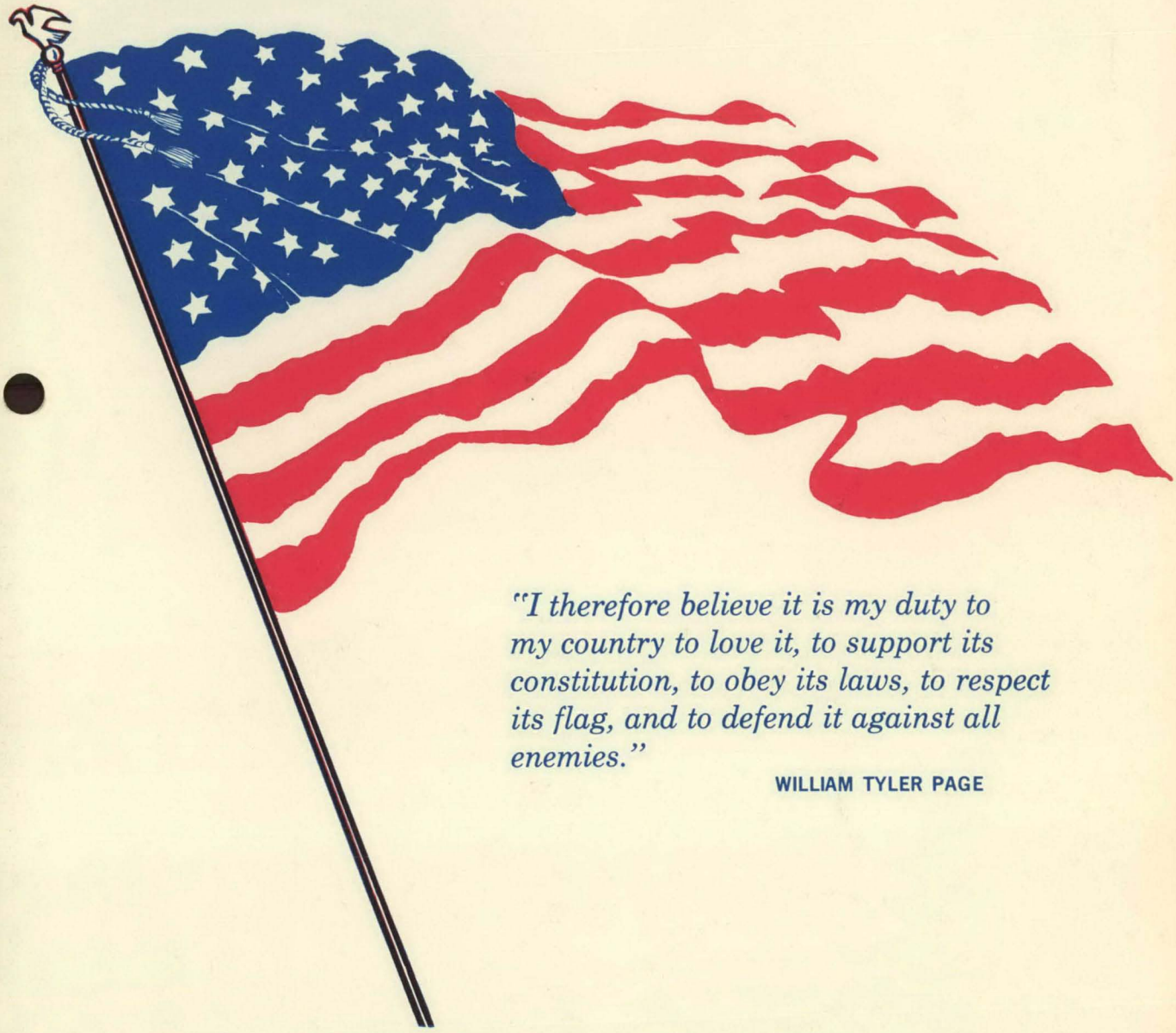
Documented copy

JULY 1967

# FBI

## LAW ENFORCEMENT BULLETIN



*"I therefore believe it is my duty to my country to love it, to support its constitution, to obey its laws, to respect its flag, and to defend it against all enemies."*

WILLIAM TYLER PAGE

FEDERAL BUREAU OF INVESTIGATION
J. EDGAR HOOVER, DIRECTOR

UNITED STATES
DEPARTMENT OF JUSTICE

JULY 1967

VOL. 36 NO. 7


THE COVER—*Patriotism and respect for the flag. See Mr. Hoover's message on page 1.*

# FBI

## LAW ENFORCEMENT BULLETIN

*Published by the*
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
*Washington, D.C. 20535*

## CONTENTS

# MESSAGE FROM THE DIRECTOR

CAN THERE BE ANY ACT more sickening and revolting than a crowd of so-called citizens desecrating and burning their country's flag? Those who resort to such moronic behavior are surely lost in the depths of depravity. Obviously, their first loyalty is not to the United States.

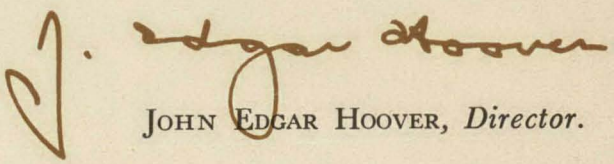
True, our Nation is founded on concepts and principles which encourage dissent and opposition. These are traditions we must always defend and support. But touching a torch to the flag far exceeds reasonable protest. It is a shameful act which serves no purpose but to encourage those who want our country to erupt in violence and destruction.

On this 191st anniversary of the Declaration of Independence, we might ask what causes unpatriotic outbursts and irrational protests. Why do people turn against their native land and openly support totalitarian forces whose goal is to enslave the world—forces which do not even allow token opposition from their subjects? Why do some individuals refuse to serve and defend their country? Why do they burn their draft cards and their flag?

There may be many reasons for such action, but I am fully convinced that dying patriotism is one major cause. Love of country is being deemphasized and excluded from several phases of our life. Many educators and other leaders seem to feel it is no longer necessary for boys and girls to be concerned with how our country came into being, what it stands for, and the courageous and noble deeds of our forefathers to preserve it.

Conditions are now such in some circles that an individual who professes love of his country, reverence for its flag, and belief in the principles which make our Nation great is considered a yokel. Open aversion to patriotism of any form is increasing. Even some news media take a "tongue-in-cheek" approach to persons and groups which promote and participate in patriotic endeavors. Love of one's country is treated as some kind of social disease to be tolerated, if not stamped out. Protests are made that too much patriotism leads to international conflict. I submit that the United States will never have anything to fear from its ardent and genuinely patriotic citizens.

American history proves that freedom and liberty come at high prices and that their upkeep is costly and time-consuming. As Daniel Webster so aptly put it, "God grants liberty only to those who love it and are always ready to guard and defend it. Let our object be our country . . ."—not our country the object of desecration and abuse.



JULY 1, 1967

JOHN EDGAR HOOVER, *Director.*

# An American Policeman in England

**Lt. ROBERT C. MITCHELL**
Multnomah County Department of Public Safety,
Portland, Oreg.

*An American police officer, for a period of 6 months, exchanged home, car, and job with his English counterpart in an experiment in the observation of police work in a foreign country.*


Lightweight motorcycles are used to patrol extensive rural beats.

allows a cost-of-living adjustment. Entrance requirements may vary slightly from force to force, but conditions of service are the same in all forces. This standardization is also found in training, uniforms, and retirement benefits. It would appear that the key to standardization is the 50 percent grant from the national treasury of the annual budget of each police force.

Every force is inspected annually by one of Her Majesty's Inspectors of Constabulary. His report, indicating that the force is up to standards, determines whether the grant will be allowed. Although placing chief constables in a very advantageous position when presenting the police budget to their local authority, this system does place the national government squarely in the local police picture. Any suggestions presented to the chief constables by the Home Secretary will usually be implemented. Without a doubt, this is the major factor in achieving the uniformity which I found so impressive.

### *Training Program*

The value of standardization is most apparent in the training program. England is divided into eight geographic police districts, each with a district training center. Recruits from every force in the district train together and take the same 13-week basic training course. This concept of training is possible where criminal law is national in scope rather than regional, as in our own State statutes.

**Women police constables in patrol cars undertake the same duties as the men but especially concern themselves with cases involving women and children. The police car is white so that it can be readily identified as a police vehicle.**


Training does not stop at the recruit level. Inservice training is carried out within the forces, and refresher courses are offered at the district training center. Specialized courses are frequently given in the larger forces with vacancies in the class held open for officers from surrounding forces.

One of the more interesting inservice training courses is the refresher course for sergeants of the Lancashire Constabulary. It is based on a concept of three R's:

1. Relax—by virtue of short hours, no pressure, and long weekends.
2. Refresh—the officer's knowledge of the latest laws and court decisions.
3. Renew—the officer's enthusiasm for his job, the department, and the future.

Supt. Walter Butterworth, now retired, assured me that the relaxed atmosphere, the roundtable conference approach to teaching, and the complete lack of pressure do send the men back to their posts with a far better outlook on their job.

The Police College at Bramshill is the seat of higher education for the whole of the English police service. The 6-month Senior Staff Course trains officers of the rank of inspector and above to assume the highest posts in the police service. The Intermediate Command Course, lasting 3 months, is designed to train inspectors and chief inspectors in the responsibilities of posts held by superintendents and chief superintendents. Sergeants and newly promoted inspectors attend the 6-month "A" Course to prepare them for the duties of inspector and chief inspector.

The Special Course impressed me with the potential of having tremendous impact on the British police service of the future. Young officers of outstanding promise, who have passed high on promotional examinations, are assigned to this 1-year course under a quota system. They are given the temporary rank of sergeant

for the duration of the course, the rank being made permanent after the successful conclusion of their studies. There are a number of scholarships available for the outstanding officers in the class to continue on to university studies.

I would hope that the Police College program could be expanded to accommodate far more students. The college graduated 448* men and women in 1965 from a total authorized police strength of about 95,000.

Crime prevention and public relations are sometimes treated as separate functions, but to me they appear to interlock to such an extent that it is difficult to tell where one stops and the other begins. Most of the forces I visited had assigned officers to the crime prevention detail on a full-time basis, and these men were very devoted to the program. In addition to the expected posters, pamphlets, and personal contacts with business people, I found two techniques that were of great interest.

Officer and police dog patrol a children's playground at Kirkby near Liverpool.

