area. Also, she had been shot twice in the head with a .38- or .357-caliber handgun (copper-jacket, hollow-point bullet). Purse and one shoe missing. Salt Lake City, UT

Case #6 - 10/2/85

Victim: 25-year-old white female, 5'4", 115 pounds, dark brown shoulder-length hair. Left work at 6:00 p.m., walked to her parked vehicle, and disappeared. Victim's abandoned vehicle recovered on 11/30/85 in Las Vegas parking lot. Roy, UT

Case #7 - 2/18/86

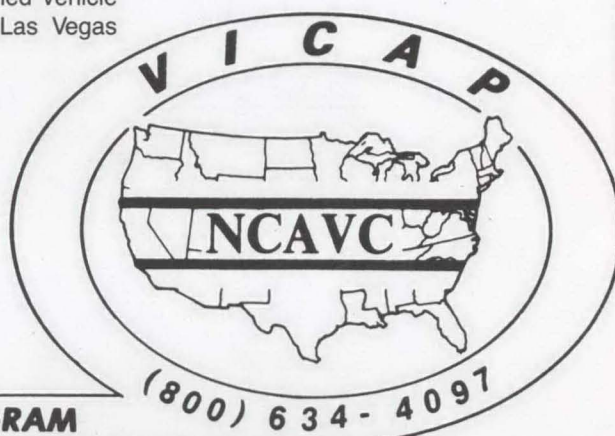
Victim: 16-year-old white female, 5'3", 115 pounds, brown shoulder-length hair. Victim was last seen alive in downtown Salt Lake City. On 3/31/86, victim's body found in a ditch, concealed and partially nude. Victim was stabbed numerous times in upper chest and neck area. Victim has past history of hitchhiking. Victim's purse and boots are still missing. Possible sexual assault. Salt Lake City, UT

Case #8 - 4/25/86

Victim: 21-year-old white female, 5'9", 160 pounds, light brown shoulder-length hair. Victim was a convenience store clerk. Found at 3:45 a.m. behind the counter. Shot five times in the head with a .38- or .357-caliber handgun (copper-jacket, hollow-point bullet). Only known loss is her purse. No sign of sexual assault. Layton, UT

Case #9 - 5/12/86

Victim: 26-year-old white female, 5'5", 105 pounds, brown collar-length hair. Victim left work and was walking home on a residential street when unknown person(s) shot her from a moving car. Victim was shot once in the head with a



VIOLENT CRIMINAL APPREHENSION PROGRAM

.38- or .357-caliber handgun (copper-jacket, hollow-point bullet). No sign of sexual assault or robbery.
Salt Lake City, UT

The above is a partial listing of the crimes. Others are suspected of being in the series.

All of the shooting victims have been shot with one of the following weapons — .38-caliber weapons

(Smith/Wesson, INA, ALFA, or Llama) or .357-caliber weapons (Smith/Wesson, Ruger, or Kassnar). All weapons have 5 lands and grooves with right-hand twist.

NOTE: THE SAME WEAPON WAS USED IN CASES # 5, 8, & 9.

ALERT TO CHIEFS & SHERIFFS: This information should be brought to the attention of all homicide officers. If

unsolved cases in your department match the MOs of the crimes listed above, contact either Senior Major Case Specialist Terry Green at the National Center for the Analysis of Violent Crime, VICAP, FBI Academy, Quantico, VA 22135 (800-634-4097) or Detective Jim Bell, Salt Lake City Police Homicide Task Force, Metropolitan Hall of Justice, 450 South 300 East, Salt Lake City, UT 84111 (801-535-6513).

FBI Law Enforcement Bulletin

Article Submissions

The purpose of this journal is to promote an exchange of professional information among the various components of the criminal justice system.

Guidelines have been established to assist those interested in submitting articles to the *FBI Law Enforcement Bulletin*. Following these guidelines will ensure prompt consideration of all manuscripts submitted to the *Bulletin*.

AUTHOR — The exact wording of the desired byline, including any advanced degrees, and the current business mailing address of the author, or authors, should accompany manuscripts submitted to the *Bulletin*.

FORMAT AND LENGTH — Manuscripts must be typewritten and double-spaced. Three copies should be submitted. In general, article should be approximately 3,000 words long, but adequate treatment of subject matter, not length, should be the primary consideration.

PHOTOGRAPHS AND GRAPHICS — A photograph of the author, and when applicable, his or her police chief, should accompany manuscripts. If possible, other suitable photos, illustrations, or charts supporting the text

should be furnished. Black and white glossy prints reproduce best. In addition, special effort should be made to obtain a quality, black and white glossy photograph, vertical format, for possible use as a cover.

PUBLICATION — All manuscripts submitted to the *Bulletin* are reviewed for relevancy, innovativeness, timeliness, and overall appeal to the readership. Favorable consideration will not be given an article which has been published previously in a journal of national circulation or is being considered for publication in another such magazine. In response to requests, the *Bulletin* will consider reprinting articles of national interest to the *Bulletin*. No promises of publication or commitments regarding publication dates can be made.

EDITING — The *Bulletin* reserves the right to edit all manuscripts.

SUBMISSION — Authors may contact the Special Agent coordinator for police training at the nearest field office of the FBI for help in submitting the articles or manuscripts may be forwarded to: Editor, FBI Law Enforcement Bulletin, Federal Bureau of Investigation, Headquarters, Washington, DC, 20535.

Referenced Pattern

This impression is given the preferred classification of a loop with a ridge count of 24. It has a whorl-type configuration within the central area of the pattern; however, the inner type-lines, delta, and recurve are extremely questionable. We have referenced the loop interpretation to that of a central pocket loop whorl, outer tracing, inasmuch as it nearly meets the minimum whorl requirements of two deltas and a recurve in front of each.



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The Bulletin Notes

On February 19, 1987, Dispatcher Lou Nicely of the Bowling Green, OH, Police Department received a frantic telephone call from a woman whose 3-year-old son had stopped breathing. Mrs. Nicely gave first aid instructions over the telephone, calmly reassuring the hysterical woman that an ambulance was on its way. Due to Mrs. Nicely's efforts, the child survived. The Bulletin is pleased to join Mrs. Nicely's superiors in commending her life-saving action.



Mrs. Nicely
