FBI LAW ENFORCEMENT BULLETIN

JULY 1984

Shoe and Tire Impression Evidence

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Shoe and tire impression evidence, when properly collected, can be important in placing a suspect at the crime scene.
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Federal Bureau of Investigation
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William H. Webster, Director

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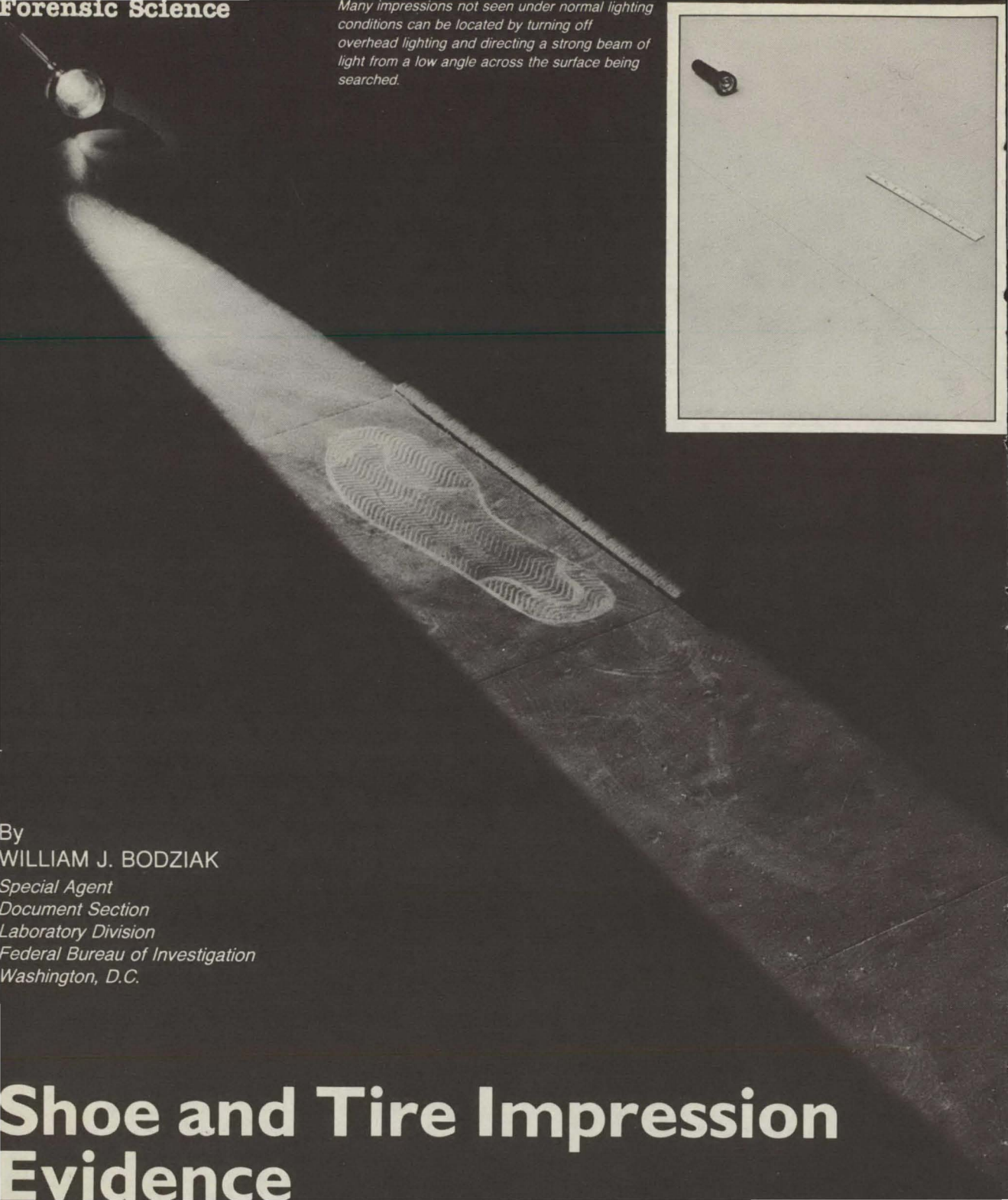

Many impressions not seen under normal lighting conditions can be located by turning off overhead lighting and directing a strong beam of light from a low angle across the surface being searched.

By
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Washington, D.C.

Shoe and Tire Impression Evidence

Director's Message

For the first time since 1960, this country experienced a significant decrease in crime reported to police for a second consecutive year. The 1983 decline in crime was 7 percent, the greatest in any year since 1960.