The Liverpool City Police have mounted movable television cameras atop one of the downtown buildings. On the day I inspected this installation, police were keeping a parking lot and a city street with a high crime rate under surveillance. Any suspicious activity was reported to plainclothes officers on the ground who immediately investigated the situation. In addition to setting up many good arrests, this system appears to keep many of the thieves off balance, as they are never quite sure where the television will be installed next.

With the cooperation of BBC and the independent television stations, the police sponsor regional programs with such titles as "Police File" and "Police Five." These programs are on the air during prime time in the evening, and public reception and reaction are excellent. The usual format might show a photograph of a wanted man, a certain type of vehicle the police are looking for, a list of stolen items, and a missing person. "Police File" is aired at 7 p.m. on Friday over Granada TV. The rough script is written by the Manchester City Police public relations officer and is then polished by television script writers under his supervision. This is not an attempt at censorship or control by the television people, but is designed to convert the script from police language to television language. Forty-eight police forces in Granada viewing area contribute to the program through the Manchester Police.

### *Displays*

Also of particular interest and value are large assortments of locks and security devices displayed by most crime prevention officers and provided through the courtesy of the manufacturers of such hardware. Many officers pointed out that the businessman should be invited to the police station to view these displays privately. There was a strong suspicion that the local burglars would enjoy attending any public display of such security devices.

During my tour in England, I had the pleasure of visiting the following police departments: Lancashire Constabulary, Preston Borough Police, Royal Ulster Constabulary, Liverpool City Police, Isle of Man Constabulary, Manchester City Police, Birmingham City Police, Coventry City Police, Stockport Borough Police, Blackpool Borough Police, City of London Police, London Metropolitan Police, Southport Borough Police, Edinburgh City Police, Glasgow City Police, and Durham Constabulary.

### *The British Policeman*

I have touched briefly on a few of the many facets of the British police service. I should like to generalize a bit and attempt to describe the British policeman. He is a first-rate police officer by the standards of any police agency known to me. He is grossly underpaid when one weighs his responsibilities against those of men employed by British industry. He performs the deeds of valor which are expected of policemen everywhere. The 1965 report of Her Majesty's

(*Continued on page 16*)

*Report of Her Majesty's Chief Inspector of Constabulary for the Year, 1965 (London: Her Majesty's Stationery Office, 1966), p. 33.

# Search of Motor Vehicles

*This is the fifth of a series of articles discussing the Federal law on search of motor vehicles.*

## VI. Consent Searches

The constitutional protection against unreasonable searches and seizures provided by the fourth amendment can be waived by the express consent of the person whose property is to be searched. *On Lee* v. *U.S.*, 343 U.S. 747 (1952). Because of the obvious advantages it offers over the search by warrant or incidental to arrest, the consent search has become a popular method of securing evidence from suspected offenders. Where properly obtained from the party in interest, it avoids the requirements of probable cause and particularity of description necessary to a valid warrant. And since it need not be tied to an arrest, the contemporaneous factors of time and place associated with the incidental search are also inapplicable. But it is precisely because this technique circumvents these traditional safeguards of privacy that consent searches are looked upon with disfavor by the courts.

When one consents to a search of his automobile, it is said that he waives any constitutional right of privacy he might otherwise enjoy over the vehicle or any property contained therein. And as in all situations involving a waiver of fundamental constitutional rights, it can be expected that the prosecution will have to meet a high standard of proof. *Johnson* v. *Zerbst*, 304 U.S. 458 (1938). In general, the limitations set on consent searches are the same considerations that have been employed in the past in determining the voluntariness of confessions. Thus the courts have held that consent must be given in circumstances free of "duress or coercion," that it be "knowingly and intelligently" given, and that it be stated in a "clear and unequivocal" manner. Because these determinations generally involve inquiries into the subjective state of mind of the suspect, the officer, or both, they present practical difficulties in judicial supervision which more often than not are resolved in favor of the criminally accused.

### A. *Duress or Coercion*

Applicability of the fourth amendment guaranty of immunity from unreasonable searches or seizures is not dependent upon any affirmative assertion by the private citizen. *U.S.* v. *Rembert*, 284 F. 996, 998 (1922); *Dade* v. *State*, 188 Okla. 677, 112 P. 2d 1102 (1941). To hold otherwise would require the individual to make the difficult choice either of challenging the officer's authority, perhaps by force, or waiving his constitutional rights through inaction. *Ibid.* Thus, in many cases where a consensual situation is in issue, there is no overt indication that the person voiced objection or otherwise contested the search. The courts must therefore look to the surrounding circumstances to determine whether or not the purported consent was induced by pressure or coercion. Peaceful submission under such circumstances is not consent but simply acquiescence to higher authority and cannot lawfully support a search without a warrant. *U.S.* v. *Rembert, supra; Johnson* v. *U.S.*, 333 U.S. 10 (1948); *Amos* v. *U.S.*, 255 U.S. 313 (1921).

There is, of course, no easy yardstick by which to measure the degree

263-817 O—67——2

of coercion or duress necessary to vitiate an expressed consent, for this must depend upon the characteristic facts of each case. Nonetheless, it is possible to identify several factors which generally influence the courts in making this determination. It has been held, for example, that the attitude and conduct of the advising officer are an important consideration, particularly where they might indicate that he had intended to search in any event. If he states peremptorily, "Open the glove compartment," or "I want to look in the trunk of your car," it is likely that this will be viewed as coercive. The courts have also pointed to such factors as undue emphasis on authority and even an aggressive manner as being sufficient to invalidate consent. *U.S.* v. *Kelih*, 272 Fed. 484 (1922). Similarly, the time of night, *U.S.* v. *Roberts*, 179 F. Supp. 478 (1959), number of officers seeking consent, *U.S.* v. *Alberti*, 120 F. Supp. 171 (1954), display of weapons or other symbols of authority, *U.S.* v. *Marquette*, 271 Fed. 120 (1920), or presence of the suspect's family during questioning, *Catalanotte* v. *U.S.*, 208 F. 2d 264 (1953), all tend to create a strong implication of coercion.

It is important therefore that the police avoid use of demanding words or gestures or any comment which might be construed to mean that the subject has no choice but to allow a search. This issue often arises when an officer threatens to procure a search warrant if consent is not given. It has been held by some courts that permission given under these circumstances is a mere submission to authority and that the individual yields his rights only because he feels there is no reasonable alternative but to consent. *U.S.* v. *Baldocci*, 42 F. 2d 567 (1930); *U.S.* v. *Dixon*, 117 F. Supp. 925 (1949); see also, *Weed* v. *U.S.*, 340 F. 2d 827 (1965).

On the other hand, it is arguable that knowledge that one cannot lawfully prevent a search indefinitely may enable him to make a more intelligent decision as to whether and how much he will cooperate. It is not required, of course, that the individual desire a search be made of his property, but only that he make a free and voluntary choice on the matter. Accordingly, some cases hold that where the officer in good faith informs a party of the likelihood that a warrant will be issued, he does no more than advise the suspect of the legal alternatives confronting him, and, in the absence of any aggravating circumstances, this factor alone will not invalidate the consent. *Simmons* v. *Bomar*, 230 F. Supp. 226 (1964).

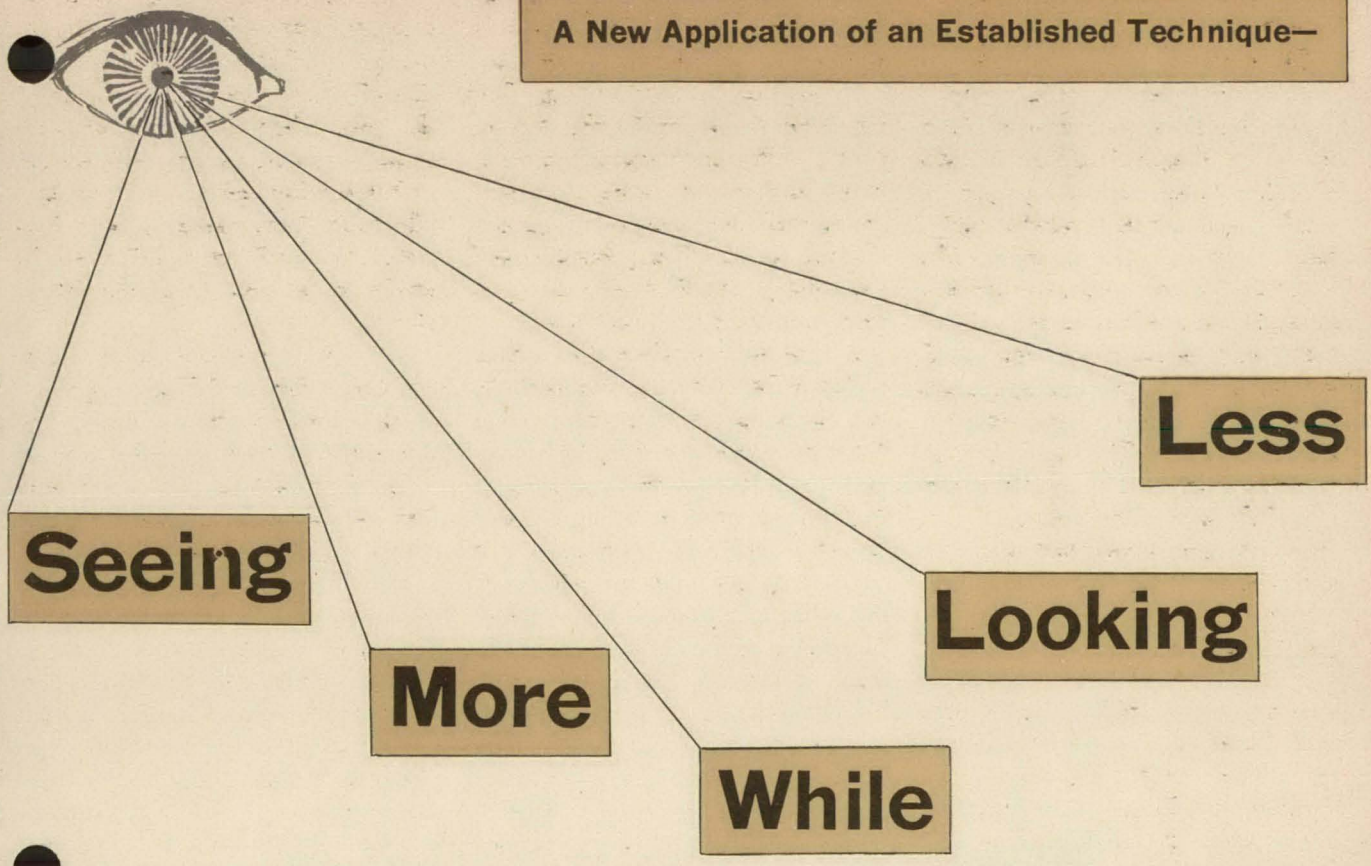
This line of reasoning is implicit in *Hamilton* v. *State of North Carolina*, 290 F. Supp. 632 (1966), where police, alerted to a recent safe robbery, arrested the defendant near his automobile. The arresting officer asked for permission to search the car, stating that he did not have a warrant with him but could get one if necessary. The defendant replied, "There is no need of that. You can search the car." He then handed the keys to the officer who searched the vehicle and found a pistol. In denying a petition for habeas corpus, the Federal district court ruled, "The fact that the officer told [the defendant] that he did not have a search warrant but that he could get one is immaterial." Citing an earlier appellate decision, the court stated, "a defendant cannot assert the illegality of a search made with his consent, though given in response to a threat to procure a search warrant." *Id.* at 635. See, *Gatterdam* v. *U.S.*, 5 F. 2d 673 (1925); *Kershner* v. *Boles*, 212 F. Supp. 9 (1963), modified and aff'd, *Boles* v. *Kershner*, 320 F. 2d 284 (1963). There is common agreement, however, that if the consent is obtained through fraud, deception, or misrepresentation regarding either the officer's authority or intention to secure a formal warrant the search will be invalid. *Bolger* v. *U.S.*, 189 F. Supp. 237 (1960), aff'd 293 F. 2d 368, rev'd on other grounds, 371 U.S. 392 (1963); *Pekar* v. *U.S.*, 315 F. 2d 319 (1965); *U.S.* v. *Wallace*, 160 F. Supp. 859 (1958).

