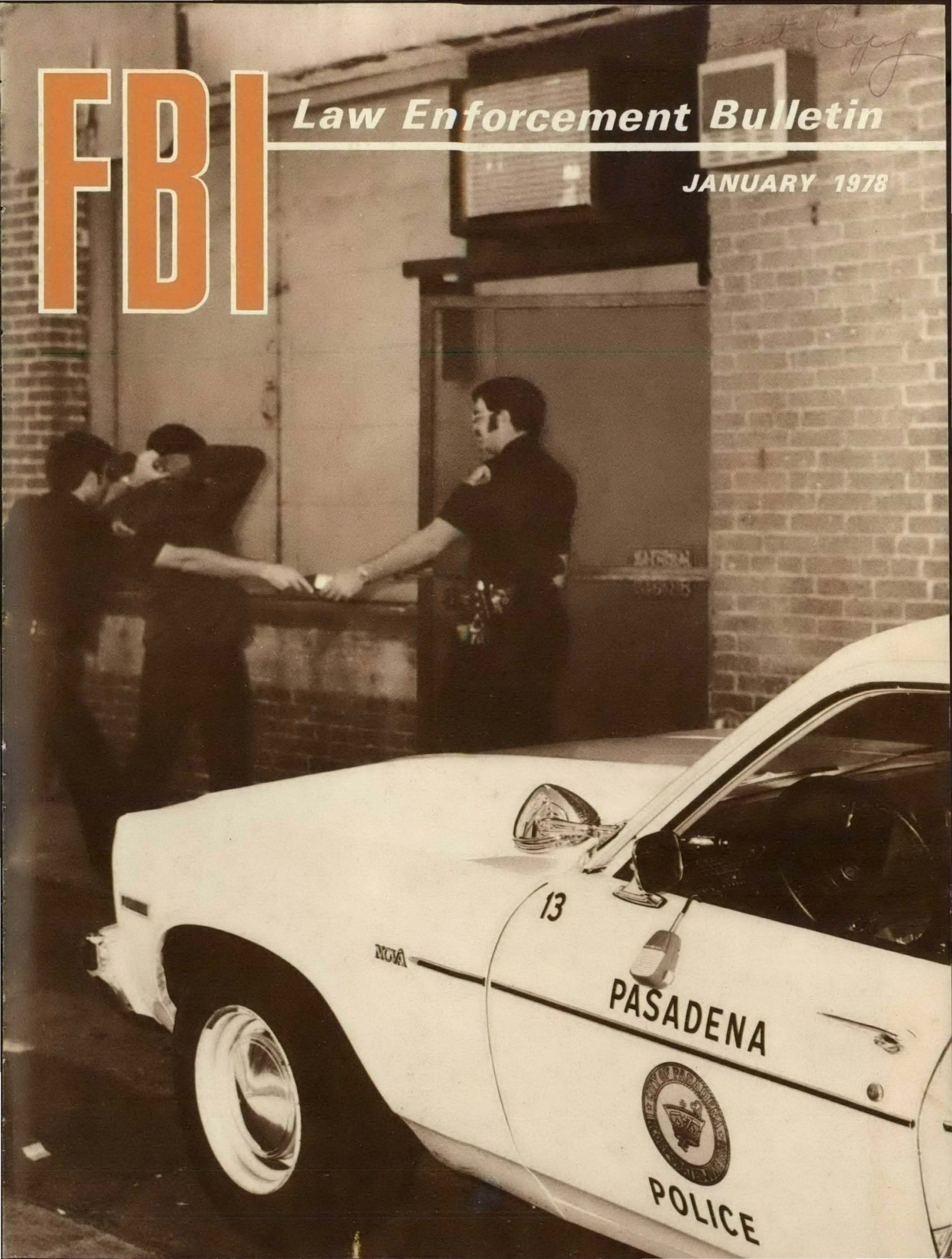
FBI Law Enforcement Bulletin

JANUARY 1978



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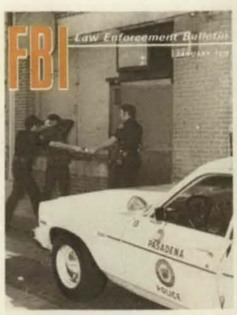

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Message from the Director . . .

As I LEAVE THE FBI after more than 37 years in law enforcement, it is gratifying to look back on the progress our profession has made during these years. For today, more than ever before, law enforcement is a profession. Like medicine and law, we have instituted a continuing learning process, a hallmark of professionalism. And, most important, we have adopted a philosophy of constructive change to adapt to the changing requirements of our society for law enforcement services.

To me, the most interesting and satisfying part of law enforcement administration is this process of change. During the more than 4 years I have been privileged to serve as Director of the FBI, I have helped implement a number of changes, ranging from computerization of records management and automation of fingerprint searching to a "quality-over-quantity" approach in the use of investigative resources and development of a participatory management philosophy. A new career development program and the crime resistance concept—convincing the public they have a responsibility to uphold the law in cooperation with police—are important changes within and without the FBI.

Our concentration of investigative effort on white-collar and organized crime, on terrorist activity and foreign counterintelligence, and our use of expanded undercover operations in cooperation with other law enforcement agencies have made the FBI more responsive to the needs of today's society.

These advances are part and parcel of those made by the whole police profession in the past three decades. Progress in research, training, forensic science, preventive and responsive patrol, behavorial science, investigative techniques, and all facets of law enforcement have been phenomenal—unprecedented.

But more important than any single change in the FBI or any police agency is the building of organizations capable of change. I hope I have followed, in my own way, the example set by my predecessor. J. Edgar Hoover was a giant force in guiding law enforcement toward professional status. And he realized that it is the caliber of people we attract to the ranks that build our respective organizations—dedicated personnel capable of instituting constructive changes.

The advances of recent years are the product of this dedication on the part of the men and women in law enforcement. To all of you, to those I have worked with in the FBI and in the Kansas City Police Department, to all who serve our society as keepers of the peace, thank you. Thank you for wearing, and being, the shield. It has been wonderful working with you. It will be my pleasure to continue working with you even though from a different perspective. I intend to continue my interest in law enforcement and will do whatever I can to further its progress.

CMKelley

CLARENCE M. KELLEY
DIRECTOR

JANUARY 1, 1978

Pasadena Police Make Alarming Progress

By
ROBERT H. McGOWAN
Chief
Pasadena Police Department
Pasadena, Calif.

False alarms, long the bane of law enforcement, are continuing annoying incidents which waste badly needed money and drain vital manpower in virtually every police department in the Nation, large and small.

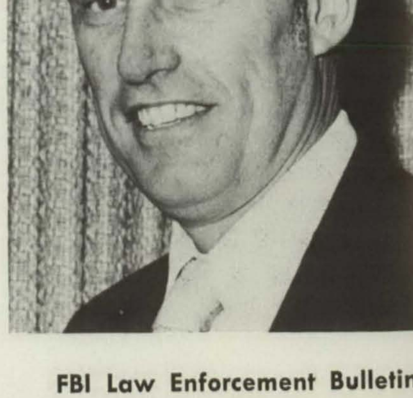
If a burglar alarm is treated lightly and it proves to be a genuine call, you've jeopardized lives and property. Yet handling them all as felony crimes in progress—which is the only professional way—is difficult to accomplish because in reality officers tend to view them as "cry wolf" situations since many jurisdictions experience false alarm rates as high as 99 percent.

Such was the case in mid-1972, when the Pasadena Police Department was receiving nearly 400 false alarms a month, epidemic proportions considering the size of the city (pop. 113,000).

We were wasting more than $36,000 annually in police manpower, not to mention the continual physical and mental wear and tear on the officers responding to the calls.

Something had to be done!

A task force was set up to research the problem and develop a solution that would substantially reduce false alarms, improve the quality of alarm services in Pasadena, and upgrade the effectiveness of police responses.



The task force found two types of burglar alarms in Pasadena: Audibles and direct-line alarms. Audibles, of course, can be mounted virtually anywhere on structures as long as they can attract the attention of passersby or neighbors, hopefully prompting a phone call to the police. Direct-line alarms trigger the monitoring station which in turn results in a call to the police from the company representative on duty. In both instances, the incidents are handled as "now calls" or "hot prowls."

"If a burglar alarm is treated lightly and it proves to be a genuine call, you've jeopardized lives and property."

The usage of alarms in Pasadena includes high-rise apartments, office complexes, private residences, schools, churches, just about any type of commercial or private structure than can be found. There is no restriction on what types of buildings alarms can be incorporated.

It was also determined by the task force that many companies had failed to provide their subscribers an adequate system for their needs. In one case, the company installed a vibration alarm—which went off constantly due to heavy truck traffic. In another, a sonic alarm proved too sensitive in a warehouse where objects fell during the night. When questioned, the subscribers told researchers that the alarm company representative had said not to worry, "The cops will answer the calls anyway." True, the police did answer the calls, good and false alike, but it made for a waste of men and money.

By the end of 1972, following months of research and discussions with the city's legal staff and alarm company representatives, an ordinance was submitted to the city council for review and approval.

It was thought from the beginning that any ordinance designed to regulate private industry in this field could face stiff opposition; from companies who naturally feared an additional layer of bureaucracy and perhaps even from the council members who would be cognizant of the feelings of local businessmen and residents who used the alarms.

But the fears never materialized. The ordinance was firm but fair; it established rigorous controls but allowed for due process and sought to improve service, not hinder or eliminate it.

The council adopted the ordinance by unanimous vote and set its effective date for February 1, 1973.

Adoption of the ordinance could not alone guarantee its success. An effective implementation plan was needed to insure that this new law would be more than just a paper document. A complete package of policies and procedures was designed for use by personnel dealing directly with the new law; the monitoring officer was carefully selected; and most importantly, support for the ordinance was vigorous at all levels within the department.

The advent of the ordinance also forced subscribers and companies alike to rethink their systems and evaluate what kinds of alarms would be best for the subscriber, the company, and the police. This led to fewer companies servicing Pasadena, but the ones that remained provided better service than ever before.

One of the remaining problems that has corrected itself slowly is that of the untrained personnel. While companies and shopowners have worked hard to meet the rigid standards, employees still seem to receive less attention than they should. A perfectly working alarm is still no better than the untrained employee who accidentally triggers it or fails to set it properly. The mechanical and human factors in a system must work together for the alarm to be an effective deterrent. The training of employees is an important ingredient that the police do look at when investigating false alarms.

Although untested, "The Burglary and Robbery Alarm Permit Ordinance" had the potential, its authors believed, to reduce false alarms, by as much as 75 percent when fully operational. Such an optimistic reduction has yet to be sustained. However, with the adoption of the ordinance, the average decrease is more than 60 percent and oftentimes does reach the hoped for 75 percent.

In 1972, the department was receiving 12.8 false alarms on an average daily basis. Today, that figure hovers around five or less, a considerable savings in money and manpower.

But there's more success to the ordinance than monetary savings and alarm reductions. Since its implementation there has been a conspicuous improvement in the mind-set and demeanor of our police officers.

In preordinance days, our officers tended to view an alarm as a routine call for service since the vast majority turned out false. Reflexes were not operating at peak efficiency; minds were getting conditioned to meet with failure rather than confronting a poten-

"Although the program seems to have achieved some sort of miracle cure status, in reality it's the law's built-in incentives for cooperation that have made it work."

tially dangerous felony suspect. Longtime veterans and even the eager rookies were hard-pressed to maintain that vital level of alertness so important when calls are legitimate.

Today, however, officers responding to alarms can expect that they will meet head-to-head with a suspect, that all their skills will be tested, and that their alertness must be at peak efficiency.

Our officers respond professionally and rapidly to all alarms, with the average response time below 2½ minutes. And because response times have steadily decreased since the statute's implementation, apprehension at crime scenes has gone up 21 percent over the same period.

This improved service has greatly enhanced the image of the police in the eyes of the subscribers and ultimately generated a more positive view of the effect of the ordinance—despite the more intensive commitment now required of alarm users in Pasadena.

Although the program seems to have achieved some sort of miracle cure status, in reality it's the law's built-in incentives for cooperation that have made it work. Instead of being a badgering instrument, punitive and instilling resentment among those directly affected by it, the law has created a feeling of mutual respect for all concerned.

Before anyone can legally operate an alarm in Pasadena, a permit to do so must be obtained from the city for a triannual fee of $15, which helps to offset some of the costs of administering the program.

The department's patrol services section is tasked with monitoring the ordinance, checking alarm performance, and handling the procedures when excessive trips are reported.

One of the law's key features is that it does not attempt to set technological standards; rather, it sets performance guidelines. This allows the subscriber and alarm firm maximum flexibility in system design, and simplifies understanding of the requirements.

These guidelines are clearly stated in the ordinance: ". . . an alarm system shall constitute a public nuisance if it actuates more than:

a. One false alarm in any 30-day period; or
b. Two false alarms in any 90-day period; or
c. Three false alarms in any 180-day period; or
d. Four false alarms in any 360-day period . . . ."

Failure of a subscriber to meet these standards sets in motion a procedure that firmly, but fairly, works to improve the system's performance.