This may signal that crime, as measured by the Uniform Crime Reporting system, is being managed more effectively by our law enforcement community.

All categories of the Crime Index—murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson—decreased in 1983; violent crime declined by 5 percent, property crime by 7 percent. In contrast, the volume of reported crime reached an all-time high in 1980, which continued through the following year. But in 1982, decreases in the amount of crime reported were experienced.

During the first quarter of 1983, a decrease of 2 percent was reported. Then, in the second and third quarters, 8-percent declines were recorded. In the last quarter of 1983, there was a 10-percent drop, for a year-long average drop of 7 percent.

While there are many influences affecting the volume of crime, there are indications that the criminal justice system is beginning to function with a higher degree of effectiveness, which is reflected in our crime figures.

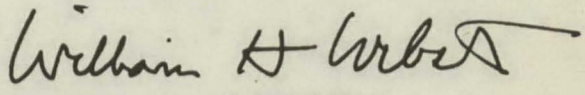
Especially noteworthy, too, is the fact that while crime counts for the past 2 years have diminished, the number of persons arrested for crime continues to rise. Recent efforts by law enforcement to concentrate on the "career criminal," coupled with better prosecutive and judicial handling of those who commit large numbers of crimes, whether to support narcotics habits or for other reasons, have resulted in jail populations reaching new highs, while reported crime has declined.

Increased citizen involvement in community action groups, such as neighborhood watch and similar programs, has also favorably affected these crime statistics, as have the actions of individuals concerned with their potential of becoming the victims of crime.

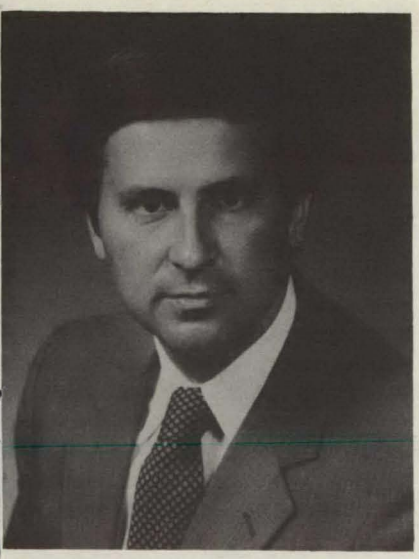
Attorney General William French Smith noted that today, criminals are more likely to be arrested and incarcerated than they were in 1980. He pointed out the "tighter coordination within federal law enforcement and among federal, state and local law enforcement agencies."

While these crime figures are a sign of hope—larger cities and suburban and rural areas alike recorded similar declines—this trend does not mean that the law enforcement community can relax. Even the statistically valid decline in the percentage of the arrest-prone age group of 15–24 years is not overly reassuring, as the number of older people being arrested for property crimes is increasing.

Increased emphasis, by law enforcement and community together, on successful programs that demonstrate the ability to reduce crime is still needed if we are to envisage a time when our children can live relatively free of crime.



William H. Webster
Director
July 1, 1984



Special Agent Bodziak

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In many criminal investigations, it is necessary to determine and prove through various types of physical evidence that a particular person was present at the scene of a crime. For this reason, the collection and forensic examination of evidence such as fingerprints, blood, hair, fibers, soil, and glass is routinely practiced. Since criminals must either be walking or driving as they move in and out of the crime scene area, it is not surprising that shoe and tire impressions are also often collected and provide excellent physical evidence.

Criminals frequently wear gloves to avoid leaving fingerprints and don masks to avoid eyewitness identification; however, they rarely are aware of or make an attempt to conceal shoe and tire impressions. Unfortunately, a well-meaning, but hasty or disorganized, search of the crime scene area often results in shoe or tire impression evidence being overlooked or destroyed. Proper collection and preservation of this type of evidence by the investigator, followed by a detailed examination by a laboratory expert, can play an important part in proving the suspect was at the scene of a crime.

Locating and Protecting Impressions

The law enforcement officer or crime scene technician who is first to enter the crime scene plays an important role in preserving areas which may contain shoe or tire impressions. Although responsibilities such as tending to injured victims or apprehending a suspect need to be met immediately, the entire crime scene should be secured as soon as possible until it can be properly and thoroughly searched.