One of the more troublesome issues of consent arises when permission to conduct a warrantless search is obtained from one who is under arrest or otherwise subjected to official restraint. Since intimidation and duress are necessarily implicit in such situations, it is especially difficult for the prosecution to convince the court that the waiver was given free from negating pressure or coercion. *U.S.* v. *Wallace*, 160 F. Supp. 859 (1958). But while some courts consistently view consent given by one in police custody as invalid, *Judd* v. *U.S.*, 190 F. 2d 649 (D.C. Cir. 1951), most Federal courts will inquire into the total circumstances of the case. *Burke* v. *U.S.* 328 F. 2d 399 (1st Cir.), *cert. denied*, 377 U.S. 849 (1964); *U.S.* v. *Paradise*, 253 F. 2d 319 (2d Cir.) (1958); *U.S.* v. *Perez*, 242 F. 2d 867 (2d Cir.), *cert. denied*, 354 U.S. 941 (1957); *Gendron* v. *U.S.*, 227 F. Supp. 182 (1964); *Kershner* v. *Boles*, *supra*; *Hamilton* v. *State of North Carolina*, *supra*.

On the other hand, where conditions of the restraint indicate a high probability of intimidation, consent by the person in custody will usually be invalid. This is often the result when a display of firearms or other open show of force is made during the course of the arrest. Thus, in one case police officers, exhibiting drawn pistols and riot gun, stopped the defendant's vehicle and placed the occupants under arrest for vagrancy and auto theft. One of the officers asked the defendant, Weed, about a vehicle parked approximately one and one-half blocks away from the scene of

(*Continued on page 20*)

## A New Application of an Established Technique—




Law enforcement officials are constantly seeking new and productive means to solve old and persistent problems. Rapid technological advances mark the pattern of growth of today's police forces, but sometimes a new and modified application of an old method proves highly effective.

Such is the case with the proposal presented in 1964 to the California Peace Officer's Training Division by the California Optometric Association. In charge of the research proposal was Dr. Arthur Heinsen of San Jose.

In 1964 vision science as applied to law enforcement was a new application of an already known and established training technique. During World War II many courses were developed for aircraft spotters and other military personnel receiving tachistoscopic training. Such a course consisted of flashing silhouettes of various aircraft, naval vessels, and other military equipment on a screen for a fraction of a second. With speedy identification as their ultimate goal, the military was very successful with this type of training. However, after the war, the consequent reduction of a constant need created obsolescence for the tachistoscopic training.

With an official of the California State Department of Education, Dr. Heinsen and I explored the feasibility of a pilot research study to present a new application of the tachistoscopic training. Our final project involved the development of an optometric program applicable to law enforcement personnel and suitable for possible incorporation by the department of education into a teaching manual. The manual would then be available to local law enforcement agencies

**C. ALEX PANTALEONI***

**Coordinator of Police Science, Rio Hondo Junior College, Santa Fe Springs, Calif.**

**Mr. Pantaleoni received his Bachelor of Arts and Master of Science degrees from California State College and has done additional graduate work at U.C.L.A. and the University of Washington.*

which would be able to conduct their own local program.

The necessary funds for the project were made possible by a contract grant from the department of education to the California Optometric Association to develop and prepare a teaching syllabus that included equipment, supplies, and training aids. Early in the development of the program, it became increasingly evident that at least one complete course would have to be offered prior to completion of a syllabus worthy of distribution. Accordingly, the Rio Hondo Junior College participated in a National Defense Education Act grant which provided matching funds for the cost of initiating this type of pilot program.

### *Three-Part Program*

The theory of vision was the first area wherein the optometrist could apply already established and known training procedures. Already in use and available for application to this program was a basic slide series prepared by Dr. Ralph Schrock of Chula Vista. This excellent slide series was used in the beginning phases of training with the tachistoscope. The use of symbols, such as numbers, letters, and geometric configurations, applies training techniques similar to those currently used in speedreading. This method begins by having the students view one digit for a fraction of a second and thereafter three, four, five, and more digits. This allows the students to develop their perception and "after-image recall" so that they perceive more in a given time period.

As a second step, the motivation for police officer personnel required the use of numerous law enforcement "scenes," which were prepared in cooperation with the Los Angeles Police Department and the Los Angeles County Sheriff's Department. As a one-man patrol unit, an officer remains extremely busy while driving 25 miles an hour on routine patrol, operating his radio, and referring to a list of stolen cars. When he passes an alley, he has but a fraction of a second to glance down it and determine whether any police action is needed. Frequently, he is already past the alley at the time of his mental reconstruction of the perceptual "after image." This was only one of the many areas that were developed to orient the program toward law enforcement.

Students in the program use peripheral stimulators to increase more accurate fixations.


The initial phase of letters and numbers rendered itself very naturally to the speedy identification and recog[nition] of license plate numbers. After the initial slide series, numerous license plates were flashed on the screen and, thereafter, pictures of automobiles were placed on the screen to simulate various driving conditions which might be encountered by the patrol officer.

The third phase involved actual eye training, using specialized equipment developed by Dr. Schrock in cooperation with the Keystone View Co.

The first pilot program was ready and offered on a test basis in the spring semester of 1965 at Rio Hondo Junior College. The course was designed to cover 30 hours on the basis of a 2-hour class twice a week. However, the initial pilot course was for 34 hours, with the additional hours at the beginning and end devoted completely to testing. This comprehensive testing served to properly evaluate the total project and was not merely a part of the training progra[m].

### *Testing With a Control Group*

Twenty-six students from 14 different law enforcement agencies started the program. A group of 25 officers from the Los Angeles Police Department's cadet class was chosen as the control group. Accordingly, both groups were tested with tachistoscopic slides and a series of timed tests developed by the California Test Bureau. The parts of the multiple aptitude tests that were used were:

(1) Factor II: Perceptual Speed:
Test 3—Language Usage.
Test 4—Routine Clerical Facility.
(2) Factor IV: Spatial Visualization.
Test 8—Spatial Relations, two dimension.
Test 9—Spatial Relations, three dimension.

The group scheduled to undergo the training was further tested for peripheral vision and possible vision deficiencies. Two of the students needed glasses, but they were allowed to continue the program and their improvement was measured accordingly.

Because of its initial testing and its research problems, the pilot course was conducted by local optometrists, Dr. Homer Hendrickson and Dr. Luprelle Williams. These two optometrists studied, reevaluated, and rewrote the course as it progressed.

In short, the course consisted of three basic phases for each session. The first phase involved vision theory, which explained the functions of vision memory and the various structures which permit vision. The second phase of instruction revolved around tachistoscopic training, using the basic law enforcement slide series. The third phase involved actual exercise and development of vision skills through use of optometric equipment developed by Keystone Co. The vision science kits included stereoscopes, plus and minus lenses, peripheral stimulators, and chiroscopic drawings as well as manuals on their use. Two students used a kit on a "coach-buddy" system. It should be noted that the kits cost $125 each and refill consumable supplies for each kit cost $25.

At the completion of the course, both groups were again tested. Comparison of the two sets of tests provided an evaluative basis inasmuch as the Los Angeles Police Department cadets had been given no specialized visual training. The results were evaluated by Dr. Melvin H. Dunn, an analytical psychologist and chairman of special services education at the University of Nevada, Reno, Nev. His complete report confirms that there was a high degree of improvement on the part of the training program group. Definite improvement was achieved in speed and adjustment of focus, span of perception, and "after-image recall." In addition, Dr. Dunn's report indicates the training was more beneficial for younger students than it was for older students. There also appeared to be a correlation between I.Q. and vision ability.


**Students improve the visual ability of their eyes to converge accurately and quickly at various distances.**

The self-evaluation reports prepared by the sudents indicated certain unexpected benefits. One student stated he was an avid golfer and that the course had taken five or six strokes off his handicap because he was able to judge distances more accurately. Another student who played in a semiprofessional softball league indicated his batting average had improved over 20 percent.

### *Additional Studies*

Followup studies made 6 months later indicated a reduction in proficiency. The optometrists felt that this loss could be reduced to a negligible percentage if the trained officers were assigned to patrol functions exclusively after their training. This procedure might help the officers maintain their acuity through practice. The expected net result of the officer's maintenance of his improved visual acuity is the reality of a "four-eyed" one-man patrol unit.

The course, taught by Dr. Williams, was again offered by the college in the spring of 1966, at which time several preservice police science students were also enrolled. The improvement noted after the course was very similar to that in the pilot program; however, the improvement was much greater in the younger students between the ages of 19 and 22, thereby suggesting that this training be conducted for recruits rather than for older officers. The college is offering the course again this year.

The California State Department of Education is proceeding with the production of the teaching syllabus as well as conducting programs throughout the State. Dr. Williams is most satisfied with the results of the program and feels very strongly that this course can be presented throughout the country if it is taught by an optometrist who is familiar with the program. Rio Hondo Junior College has added this course to its vast police curriculum.