The responding officer to a false alarm attempts to determine the cause of the trip, whether it's mechanical or human error. If the business is closed and no one can be contacted by the officer, a postcard is mailed alerting the owner that an alarm was reported. A second false alarm within 30 days draws a warning letter from the department, and the third failure results in a personal visit from an officer to discuss the situation. The fourth false alarm within the 30-day period draws a letter of suspension, and the subscriber has 15 days in which to file an appeal or seek informal relief.

Every letter sent to a subscriber, either alerting of a false alarm or warning of imminent suspension, encourages cooperation with the department to detect the problem and find an answer.

Two alternatives are open to the owner facing revocation of the permit to operate an alarm: Prove satisfactorily to the police that the problem has been corrected or file a formal appeal. If neither approach is followed, the department issues a letter revoking the permit and warning the owner that to operate an alarm in Pasadena without approval can result in a $500 fine, the maximum allowed under this misdemeanor violation.

If an owner desires to obtain a new permit within a year of revocation, he must satisfy the police department and license bureau that the alarm system has been modified and that "there has been a material change in circumstances."

But throughout the entire process, the spirit of the ordinance is to bring the police, the owner, and the alarm company into harmony, to have this trio work out the problems and correct them to everyone's satisfaction.

Through May 1976, 82 permits had been revoked—but many of the owners revamped their systems and reapplied for alarms.

Subscribers facing suspension must meet personally with the patrol section officers. Also in attendance must be a representative from the alarm company. In this meeting, the subscriber/representative must prove that corrective measures have already been taken to insure the alarm system meets the ordinance. If the problem was me chanical, the specific changes in the system must be outlined, whether it is a change in the system's design, installation, or operation. If the problems have been the result of personnel, then those responsible for activating the alarm must have undergone retraining BEFORE this meeting takes place. Promises of educating the employees will not suffice.

One personnel solution that employers have found successful is to reduce the number of persons responsible for the alarm. This reduced the chance of error and upgraded the efficiency of those tasked with setting the alarm since they got more practice more often.

The bottom line, however, rests with the patrol services personnel who must be convinced that every mechanical and personnel flaw in a system has been corrected to bring it within the performance standards established under the ordinance.

This procedure has been effective in curtailing the use of inefficient alarms and weeds out those persons who refuse to or cannot comply with the rigorous standards. Virtually everyone working with the law feels it has been beneficial to the alarm situation in Pasadena. Subscribers, anxious to maintain their alarms, have pressured companies to provide better service and equipment and the responsible companies have enthusiastically responded with both.

An officer points out why the alarm at a savings and loan branch was tripped accidentally. The teller had placed a tape dispenser within easy reach . . . and also near the alarm button.

Since implementation of the ordinance, subscribers and company representatives have exhibited more interest in operating efficient alarm systems.

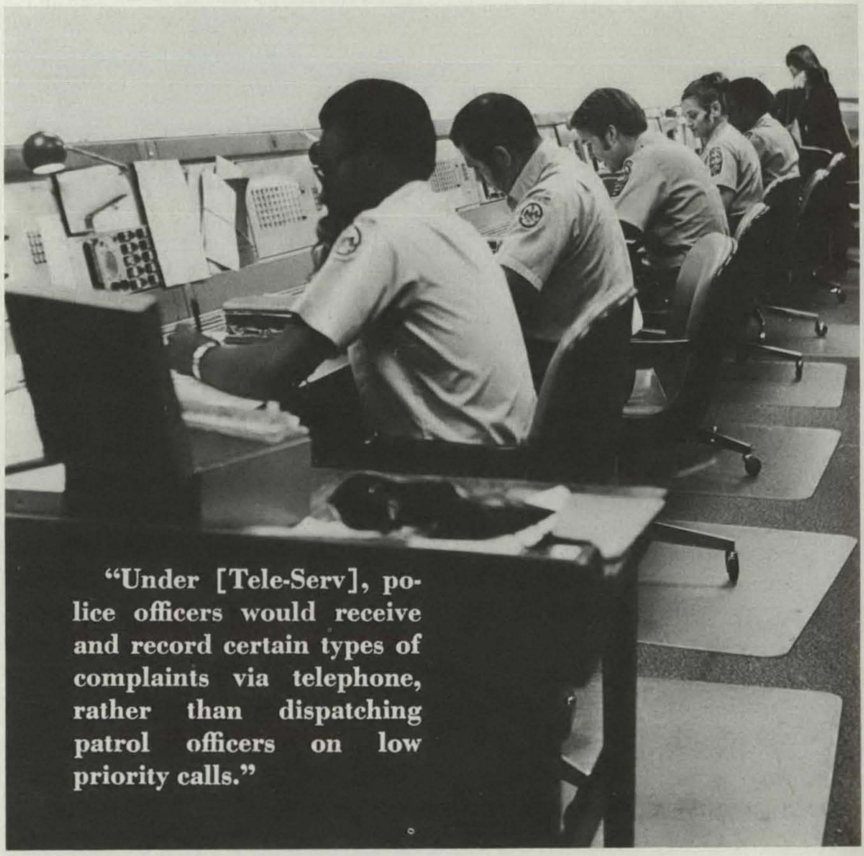
Owners, anxious to maintain a reasonable insurance premium now shop around for the best company to fulfill their alarm needs; these companies in turn demand better quality equipment in order to offer better service to their customers; and manufacturers have responded by providing better systems. In fact, one of the key elements to come out of the ordinance is the proof that three entities, working toward the same goal, can achieve successful and mutually beneficial results, even if the individual reasoning differs from entity to entity.

If a common denominator could be applied, it would be that it is good business to work within the ordinance—and this appeals to tax-conscious and inflation-weary citizens.

The department now enjoys a more efficient and professional attitude among its officers, resulting in more effective alarm responses.

There is one other issue directly linked to the ordinance—and perhaps it is the most critical element of all—the saving of lives. Every robbery and burglary potentially is lethal—to citizens and police officers alike. That is why "The Burglary and Robbery Alarm Permit Ordinance" is regarded as an invaluable life insurance policy and a vitally important adjunct to our law enforcement arsenal.

TELE-SERV



"Under [Tele-Serv], police officers would receive and record certain types of complaints via telephone, rather than dispatching patrol officers on low priority calls."

By

MAJ. CARROLL D. BURACKER

Assistant Chief of Police
Fairfax County Police Department
Fairfax, Va.

Can police managers increase services to the public at a lesser cost to the taxpayer? Most police administrators have wrestled with this question during the annual budget review. With the tax base of political subdivisions reaching the saturation point, police departments are beginning to feel the noose tighten around expenditures. While police administrators insist that they can provide better service to the public if they are provided with more personnel, local officials argue that the departments should increase the productivity of existing personnel. For the police chief, it sometimes seems like a "no-win" situation.

Fairfax County, Va., is no exception to the "budget crunch" problem. Although the county has one of the highest per capita incomes in the Nation, competition for the tax dollar is quite vigorous. Fairfax County is located in the Washington, D.C., metropolitan area, with a population of 550,000 spread over 400 square miles. The police department's service delivery area includes highly urbanized areas, bedroom communities, and rural farmland. To provide police service, the department has 657 sworn officers and 297 civilian personnel working from 7 district stations and an administration building.

From a historical viewpoint, the Fairfax County Police Department has attempted to engender a sound community relations atmosphere between the police and the public. When citizens requested a given service, notwithstanding its nature, police officers were normally dispatched to the citizen's home. The reasons for this policy were twofold: To create a direct contact between the officer and citizen since the rapid population expansion was causing less and less face-to-face communication; and to encourage officers to enter residential areas rather than limiting their patrols to business districts. During the 1950's and 1960's, this program served its purpose. However, with the advent of the 1970's, the budget crunch forced a critical appraisal of its utility.

Between 1940 and 1970, the population of Fairfax County increased by one-half million. Along with the population explosion, there was a dramatic increase in Part I crimes—murder, nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft. As calls for service escalated, the overall response time began to deteriorate to the point that complaints of lengthy delays were affecting the department's reputation within the community. For example, during fiscal year 1974, there were 130,339 calls for police service and 15,835 traffic accidents. A total of 22,651 Part I cases were reported that year.

Major Buracker

To reduce response time and provide more time for countermeasure activities, police commanders developed several proposals to restructure the quality and quantity of police service. The major suggestions included ending escorts and bank checks, reducing traffic safety programs, using more civilians and fewer sworn personnel in the planning and research section and the communications center, clearing certain types of cases through radio code without paper, weighing criminal cases for investigative purposes, and implementing Tele-Serv—taking reports by telephone. The department has adopted all of these programs, excluding a reduction in traffic safety programs. This is a report on the development and implementation of Tele-Serv.

A critical review of the department's service delivery program disclosed an inordinate time delay when responding to critical cases. While several studies have shown that citizens may accept a lengthy response time if they are told in advance to expect it, the department still wanted to maintain a patrol force of officers available for response to critical cases and more proactive involvement. The Tele-Serv program was viewed as a possible answer to this problem.

Under this program, police officers would receive and record certain types of complaints via telephone, rather than dispatching patrol officers on low priority calls. The overall goal—to increase the productivity of police officers in the field—had two major objectives: To reduce the caseload of patrol officers by 10 percent; and to provide additional time for patrol officers to concentrate their efforts on Part I crimes.

The greatest problem anticipated with the establishment of the Tele-Serv program was gaining acceptance by the citizens. Given a public accustomed to having a police officer at their doorstep on practically any call, the task of convincing the public that the program did not represent a service reduction was not to be taken lightly. Politically, the program would have to be sold to the county's governing body, the board of supervisors, and the county executive, the chief administrative officer.

A plan of action was developed by the chief and his staff: Establish guidelines, gain input from a representative group of personnel of all ranks, educate personnel on final proposals, present these proposals to the county administration for transmittal to the board of supervisors, appear before the board in public session, and educate the public through the media and 150 civic groups. A timetable was established for each phase.

The Tele-Serv program was initiated in August 1974. Once adopted, the procedures for implementing Tele-Serv were relatively simple. Calls for service that qualified for Tele-Serv were to be transferred from an incoming mode to one of three telephone positions staffed by police officers during the day and evening shifts.

Fairfax County has an integrated police, fire, and rescue communications center. Referred to as the Emergency Operations Center (EOC), it is staffed with 109 personnel: 27 police officers, 53 police civilians, 11 firefighters, 11 fire civilians, and 5 security guards. Pending implementation of the "911" concept (standardized emergency exchange), which is being delayed by the fact that boundaries of telephone exchanges in the northern Virginia dialing area do not match jurisdictional boundaries, the unified EOC at least makes it possible for citizens of Fairfax County to call a single number for police, fire, or emergency rescue service. One of our major objectives has been to utilize civilians mostly in the Emergency Operations Center. Thus far, civilians ("nonsworn" personnel) have been integrated into the center with a high degree of success. Our intent is to maintain police presence in the center, but at a reduced level.

When complaints or calls for service are received in the EOC, police or fire personnel may receive the call before transmittal to the affected dispatcher. When the Tele-Serv program was being planned, it was felt that the public would more readily accept the program if police officers received the calls rather than civilian or fire personnel. If Tele-Serv officers were busy with other complaints, the complainant's name, address, and telephone number were recorded on a communications card for transmittal to a Tele-Serv officer, who would return the call. The date, time of call, and nature of call were also recorded on the card for later analysis of time delays and reported case versus actual case; i.e., reported robbery but found to be a burglary.

During the initial conversation with the complainant, the Tele-Serv program was to be explained to the citizen. When told that an officer could receive certain types of reported offenses via telephone, the citizen's attitude played a key role in further processing. If, for example, the complainant expressed a desire to see an officer in person, regardless of the case, an officer was to be dispatched. Initial reaction, and one that still exists today, is *acceptance* of reporting certain kinds of calls via telephone. There are instances when the complainant wants to see an officer, especially in stolen car cases; in such cases officers are dispatched.

Prior to the assignment of individual officers selected for this duty, a special training session was developed. The officers were apprised of the various kinds of cases selected for Tele-Serv. (See Table A.) If a Tele-Serv officer is in the process of recording a report and the citizen changes his mind, an officer is dispatched. Moreover, an officer is to be dispatched on Tele-Serv categories if any of the following conditions exists:

1. The offense is in progress;
2. The offender is on the scene, or the probability exists that an immediate apprehension can be made if a field unit is dispatched;
3. The offense to be reported is an integral part of, or is in combination with, other offenses which are not reportable via Tele-Serv; and
4. The EOC operator believes that the facts, as related by the caller, warrant the dispatch of a field unit.

During its first year of operation, the Tele-Serv program in Fairfax County processed 13,192 cases or 10.5 percent of the department's total workload, excluding traffic accidents and warrants. During the year, there were 4,954 cases of petty larceny processed by Tele-Serv and 3,893 cases of vandalism. By tracking the Tele-Serv cases for the first year, the

Col. Richard A. King
Chief of Police

department found that 17 minutes were required to process a Tele-Serv case as contrasted to 28.5 minutes by officers in the field processing similar cases. This time difference alone allowed for 2,528 man-hours. Of course, by not dispatching officers to these offenses, officers were available for assignment to more critical calls for service on a more frequent basis. The man-hours saved in this respect are not quantifiable at this time.