When conducting an exterior crime scene search, investigators should pay particular attention to vehicular tire tread impressions and shoe impressions the subject may have made while entering and leaving the scene. During an interior search, all surfaces in areas where the suspect(s) may have entered the premises should be carefully examined, since most of the residue on their shoes from outside surfaces would be deposited in those areas. Some hard interior surfaces, such as tile floors, broken glass, desk tops, chair seats, and countertops, may contain valuable impressions which are not easily seen under normal lighting conditions. To locate those impressions, all lighting should be turned off and a strong beam of light directed from a low angle across the surface being searched. For some reason, this technique is seldom used; yet, ironically, the residue and dust impressions found this way usually have the best detail and are often the easiest impressions to compare with a suspect's shoe. They are also the easiest impressions to overlook and accidently destroy. Once located, all impressions should be protected until the crime scene investigator has the opportunity to photograph and cast or lift the impressions.

Sometimes, certain shoe or tire impressions located at the scene appear "worthless" to the investigator when, in fact, they contain sufficient detail and characteristics for a meaningful examination. At other times, numerous shoe or tire impressions will be found, but only a few will be retrieved. In both instances, all impressions should be retrieved for subsequent evaluation by a qualified expert.

Proper positioning of camera when photographing impressions. The camera should be mounted on a tripod and positioned directly over the center of the impression with the camera lens parallel to the surface. Flash is used to provide an oblique light source.

Two commonly used practices but improper ways of photographing impressions. Both result in distorted photographs.

Tire and Shoe Impression Photographs

Once located, all shoe and tire tread impressions should first be photographed. In order for a laboratory examiner to perform the best examination, high-quality, closeup photographs of the impressions are required. These photographs need to be taken from directly over top of the impressions at a distance of 2 to 3 feet. They should not be confused with general crime scene photographs. The photographs will provide a clear and accurate record of the original condition and appearance of the impressions prior to being lifted or cast.

Figure 1

Instructions for Photographing Shoe and Tire Impression Evidence

1) *Select a camera that has the largest size negative format.* Because a natural size enlargement of the photographs will be required for an examination, the original negatives must be enlarged. Since a smaller negative (35mm) must be enlarged more than a larger negative (4″ × 5″), a larger negative format camera is preferable.

2) *Use fine grained, slow speed (low ASA) black and white film.* Some examples of good film would be Kodak Plus-X, Kodak Panotomic-X, or liford HP–5. In certain cases where color film is desired, it should be used *only* to supplement the black and white photographs.

3) *Use a tripod.* The camera should be mounted on a tripod and should be positioned directly over the center of the impression with the camera lens parallel to the surface being photographed. The lens should be carefully focused. Failure to place the camera on a tripod directly over the impression and correctly focus it will result in distortion which may limit the results of the examination.

4) *Always photograph with a ruler or scale next to the impression.* A suitable scale, such as a flat ruler, must be placed next to the impression and should be present in each photograph. The ruler should be depressed into the surface until it is at the same depth as the actual impressions. Without a ruler or other suitable scale, it would not be possible to enlarge the photographs to a true and accurate natural size.

5) *Use proper lighting and exposure.*

a. Three-dimensional impressions, such as those found in soil, sand, and snow, require the use of an oblique light source (a light source which is held at a low angle to the ground) to make them more distinct. If the flash of the camera is used as the oblique light source, a flash extension cord will be needed, since the flash will have to be held close to the ground and at least 3 feet away from the impressions to allow for the even distribution of light across that impression.

b. For each impression photographed, an oblique light source should be projected from at least three different sides of the impression to highlight as many points of identification as possible. Several photographs of each impression from each of those positions should be taken. If the impression is very deep, the light source should be held slightly higher to avoid casting a shadow over part of the impression.

c. Impressions in blood, grease, oil, or other material, which are visible under existing light but are not further enhanced with oblique light, should be photographed using existing light or by using an indirect flash (not aimed directly at the impression).

d. When taking "existing light" photographs of impressions in light colored sand, in snow, or on other highly reflective surfaces, the camera meter receives an incorrect reading from that surface. To correct this reading, take a camera meter reading holding a "gray card" over the impression or manually compensate for the incorrect camera meter reading by "opening up" the lens of the camera by "one to two" operative settings. An example would be a photograph of an impression in the snow, where the camera meter indicates the shutter opening should be F16. Since the camera meter is being fooled by extraneous reflected light, the proper setting would be F11 or F8.

e. In all of these situations, it is advisable to take several extra photographs of each impression and to "bracket" your exposure settings.

They often provide the examiner with more detail than may be possible to achieve through the subsequent casting or lifting process, the success of which cannot always be predicted. Again, the importance of these photographs cannot be overemphasized. The instructions in figure 1 should be adhered to while photographing shoe and tire impression evidence.