# A Publ
# Cri

**WARREN DODSON**
**Chief of Police,**
**Abilene, Tex.**

"Dogs were once content to howl at train whistles, fire trucks, and Civil Defense sirens. Now they have another electronic tormentor. It's the 'yelper' on the Abilene Police Department's new public safety cruiser. Every time the powerful wagon roars off to the scene of a bad wreck or other emergency, the dogs join in the chorus."

This excerpt from an article which appeared in the Abilene Reporter News shows the immediate reaction of

# Safety

# ser


The Abilene safety cruisers have the necessary equipment for any emergency.

Abilene to the public safety cruiser which was inaugurated in February of 1963. Since then its sound in emergency situations has become a source of comfort and solace to many Abilene's citizens.

### *Purpose of Cruiser*

Capable of performing a multitude of tasks relating to public welfare and safety, our public safety cruiser is a multipurpose police unit designed and equipped to render service and protection for citizens while aiding in the enforcement of laws.

As a police unit, public safety officers are responsible for the enforcement of all laws of the State of Texas and the city of Abilene. They respond to all calls of the police dispatcher just as any other police unit. The safety cruiser is assigned to a district to patrol with due regard for the enforcement of all laws including those pertaining specifically to traffic. However, as a specialty unit, it is not assigned to investigate traffic accidents, handle domestic problems, or transport prisoners. Likewise, it is not required to respond to calls involving misdemeanors, unless the call is an emergency.

As a public safety unit, it responds to all major accidents where persons are injured for the purposes of rendering first aid, releasing trapped persons, and preventing fire. The cruiser responds to all calls of an emergency nature, such as drowning cases in which they use scuba diving equipment to dive, locate, and recover the victims and render what first aid is possible. When the fire department arrives on the scene with its equipment for dragging, etc., the public safety officers assist as directed by commanding officers of the fire or police department. The unit also responds to any call concerning unconscious or seriously injured people, like those suffering from heat exhaustion, strokes, poisoning, asphyxiation, electrical shock, or heart attack. The unit frees trapped persons and removes and destroys the explosive in cases involving an explosion or explosive material. Under normal circumstances, this unit does not respond to calls involving gunshot or knife wounds unless so directed and then only to render what first aid is needed at the scene or to act as a backup unit.

As a fire patrol unit, the public safety cruiser responds to all fire alarms and upon arrival extinguishes all small fires that can be controlled with a hand extinguisher, if the fire department unit has not arrived. At all major fires, the public safety officers are under the immediate control of the fire department supervisors and carry out their orders immediately to the best of their abilities. While on patrol, our officers always watch for fire hazards and notify the fire department of any encountered.

The public safety cruiser never, under any circumstances, operates as an ambulance. However, in many cases the assistance of the public safety officers is needed by the ambulance attendant. In such cases, one of our officers (the cruiser is a two-man unit) will accompany the victim in the ambulance to the hospital and will render aid and assistance if necessary.

The public safety cruiser is not a rescue unit per se, nor is it an ambulance, but it is basically a police

unit fully equipped to handle all types of emergencies.

### *Services Rendered*

"Send the safety cruiser" has become the most common request at the Abilene Police Department. In all emergencies, both large and small, our citizens have come to rely on the services rendered by the cruiser. Many of the calls are humorous (such as, "My cat is caught in the air conditioner"), but others are tragic and often fraught with danger for our safety officers. Recently, on an attempted suicide call, the person threatening suicide was located in a garage, holding a razor to his wrist. He refused to lay the razor down. One of the safety officers calmly talked to the disturbed person and grabbed the razor away from his wrist while the other officers assisted in restraining the individual.

During the first 14 months, the cruiser made 740 emergency calls. Out of this total number of calls, emergency oxygen was administered to 83 people. Many of these first calls involved life-or-death situations.

### *Record of Service*

In the 3½ years that the cruiser has been in existence, we have a record of first aid being administered 983 times. The resuscitator has been used 294 times, the scuba diving equipment 9 times, and the fire extinguishers 79 times. The safety officers have administered artificial respiration 18 times and assisted in saving 20 persons who had attempted suicide.

They also performed many minor services, such as in cases involving citizens who had locked themselves out of their cars or homes, fingers caught in automatic electrical kitchen appliances, cars with dead batteries, etc.

One phase of training given by our local physicians has come in handy a number of times—how to deliver a baby. Incidentally, the first baby delivered by our public safety officers was 1 year to the day from the time they began their duties. Since that time a number of Abilene's "young generation" has arrived with the assistance of the safety officers. In one case the parents honored the officers by naming the new arrival after them.

Last year, during the national scare that dolls shipped home to loved ones by servicemen in Vietnam might be booby trapped, these officers, who are thoroughly trained in the handling of explosives, checked more than 500 of these dolls. However, they found none containing explosives.

### *SCUBA Gear*

The SCUBA diving gear has been a real asset to our police department as well as to the public. In some cases, the public safety officers have retrieved discarded evidence from one of the three large lakes near Abilene. In cases involving a possible drowning, one officer begins dressing for diving en route to the scene and is ready to don the underwater breathing apparatus when he arrives. In one such incident where a double drowning was reported at Lake Fort Phantom Hill, both bodies were recovered within 5 minutes after our cruiser arrived at the scene of the emergency. While the diver goes into the water, his partner maintains the safety line and has the resuscitator ready to administer oxygen when the victims are located.

The most common treatment given by the officers is to apply a medical swab to a cut or laceration and an antiseptic bandage while awaiting the ambulance at the scene. They apply an air splint to broken limbs quite often also. This procedure is of great assistance to the hospital because it allows them to make an X-ray without removing the splint.

### *Emergency Procedure*

Since it stays in service at all times, the cruiser seldom is preceded to the scene of an emergency by an ambulance. Because it is on call for emergencies, both officers are never out of the cruiser at once except at the scene of an emergency. This policy is also true in cases where the public safety officer is writing a traffic citation. If, in any case, the officers have to be out of the car at the same time, they are able to switch their radio to a public address system which enables them to hear all calls from the dispatcher.

After making an emergency run, they call the station and are switched onto a dictating machine to record a report of their run. This is then typed by a clerk typist and placed in a file.

### *Conception of the Unit*

We conceived the idea for a public safety unit after the drowning of two youths in a creek which flows through Abilene's city limits. We were the first called to the scene of this tragic occurrence, but when the drownings were established, the fire department with their boats and rescue equipment had to be called because we did not have the necessary training or proper equipment to retrieve the victims.

A short time after this, on a dark rainy night, an automobile crashed into a utility pole causing a high voltage line to come precariously close to the vehicle. There was some difficulty getting the occupants of the car to remain in the car until the utility company could be summoned to remove the live wire. The many spectators who were attracted to this incident were in jeopardy of coming in

**The unit's portable oxygen kit has been used to save several lives.**

contact with the high voltage wire which hung close to the ground. Some of these individuals stooped to go under this wire before our officers at the scene could move them back to a safe distance.

After this tragic incident and near catastrophic occurrence, we began to plan and research for a police unit which would be trained to cope with all types of emergency and rescue work.

After discussing our ideas about the safety unit, we assigned senior staff officer Capt. L. A. Martin to head the planning and research.

We contacted the director of civil defense and obtained his opinion as to what type of emergency gear would be needed to equip the unit. Next, we called the fire chief for consultation and considered his recommendations. Then we invited the local chapter of the American Red Cross to assist in the training of each officer assigned to the safety unit in advanced first aid courses.

We contacted the local medical society, and they agreed to appoint a committee to serve in an advisory capacity as well as to assist in the training of the officers.

After months of ardent research, the plans were finally formulated and presented to the city government. They were hesistant at first to approve such a project mainly because of the expense of such a unit. However, when they were presented all the facts of the value of its services, they gave us the authority to proceed with our plans.

After much consideration, we chose a four-door station wagon as the vehicle for this unit. Its equipment included spotlights, large revolving red lights, and an electronic siren and public address system to identify it as an emergency vehicle.

### *Selection and Training of Personnel*

The men operating and maintaining the public safety cruiser are all volunteers carefully screened on the basis of their experience, aptitude, and mental and physical abilities. A committee composed of training officers from both the fire and police departments, plus the city's personnel director and assistant city manager, screens the volunteers before they receive joint approval by the chiefs of both departments.

The fire department conducted the initial training of the public safety officers over a 3-week period. This training covered such basic firefighting techniques and subjects as: small structure fires, ladder and aerial work, elements and causes of fires, the duties of fire hosemen, fire response and attack, rescue and carries, safety techniques, the use of a gas mask, ventilation of a fire, and fire hazards. Experienced fire department training officers personally conducted or supervised these training sessions and exercises.

The second phase of training included a 1-week session in high-risk rescue work at Texas A. & M. College. This second step included "hotwire" handling and first aid through the advanced level, along with instructions in the use of such life-saving apparatuses as resuscitators, oxygen equipment, cutting torches, etc. Additional training included defensive driving, scuba diving, explosives handling, and radiological monitoring.

The Taylor-Jones County Medical Society furnished the physicians who trained our officers in such techniques as how to deliver a baby during emergency conditions and other emergency aid that could be rendered at the accident scene. This extensive emergency training, plus the past experience and training that normally is retained by veteran police officers, fully prepared our public safety officers to cope with any emergency that might arise.

### *Vehicle and Equipment*

As mentioned above, the public safety cruiser is an up-to-date station wagon equipped with radios on both

police and fire department frequencies, emergency lights and sirens, rescue and first aid equipment, and fire-fighting extinguishers and tools.

A partial list of the cruiser equipment includes: fire extinguishers, (dry, $CO_2$, and water), fireman boots, helmets, bunker coats, gloves, safety goggles, gas masks, completely equipped toolbox, axe, sledge hammer, disposable blankets, army blankets, ropes, block and tackle, large, completely equipped first aid kit (including splints, medicold compresses, etc.), Porto-Power kit, frogman suit and scuba equipment, lanterns, hot stick (for handling high voltage wire), stretcher, Scott resuscitator, Scott air pack (for use in building filled with smoke, etc.), battery jump cables, tools for entering locked vehicles, various types of saws, and other tools to cover any type of emergency situation. When the unit makes an emergency run and the officers have no tool to cover the particular type of situation, they immediately add that tool. The initial total cost for equipping the cruiser ran close to $3,000. The average cost of supplies has run approximately $30 per month in keeping it equipped.

### *Evaluation*

There seemed to be some skepticism at the start as to the true value of such a unit as the public safety cruiser. It had only been in service a few days when the public began to recognize its worth.