What is the department doing with the officers' additional time? The most advantageous facet of this program has been to allow the department to move from a reactive to a more proactive status. Officers have more time for followup in critical cases. Of equal importance is the fact that public confidence and support of the police department has not diminished in any measurable way. The additional time that officers have to conduct more thorough preliminary reports has, in some respects, effected the "weighing" of criminal cases for possible followup. The clearance rate for Part I crimes has risen considerably. (However, the higher clearance rate is attributed to several programs, not Tele-Serv alone.)

It is easy to categorize a program such as Tele-Serv as a bed of roses, but police managers recognize that there can be negative overtones to innovative programs. Thus far, it has been difficult to measure the overall public attitude toward the program. In a time when the public is burdened by higher and higher taxes, citizens may view such a program as an example of indifference by the police—the most visible public service agency. This feeling of indifference can flow over to other public services. Conducting business over the telephone can be very impersonal; therefore, public relations may suffer somewhat. In a time when more positive officer-citizen contacts are required to engender public cooperation in crime prevention/suppression, such programs must be weighed very carefully before implementation.

Without close scrutiny of a Tele-Serv operation in a large department by a central entity, the complaints processed via Tele-Serv may not be matched/merged with similar cases in the community. What may begin as one case of vandalism or petty larceny can become quite aggravated when several cases are merged together. One vandal, for example, could be responsible for multiple offenses. Hence, countermeasures may not be instituted to deal with the vandal if the department neglects to review and correlate these cases.

Recognizing that officers like to be near the action, residential patrol may be reduced without positive programs to place officers in these communities. As it is, officers have a tendency to focus their patrol activities upon major arteries or business districts. When residential burglaries are the major problem in a community, specific efforts must be directed to establish police presence in the community. Prior to the installation of the Tele-Serv program, officers were dispatched to points inside residential subdivisions. Now, however, there is less direct dispatching of officers to these communities. One way to avoid this potential problem is to require an officer's presence in a residential community at least "x" times per tour of duty. This issue, of course, surfaces the discussion of visibility versus deterrence. The homeowner and the housewife, like it or not, want to see a visible symbol of protection now and then within the community. One of law enforcement's objectives is to cause citizens to feel secure in their homes.

Whether or not such a program is acceptable in all communities cannot be answered here. Variations of this program are in effect in several cities. Of particular importance to this program is the social and economic status of residents in Fairfax County. Most residents have insurance of some kind to afford protection against loss or damage. Preprogram analysis indicated that many citizens reported the offense only for insurance purposes without any desire of having a police officer at their home. Actually, some citizens preferred that officers not respond in order to avoid "inquisitive-

TABLE A

OFFENSE/COMPLAINT CATEGORIES ELIGIBLE FOR TELE-SERV

1. Grand Larceny (three types):
   a. Auto parts or accessories
   b. Grand larceny from a vehicle (not subsequent to auto theft)
   c. Theft of a bicycle.
2. All Petty Larceny except:
   a. Shoplifting
   b. Pursesnatching
   c. Larceny after trust.
3. Telephone Violations
   Incidents of harassing or annoying phone calls directed at the complainant. (Does not include bomb threats or threats to do bodily harm.)
4. Property Damage
   All types *except* damage resulting from an auto accident or those which involve extensive damage to private property. (Damage to government-owned property will require the dispatch of an officer.)
5. Tampering with a Vehicle
   All cases unless the incident is in progress or suspects are in the vicinity.
6. Lost Property
   All cases unless some unusual circumstances dictate the need to dispatch an officer.
7. Found Property
   All cases unless the property reported found involves:
   a. Firearms
   b. Explosive devices
   c. Drugs
   d. Potential evidence related to a crime
   e. Other sensitive items which, in the discretion of the Tele-Serv operator, require response by a field unit.
8. Vandalism
   All vandalism except those involving extensive or widespread damage to property, or cases in which the incident is still in progress or suspects are in the vicinity.
9. Traffic Complaints
   Includes drag racing, speeding, etc., unless the incident requires the immediate attention of a field unit.
10. Auto Theft

TELE-SERV WORKLOAD

[Aug. 1, 1974 to July 31, 1975]

	Total cases	Cases processed by Tele-Serv	Percent
All offense categories	125, 054 [1]	13, 192	10. 5
Tele-Serv categories	35, 198	12, 523 [2]	35. 6

TELE-SERV WORKLOAD BY TYPE OF OFFENSE

Category [3]	Actual number of cases reported	Cases processed by Tele-Serv	Percent [4]
Grand larceny	3, 274	1, 647	50. 3
Petty larceny	10, 564	4, 954	46. 9
Auto theft [5]	2, 172	584	26. 9
Vandalism	11, 066	3, 893	35. 2
Property damage	493	12	2. 4
Tampering	542	109	20. 1
Telephone violations	1, 044	407	39. 0
Traffic complaints	3, 339	41	1. 2
Lost property	537	296	55. 1
Found property	2, 167	580	26. 8
Totals	35, 198	12, 523	35. 6

[1] Excludes responding to traffic accidents and serving warrants.

[2] The difference between this and the total handled by Tele-Serv is 669 cases, or 5.1 pct. of the Tele-Serv workload. These were cases that were not in the originally designated categories, but were handled through Tele-Serv at the discretion of the Tele-Serv operator.

[3] As defined for Tele-Serv, see table A.

[4] Represents the percentage across does not total down.

[5] Represents only 6 mo. experience with Tele-Serv.

ness from neighbors."

In communities with less affluence, there may be more emphasis on an officer's visible presence at the scene of the offense. If insurance doesn't cover the loss, the owner expects the police to recover the property. Police administrators recognize that the officer's presence at the scene of certain calls for service has limited investigative value. Yet, the citizen, in some respects, may feel more secure if he has an officer to talk with personally. On minor cases, a canvass of the neighborhood may indeed turn up leads. While a program such as Tele-Serv can be advantageous to a police department, the inevitable question is: Does the department have the personnel or resources to investigate thoroughly every offense or call for service?

Thus far, the Fairfax County Police Department is quite pleased with the Tele-Serv program. The two major objectives have been realized, and the overall goal to increase productivity of patrol officers has been achieved. This program will be evaluated annually. As with any program, Tele-Serv cannot be filed away to become another traditional police practice. As change agents, police administrators must remain flexible in their view of service delivery, bold enough to try something new, and courageous enough to say that a specific program is or is not working. Tomorrow Tele-Serv may not be necessary.

Advantages of a Viable Police Cadet Program

Cadet is introduced to the communications center.

By
WILBUR E. STAFFORD
Chief of Police
Jacksonville, Ill.

During the late 1960's and early 1970's, the Jacksonville Police Department was experiencing problems with recruiting sworn personnel and maintaining a favorable image with local college students and young people in the community. Correcting these two problem areas was given a high priority by command personnel of the department.

At that time the Jacksonville Police Department consisted of 29 persons; i.e., 23 sworn police officers, three dispatchers, one secretary, and two meter maids. Assignment of personnel was as follows: The day shift consisted of the chief of police, two detectives, six sworn officers, one dispatcher, one secretary, and two meter maids; the afternoon and evening shifts each consisted of seven sworn officers and one dispatcher. Dispatchers worked a 5-day week and were relieved when sick, for holidays, vacations, and/or regular days off by sworn officers. This further reduced the number of officers available for street duty. Sworn members of the department also worked a 5-day week and received compensatory time for any overtime worked. Thus, it was not uncommon to find only two sworn officers on duty to answer calls on the evening and night shifts.

Among the several programs considered at that time a police cadet program with college students seemed to most nearly meet our needs. The city could draw from students at two local colleges.

Several factors favored a cadet program with college students. Financial considerations were important. Part-time employees are available when needed and are paid primarily for the special purpose or time needed. Thus, costs would be easier to adjust within budget constraints. Also, students are available during periods of greatest need; e.g., to work as dispatchers on weekends and/or evenings. They are also available during the summer, the time regular employees prefer to take their vacations and compensatory time.

In the late 1960's and early 1970's, a major consideration was also establishing some favorable rapport and visibility on the college campuses. Further, the age for becoming a police officer was 21, the approximate age a college student would enter the job market. In addition, the Jacksonville Police Department wanted a positive recruitment program of young people. It seemed reasonable then, to aim the program at ultimately obtaining college graduates as sworn members of the department. If we later recruited a cadet as a member of the department, his department-wide training as a cadet would contribute to making him/her a better police officer.

Cadet operating the radio while on patrol with a sworn member of the departme

Ten college students responded to the initial advertisement for cadets. Two of these applicants were female. Upon receiving applications from the two females, it was decided that this would be an excellent opportunity to see if a female officer would be beneficial to the department. The female applicants and department officials agreed that female cadets would not be assigned to patrol; however, they would be assigned to work with female juveniles.

The applicants were interviewed

"Considering that cadets free a minimum of six sworn officer man-days per week just in communications, Jacksonville more than realizes the cost of the program by being able to return these officers to the street."

Chief of Police Wilbur E. Stafford

and the following rules were established:

- —Remaining in school and obtaining a B.A. or B.S. degree would be the cadet's goal, although the Illinois Law Enforcement Commission required only an associate degree.
- —If for any reason they left school prior to obtaining a B.A. or B.S., they would be dropped from the program.
- —A background investigation would be conducted similar to that conducted on police officer applicants.
- —Schooling would come first; should they have a test or other need to be off they would be given the necessary time off.
- —Local students would be given preference as they would be more likely to later join the department.
- —At that time minimum height requirements, etc., for police officers also applied to cadet applicants.

Four cadets were employed from this initial list of 10 applicants—3 males, and 1 female. Of these, the female dropped from the program after a couple of years and married, two of the male cadets joined the department after graduation, and the fourth male cadet entered law enforcement in another State. Of the two cadets who joined the department, one continued his education and obtained a master's degree. He left the department after 3 years to work for a regional office doing criminal justice planning. One of the original four cadets remains as a member of this department.

Operation

The program has remained relatively the same since its inception and implementation. Cadets are presently paid $3.25 per hour, are furnished uniforms, and receive a meal allowance when they work the night shift. Jacksonville's personnel policy gives nonsworn members of the department holidays off. As part-time employees, cadets are paid double time when they work on holidays.

The regular assignment for cadets during the school year is relief of the telephone/radio dispatchers. The three regular shifts of the patrol unit rotate every 28 days. Full-time dispatchers are assigned to a shift and rotate with the shift. Scheduling for the cadets gives them one of every four weekends off. With this schedule cadets work an average of at least 16 hours per week during the school year. Within limits they are permitted to work as many additional hours as they feel they can handle. These extra hours normally are worked during school holidays, such as at Christmas and during spring vacation. During the summer months, each of the four cadets works a 40-hour week and is assigned according to the needs of the department. However, there is ample time for the cadets to obtain departmentwide experience in areas of their preference.

Among the areas to which the cadets are routinely assigned is the investigative section, having the responsibility for followup on unsolved crimes and consisting of four detectives and a secretary. The photoprocessing darkroom and evidence laboratory are within this unit. Cadets now do most of the darkroom work since this is usually something that can be done at any time. In addition, cadets assist in processing evidence, filing investigative records, and accompanying detectives on investigations.

With the rapidly growing volume of records and files confronting the police department today, cadets necessarily find themselves spending a large share of their time in records doing filing. They work in all areas of records, particularly to reduce or eliminate any backlog which occurs.

The favorite assignment of all cadets is patrol. Cadets are now assigned throughout the department without regard to sex. No reluctance has been voiced by the officers on having a female cadet assigned them on patrol. This may be due in part to the alternative the officer has of riding by himself, but from comments it appears to be due to the female cadets having proven themselves to be 100 percent able and willing to help when needed.

Since implementation of the program the Jacksonville Police Department has employed four cadets with B.A. or B.S. degrees as officers, but still does not have a female police officer. The first female dropped from the program to get married and a second female cadet completed the program, but because of the lack of vacancies in the department was not offered employment until several months after graduation. By that time she had obtained other employment. The Jacksonville Board of Fire and Police Commissioners contracts with a nonprofit corporation for entrance and promotional examinations to insure the tests are validated and nondiscriminatory. Only the one female cadet to date has passed the tests. Thus, there are no female officers now in the Jacksonville Police Department, and as part of a self-imposed affirmative action program to obtain female officers, the department now employs two male and two female cadets.

Cadet working in the darkroom.