Casting an Impression

In footwear or tire tread impressions on soft surfaces, the raised areas of the shoes and tires which contain the most wear characteristics and identifying characteristics make the depressed areas of the impressions. These areas are not always represented well by a photograph, but are reproduced effectively by a cast.

Therefore, after photographing, casts should *always* be made of three-dimensional impressions such as those found in soil, mud, sand, and snow. A cast will provide a three-dimensional record of the impression and will supplement the photographs of the impression, enabling the examiner to make a more complete examination.


S #
IMPRESSION

". . . in no instance, should an attempt be made to remove debris if that debris is part of the impression or if there is any possibility of destroying part of the impression by removing it."

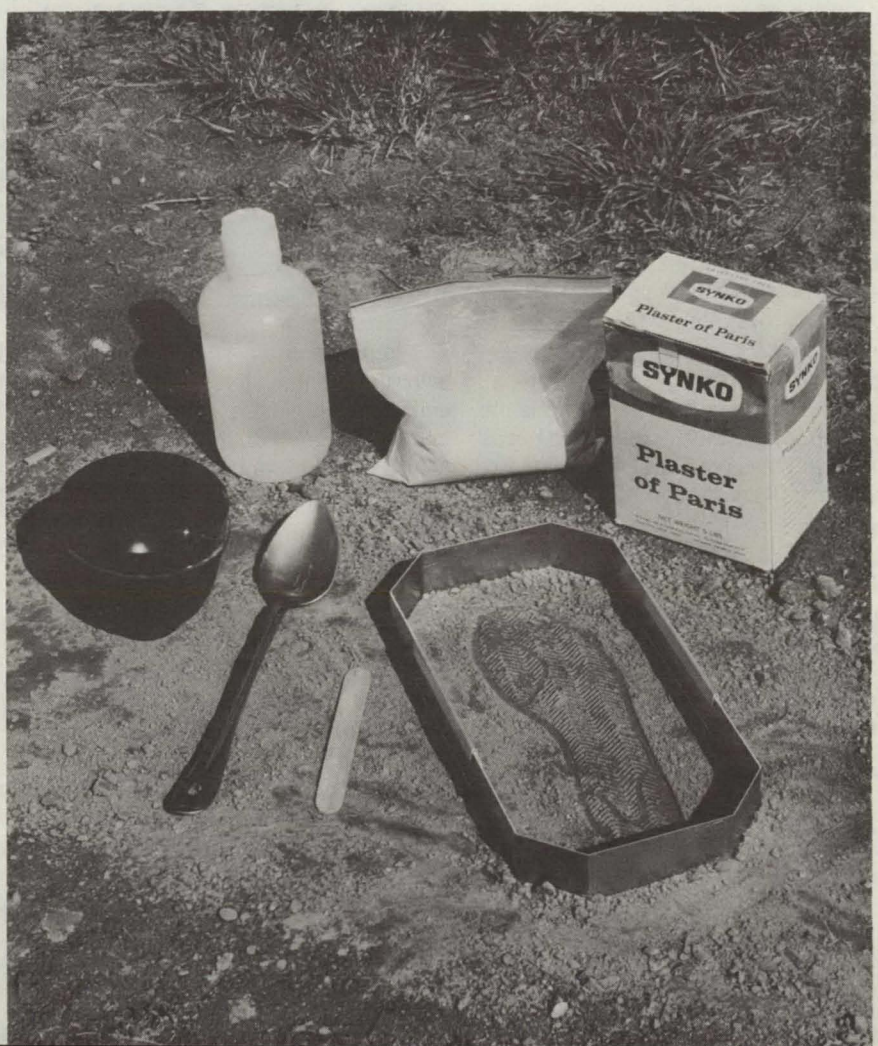
Prior to casting an impression, it may be necessary to remove leaves, wigs, or other loose debris which may have fallen into the impression; however, in no instance, should an attempt be made to remove debris if that debris is part of the impression or if there is any possibility of destroying part of the impression by removing it. A form should be placed around the impression. This will contain any excess casting material and also help give the cast extra thickness.

Class I dental stone and plaster of paris are two forms of gypsum which can be used for making casts of shoe and tire impressions. Class I dental stone is stronger, easier to use, more durable, and superior to plaster of paris and is available from most local dental supply houses. (R&R castone is one brand of class I dental stone and available from Dentsply International, Inc., P.O. Box 905, Toledo, Ohio 43691) However, in the absence of class I dental stone, a suitable cast can be made with plaster of paris. It is important that only "class I" dental stone be used, since other types of dental casting materials contain "hydrocolloid alginates" which shrink excessively and must therefore be avoided.