One lady wrote our department and the Abilene Reporter News the following letter after her husband had been aided by our public safety officers: "He is alive today due to the excellent service rendered by your safety cruiser and its men. My husband had an acute attack of allergy, to the point of death. He collapsed from lack of oxygen and at one time completely stopped breathing. Officer Bill Paul, our neighbor, rendered first aid and called the cruiser.

"We are grateful to the Abilene Police Department and its men for the service rendered. Words seem inadequate when you are trying to thank someone for saving your mate's life."

We have received numerous similar letters of thanks and appreciation from citizens.

Public acceptance of the safety cruiser grew until it was necessary for us to add a second unit in July of 1965. Even physicians now tell their heart patients and others who may need emergency aid to call the safety cruiser prior to calling them.

Not only do our public safety officers feel a keen sense of pride in being able to serve humanity in this capacity, but the citizens of Abilene are very proud of our cruiser and the men who operate it. We feel that it has done more for the benefit of public relations than any other thing that the department has ever undertaken.

One of the big selling points that we used in getting our cruiser approved was, "If one life is saved, it will be well worth all the expense." Well, the public safety cruiser has more than proved its worth. This is attested to by many local physicians, families who have been assisted, and three Red Cross Life Saving Awards earned by the men who operate Abilene's public safety cruiser.

---

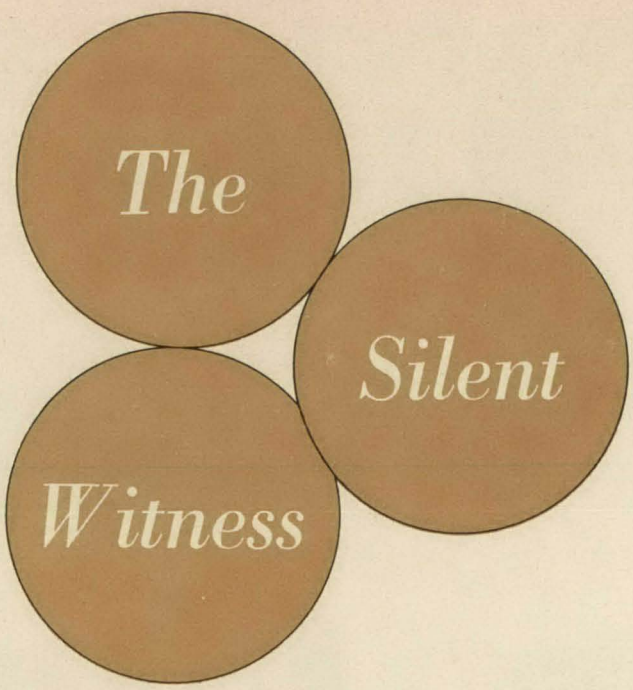
## AMERICAN POLICEMAN

(*Continued from page 6*)

A police employee explains to Lieutenant Mitchell her department's records and filing system.

Chief Inspector of Constabulary lists 58 awards for gallantry to British policemen ranging in rank from constable to inspector. Two of them are posthumous. Five civilians who assisted the police are also on the list.

Armed with a whistle, a wooden truncheon, a pair of handcuffs, and, if available, a personal radio, the British policeman performs the same duties as his American counterpart. I formed the impression that, although he may be as young as 19, a great deal of his success is based on his almost amazing personal dignity when on duty. Most of the policemen I came in contact with were more than deserving of the English term of approbation, "He's a proper Copper."




***Let the bank robber beware! More and more his criminal acts are being watched by a silent witness—the hidden camera—which records the infallible truth.***

In identifying bank robbers, many times a picture is worth a thousand descriptions—especially if the photograph catches the bandit committing the robbery.

About 6:45 p.m., December 6, 1966, three armed men, all wearing sunglasses, entered a branch of the Southern Maryland Bank and Trust Co. at Oxon Hill, Md., and ordered two male tellers to the rear of the bank. One of the robbers handed a laundry-type bag to the female teller and ordered her to put all the money from the cash drawer into the bag. Then the robbers fled. Total amount of money taken was $1,659.

The bank is equipped with a concealed camera which runs continuously during banking hours and takes photographs at regular intervals. The film in the camera was processed by the FBI. Three frames contained photographs of the persons involved in the robbery, one of which was a good clear picture of the face of one of the robbers. He was wearing a special police officer's uniform, including a badge and cap.

The photograph and pertinent information concerning the robbery were prepared by the FBI and released to all major newspapers in the Washington, D.C. area for publication in the hope of securing an identification.

Several calls were received from citizens who said they could positively identify the subject of the photograph. He was subsequently identified by three people as an individual who had previously worked in the Washington area. These identifications supported prior investigation by FBI Agents who had developed the man as a suspect. He was arrested and charged with bank robbery.

The value of a strategically placed camera and resulting publicity of suspects is illustrated by another incident in which a subject was caught on camera in the act of committing a bank robbery.

In this incident a youth entered the National Savings & Trust Co. in the District of Columbia on January 4, 1967, at which time he took an estimated $6,000.

The picture taken by a hidden camera during the robbery showed a man wearing glasses, with his hand partially covering a pistol, at a teller's window.

The suspect in the photograph released to newspapers by the FBI was recognized by a local police officer. He notified police investigators who arrested the youth.

### *Just in Time*

In one instance, a camera had been installed only the day before the robbery, when shortly before noon a masked bandit, accompanied by a teenage female, entered a banking institution in Cleveland, Ohio. Brandishing a small hand weapon, the masked man warned bank employees that this was a stickup and to stand back. Stationing himself in front of a teller's window, he waited while his accomplice calmly proceeded to empty the money from the teller's cash drawer into a brown paper bag.

One of the bank tellers had observed the masked bandit enter the bank and had immediately tripped a silent alarm which also set a hidden movie camera into motion.

Two minutes after the bandits had fled with $2,372, detectives from the Cleveland Police Department arrived at the bank and rushed the film for

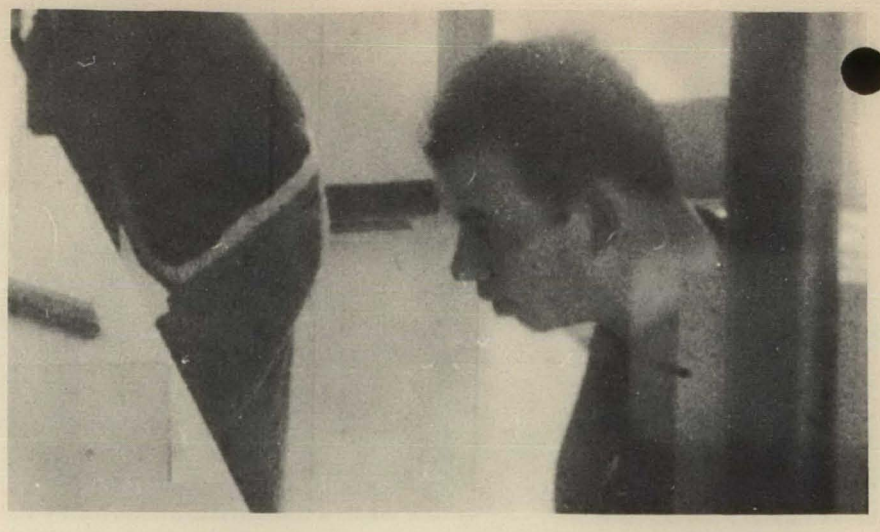
immediate processing. FBI Agents dispatched to the scene commenced immediate investigation.

Still prints of the film taken during the robbery were distributed to police officers, FBI Agents, surrounding police departments, and to newspapers. The film was rushed to TV stations and given nationwide coverage.

The youthful bank robber turned himself in to police the following day. He told police he had gone to Indiana by bus after the robbery, but when he realized the robbery film was being shown on TV, he had decided to return to Cleveland and surrender. "Where can you go when you're on TV all the time!" was the remark he made to detectives and FBI Agents.

The girl was arrested the following day when her whereabouts was made known to police by an anonymous telephone call.

The man was sentenced to a term of 10 to 25 years in the State penitentiary. The girl was placed on probation for 2 years.



Joe Meador, caught by a hidden camera, was convicted on charges of robbing a bank of more than $30,000.

Joe Meador photographed following his arrest.

### *Nervous Robber*

Another bank robber, an 18-year-old youth, robbed the Citizens & Southern Emory Bank, Decatur, Ga. Holding a sawed-off shotgun, he herded 18 persons into the open space of the bank lobby, then ordered the tellers to put the money in a green paper bag he was carrying. He showed extreme nervousness and at one time was heard to remark, "I swear to God, I'm scared to death." He obtained $19,475 and escaped in a stolen car.

The bank manager in an office adjoining the lobby, seeing this action, set off the silent bank alarm which also activated the bank's two hidden cameras.

Ten clear photographs of the robber were taken during the course of the robbery. These were released to all available news media and displayed throughout the Nation.

The robber was identified as Stephen Patrick Wilkie by a tenant of a home where the robber had been living for several months; but he, in the meantime, was traveling all over the country living a life of luxury on the money he had stolen. When a phone call to his hometown revealed that he was wanted by the FBI for bank robbery, he surrendered to Special Agents in San Francisco. He was sentenced to 10 years in the custody of the Attorney General.

In another robbery two brothers armed with handguns entered an Indiana bank and forced the manager to fill a cloth bag with money from the vault and the tellers' cashboxes.

After obtaining $30,845, one of the brothers ripped two sequence cameras from the wall of the bank and took them along when they fled from the scene. Apparently they had no objections to being photographed during the robbery, but they made sure the film could not be developed after they left.

During the ensuing investigation, one of the bank tellers told FBI

Agents that she recognized one of the robbers as having been in the bank [illegible]e 6 weeks previously to cash a check.

With the cooperation of the bank officials, FBI Agents assisted the teller in the task that lay before her in effecting an identification. Sequence camera films for the preceding 6 weeks were developed and shown to the teller. For several hours each day for 11 days, she sat with FBI Agents reviewing the frames, until one day, after having viewed some 20,000 frames, she picked up the frame identifying the robber—the man who had entered the bank almost 6 weeks before the robbery.

Numerous prints of this photograph were made and circulated by the FBI to various sources. Three days after the photograph was first obtained, a trusty of a local county jail identified the bank robber as Joe Wayne Meador. With his identification, the brother, Radine Meador, was found to answer the description of the [illegible]er robber.