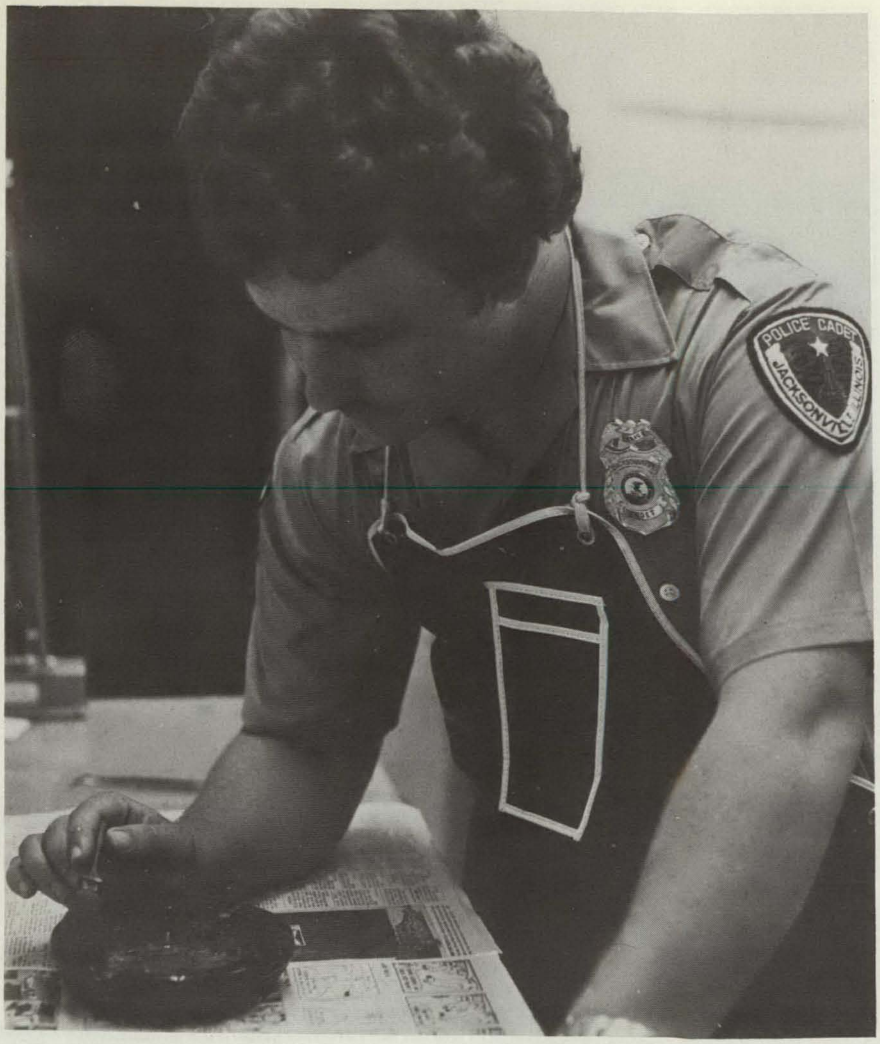
As the need arises the department seeks to employ new cadets after they have completed their first year of college. This allows a consideration of their ability to do college work and provides the probability they will be in the training program as a cadet for about 3 years. Cadets must pass the merit board exam and place in the top three according to overall score. The merit board does allow cadets with 2 years' experience an extra five points in computing the cadets overall score.

Evaluation

Costs of the program to the city for four cadets, each working approximately 1,100 hours per year, is slightly less than the salary for one patrolman with 5 years' seniority. Considering that cadets free a minimum of six sworn officer man-days per week just in communications, Jacksonville more than realizes the cost of the program by being able to return these officers to the street.

Areas the cadets are used in as relief are not confined to the telephone/dispatch center. Cadets fill in during the absence of the secretaries during periods they are on vacation or illness and fill in for the civic hostesses who handle parking enforcement as necessary.

Today the Jacksonville Police Department consists of 36 sworn police officers, 3 dispatchers, 4 secretaries, 2 civic hostesses (who enforce 2-hour parking restrictions), 1 animal control warden, 4 cadets (part time), and 7 school crossing guards (part time). Although the department has grown since 1970 when the program was implemented, cadets are still considered valuable members of the department and other programs would be reduced or eliminated if necessary to retain the cadet program. An outside evaluation of the cadet program after it had been in operation 16 months reported a consensus of the sworn officers that the department had received tremendous benefits from the cadet program. The benefits cited included: Putting



Cadet dusting an ashtray for fingerprints.

more officers on the street, especially relieving younger officers from dispatching; bettering relations with teenagers of the town and college students in the area; recruiting one highly qualified officer; relieving backlogs in the records department; creating added interest in police work; and improved attitudes concerning college education and increasing awareness of student problems. One officer stated: "I think we would only have to lose them to realize how much we benefited from having them."

The improved morale of the department is one of the most beneficial assets of this program. Formerly, patrolmen were assigned to relieve the dispatchers and to aid those in the records division. Patrolmen tend to consider communications and records as nonpolice work; consequently, they prefer to be "on the street." A happy policeman is a more effective officer because his attitude and actions will tend to be less offensive to members of the public. Furthermore, young officers obtain more experience by being "on the street" than being at the dispatcher's desk. Thus, many of the young officers are more satisfied with their job as a result of the cadet program.

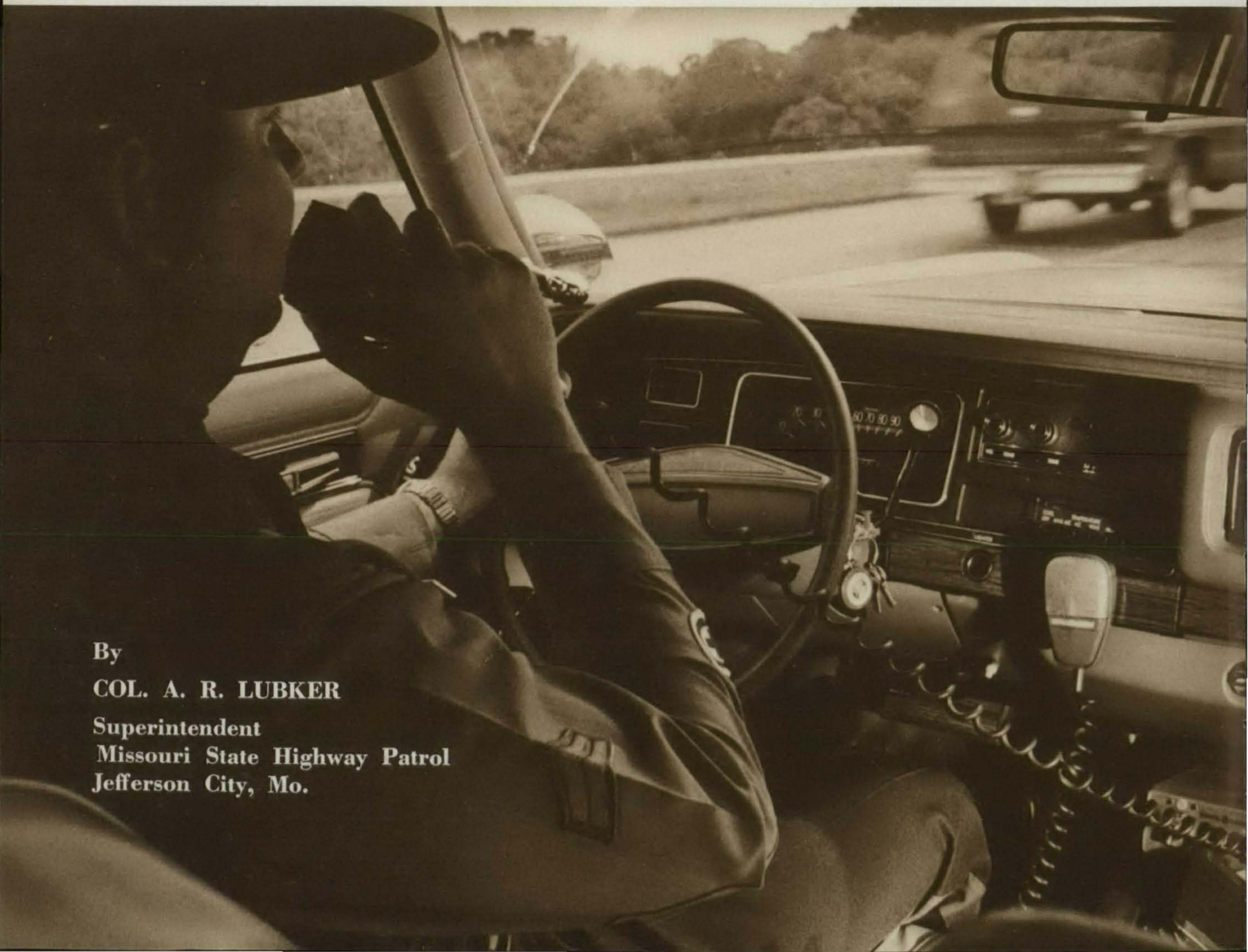
The feelings of the cadets and the noncadets indicated that the cadet program is valuable and should be maintained. Both groups cited the benefits of more officers on the street and relief for dispatchers, but the majority overlooked the advantage of recruitment. The funds needed for this program could purchase the services of two dispatchers or $1\frac{1}{4}$ beginning patrolmen; however, the recruitment advantages cannot be evaluated on a monetary basis. The quality of the department will be increased if recruits continue to come from the ranks of cadets. From this law enforcement exposure cadets should have a better understanding of situations and ultimately make better decisions. Since the beginning of the cadet program, one of the cadets was promoted to patrolman and it is generally felt that he has the potential of making an excellent officer. According to his own statement, he probably would not have applied to become a police officer if he had not had the cadet experience.

An evaluation of the program by an outside expert noted that cadets should have received a longer, more formal indoctrination. The recommendation was that the cadet experience should begin with a formal classroom experience of at least 20 hours to include the following: Organization of the police department; philosophy of the department; purposes and duties of each division in the department; role of the cadet; training in communications; techniques of counseling or working with juveniles; operation of the criminal justice system (courts, probation, police, etc.); functions of law enforcement in a community; rights and duties of a law enforcement officer and of a citizen; and crime prevention projects and methods.

The experience of the Jacksonville Police Department with the cadet program has been good. Those small departments now considering the addition of sworn or nonsworn personnel may wish to consider the alternative of establishing a cadet program.

"Cooperation Through Communication"

The CB Radio Pla



By

COL. A. R. LUBKER

Superintendent
Missouri State Highway Patrol
Jefferson City, Mo.

n Missouri

A call for help on citizens' band (CB) radio channel 9: A young lady entered the restroom at a rest area on Interstate 29. She was accosted by a man who pointed a gun at her and tried to remove some of her clothing. Her screams scared the assailant out of the building and she ran to a public phone, but was prevented from using it by her attacker. The young woman then ran to a parked tractor-trailer, and the truckdriver used his CB radio to contact two highway patrolmen in the area. The gunman fled from the rest area in his car and was followed by a motorist who had overheard the CB traffic. This motorist kept the officers informed of the suspect's location until they were able to take him into custody.

The ability to communicate has been a basic need for man since the beginning of civilization. Much time and money has been spent on developing ways by which thoughts could be exchanged, and the advancement of civilization has necessitated an expansion of communication facilities. One missing link has been effective communication for the millions of motorists who travel the Nation's highways.

Although huge sums of money have been spent on experimental projects in attempts to solve the problem, none was found to be practical or economically feasible. An answer began to appear in the surge of popularity of CB radios.

One of the first law enforcement administrators to recognize the worth of CB radios in establishing a line of contact between motorists and police services was Col. S. S. Smith, who retired as superintendent of the Missouri State Highway Patrol in January 1977. He envisioned their use by law enforcement as a low-cost approach to motorist aid with a multitude of side benefits.

The idea was not entirely new. Ohio and Detroit, Mich., had been experimenting with CB's for sometime, but this had been confined mostly to base station reception of calls from motorists needing assistance.

The novelty in Colonel Smith's proposal was the concept of placing a CB transceiver in each of 800 patrol cars, as well as base stations in each of the nine troop headquarters and in several other strategic locations throughout the State. He felt that this system, with the cooperation of REACT (Radio Emergency Associated Citizens Teams) and other CB "watch teams," would enable Missouri motorists to reach law enforcement from any point in the State at almost any time.

The idea of using citizens' band assistance was prompted, in part, by the presence of a problem which is common to most State police and highway patrol organizations: large areas to patrol with relatively small numbers of officers. The Missouri State Highway Patrol is required by State statute to police the 32,000 miles of State-maintained highways in Missouri and to investigate accidents on most of the additional 69,000 miles of county roads. It is virtually impossible to adequately patrol this vast network of highways with an authorized strength of 800 commissioned officers. About 70 percent of the full patrol complement is available for road duty, and after division into shifts and allowance for time off, the number of cars on road duty at any one time is small. It is not uncommon for one trooper to be responsible for one-half of a county, and there are a few sparsely populated areas in which

"When the use of CB radios by the police is kept in its proper perspective, improved police-community relations become a distinct possibility."

Col. A. R. Lubker

one officer must patrol the roads of an entire county.

Naturally, a shortage of manpower can have an adverse effect on response time, critical in answering many requests for police services. It is obvious that where only one or two officers are patrolling an entire county, an officer may have to travel a considerable distance to answer a call. The problem was compounded by the inability of the highway patrol to communicate quickly with nonpolice personnel on a statewide basis. Citizens and motorists had to rely on the telephone to call the patrol, and in rural areas, motorists often had to drive several miles to find a phone. It was felt that precious minutes could be shaved from response time, and perhaps lives could be saved, by establishing a CB network between citizens and the patrol.