If proper casting supplies are kept on hand, the process is relatively quick and simple. A container of water, a few zip-lock bags of dental stone or plaster of paris, a small rubber container or a small bucket for mixing, a stirring stick, some materials for a form, and if plaster of paris is used, materials such as hardware cloth to reinforce the cast are all that are needed.

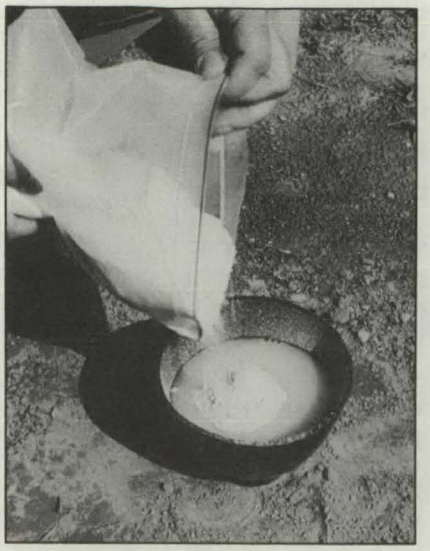
In preparing the casting material, approximately 3 pounds of dental stone will be needed for each shoe impression. For every 3 pounds of dental stone, place approximately 14 ounces of water in a container. (A discarded soda can is suitable for making approximate measurements of the water.) Then pour enough dental stone into the container to allow it to "cone up" a couple of inches of the water. Allow to stand for 1 to 2 minutes. During this time, the casting material will settle into the water. Stir the mixture, which will be watery at first, until the dental stone has completely dissolved. Continue to stir every 30 seconds. When the mixture approaches the consistency of thin pancake batter (in 8 to 10 minutes), it is ready and should be poured before it becomes thicker. Pour the mixture into the form by pouring it onto a flat stick or spoon held close to the surface of the ground and slightly to the side of the impression so as not to wash away portions of the impression. The mixture must be allowed to flow evenly over the impression.

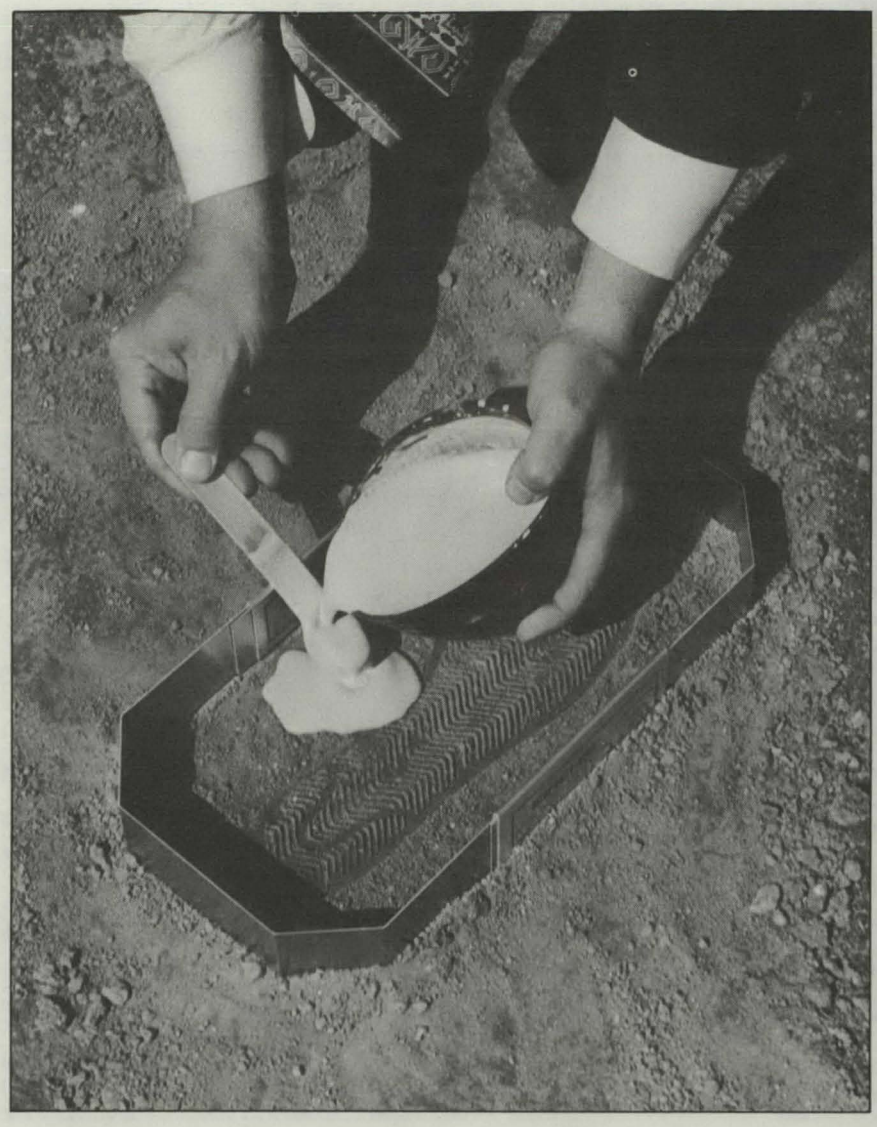
In approximately 30 minutes, the cast may be carefully lifted. If soil or