### *Green Thumb*

Both men denied guilt of the robbery, stating they had been planting tobacco on the farm of a relative at the time. This information was checked out, but apparently tobacco was not the only thing they had planted. After many hours of backbreaking digging, FBI Agents unearthed a 25-pound lard can which had been buried some 15 inches under a stable. Inside the lard can was a plastic container; inside the plastic container was a styrofoam ice bucket; and inside the bucket was $11,000 completely saturated with talcum powder.

Confronted with the buried treasure, the brothers accompanied FBI Agents to another location where a similar lard can was buried containing another bucket and $11,487 completely saturated with talcum powder. The brothers explained that the talcum powder served as a dehydrating agent for the preservation of the buried money.

FBI Agents and SCUBA divers located the cameras in a deep creek running through a heavily wooded area in the general vicinity of the bank. Although the cameras had been completely submerged for almost a month, it was possible to develop 1½ frames on the exposed film which clearly showed one of the victim tellers with hands upraised and one of the brothers standing nearby.

The two brothers were each sentenced to 10 years' imprisonment.

### *Camera Scores Again*

Another youth, Albert Earl Ehrenberg, recognized from a photograph taken at the time of the holdup and publicized in a widely read daily newspaper, was convicted for the robbery of the Colonial National Bank of Alexandria, Va., for which he received a sentence of 15 years' imprisonment. He was also charged with the robberies of banks in Maryland and the District of Columbia, but in view of the substantial sentence given him for the Alexandria robbery, these other two charges were dismissed.

More and more banks are installing cameras as a means to reduce their vulnerability to marauding bank robbers. Certainly, the results achieved in many cases in which robbers have been caught on film while committing the crime are encouraging and indicate the value of this technique.

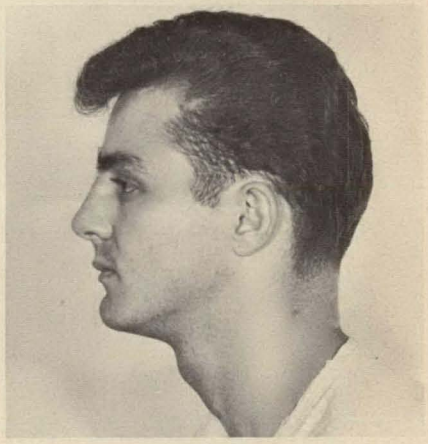
If, however, a camera installation in a bank is to be of maximum usefulness, certain technical factors should be considered. The photographs produced by a concealed camera must be of good enough quality for identification of the personal features of the bank robber. It is frequently desirable to publish such pictures or show them on television which requires pictures of good quality if results are to be achieved from such investigative procedures.

Experience in the FBI with pictures provided by numerous bank camera installations have led to the following conclusions with respect to these installations:

1. Cameras of 35 mm. or larger negative size will produce better results than cameras of smaller negative size.
2. A sequence camera is preferable to a movie camera. This kind of camera will produce a series of still photographs that will ordinarily be of higher quality for identification purposes and will also record the action.
3. Camera(s) (more than one if necessary)

(*Continued on page 24*)

**Albert Earl Ehrenberg photographed during the robbery of a Maryland bank.**



**Ehrenberg following his arrest on bank robbery charges.**

## SEARCH OF VEHICLES

(*Continued from page 8*)

the arrest and he answered that the vehicle was his. Weed surrendered the keys to the car after being told by the officers that they could get a search warrant if necessary. The latter circumstance, coupled with the fact that the defendant relinquished the keys while in custody and "during a period of dramatic excitement of drawn guns," led the court to conclude that the alleged consent was not "freely and intelligently given." Compare, *U.S.* v. *Kuntz*, — F. Supp. — (Northern District of New York, March 17, 1967) (upholding consent search at a roadblock manned by an officer armed with a shotgun).

As a general rule, the courts tend to question the competence and voluntariness of consent given by a subject who denies guilt, particularly where it is apparent that incriminating evidence will be discovered. One appellate court rejected a waiver in this situation, stating that "no sane man who denies his guilt would actually be willing that a policeman search his room for contraband which is certain to be discovered." *Higgins* v. *U.S.*, 209 F. 2d 819 (1954). See also, *U.S.* v. *Gregory*, 204 F. Supp. 884, aff'd 309 F. 2d 536 (1962), holding that consent given under these circumstances is simply "not in accord with human experience." On the other hand, a confession of guilt which precedes a search tends to support the authenticity of the consent. *U.S.* v. *Mitchell*, 322 U.S. 65 (1944); *U.S.* v. *Smith*, 308 F. 2d 657, 663–64 (1964); *U.S.* v. *Wallace* (*dictum*), *supra*. See also, *State* v. *Bindhammer*, 209 A. 2d 124 (N.J. 1965).

Also, where it appears that the person in custody consented primarily in an effort "to shift culpability" to another, *U.S.* v. *DeVivo*, 190 F. Supp. 483 (1961), or to bluff his way through a search on the mistaken belief that the incriminating articles are too well concealed to be discovered, the courts have generally allowed the admission of such items into evidence. *Grice* v. *U.S.*, 146 F. 2d 849 (1945); *contra*, *Smith* v. *U.S.*, *supra*. A similar result was reached recently in a case where the subject delivered the keys to his vehicle in an attempt to "corrupt" a Federal agent into preventing the Government from obtaining pertinent evidence. In *U.S.* v. *Hilbrich*, 232 F. Supp. 111 (1964), aff'd, 341 F. 2d 555 (1965), the defendant was arrested by police officers shortly after he had robbed a savings and loan association. While being interviewed by an agent with whom he was acquainted, he gave his car keys to the agent and asked him as a "favor" to go to the automobile, which was parked a short distance from the scene of the robbery, and to "get rid of" two boxes of ammunition located in the trunk. A second agent used the keys and seized the ammunition. The defendant later advanced the rather novel argument that he had not in fact consented to the search since his only reason in surrendering the keys was to prevent the Government from getting the evidence. The appellate court, however, rejected this contention, stating that in the absence of any showing of coercion, the motion to suppress the evidence was properly denied.

The defendant's argument here was not without merit, i.e., that permission to enter the vehicle was extended for the sole and limited purpose of disposing of the evidence and that, once this authority was exceeded, the consent, which has sometimes been viewed as an agency relationship, was terminated. But since it is also clear that Hilbrich made no effort to withdraw his consent even after the agent unequivocally informed him that he could not comply with the request, the result in this case seems a proper one. It is worth repeating at this point, however, that whenever the conditions permit, as would appear to have been the case here, an officer should endeavor to obtain a warrant. Although the practicability of doing so does not have a bearing on the legality of the consent search, evidence which has been obtained in the execution of a proper search warrant is always received more favorably by the courts than that which has been secured through a claimed waiver of rights.

### B. *Clear Expression of Consent*

Aside from consideration of duress or coercion, consent cannot validly be obtained unless it is expressed in an explicit and unequivocal manner by the person whose property is to be searched. *U.S.* v. *Fowler*, 17 F.R.D. 499 (1955); *Karwicki* v. *U.S.*, 55 F. 2d 225 (1932). Where the consenting words are such that they do not show a clear and unmistakable intent to waive one's constitutional right to refuse a warrantless search, the evidence so obtained will be inadmissible. *Ray* v. *U.S.*, 84 F. 2d 654 (1936).

But as a general rule, the express language used by a suspect is merely a factor to be considered, among others, in determining the voluntariness of the consent. As one appellate court stated: ". . . a waiver cannot be conclusively presumed from verbal expression of assent. The court must determine from all the circumstances whether the verbal assent reflected an understanding, uncoerced, and unequivocal election to grant the officers a license which the person knows may be freely and effectively withheld," *Cipres* v. *U.S.*, 343 F. 2d 95, 97 (1965). Thus, while the party may respond with words indicating consent, they do not constitute a valid waiver when the surrounding circumstances fail to support the voluntary use of such words. Accordingly, consent searches have been invalidated in

some cases notwithstanding such remarks as, "I have no stuff in my apartment and you are welcome to go search the whole place," *Channel* v. *U.S.*, 285 F. 2d 217 (1960), or, "I have nothing to hide, you can go there and see for yourself." *Judd* v. *U.S.*, 190 F. 2d 649 (1951). See, 79 C.J.S., Searches and Seizures, n. 89, sec. 62, for further examples.

In *Application of Tomich*, 221 F. Supp. 500 (1963), aff'd 332 F. 2d 987 (1964), the defendant was arrested for a traffic violation. When asked by the officers for permission to search his car, Tomich replied that "he didn't mind," but stated that he did not have a key to unlock the trunk; in fact, he had the key hidden in his shoe. Eventually, the police were able to gain entrance into the trunk by having a key made at a local garage. Tools and a pair of shoes linking Tomich to a burglary were found in the trunk of the vehicle and were later used in evidence against him. In a subsequent habeas corpus proceeding, a Federal district court rejected the State's contention that valid consent had been obtained, stating: "At all times when he was allegedly consenting to the search, he had in his possession, hidden in his shoe, the key to the trunk. If he truly consented to the search, he would have delivered up the key to the officers and saved them all the trouble they went to to get into the trunk of the car." *Id.* at 503.

The difficulty with this reasoning is that the officers in this case had no way of knowing that the subject was in possession of the key. Had his overt conduct reasonably indicated that he did not in fact wish to cooperate, the police would not have been justified in relying on his expressed consent. But to all outward appearances the defendant in this case knowingly and voluntarily relinquished his right to insist upon a warrant. It would seem that if the police are to know with any certainty when a proper waiver of fourth amendment rights has been made, they should be permitted to rely on the open and expressed conduct of the suspect, without regard for the possibility of pretense. Carried to the extreme, *Tomich* could open the way for a criminal suspect to insure the inadmissibility of physical evidence, which might otherwise be acquired by an alternative method, by professing cooperation at the scene and later refuting his alleged consent, pointing out that he had in fact withheld the keys to the vehicle or in some other manner had not fully assisted the police. See e.g., *Burge* v. *U.S.*, 332 F. 2d 171 (1964), in which the defendant apparently feigned consent as "a determined strategy" to a later claim of illegality on the part of the officers.

In some cases, permission to search has been found by the courts in the absence of consenting words by the suspect, where it appeared that the party had indicated a willingness to cooperate or had rendered some affirmative assistance to the officers. Where the defendant readily tendered the keys to his vehicle upon request, *Robinson* v. *U.S.*, 325 F. 2d 880 (1963), or, without objection, opened the trunk and surrendered pornographic materials to investigating officers, *Burge* v. *U.S.*, 332 F. 2d 171 (1964), such conduct has been viewed as convincing evidence of consent. See also, *Smith* v. *U.S.*, 308 F. 2d 657 (1962) (*dictum*), *cert. denied*, 372 U.S. 906 (1963) (consent found where the defendant, while under arrest for possession of narcotics, led officers to a nearby apartment and produced a suitcase containing heroin); *U.S.* v. *MacLeod*, 207 F. 2d 853 (1953) (*dictum*) (following his arrest, the defendant cut the lock off a chest containing incriminating evidence and, without suggestion from the agents, went into the bedroom and carried out a hand printing press).