Experimentation to check Colonel Smith's theories began early in 1974. A limited number of CB transceivers installed in Missouri State Highway Patrol cars produced favorable results, which led to the development of a plan titled "Cooperation Through Communication." The plan, which reflected an indepth study of the potential for improved public safety by this medium, was completed in June 1974 and was submitted to the National Highway Traffic Safety Administration with a proposal for Federal funding of the project.

In September 1974, an order was issued which allowed officers to install CB units in patrol cars at their own expense. Thus, the project got its start when about 30 troopers purchased CB radios and began submitting informal reports regarding their radio contacts with other CB'ers. By the end of the year, the number of CB radios in patrol cars had increased to nearly 100, and 478 reports describing CB contacts had been received from officers in the field and from one base station located at the patrol's Troop I Headquarters.

The first few pioneers were received enthusiastically by motorists whose vehicles were equipped with CB's. As the word was passed along that "Smokey has ears," motorists began to request services and report violations. An example of the interest shown by the public was one instance in which a lady became exasperated when she was unable to contact a local trooper by CB to report an intoxicated driver she was following. On learning that the trooper did not have a CB radio because he felt he could not afford it, she immediately loaned him one to use until the State could provide the units.

The overall success of this small-scale operation left little doubt about the advisability of broadening the program to include all the department's patrol cars. A request for funding was made to the Missouri Division of Highway Safety, and $175,000 was subsequently allocated for implementation of the project. After the appropriate bid-letting procedures were carried out, purchases were made of 850 mobile units and 60 base stations, and the equipment was installed in July 1975.

"Cooperation Through Communication" became a reality on August 1, 1975, when the keeping of official records of the statewide project began. Special reporting forms to be used in the collection of data were distributed to the officers. Figures from these field reports and the base station logs were summarized monthly by each troop and submitted to general headquarters for a State summary.

Various publicity methods were utilized to make the public aware of the patrol's CB capabilities. Throughout the State, 250 outdoor billboards advertised the patrol CB program. Bumper stickers on the rear of each patrol car announced that the patrol monitors channel 9 and that the patrol CB call sign is KMO–0911. The monthly summaries of CB contacts, along with news releases prepared by the patrol, were quoted widely on radio and television stations and in the newspapers. Attracted by the novelty and the results of the program, a number of magazines published feature articles on the use of CB radios by the Missouri State Highway Patrol.

During the first month of operation, officers recorded 8,443 CB radio contacts in which violations or dangerous conditions were reported, or requests were made for some kind of assistance.

In answering these calls, troopers were able to make 2,225 arrests and to render service in 4,619 instances in which assistance had been requested.

Under the category "Violations Reported," there were 1,835 CB radio contacts. Violations of traffic laws, including 525 reports of drunk drivers, were the subject of 1,701 of these calls, while 134 of the reports involved criminal violations. The 30 felony matters reported resulted in 12 arrests, and 12 other reports were referred to other departments for reasons of jurisdiction.

"[T]his system, with the cooperation of REACT . . . and other CB 'watch teams,' would enable Missouri motorists to reach law enforcement from any point in the State at almost any time."

Billboards advertise the patrol's CB program.

The project showed its real strength in the area for which it was originally designed: service to the public. CB calls of that nature totaled 6,608, with the greatest number, 1,540, of requests for assistance to stranded motorists. Of the 1,002 accidents reported by CB operators, 534 were handled by the patrol, and 282 were investigated by other departments. In many of those worked by the patrol, response time was shortened considerably because of timely notification. In fact, a study of that facet of CB use showed that officers arrived at accident scenes on the average of 6 minutes earlier when the incident was reported by CB radio as opposed to notification by other methods.

Excellent cooperation was demonstrated by citizens with CB equipment. The subjects of their CB contacts ranged from weather reports to information leading to the apprehension of a murderer.

A CB radio tip from a trucker resulted in the arrest and confiscation of 48 pounds of marihuana. It all began when a trooper turned on his flashing red lights to stop a car. The truckdriver advised the officer via CB that the red lights had caused suspicious actions by two men who had been changing a tire on another car parked nearby. They had hurriedly removed two large bags from the car and dragged them into some weeds. The officer was able to find the bags, full of marihuana, and take one of the men into custody.

One justifiable fear motorists have is that they will meet a vehicle being driven on the wrong side of the road. A truckdriver who experienced that situation lost no time in reporting the incident by CB radio to an officer. He also voiced suspicion that the wrong-way driver was drunk. Immediately

"[O]fficers arrived at accident scenes on the average of 6 minutes earlier when the incident was reported by CB radio, as opposed to notification by other methods."

after that call, the officer received numerous other reports advising of the progress of the errant driver. The officer was able to stop the vehicle within 3 miles from the point at which it was first reported, and breath-test results of 0.35 percent confirmed the truckdriver's suspicion.

Even citizen "Smokey" reports can serve a useful purpose. A patrol officer was parked on the shoulder observing traffic when a motorist from Kansas pulled over in front of the officer. He was suffering from some kind of attack, and the trooper quickly took him to a hospital. The man said he located the officer by listening to Smokey reports, and he know "Old Smokey" would help him.

A local truckdriver stopped to help a stranger load a motorcycle onto a pickup truck. As the stranger thanked him and started to drive away, the trucker realized that the motorcycle resembled very closely one owned by his brother-in-law, who lived nearby. Quick use of the CB radio brought a trooper to the scene and resulted in recovery of the motorcycle and the stolen pickup truck used by the stranger.

First aid training dictates that quick access to medical attention is the best recourse in handling heart attack victims. CB radio has helped bring this about in several cases. In one incident, a truckdriver made CB notification to an officer that a man was lying in the grass near a truck parked on the shoulder. The trooper was at the scene in about 3 minutes and found the man suffering from a heart attack. Just before the officer arrived, another truckdriver, whose vehicle was not equipped with CB, had stopped and run to a nearby house to call the patrol. The officer had called an ambulance and had been attending the victim for 5 minutes before the telephone call by the other trucker was received at patrol headquarters.

One trooper stationed in St. Louis County received a CB radio call from a local resident who reported he was in his car following a young man who had broken into his garage. Three officers responded from different directions, apprehended the young man, and returned him to the scene of the crime, where the complainant's wife made positive identification of him. He was turned over to the St. Louis County policeman who was taking a report of the crime—attempted theft of a CB radio!

Perhaps the most poignant matter uncovered with help from CB'ers started as a simple report of a suspected drunk driver. A REACT base station operator relayed a CB message to a troop headquarters from a motorist about a driver who appeared to be intoxicated. A trooper stopped the vehicle and found the driver had in his possession three loaded guns, a large amount of cash, and two dogs, which he said belonged to his grandparents. On questioning about the items, the 18-year-old driver finally admitted that he had just killed his grandparents. Officers found the grandparents—each had been shot in the head with a .22-caliber rifle.

Aid to motorists, the essence of

Backdoor Trooper

As I came on duty, I turned on my CB and immediately heard a "Break 19 for road information." I advised the CB'er to go ahead. He said he needed to find Arkansas Route 201 to Mountain Home. After he gave his 10–20, I directed him to the route he was looking for. He said he sure appreciated the information because, "Those Smokeys were holding a spot check on Route S and he had to get back to Mountain Home by going around them." I inquired as to why he had to avoid the Smokeys, and he stated he had been to the State line to get "some things." (Since Baxter County is "dry," it was not difficult to figure out what "some things" were.) By asking his 10–20, I learned that I was just a mile behind him. "10–4," I said. "I must be running your back door. What kind of car are you driving?" I headed east, got behind his car, and advised him to turn right on Route J which would become Arkansas 201 at the State line. He radioed, "10–4, good buddy. Thanks for your help." I then told him to look in his rearview mirror as I turned on my red lights. After the stop, I discovered the driver was suspended. He pleaded guilty to driving while suspended and was fined $100 plus costs, saying ruefully, "You just never know who is at your back door."

Trooper L. A. DAUGHERTY,
Missouri Highway Patrol.

"Aid to motorists, the essence of the program, has consistently been the subject of most of the CB calls."

the program, has consistently been the subject of most of the CB calls. Although not as dramatic, the service requests are as important as other categories of the project. The highway patrol was able to successfully fulfill 85,507 requests for assistance in 22 months of operation.

In the same period, officers recorded 164,906 CB radio contacts. Included in that total were 27,355 violation reports, 40,088 reports of dangerous conditions, and 97,463 requests for assistance. Some of the specific items reported included: 19,508 accidents, 28,709 stranded motorists, 492 felony crimes, 10,121 suspected drunk drivers, and 1,280 wrong-way drivers.

The number of positive responses to those reports and requests is impressive. As the direct result of cooperative efforts between CB'ers and patrol officers, in addition to the 85,507 answered requests for assistance, appropriate action was taken in 23,326 instances of dangerous conditions, and 7,254 arrests were made because of violations reported via CB. In addition, 8,083 warnings were issued in circumstances were an arrest would not have served any purpose. Some 185 felony arrests were made possible by CB reports. Also, charges were made against 2,600 drunk drivers and 173 wrong-way drivers.

Evaluation of the dispositions recorded for the CB reports and requests received reveals that 70 percent of them were disposed of by accomplishment of the action required. Another 8 percent were referred to other police agencies in jurisdictions where the reported matters were located.

The 13 percent of the items reported which were shown as "not located" does not necessarily indicate false calls. Many of the violators reported were undoubtedly able to escape detection, especially in the metropolitan areas, and a considerable number of motorists reported as needing assistance were probably able to correct their problems before an officer could respond.

The program has not been expensive when weighed against the results. Based on the initial outlay of $150,000, each arrest, warning, or service rendered cost $1.25 during the 22-month period. It is expected that the original CB equipment will last, without expense for replacement units, for 8 years. By that time, the cost per enforcement action or service rendered, at the present rate of calls, is predicted to be about 28 cents.

The success of a CB program undertaken by a law enforcement agency depends heavily upon that agency's attitude toward CB radio and toward the other users of the facility. It should be kept in mind that the frequencies reserved for this method of communication are devoted to citizens' use and that police organizations should use those CB channels only as a means to serve the citizens. Other benefits, such as enforcement action, will come as a natural sequel to that central idea.

Policies written by the patrol to establish the objectives of, and the rules for, the use of CB by its officers follow the theme of public service and are designed to promote public cooperation. Officers are directed to answer CB calls quickly and courteously. Nonemergency calls received on channel 9 are to be terminated as promptly and tactfully as possible. Patrol members are strictly forbidden to retaliate in any way against a person who uses the CB radio to report officers' locations or activities. And, in keeping with FCC regulations, no false or deceptive information shall be transmitted, nor shall patrol members entice any person to commit an unlawful act.

When the use of CB radios by the police is kept in its proper perspective, improved police-community relations become a distinct possibility. Removal of the beat patrolman in municipal departments may have weakened personal relationships with the public, but State police organizations have always been confronted with this lack of personal relationship problem. A trooper committed to patrolling large areas has little time to establish a working rapport with the public. Citizens' band communication makes it easy for motorists to voice their needs for assistance, report violations, and to simply exchange a friendly greeting with an officer.

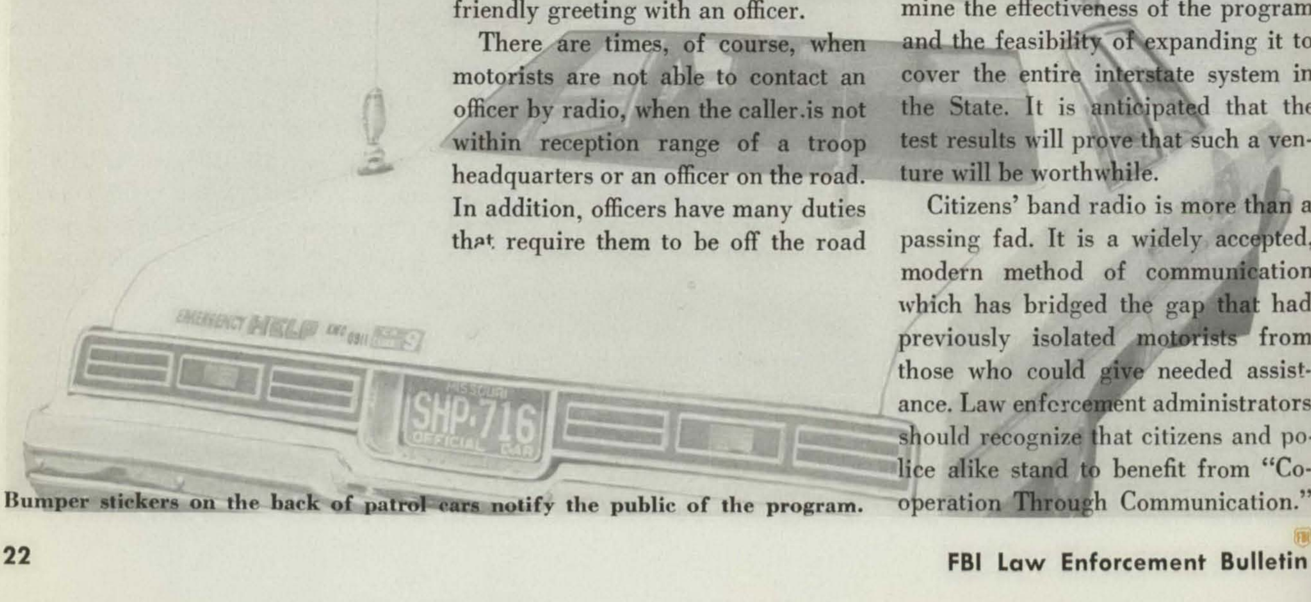
There are times, of course, when motorists are not able to contact an officer by radio, when the caller is not within reception range of a troop headquarters or an officer on the road. In addition, officers have many duties that require them to be off the road and out of their cars. This problem is rectified to some extent by other CB'ers who relay the caller's message to the proper authorities. Teams of volunteers, such as REACT and other CB watch team organizations who monitor channel 9, have been a great help by relaying CB reports from motorists to the patrol.