Left: A ruler or suitable scale should be placed next to an impression before photographing so that enlarged prints will show natural size for examinations.

Right: Supplies needed to cast an impression properly.





Above: Add dental stone to water until it "cones up," then allow to stand for 1 to 2 minutes before stirring.

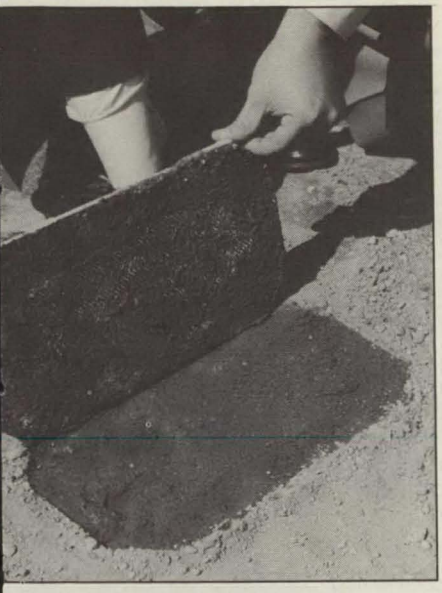
Right: When casting mixture is the consistency of thin pancake batter, pour mixture onto a spoon or flat stick held close to the surface of the ground and slightly to the side of the impression, allowing mixture to flow over the impression.

debris from the impressioned area is adhering to the cast, no attempt should be made to clean it. The cast should be allowed to air dry for 24 to 48 hours. The cast should never be placed in an airtight container or wrapped in plastic.

If plaster of paris is used, approximately 5 pounds will be needed for each footwear impression and will require approximately 15 ounces of water for each pound. Otherwise, the procedure for mixing and pouring the plaster of paris and dental stone is the same. Because plaster of paris is not as strong as class I dental stone, reinforcement material will have to be placed in the cast. This is accomplished by first pouring half of the plaster of paris mixture into the form until the impression is covered, laying the reinforcement material over the poured plaster, and then pouring the remaining plaster mixture over the reinforcement material.

Impressions in snow can be cast with the dental stone technique described; however, a small amount of snow or ice should be added and stirred into the dental stone mixture to keep the temperature low. The mix should be allowed to become slightly more viscous than the thin pancake batter consistency. When cold, it will take the mixture longer to reach that consistency. Be careful not to pour the mixture when it is too thin or it will pass through the snow.

A new product called "snow print wax" is a spray wax product which provides considerable help in casting snow impressions. (It is available through the Kinderprint Company, P.O. Box 16, Martinez, Calif. 94553) Directions are provided with the product; however, best results are obtained when each snow impression is sprayed with three or four coats of snow print wax and then carefully filled by allowing a mixture of dental stone or plaster of paris to flow indirectly into the wax-covered impression.