### C. *Knowing and Intelligent Waiver of Rights*

The courts have long required that consent to search be a "deliberate relinquishment of a known right," *U.S.* v. *Alberti*, 120 F. Supp. 478 (1959), and that such consent be "intelligently" given. *U.S.* v. *Smith*, 308 F. 2d 657, *cert. denied*, 372 U.S. 906 (1963). As a general rule, however, there need not be an affirmative showing that the consenting party was advised of his fourth amendment right to prevent a search without a warrant. Although a failure to warn has sometimes been persuasive on the issue of coercion, that factor alone has not been sufficient to invalidate the search. *U.S.* v. *Paradise*, 253 F. 2d 319 (1958). Rather, the practice has been to establish whether, in view of the circumstances as a whole, the waiver of fourth amendment rights was voluntary and intelligent. *Tatum* v. *U.S.*, 321 F. 2d 219 (1963); *Channel* v. *U.S.*, 285 F. 2d 217 (1960). In making this determination, the courts have been influenced by the suspect's "marked intelligence and mental alertness," *U.S.* v. *Haas*, 106 F. Supp. 295 (1952), or the fact that the consenting parties were "sophisticated businessmen of many years experience." *U.S.* v. *Martin*, 176 F. Supp. 262 (1954); *In re White*, 98 F. Supp. 895 (1951). A history of previous arrests or "indicated knowledge from previous search and seizure experience" may also show that the party was probably alert to his rights and to the consequences of a waiver at the time he allegedly gave permission to search. *Burge* v. *U.S.*, 332 F. 2d 171 (1964). Thus, while upholding a consent search, one Federal court declared: "The amount of intimidation or fear of the badge in a person with little knowledge of police officers or of legal proceedings would be much more acute and motivating than that of a man with 13 years of experience

as an officer and investigator. It may be reasonably assumed that he was aware of all the consequences." *Tatum* v. *U.S.*, 321 F. 2d 219, 220 (1963). By the same token, the government's burden of proving an intelligent and understanding waiver of rights is understandably difficult to sustain when the consenting party is illiterate or does not have a good understanding of the English language. *U.S.* v. *Wai Lau*, 211 F. Supp. 684 (1963); *Kovach* v. *U.S.*, 53 F. 2d 639 (1931); *U.S.* v. *Ong Goon Sing*, 149 F. Supp. 267 (1957).

In a noticeable departure from the traditional approach, however, some courts have interpreted the requirement of a knowledgeable waiver to mean that, in the absence of other evidence that the suspect was aware of his fourth amendment rights, a formal warning by the police officer is a necessary prerequisite to consent. For example, in *U.S.* v. *Blalock*, 255 F. Supp. 268 (1966), the defendant was questioned in a motel room concerning his possible implication in a recent bank robbery. When asked whether he would mind if the agents searched the room, the defendant replied that he had no objection. The search disclosed a quantity of bait money taken during the robbery. On a motion to suppress the evidence, the Federal district court stressed the need for an "intelligent" consent and restated the long-standing rule that one cannot be said to waive a fundamental right unless he knows the right exists. Pointing out that the "voluntariness" of the consent was not in issue, the court stated: "[T]he fourth amendment requires no less knowing a waiver than do the fifth and sixth. The requirement of knowledge in each serves the same purpose, i.e., to prevent the possibility that the ignorant may surrender their rights more readily than the shrewd." See also *U.S.* v. *Nikrasch*, 367 F. 2d 740 (1966).

*Blalock* expresses the growing tendency among the Federal courts to avoid resolving each case on its own set of facts where a waiver of constitutional rights is involved. By requiring an explicit warning of fourth amendment rights for all suspects, regardless of age, experience, or coercive influences, the court frees itself from the burden of deciding whether this particular defendant knew of his rights in the matter. This trend away from "particularism" in the law has been most evident in the fifth amendment area where, as indicated earlier, the court previously weighed similar factors in establishing the voluntariness of confessions. In *Miranda* v. *Arizona*, however, the court rejected this approach, requiring that all persons in custody be warned of their right to remain silent prior to interrogation. Since there are elements of self-incrimination in illegal searches, *Boyd* v. *U.S.*, 116 U.S. 616, 630 (1886), it has been speculated that *Miranda* bears constitutional implications for consent searches as well. See, Note, "Consent Searches: A Reappraisal After *Miranda* v. *Arizona*," 67 Colum. L. Rev. 130 (1967). Whether advice of fourth amendment rights need be as comprehensive as *Miranda* requires, or whether the States would be bound by such a rule, is largely a matter of conjecture at this point.

But even assuming that *Miranda* is relevant to fourth amendment matters, at best it would apply only where the consenting party is "in custody or otherwise deprived of his freedom of action in any significant way." *Miranda* v. *Arizona*, 384 U.S. 436, 444 (1966). As noted earlier, however, it is in this type of situation that consent searches are most difficult to sustain, the theory being that custody itself creates a coercive atmosphere which makes it difficult for one to exercise free choice. Thus, while a technical reading of the law at this point may not require a warning in every instance, the better practice in situations of restraint or intimidation is to inform the consenting party that he has the right to insist upon a warrant.

### D. Consent by Third Parties

As a general rule, the constitutional right to privacy is personal to the individual and cannot be waived by third parties. *Stoner* v. *California*, 376 U.S. 483 (1964). Consequently, in the absence either of expressed or implied authorization to consent or a joint occupancy or ownership of the property to be searched, a valid waiver of the privilege against unreasonable searches and seizures can be given up only by the person himself. This limitation holds true, moreover, regardless of the personal or familial relationship which may exist between the consenting party and the person against whom the evidence is to be used.

The specific question of whether the wife's consent can validate a search against her husband remains unsettled in both the State and Federal law. See, Note, "The Effect of a Wife's Consent to Search and Seizure of the Husband's Property," 69 Dick. L. Rev. 69 (1964). But judging from the existing law applicable to the search of fixed premises, one ordinarily can assume that a spouse can give consent to the search of a motor vehicle which is valid as against the other, where they jointly own and utilize the automobile in question. See, *State* v. *Coolidge*, 208 A. 2d 322 (N.H. 1965) (wife's consent to search family cars parked in yard upheld). See also, *Roberts* v. *U.S.*, 332 F. 2d 892 (1964), *cert. denied*, 380 U.S. 980; *Stein* v. *U.S.*, 166 F. 2d 851 (1948); *U.S.* v. *Heine*, 149 F. 2d 485 (1945), *cert. denied*, 325 U.S. 885. In this type of situation, the wife's authority to permit a search comes from her right to joint possession of the property to be searched and not from the marital relation per se. For example, in *Dalton*

v. *State*, 105 N.E. 2d 509 (Ind. 1952), officers investigating a hit-and-run offense asked the wife for consent to search the suspect automobile, which was registered in her name. The car, however, was paid for by the husband, who had sole control and possession of it. The wife had never driven the car. In view of her lack of possession, the court held that the wife could not consent to a search of the car which was her husband's personal "effect," protected by the fourth amendment. However, if a specific area of the vehicle or a container in the automobile, such as luggage or a footlocker, is the exclusive property of the defendant, it is doubtful that a proper waiver can be obtained from a consenting spouse. See, e.g., *State* v. *Evans*, 372 P. 2d 365 (Hawaii 1962) (wife cannot consent to search of husband's cuff link case in dresser drawer).

The issue of interspousal consent was present in a case which came before the Supreme Court recently, but the Court disposed of the matter on other grounds. In *Henry* v. *Mississippi*, 379 U.S. 443 (1965), the petitioner was convicted of disturbing the peace by making indecent proposals to and offensive contact with a hitchhiker to whom he allegedly gave a ride. The only evidence available to corroborate the complainant's charges was obtained by an allegedly unlawful search of the vehicle. The evidence tended to substantiate the complainant's story by showing its accuracy in details which could only have been seen by one inside the car. Subsequent to the petitioner's arrest, an officer went to his home and obtained permission from the petitioner's wife to search the vehicle without a warrant. Despite the fact that under Mississippi law a wife could not give consent which waived the constitutional rights of her husband, the State Supreme Court affirmed the conviction on the ground that the petitioner's counsel had failed to make a timely objection to the introduction of the illegal evidence. In vacating the judgment and remanding it for a rehearing on the question of whether the noncompliance with the procedural rules constituted a waiver, the Supreme Court noted: "Thus, consistently with the policy of avoiding premature decision on the merits of constitutional questions, we intimate no view whether the pertinent controlling federal standard governing the legality of a search and seizure, see *Ker* v. *California*, 374 U.S. 23, is the same as the Mississippi standard applied here, which holds that the wife's consent cannot validate a search as against her husband." *Id.* at 449, fn. 6.

Where a gratuitous bailment of a vehicle is concerned, one appellate court has taken the view that delivery of the automobile into the temporary custody of another represents an affirmative relinquishment of one's fourth amendment protection over such property. In *Eldridge* v. *U.S.*, 302 F. 2d 463 (1962), the suspect lent his automobile to a friend, Nethercott, who had requested permission to use the car to visit his daughter. The keys to the ignition and to the trunk were given to him. Acting on information that there was a stolen rifle in the car, and after observing a rifle on the back seat, the police asked the friend for permission to examine the automobile. The trunk of the car was voluntarily opened by the friend, disclosing two stolen Government radios which were immediately seized and turned over to Federal authorities. At his trial the defendant contended unsuccessfully that the radios had been illegally seized, claiming that the protections of the fourth amendment are personal to him and cannot be waived for him by the gratuitous bailee of the car. On review of the conviction, the Fourth Circuit Court of Appeals ruled that the articles seized from the automobile were properly admitted in evidence. The court reasoned that the friend

> "was clothed with rightful possession and control and could do in respect to the automobile whatever was reasonable and not inconsistent with its entrustment to him. No restriction was imposed upon him except to return with the car by a certain hour. Although the defendant knew of the presence of the stolen radios in the trunk, he apparently did not think it worthwhile to take the precaution of forbidding his bailee to open the trunk or permit anyone to look into it. He reserved no exclusive right of privacy in respect to the trunk when he delivered the key. In responding as he did to the police, Nethercott did not exceed the authority Eldridge had seemingly given him. Using the key to open the trunk was not an unwarranted exercise of dominion during the period of his permissive possession and use. Access to the trunk is a normal incident to the use of an automobile. And if, when he voluntarily opened the trunk, Nethercott did not exceed proper bounds because he had to that extent at least concurrent rights therein with Eldridge, was the ensuing search by the police unreasonable? We think not." *Id.* at 466.