A new pilot project aimed at providing better CB coverage was implemented by the Missouri State Highway Patrol on July 1, 1977. The experimental program called CARS (Citizens' Aid Radio System) consists of three base stations, set to monitor channel 9, located along Interstate 70 in the central section of the State. The radios are housed in highway department buildings and are spaced along the highway at intervals of about 15 miles. The range of reception extends about 37 miles in length and 5 miles in width. Each unit is connected to the Troop F Headquarters in Jefferson City by a dedicated telephone line.

Motorists in the experimental area can be assured of being able to contact the patrol at all times. If no patrol officer is within CB reception distance, the call is received at troop headquarters, where radio operators monitor the system 24 hours per day.

Experimentation with the system will be continued at least 6 months. Statistics are being gathered to determine the effectiveness of the program and the feasibility of expanding it to cover the entire interstate system in the State. It is anticipated that the test results will prove that such a venture will be worthwhile.

Citizens' band radio is more than a passing fad. It is a widely accepted, modern method of communication which has bridged the gap that had previously isolated motorists from those who could give needed assistance. Law enforcement administrators should recognize that citizens and police alike stand to benefit from "Cooperation Through Communication."



Bumper stickers on the back of patrol cars notify the public of the program.

Letter of Appreciation Program

By
DET. NEAL TRAUTMAN
Police Department
Winter Park, Fla.

All within the criminal justice system face the common problem of lack of cooperation or apathy of the general public toward law enforcement and the judicial system, particularly as witnesses. It is not difficult to understand a citizen's attitude. The witness in a criminal trial often is ignorant as to what is expected of him or how he should conduct himself during the judicial procedure. Many times, he must wait for hours, or sometimes days, for a procedure he doesn't understand, and in most cases, receives little monetary compensation for lost wages and inconvenience.

As the case comes to an end, the witness sometimes faces a frustration all police officers know well. The defendant has been released as a result of a suppression hearing, insufficient evidence, or a "not guilty" verdict. Whether the accused goes free or is convicted as charged, it is rare that anyone takes the time to explain to a witness the legal procedures that occurred or even to tell him "thank you."

Law enforcement agencies would benefit from an examination of the ramifications of extended citizen frustration with the criminal justice system. When the public's faith in the effectiveness, fairness, and efficiency of the judicial system is lessened, then the efficiency of the system will decline accordingly. Some results of this lack of confidence are quite evident, such as witnesses' refusals to testify or become involved in a criminal incident. The failure to report offenses may be less obvious but equally devastating to justice.

The Winter Park, Fla., Police Department has begun a program to improve the assistance of prospective witnesses and better the relationship between witnesses and the judicial system. An expression of gratitude from the police department toward the witness assisting in a particular offense is expressed through a letter mailed to them from the investigating officer.

The following letter is now sent to all nonlaw enforcement witnesses:

"On behalf of the Winter Park Police Department I would like to express my gratitude for your assistance and cooperation regarding the case of John Doe.

"Unlike yourself, many citizens have become apathetic toward our judicial system. A distrusting and uninvolved attitude remains, while crime continues to soar. For the system to be effective, your assistance is vital.

"True, you may be inconvenienced if called upon to testify. It is foreseeable there will be postponements and waiting periods due to court congestion. We want you to be prepared for this eventuality, and know that your service is appreciated and indispensable to the success of the system. If we strive to work together, the problems which have resulted in disrespect by some citizens can be eliminated, and the public's confidence will be restored.

"The Orange County Bar Association has provided the enclosed pamphlet which should help you to further understand the judicial system. If I can be of any further assistance with any matter, please do not hesitate to contact me."

The pamphlet provided by the Orange County Bar Association is entitled "So You're Going To Be A Witness." It contains useful information to assist prospective witnesses to better understand the criminal justice system, explanations of judicial procedures, and helpful suggestions which will further aid witnesses throughout the "ordeal" of a judicial hearing.

Coordination of all law enforcement agencies within Orange County,

Chief Raymond E. Beary

Fla., was begun even at the initial planning stages of this program. Both the municipal police departments and sheriff's office cooperated in establishing this program. This cooperation resulted in the program being expanded countywide. Both the local district attorney and public defender gave encouragement, and their endorsement assisted in putting the program into effect.

The program is simple to operate. After the local bar association assumed the expense of providing the pamphlet enclosed, only minimal costs of stationery and mailing of the letter remained. In addition, the manpower necessary for the program is minimal. As felony charges are filed against any individual by an investigating detective, the letters are addressed to the nonlaw enforcement witnesses in a particular case, and the concerned detective signs the form letter which is mailed along with the pamphlet to the witness.

The police, prosecution, courts, and defense should all realize the importance of cooperation from witnesses during pretrial preparations and court proceedings. Considering the burden placed upon a prospective witness, it seems long overdue that we take it upon ourselves to attempt to answer his questions and let him know his assistance is appreciated. This will hopefully result in an improved public attitude toward the judicial system.

LEAA

Expenditures for Criminal Justice Activities Increase

According to the report "Trends in Expenditure and Employment Data for the Criminal Justice System, 1971–1975" (prepared by the Bureau of Census and the Law Enforcement Assistance Administration), expenditures for criminal justice activities increased from $11 billion in fiscal year 1971 to $17 billion in fiscal year 1975.

This is an increase from $45 to approximately $71 for every man, woman, and child in the United States to pay for law enforcement and other criminal justice operations.

The study (which includes law enforcement agencies, courts, legal services and prosecution, public defense, corrections, and other criminal justice activities at the local, State, and Federal level) shows that expenditures during fiscal year 1975 were as follows: Local governments accounted for nearly 61 percent of all criminal justice expenditures, States spent almost 27 percent, and Federal expenditures were 13 percent of the total.

Search by Consent

PART II

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Lawful Possession—The First Key to Valid Consent

Having thus far considered the meaning of consent to search, and whether consent is even necessary, we next turn to a most critical stage—obtaining consent from the proper party.

An officer seeking permission to search must obtain this authority from the person in *lawful possession* of the premises. Note the key word is "possession," not "ownership." The fourth amendment is not concerned with legal title to premises, but rather the current right of possession, that is, the right to occupy and enjoy use of the premises to the exclusion of all others. Similarly, lawful presence is not the equivalent of possession. Simply because a person is a guest or invitee on the premises does not confer upon such a person the right to consent to a search thereof.

The fourth amendment guarantees the right to possess a protected place free from unreasonable invasion by the government. *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971); *Chapman* v. *United States*, 365 U.S. 610 (1961). It does not provide absolute protection against all intrusions, but prohibits only those deemed "unreasonable." When the need to search for fruits, instrumentalities, contraband, or evidence of crime is compelling, a reasonable search may be conducted, provided the officers do not act arbitrarily. Thus, a search warrant based on probable cause, correctly executed, meets the constitutional test of reasonableness; likewise, a warrantless search incidental to arrest, properly limited. Finally, the law recognizes as reasonable those searches made with the consent of one having possession of the specific place against which the search is directed.

Consent puts officers lawfully on the premises and permits their search, limited only by the terms expressed in the consent and the physical extent of the area in present possession. The fact that possession is held jointly is not fatal to the reasonableness of the search; for in reality, the one expressing consent does not assume to speak as the alter ego of his co-occupant. He speaks for himself as one fully in possession. His invitation to the officers lawfully commits the premises to their inspection, and as this is deemed a reasonable search for fourth amendment purposes, the results are admissible in evidence not only against the consenting party but also against the co-occupant and anyone else. *United States* v. *Matlock*, 415 U.S. 164 (1974).

Actual v. Apparent Authority to Consent

A problem which has surfaced occasionally is whether a law enforcement officer may obtain a valid consent from one with apparent authority to permit the search. For example, where a search is made by an officer who in good faith reasonably believes he has received consent from the party in lawful possession, and when in fact the party had no such interest in the premises, will the search be deemed reasonable? In *Stoner* v. *California*, 376 U.S. 483 (1964), the Supreme Court responded as follows:

> "Nor is there any substance to the claim that the search was

reasonable because the police, relying upon the night clerk's expressions of consent, had a reasonable basis for the belief that the clerk had authority to consent to the search. Our decisions make clear that the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority'." *Id.* at 488.

More recently, the Court suggested that actual authority to consent is necessary. In *United States* v. *Matlock*, 415 U.S. 164 (1974), the Court, in explaining two earlier decisions, had this to say:

> "These cases [*Frazier* v. *Cupp*, 394 U.S. 731, 1969; *Coolidge* v. *New Hampshire*, 403 U.S. 443, (1971)] at least make clear that when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a *third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected*." 415 U.S. at 171 (emphasis added).

See also *Moffett* v. *Wainwright*, 512 F. 2d 496 (5th Cir. 1975) (warrantless search of suspect's apartment on alleged authority of three girls found therein not justified; girls had insufficient rights in premises to give consent); *Cunningham* v. *Heinze*, 352 F. 2d 1 (9th Cir. 1965), cert. denied 383 U.S. 968 (1966) (permission by one whom officers reasonably and in good faith believe to have authority to consent does not necessarily make a search reasonable); *People* v. *Taylor*, 333 N.E. 2d 41 (Ill. App. 1975) (nonresident son had no actual authority to consent to search of mother's house for evidence incriminating resident brother; co-occupancy is essential); *People* v. *Litwin*, 355 N.Y.S. 2d 646 (App. Div. 1974) (police had no fourth amendment right to rely on the consent of a suspect's babysitter or her companion for authority to make warrantless search of suspect's residence); *State* v. *Bernius*, 203 N.E. 2d 241 (Ohio 1964) (apparent authority to consent insufficient in light of *Stoner* decision).

While the majority view requires actual authority for a consent to search, several decisions would permit officers to search on apparent authority of the consenting party. *Mengarelli* v. *United States*, 426 F. 2d 985 (9th Cir. 1970), cert. denied 400 U.S. 926 (1970) (sanction of excluding evidence should not be applied where officers mistook the authority of consenting party); *People* v. *Parker*, 119 Cal. Rptr. 49 (Cal. App. 1975) (search is not unreasonable if made with consent of occupant of premises whom officers reasonably and in good faith believe has authority to consent to their entry); *People* v. *Robinson*, 116 Cal. Rptr. 455 (Cal. App. 1974) (search reasonable on consent of third party whom police reasonably and in good faith believe has authority to consent).

In light of the prevailing view that actual authority is required of the consenting party, officers in a sense assume the risk that their entry and search will be nullified later if it turns out that such a party had only apparent authority. And this is the case notwithstanding good faith and reasonable belief of the officers. To safeguard against this possibility, officers should make an intensive effort to identify exactly who controls the premises, i.e., who has lawful possession, before obtaining consent. This might require a records' check and most certainly entails the careful questioning of the person thought to possess the premises.

Absentee Possessor

An individual in lawful possession of premises retains the constitutional protection therein during his temporary absence. Thus, he has the requisite "standing" to object to a search made while he is not present. *Chapman* v. *United States*, 365 U.S. 610 (1961) (tenant temporarily absent); *Steeber* v. *United States*, 198 F. 2d 615 (10th Cir. 1952) (absent lessee); *United States* v. *Wilcox*, 357 F. Supp. 514 (E.D. Pa. 1973) (separated husband, though residing elsewhere, had "sufficient interest" in wife's apartment to establish standing); *United States* v. *Thomas*, 216 F. Supp. 942 (N.D. Cal. 1963) (temporarily unoccupied building does not lose its character as house; constitutional protection extends to periods of vacancy); *State* v. *Mills*, 98 S.E. 2d 329 (N.C. 1957) (temporary absence of occupant does not change the character of a dwelling house).

If officers desire to search by consent premises temporarily vacated (e.g., where a party is on vacation, business trip, etc.), authorization for the search must be obtained from the absent party, from one who is the agent of the lawful possessor empowered to consent, or from one who has equal possessory rights in the premises, such as a spouse, joint tenant, or partner.

Possessory Interests in Particular

Owner—Landlord

If the owner of the house, office, or other protected premises to be searched enjoys the current right to possession and he is physically present, his consent must be obtained. This rule applies whether the search is to be made of the entire premises or of specific suitcases, boxes, or other personal property located therein. It is the fact of his possession which triggers the fourth amendment protections and his physical presence which makes it mandatory that any relinquishment of his constitutional rights come directly from him.