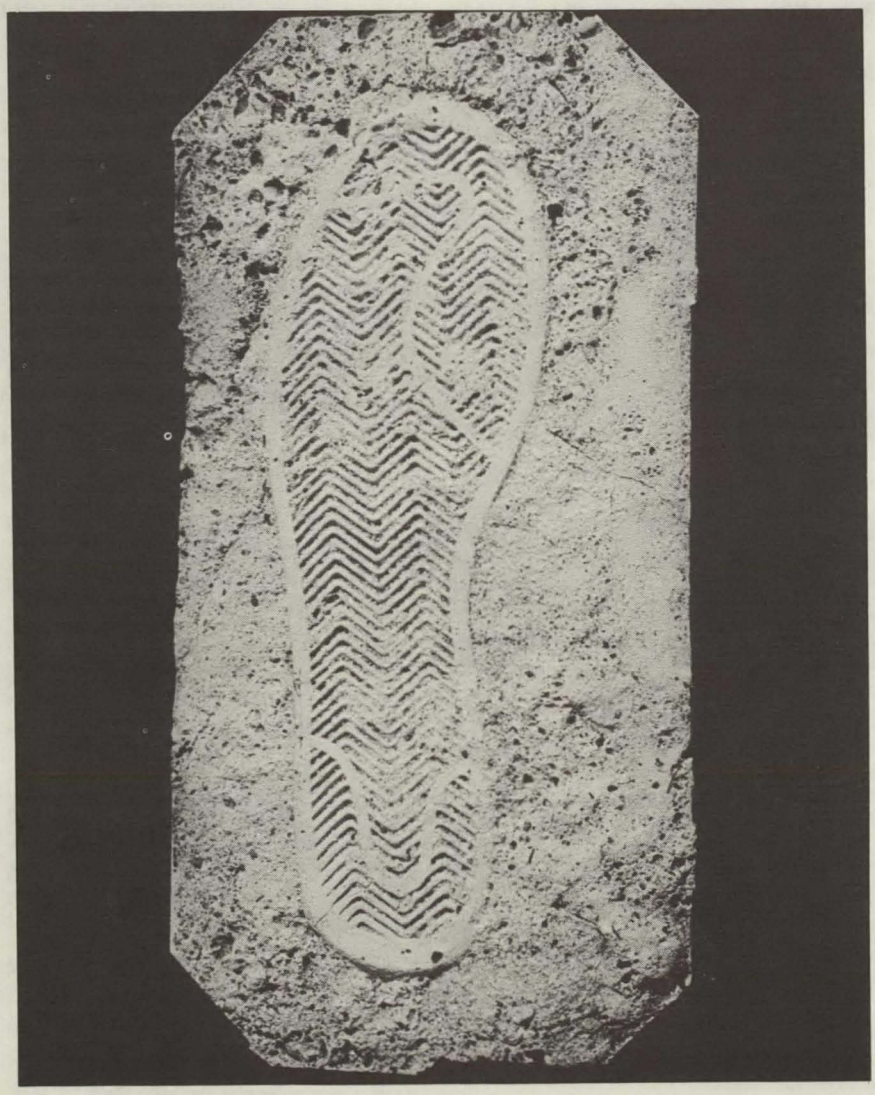


Hard Surface Impressions

"Hard surface" or "two-dimensional" impressions include impressions on tile floors, bank counters, glass, doors, windowsills, paper, concrete, and virtually any hard surface which will retain an impression of a shoe or tire. The majority of these impressions are shoe impressions which are found inside and are, therefore, particularly useful in linking the suspect with the crime scene. The impressions fall into two categories—dust impressions and residue impressions.

Dust impressions occur when a shoe or tire comes in contact with a surface heavily coated with loose material, such as dust or grit. As the shoe or tire strikes the surface, the dust or grit clings to its surface and a negative impression of the shoe or tire remains. Dust impressions should be photographed first with the proper oblique lighting technique. The item which contains the impressions should then be preserved and submitted to the examiner in the laboratory. If the item cannot be submitted to a laboratory, the impression should be "lifted" by using a commercially available footprint lift.

If possible, avoid using makeshift footprint lifting materials, such as cellophane tape, rubber fingerprint lifters, and contact paper. Instead, a quality footprint lifting material large enough to lift the entire impression should be used. (One product that is excellent for lifting impressions is called "handprint" and is available from the Kinderprint Company, P.O. Box 16, Martinez, Calif. 94553) Carefully place the lifting material over the impression from one end to the other. Using a clean fingerprint roller will make this easier and will help eliminate trapping air bubbles. If a clear lifting material such as cellophane tape is used, it should be transferred to white paper, again using a roller to eliminate air bubbles. Dust impressions should



Above: After 30 minutes, lift cast and allow to air dry thoroughly. Soil will be cleaned from cast in laboratory.

Left: A clean cast.

A clean fingerprint roller should be used to apply footprint lifting material over a footwear impression.

never be dusted with latent fingerprint powder since this will most likely destroy the impression.

Residue impressions are those resulting from residue being deposited from the shoe to the surface. They include impressions made by the transfer of ordinary residue which shoes accumulate or impressions made after stepping in blood, grease, and liquids. Many of these impressions will not transfer back off of the surface to a lifting material with sufficient detail to enable them to be lifted successfully. For that reason, after each impression is photographed, the item containing the impression should be preserved and submitted to the laboratory. If it is not possible, the photographs should be checked before that evidence is lost or the crime scene is "cleaned up."