A similar result was reached in *Hamilton* v. *State of North Carolina*, 260 F. Supp. 632 (1966), where a Federal district court ruled that petitioner's codefendant, who was in temporary possession of the vehicle, had the capacity to consent.

It has been argued in support of *Eldridge* that one who has lent his vehicle to another "seems affirmatively to be taking the risk that the third party will show his belongings to others. Therefore, it is not unreasonable to conclude that in these cases the suspect has impliedly given the third party authority to waive his own personal right to privacy." Note, "Effective Consent to Search and Seizure," 113 U. Pa. L. Rev. 260, 263 (1964). But not all decisions are in agreement with this view, as evidenced by the holding in *State* v. *Bernius*, 203 N.E. 2d 241 (N.J. 1964). There the defendant lent his automobile to a friend who was later arrested on a traffic violation. When she was unable to

*(Continued on inside back cover)*

# WANTED BY THE FBI

**LAWRENCE ROBERT HEMMINGER, also known as Larry Hemminger.**

***Interstate Flight—Escape***

LAWRENCE ROBERT HEMMINGER is being sought by the FBI for unlawful interstate flight to avoid prosecution for the crime of escape. A Federal warrant for his arrest was issued on July 8, 1965, at Springfield, Mo.

In Camden County, Mo., on September 16, 1964, Hemminger and two other individuals allegedly attempted to kill a Missouri State Highway Patrol trooper. They were arrested 10 days later and incarcerated at the Greene County Jail at Springfield, Mo., to await trial on this charge. Over a period of several weeks, Hemminger and three other men used a bed rail to dig through the brick and mortar enabling them to escape th[illegible] confinement on July 5, 1965.

Hemminger usually wears glasses and has been employed as a factory worker, laborer, and welder. He has been convicted of burglary and larceny and has escaped custody on previous occasions.

## Description

| | |
|---|---|
| Age | 37, born April 12, 1930, Sterling, Ill. |
| Height | 6 feet. |
| Weight | 165 pounds. |
| Build | Slender. |
| Hair | Brown, graying. |
| Eyes | Blue. |
| Complexion | Medium. |
| Race | White. |
| Nationality | American. |
| Occupations | Factory worker, laborer, welder. |
| Scars and marks | Pitted scar between eyebrows, skin moles across back and shoulders, scar on back of right hand and on right thumb, scars [illegible] side and base of [illegible] thumb. |
| Remarks | Usually wears glasses. |
| FBI No | 752,904 B. |
| Fingerprint classification. | |

18 O 31 W MOO 21 Ref: 31
O 20 W MOI 24

## Caution

Hemminger may be armed and should be considered dangerous.

## Notify the FBI

Any person having information which might assist in locating this fugitive is requested to immediately notify 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.

## SILENT WITNESS

(*Continued from page 19*)

should be placed in strategic locations, preferably over entrances for best facial views.

4. Lighting is an important consideration in such installations. Minor changes in lighting will sometimes greatly enhance the results. An initial test of equipment will determine results that can be anticipated.
5. It is important to arrange to have any installation serviced on a regular basis to make certain film supply is fresh and that equipment is functioning properly.

Law enforcement stands ready to shoulder its responsibility in reversing the rising tide of bank robberies, but it needs help from the banking institutions themselves, from news media, and from the courts which must deal realistically with those who are found guilty.

Experience shows that time-proven deterrents to crime are sure detection, swift apprehension, and proper punishment. As a deterrent, the latter is by far the most important; however, its news value is considerably lower. Consequently, robbers and potential robbers see and hear a lot about sensational bank hold-ups but may never know of the punishment invoked when the perpetrators are caught.

# Tribute to Peace Officers

***The following is a statement by FBI Director J. Edgar Hoover concerning Peace Officers Memorial Day and Police Week which was addressed to the 79th Session of the FBI National Academy on May 15, 1967.***

GENTLEMEN:

This day has a special meaning for all of us. Nearly 5 years ago, the President of the United States signed the public law which authorizes and requests him to issue annual proclamations designating May 15th of each year as Peace Officers Memorial Day. The purpose of ceremonies and activities proposed for the occasion is to honor those officers who have been killed or disabled in line of duty. The law also authorizes and requests a presidential proclamation each year designating the week in which May 15th occurs as Police Week.

Now, when the rate of crime continues to ascend, our mutual friends and colleagues on the firing line face an increasingly dangerous and aggressive army of criminals. Some bear on their bodies everlasting reminders of the intense struggle in which we are engaged—indeed, there may be those among you who carry such scars. Others, less fortunate, are tied to wheelchairs or bound in utter helplessness to their hospital beds. Still others—and some were known to each of us—will never again awaken to a spring morning.

We pause today to honor those men in law enforcement whose commitment was complete and whose sacrifice was total.

What kind of monument can we erect to keep alive the memory of such men? What memorial can we raise to their courage, their dedication, and their sacrifice?

I believe that if the men who have given their lives to uphold the law could speak, they would desire most the type of testimonial which is to be found in your presence here. With every forward step we take in making certain that our law enforcement representatives are better trained, better equipped, and generally better prepared than their predecessors, we add strength and dignity to the living memorial we are developing. The good men whose lives have been sacrificed on the evil altar of crime would find in your determination, your effort, and your dedication to the advancement of our profession the memorial they would welcome above all others. I thank you.

## SEARCH OF VEHICLES

(*Continued from page 23*)

give a satisfactory account of her possession of the automobile, she was taken into custody and the car was removed to a local police lot. While being detained at the station, the friend gave the keys to the car to the police who searched the trunk and found incriminating evidence which subsequently was used to convict the defendant. In reversing the conviction, the New Jersey State Supreme Court refused to accept the implied authorization theory which had influenced the holding in *Eldridge*. Instead, the court ruled that "where the owner of an automobile entrusts the possession and control thereof to another, a search thereof with the consent of the one so entrusted but without a warrant and without the express consent authorization of such owner is, as against such owner, prohibited . . . as an unreasonable search." *Id.* at 243.

A somewhat different situation is involved if the bailment is for hire as, for example, where the defendant places his automobile in the custody of a parking lot attendant. In this case it is doubtful that the bailee can waive the defendant's rights. But see, *Casey* v. *U.S.*,191 F. 2d 1 (1951) (holding the defendant, who failed to claim ownership or interest in articles seized from vehicle, lost immunity from search and seizure when he placed garage in possession of his automobile). As a general rule, when control over the property is limited to temporary custody for storage purposes with rights of access expressly or impliedly denied, the courts hold that the custodian lacks sufficient capacity to consent. *Corngold* v. *U.S.*, 367 F. 2d 1 (1966); *Holzhey* v. *U.S.*, 223 F. 2d 823 (1955). The issue here is analogous to that presented in *Chapman* v. *U.S.*, 365 U.S. 610 (1961), where the Supreme Court held that a search by police officers of a house occupied by a tenant violated the tenant's constitutional right, even though the search was made with the authorization of the owner. There the owner had not only apparent but actual authority to enter the home for various purposes, such as to "view waste." Since the purpose of the entry was not to view waste but to look for evidence of a crime, the court held the search unlawful. See *Stoner* v. *California*, 376 U.S. 483, 489 (1964). On this reasoning, it would seem that the authority conveyed to the garage attendant would relate solely to the proper and safe storage of the vehicle, and entry for any other reason would be improper.

(*To be continued in August*)

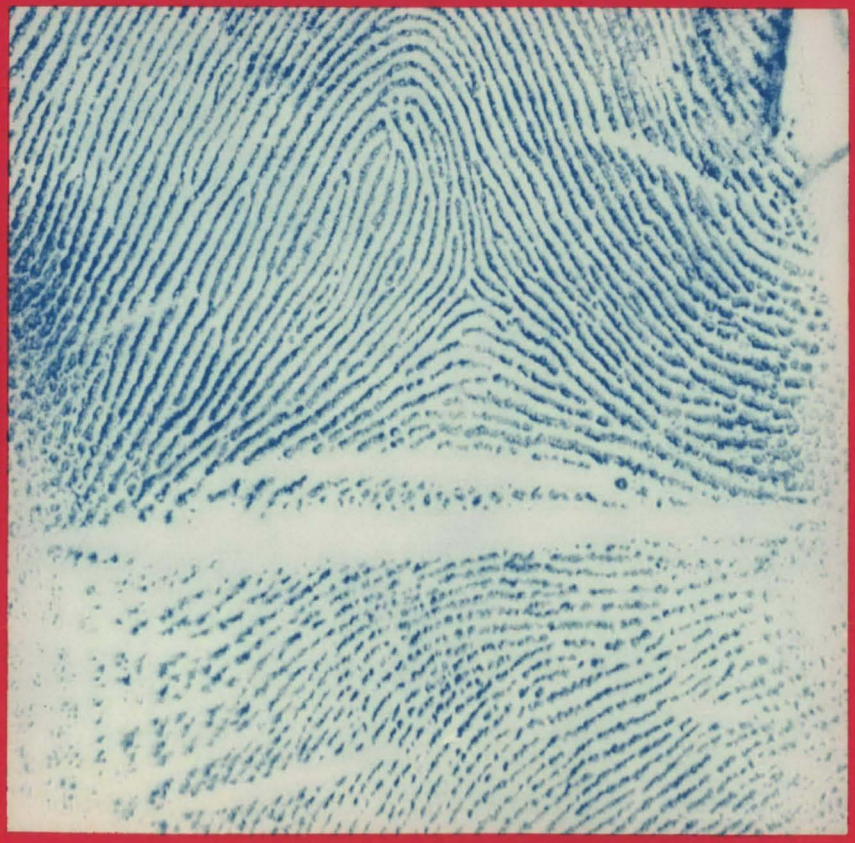
UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

OFFICIAL BUSINESS

RETURN AFTER 5 DAYS

POSTAGE AND FEES PAID
FEDERAL BUREAU OF INVESTIGATION

# QUESTIONABLE PATTERN



Although this pattern has the general appearance of a loop, a close inspection discloses no sufficient recurves. Therefore, this impression is classified as a tented arch. A reference search would be conducted in the loop group.