A valid consent to search given by the owner-possessor-occupant is effective against himself and any third party who has no possessory right (i.e., no reasonable expectation of privacy) in the premises. Evidence collected during the course of such a search may be used against the third party, as well as the person giving consent, because the exclusionary rule is inoperative where either there was no fourth amendment right at the time of search or such rights as then existed were effectively relinquished. Examples of law enforcement officers properly obtaining consent from an owner in possession may be found in *United States* v. *Novick*, 450 F. 2d 1111 (9th Cir. 1971) cert. denied 405 U.S. 995 (1972); *United States* v. *Jones*, 352 F. Supp. 369 (S.D. Ga. 1972) aff'd 481 F. 2d 1402 (5th Cir. 1973); *Mares* v. *State*, 500 P. 2d 530 (Wyo. 1972).

If the owner-possessor is *not* physically present when a search is desired, authorization may be obtained from any other person having the requisite capacity to permit a search of the protected premises. In some cases, this may be a business partner, spouse, agent, or joint occupant. (See later discussion under these headings.)

Where the owner of the premises to be searched is not entitled to immediate possession, he cannot give a consent valid against all other persons. He can, of course, waive whatever interest he has remaining in the premises. For example, an owner may rent a house to a tenant while reserving the use of a detached garage on the premises or even a storage room within the premises. Such a residual interest would permit the owner to consent to the search of the garage or the room. *United States* v. *Cook*, 530 F. 2d 145 (7th Cir. 1976), cert. denied 426 U.S. 909 (1976); *State* v. *Schrader*, 244 N.W. 2d 498 (Neb. 1976). Absent this condition, however, the owner lacks the current right to possession of the rented premises and his consent would be ineffective against one who enjoys the possessory right.

"The fourth amendment is not concerned with legal title to premises, but rather current right of possession. . . ."

Some officers, in cases in which a tenant was the accused, have made the mistake of searching the premises by consent of the owner during a temporary absence of the tenant. These searches are unreasonable. The owner is not the one in possession and his consent is not valid against the current tenant. *Chapman* v. *United States*, 365 U.S. 610 (1961); *United States* v. *Nelson*, 459 F. 2d 884 (6th Cir. 1972) (motel manager, absentee guest). Moreover, the right of an owner-landlord to enter premises for inspection or maintenance purposes, frequently provided for in the rental agreement, does not confer on him the authority to permit law enforcement officers to search the rented premises.

The owner may consent where the present exclusive possessory interest of his tenant is terminated and he regains the right to immediate possession. For example, where the tenant has abandoned the premises, the owner or landlord may repossess and thereby acquire the right to consent. (See Abandoned Dwellings.) Similarly, the owner may give consent to search following termination of the tenant's right to possession where there has been a formal eviction for nonpayment of rent, *United States* v. *Roberts*, 465 F. 2d 1373 (6th Cir. 1972); where a month-to-month tenancy has been terminated by the owner, *United States* v. *Abbarno*, 342 F. Supp. 599 (W.D.N.Y. 1972); or where a landlord or owner otherwise asserts his right to regain possession, *Hayes* v. *Cady*, 500 F. 2d 1212 (7th Cir. 1974), cert. denied 419 U.S. 1058 (1974) (rent overdue and tenant disclaims any interest in room, right to consent reverts to landlady); *United States* v. *Wilson*, 472 F. 2d 901 (9th Cir. 1972), cert. denied 414 U.S. 868 (1973) (departed tenant with rent unpaid, landlord had right to assume control of premises). Nonpayment of rent, however, is not necessarily controlling. It has been held that the right to possession remains with the tenant even though the rent is overdue, where there is an argument to that effect, *United States* v. *Olsen*, 245 F. Supp. 641 (D. Mont. 1965); *State* v. *Taggart*, 491 P. 2d 1187 (Ore. App. 1971); and where the owner-landlord has failed to comply with a statutory requirement concerning dispossession, *United States* v. *Botelho*, 360 F. Supp. 620 (D. Hawaii 1973).

The landlord-tenant relationship is no bar to a search by voluntary consent of the landlord where the premises are being used by both in a conspiracy to violate the law. The law will look to the real relationship of the parties and where, as a part of a conspiracy, both have a current right to possession, either may give a valid consent to search, good against the other. *Drummond* v. *United States*, 350 F. 2d 983 (8th Cir. 1965), cert. denied sub nom. *Castaldi* v. *United States*, 384 U.S. 944 (1966).

The owner or other occupant, having the current right to possession of the premises, has the capacity to consent to a search for the purpose of locating and removing property stored on his premises by a trespasser. A trespasser simply has no standing to object to such a search. In *Jones* v. *United States*, 362 U.S. 257 (1960), the Supreme Court declared that only those "*legitimately on premises* where a search occurs" may challenge the legality of a search.

An illustrative case is *State* v. *Chavis*, 210 S.E. 2d 555 (N.C. App. 1974), petition for cert. dismissed 214 S.E. 2d 434 (1975), cert. denied 423 U.S. 1080 (1976), in which defendants, while carrying out a plan to firebomb various properties and ambush police and firemen when they responded, gathered unlawfully in a local church. Church officials consented to a warrantless search of the church and parsonage which disclosed incriminating evidence. In sustaining the trial court's denial of a motion to suppress this evidence, the appellate court stated:

> "It appears from the uncontradicted evidence that defendants had been trespassers on the church premises. In our view they have absolutely no standing to object to the search . . . . In addition the search was conducted with the permission of one of the officials of Gregory Congregational Church, who had several days earlier tried, without success, to evict defendants from the church premises." *Id.* at 587.

See also *Government of Virgin Islands* v. *Gereau*, 502 F. 2d 914 (3d Cir. 1974), cert. denied 420 U.S. 909 (1975) (trespasser deemed to assume risk that owner of property will consent to search); *State* v. *Widemon*, 215 S.E. 2d 826 (N.C. App. 1975) (trespasser in the house has no standing to question validity of search of house); *State* v. *Pokini*, 367 P. 2d 499 (Hawaii 1961) (a trespasser who places his property where it has no right to be has no right of privacy as to that property—he has no standing). The principle announced in *Pokini* was endorsed more recently by a Federal appellate court in *Amezquita* v. *Hernandez-Colon*, 518 F. 2d 8 (1st Cir. 1975), cert. denied 424 U.S. 916 (1976).

Tenant

Tenant is broadly defined to include one who, by express or implied agreement, acquires possession but not ownership of a ranch, farm, business building, office, house, apartment, room, or other place regardless of the duration of the contract. As long as the occupant has the sole right to possess the premises, whether it be by mutual agreement or simply until the owner orders him to leave, he and he alone has the capacity to consent to a search of those premises that would be good against himself. The landlord cannot give an effective consent. *Chapman* v. *United States*, 365 U.S. 610 (1961); *United States* v. *Williams*, 523 F. 2d 64 (8th Cir. 1975), cert. denied 423 U.S. 1090 (1976). But if the tenant consents, any evidence of crime uncovered can be used against him and against any other person having no immediate possessory right (i.e., expectation of privacy) to the leased premises or the things found therein.

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.

As in the case of an owner in possession, if the tenant is not physically present or is otherwise unavailable, a consent search directed against his premises cannot be made unless the officers are able to obtain consent from someone else lawfully exercising the possessory right in the premises. Unless specifically empowered to do so by the tenant, the owner is *not* authorized to consent. He surrenders his right of possession when he agrees to the tenancy and retains no implied authority to give up the tenant's constitutional rights.

The tenant of an office building, apartment house, rooming house, etc., may sublease the rented premises or parts thereof, in which case the sublessee assumes lawful possession of the premises sublet and only he can consent to a search of that area.

Close questions can arise as to the precise limits of the space in lawful possession of the tenant, i.e., the area in which he has a reasonable expectation of privacy. Generally, the tenant possesses only that part of premises specifically described in the lease or commonly understood from the circumstances to be reserved for his exclusive use. Other parts of a building used for the landlord's purposes alone (e.g., the boilerroom, the rental office) or those used by everyone in common (e.g., hallways, elevators, laundry room), not leased specifically to any tenant, remain in possession of the landlord or owner and may be searched on his consent alone. *United States* v. *Gargiso*, 456 F. 2d 584 (2d Cir. 1972) (valid consent by landlord to search of basement used in common by several tenants); *United States* v. *Abbarno*, 342 F. Supp. 599 (W.D.N.Y. 1972) (lawful consent by owner to search section of warehouse not included as part of original rented area).

If the leased premises are commercial in nature and open to the general public, the tenant enjoys no expectation of privacy therein, and his consent to enter is not necessary. In *United States* v. *Berkowitz*, 429 F. 2d 921 (1st Cir. 1970), FBI agents entered a retail store to "look around" in connection with a theft of shoes. Stolen property was observed in plain view. The court pointed out that it was not improper for the agents to walk into a commercial establishment open to the public. Such an entry in no way offends an individual's right against unwarranted government intrusions. See also *United States* v. *Berrett*, 513 F. 2d 154 (1st Cir. 1975) (officers may accept general public invitation to enter open garage for purpose not related to trade conducted thereon); *State* v. *Quatsling*, 536 P. 2d 226 (Ariz. App. 1975), cert. denied 424 U.S. 945 (1976) (no reasonable expectation of privacy in semipublic storage facilities open for business); *People* v. *Favela*, 333 N.E. 2d 284 (Ill. App. 1975) (fourth amendment not violated by police entry to house opened as place of illegal business to which outsiders are invited). Support for this view may also be found in the Supreme Court decisions of *Recznik* v. *City of Lorain*, 393 U.S. 166 (1968), where the Court appears to draw a distinction between a private home and a "public establishment," and *Lewis* v. *United States*, 385 U.S. 206 (1966) (home converted to commercial center for narcotics entitled to no greater sanctity than store).

In the event a tenant, either by the terms of the lease or by mutual agreement with the landlord, is permitted to store personal property in a place remote from his living quarters, such as a storage locker for suitcases, the fourth amendment would protect such areas. Absent a warrant or emergency, consent to search from the tenant would be necessary. *United States* v. *Principe*, 499 F. 2d 1135 (1st Cir. 1974) (by implication, cabinet in hallway 3 to 6 feet from entrance to apartment); *United States* v. *Lumia*, 36 F. Supp. 552 (W.D.N.Y. 1941).

Joint Tenants and Common Occupants

In recent years, there has been a uniform response to the question of whether a joint tenant or common occupant may consent to a search of premises mutually possessed. In a 1969 decision involving joint possession of personal property, the Supreme Court held that consent to the search of a duffel bag by one joint user was binding on the other user. The Court pointed out that a "joint user of the bag . . . clearly had authority to consent to its search" and the nonconsenting party "must be taken to assume the risk" that his copossessor would allow someone else to look inside the bag, i.e., permit the police search. The Court recognized no valid search and seizure claim by the nonconsenting party. *Frazier* v. *Cupp*, 394 U.S. 731 (1969).

This same principle has been applied frequently by lower courts in consent searches of premises. It is stated succinctly in a Federal appellate decision:

> "The rule in this Circuit is that 'where two persons have equal rights to the use or occupation of the premises, either may give consent to a search, and the evidence thus disclosed may be used against either'." *Moffett* v. *Wainwright*, 512 F. 2d 496 (5th Cir. 1975).

See also *White* v. *United States*, 444 F. 2d 724 (10th Cir. 1971) (one endowed with right to use or occupy premises at time of consent may authorize search of premises, and evidence thus disclosed may be used against his cohabitant); *United States* v. *Hughes*, 441 F. 2d 12 (5th Cir. 1971), cert. denied 404 U.S. 849 (1971); *State* v. *Knutson*, 234 N.W. 2d 105 (Iowa 1975); cases collected in *United States* v. *Matlock*, 415 U.S. 164 at 170 nn. 5 & 6 (1974).

The reasoning which underlies the principle is best stated by Justice White in *United States* v. *Matlock*, *supra*:

> "The authority which justifies the third-party consent does not rest upon the law of property . . . but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." *Id.* at 171, n. 7.

There are two exceptions to the general proposition that a joint tenant or occupant may consent to search of premises commonly occupied. First, where areas or things within such premises are understood to be reserved for the exclusive use of the nonconsenting party, such places may *not* be searched with the consent of a joint occupant. Such a limitation is implicit in the reasoning of the Supreme Court in *United States* v. *Matlock*, *supra*, and is expressly stated in other decisions. *United States* v. *Bussey*, 507 F. 2d 1096 (9th Cir. 1974); *United States* v. *Heisman*, 503 F. 2d 1284 (8th Cir. 1974); *Government of Canal Zone* v. *Furukawa*, 361 F. Supp. 194 (D.C.Z. 1973); *People* v. *Langley*, 234 N.W. 2d 513 (Mich. App. 1975).

The second exception exists where a joint occupant is present and objects to the consent given by his cohabitant. *Duke* v. *Superior Court*, 461 P. 2d 628 (Cal. 1969); *Tompkins* v. *Superior Court*, 378 P. 2d 113 (Cal. 1963); *Lawton* v. *State*, 320 So. 2d 463 (Fla. App. 1975); *Dorsey* v. *State*, 232 A. 2d 900 (Md. Ct. Spec.

App. 1967). In effect, the objection by one cotenant nullifies the consent of the other, and police may not proceed with an entry and search over such objection. A New York court carried this view a step further in *People* v. *Mortimer*, 361 N.Y.S. 2d 955 (App. Div. 1974), holding that shared premises may not be searched by consent obtained from co-occupants (parents) where the absent occupant has specifically refused police permission to search his house. The court pointed out:

> "But if the Fourth Amendment means anything, it means that the police may not undertake a warrantless search of defendant's property after he has expressly denied his consent to such a search. Constitutional rights may not be defeated by the expedient of soliciting several persons successively until the sought-after consent is obtained." *Id.* at 958.

Business Partners

A valid consent to search obtained from one partner is binding on all members of the partnership as to business premises jointly occupied. *United States* v. *Sferas*, 210 F. 2d 69 (7th Cir. 1954), cert. denied sub nom. *Skally* v. *United States,* 347 U.S. 935 (1954). The rule is essentially the same as that applicable to joint tenants and common occupants. (See Joint Tenants and Common Occupants.) It applies to financial records and documentary materials, as well as to physical evidence. *United States* v. *Goodman,* 190 F. Supp. 847 (N.D. Ill. 1961).

Consent from a partner presupposes the consenting party is a full partner occupying or sharing possession of the business premises. Consent from a "silent partner," one who contributes money but has no right to occupy the premises or participate in management of the enterprises, would likely be ineffective against the other partners. The same might be said of absentee and limited partners. Whether a partner has the requisite authority to bind other partners by his consent, therefore, will depend upon the terms and conditions of the partnership agreement, the nature of the business operation, and the understanding of the parties.

Even in the case of consent received from a full partner, the search should be limited to premises and property which the partners clearly possess in common. Any place or thing within the premises reserved for the exclusive use of one partner could not be searched by consent of another. For example, where two full partners operate a small office and manufacturing plant, either partner could consent to the search of the production area, storage rooms, lavatories, etc., but neither could authorize the entry by police to desk, locker, or briefcase possessed solely by the other partner.

Husbands, Wives, and Paramours

Though there is general agreement that persons in joint possession may independently consent to a search of their mutual premises that is valid not only as to themselves but also as to each other, there has been some disagreement in the law when this principle has been applied to the case of husband and wife.

At one time, married women did not enjoy the same legal rights as men. At least insofar as the right to possess premises was concerned, a wife was living in her husband's house. In early cases, such as *Hume* v. *Tabor*, 1 R.I. 464 (1850), it was held that she had no implied authority to license a search of *his* house for stolen goods. These older cases stressed the agency relationship of husband and wife and generally concluded that the wife had no authority to waive *his* constitutional right.

Times have changed, of course, and the legal status of married women has changed with them. Nevertheless, some courts have continued to bar the use of evidence against one spouse where it was seized pursuant to consent of the other. See, e.g., *State* v. *Blakely*, 230 So. 2d 698 (Fla. App. 1970) (husband-wife relationship alone does not impute authority to one spouse to waive the other's constitutional right); *Henry* v. *State*, 154 So. 2d 289 (Miss. 1963), vacated on other grounds 379 U.S. 443 (1965) (wife cannot waive constitutional right of husband); *State* v. *Hall*, 142 S.E. 2d 177 (N.C. 1965) (wife's consent to search not sufficient to waive husband's constitutional right). But see *Loper* v. *State*, 330 So. 2d 265 (Miss. 1976), in which the Mississippi Supreme Court seems to have limited its holding in *Henry* v. *State*, *supra*, to those situations where the wife has no interest whatsoever in the property of her husband.

Today, the weight of authority favors the view that a spouse *can* consent to the search of the family dwelling. Such a rule is based not on an agency relationship or an implied grant of authority to the consenting party, but rather on the principle that each spouse has full authority over property mutually used and subject to common access and control. Thus, the key is *joint possession.* The party giving consent waives his or her own right, not that of the spouse. *United States* v. *Long*, 524 F. 2d 660 (9th Cir. 1975); *Burge* v. *Estelle*, 496 F. 2d 1177 (5th Cir. 1974); *McCravy* v. *Moore*, 476 F. 2d 281 (6th Cir. 1973); *Chism* v. *Koehler*, 392 F. Supp. 659 (W.D. Mich. 1975), cert. denied 425 U.S. 944 (1976). See also cases collected in Fisher, Search and Seizure 300 (Appendix C), as supplemented (1972). The more recent trend was given added support by the

Supreme Court in *United States* v. *Matlock*, 415 U.S. 164 (1974). Though *Matlock* concerned a consent to search obtained from a mistress, Justice White, speaking for six members of the Court, noted:

> "This Court left open, in *Amos* v. *United States*, 255 U.S. 313, 317 (1921), the question whether a wife's permission to search the residence in which she lived with her husband could 'waive his constitutional rights,' but more recent authority here clearly indicates that the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared." *United States* v. *Matlock, supra* at 170 (1974).

Implicit in the interspousal consent cases is the doctrine of assumed risk, invoked by the Supreme Court in *Frazier* v. *Cupp*, 394 U.S. 731 (1969), and referred to more recently in *Matlock.* If one spouse occupies premises jointly with the other, both must assume the risk that the other will permit a search of the property. As pointed out in a 1970 Federal decision:

> "Clearly, the 'risk' involved is that someone with an equal or similar Fourth Amendment right will consent to a warrantless search of the place of concealment chosen by one against whom evidence thereby discovered is used." *United States ex rel. Cabey* v. *Mazurkiewicz*, 431 F. 2d 839, 846 (3d Cir. 1970) (dissenting opinion).

It makes no difference in the law whether the consent is given by wife or husband. While in most cases the wife is the consenting party and evidence found is used against the husband, the reverse situation occasionally is presented. See, e.g., *State* v. *Shephard*, 124 N.W. 2d 712 (Iowa 1963) (husband's consent to search apartment valid against wife in search for murdered newborn infant); *Jones* v. *State*, 177 P. 2d 148 (Okla. Crim. App. 1946) (husband's consent to search home for evidence against wife authorized search of cookie jar in closet); *Bannister* v. *State*, 15 S.W. 2d 629 (Tex. Crim. App. 1929) (illegally possessed liquor seized pursuant to consent of husband admissible against wife).

Where the consenting party is a mistress or paramour, the rule applicable to the husband-wife relationship is generally applied. Thus, in *Matlock*, a girl with whom Matlock had been living for 7 months possessed the requisite authority to permit officers to search the closet of the bedroom they shared. Bank robbery loot was found. Searches based on consent of a paramour have been approved in both Federal and State courts. *United States* v. *Robinson*, 479 F. 2d 300 (7th Cir. 1973) ("If a spouse does not have complete expectation of privacy in his own home in view of the possibility of his mate's consent, the casual lover who drops in at his convenience can hardly expect more when he turns his part-time home over to the full-time dominion of his paramour . . . ."); *White* v. *United States*, 444 F. 2d 724 (10th Cir. 1971); *Gurleski* v. *United States*, 405 F. 2d 253 (5th Cir. 1968), cert. denied 395 U.S. 981 (1969); *Nelson* v. *People of State of California*, 346 F. 2d 73 (9th Cir. 1965), cert. denied 382 U.S. 964 (1965); *People* v. *Smith*, 246 N.E. 2d 689 (Ill. App. 1969), cert. denied 397 U.S. 1001 (1970); *State* v. *Wigglesworth*, 248 N.E. 2d 607 (Ohio 1969), rev'd on other grounds 403 U.S. 947 (1971); *State* v. *Gordon*, 543 P. 2d 321 (Ore. App. 1975); *Powers* v. *State*, 459 S.W. 2d 847 (Tex. Crim. App. 1970). But cf. *United States* v. *Pagan*, 395 F. Supp. 1052 (D.P.R. 1975), aff'd 537 F. 2d 554 (1st Cir. 1976).

Whether the consent is obtained from a spouse or a lover, it is clear that the consenting person must possess joint control over the place or thing searched. As in the case of joint tenants and business partners, a spouse or paramour may *not* consent to officers entering or searching an area within the exclusive control and possession of the mate. *State* v. *Evans*, 372 P. 2d 365 (Hawaii 1962) (wife could not validly consent to police search of husband's jewelry case in bedroom bureau drawer); *People* v. *Gonzalez*, 270 N.Y.S. 2d 727 (App. Div. 1966) (while original entry was by permission of wife, she could not validly consent to a search of husband's personal effects not in plain view); *State* v. *McCarthy*, 253 N.E. 2d 789 (Ohio App. 1969), aff'd 269 N.E. 2d 424 (Ohio 1971) (to allow a search of husband's personal effects on consent of wife would unduly destroy the former's right against unreasonable search).

McCarthy is a decision illustrating how a court analyzes a spousal consent problem. The principal issue was whether a wife could lawfully consent to a police search of a jointly occupied family dwelling. In concluding that the wife validly consented, the court answered three questions: (1) Whether the wife had the authority to permit a warrantless search of the family home in the absence of the husband (yes); (2) whether the item sought was among "personal effects" of the husband not commonly or jointly possessed by the spouse (no); (3) whether the wife's consent to search was voluntarily given (yes). The Ohio court in *McCarthy* traces the development of the law of interspousal consent and concludes that the modern and better view is that such consent is valid except for personal effects or areas not jointly occupied.

(Continued Next Month)

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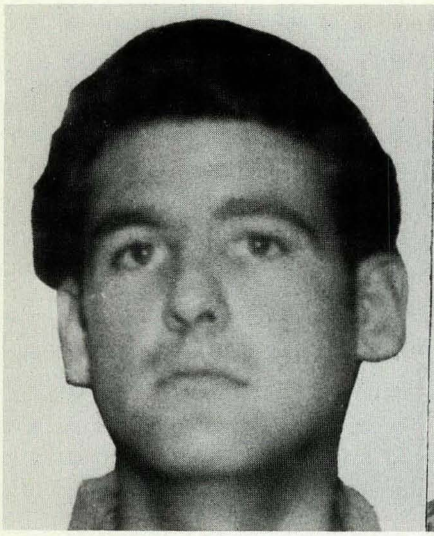
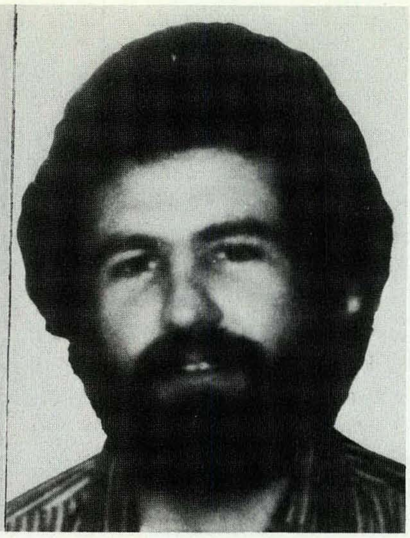


Photograph taken 1973.



Photograph taken 1975.

HAROLD DAVEY CASSELL, also known as William Cotter, Richard D. Green, Richard Dale Green, "Dinker"

Unlawful Interstate Flight to Avoid Prosecution—Murder

The Crime

On December 21, 1975, Cassell was allegedly involved in the death of a Springdale, Ark., policeman. The officer was found handcuffed and shot in the head several miles from where he stopped a vehicle while on patrol.

A Federal warrant was issued on January 27, 1976, at Fort Smith, Ark., charging Cassell with unlawful interstate flight to avoid prosecution for murder.

Caution

Cassell, who may be in the company of James Ray Renton, FBI Identification Order 4694, is believed to be heavily armed and extremely dangerous.

Notify the FBI

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

Description

Age	30, born August 29, 1947, Denison, Tex.
Height	5 feet 11 inches.
Weight	180 to 200 pounds.
Build	Medium.
Hair	Brown.
Eyes	Hazel.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Laborer, plumber's helper.
Scars and Marks	Scar on back of left hand, burn scar on left forearm, scar on left side of forehead; may have tattoo of "Carol" on left forearm.
Social Security Nos. used	405-82-6508, 412-62-6808.
FBI No.	825,419 D.

Fingerprint classification:

$$\frac{2\ \text{O}\ 1\ \text{Ua}\ 2}{\text{M}\ 17\ \text{Aa-t}}$$

NCIC classification:

PO02AA020216AAAA09TT

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field County
's Office
nid, Okla

"Handcuff Key Concealment"

The Garfield County District Attorney's Office, Enid, Okla., brought to the Bulletin's attention a unique example of concealment discovered in transporting two out-of-State inmates to Enid.

Prior to leaving the penitentiary the inmates were strip searched, with no contraband found. After the first night's lodging, the prisoners were again strip searched and an improvised handcuff key, approximately ¾ of an inch long, was discovered hidden in a cigarette contained in a partially smoked pack. (See photograph.)

Officers learned that one of the subjects began the trip from the penitentiary with a long piece of guitar string and the handcuff key, which had been made in the penitentiary, embedded in a tube of lip balm secreted in a body cavity. During the night's lodging, the prisoner removed the key from the tube and placed it in the cigarette.

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INTERESTING PATTERN

The above pattern presents no problem as to classification. It is classified as an accidental whorl with a meeting tracing. The number of looping formations appearing in the pattern area are unusual and interesting.