Because dusting residue impressions with latent fingerprint powder is usually unpredictable, it is not generally recommended. However, it may be worth trying as a last resort in cases where the impressioned item cannot be submitted to the laboratory and the evidence would be "cleaned up" anyway. One particular situation where dusting with latent fingerprint powder is occasionally successful are those instances where a wet shoe comes in contact with a waxed surface, such as a waxed bank countertop. If a shoe impression is developed or enhanced with the powder, it can be rephotographed and then lifted as previously described.

Packaging and Submitting Impression Evidence to a Laboratory

In criminal cases, the FBI Laboratory will conduct evidence examinations for all law enforcement agencies and will furnish expert testimony, provided no other expert in the same scientific field will be used by the prosecution. This testimony, as well as the examination in the FBI Laboratory, is provided at no cost to the requesting agency.

All communications transmitting impression evidence to the FBI Laboratory should list the name of the suspect(s) and/or victim(s), the type of violation and the date it occurred, a description of the evidence being submitted, the types of examinations desired, and any background information that would be of assistance to the examiner or pertinent to the examination requested. Reference should also be made to any previous correspondence or reports and as to whether any of the evidence has already been subjected to any previous examination. The communication should be submitted in duplicate with additional copies of that communication accompanying any evidence which is sent under separate cover. All evidence should be sent by registered mail. (See fig. 2.)

What examinations can be made and what conclusions can be reached?

Footwear Impressions

In situations where a footwear impression is left at the scene and no suspect or known shoes exist, a laboratory can offer assistance in possibly identifying the make and full design of the shoe. The laboratory can also make a permanent record of the evidence by photographing casts, impressions, and impression lifts which are submitted and can often enhance the detail in those impressions.

When known shoes of suspects are obtained, comparisons can be made which may determine whether a particular impression corresponds in size, design, and wear characteristics with the respective portion of the suspect's shoe. If the known shoe contains identifying characteristics such as cuts, abrasions, or tears which have occurred randomly as a result of the use or abuse of the shoe, and these same individual identifying characteristics are evident in the questioned impression, it is possible that shoe can be "identified" as the particular shoe that made the impression.

Figure 2

Instructions for Submitting Evidence to the FBI Laboratory

CASTS—

Casts should be allowed to air dry thoroughly for 24 to 48 hours, longer if necessary. No attempt should be made to remove soil from the casts or to clean the casts. When dry, each cast should be wrapped individually in shock absorbent, porous packaging material. DO NOT WRAP OR PLACE IN PLASTIC.

KNOWN SHOES—

If wet (water, blood, etc), shoes should be air dried thoroughly before wrapping. Do not dry shoes with artificial heat, such as a heat lamp or hair dryer, and do not wrap in plastic. Identify the wearer of each pair of shoes and the date obtained. If shoes are to be examined for soil, glass fragments, safe insulation, fibers, or other microscopic evidence, they should be wrapped individually in a manner to avoid their being contaminated or contaminating other evidence in the same package.

TIRES—

Tires should be left mounted and should be shipped by the best method locally available, ensuring that the tread surface is protected during shipment. Furnish the make, model, and year of the car from which they were obtained, along with their position on the car (left front, right front, left rear, right rear, and spare).

EVIDENCE CONTAINING IMPRESSIONS AND IMPRESSION LIFTS—

Lifts of impressions and individual items on which there are impressions should be preserved and individually wrapped so that the impressions will not be destroyed or erased during shipment.

PHOTOGRAPHS—

Negatives should accompany all photographs of impression evidence so that quality "natural size" enlargements for examination purposes can be made. All photographs and negatives taken of impressions should be submitted, regardless of their apparent quality. Too often, it is discovered that some photographs were not submitted only to find out later that they would have been of additional value to the examiner.

CRIME SCENE SKETCH AND GENERAL CRIME SCENE PHOTOGRAPHS—

In cases where a crime scene sketch or general crime scene photographs concern themselves with impression evidence, copies of these items should also be submitted, along with the impression evidence to assist the examiner.

In cases where the impression lacks sufficient characteristics or detail to result in an absolute identification, examination results concerning the size, design, and wear characteristics still offer significant evidence that contributes to placing the suspect at the crime scene. On today's market, there are thousands of different shoe designs, each of which comes in numerous sizes. Therefore, any particular shoe design in a particular size represents an item which is owned and worn by far less than 1 percent of the population. Any addi-

A partial impression left at the crime scene when the subject's "bloody" shoes came in contact with a piece of paper. A "test impression" made with the subject's shoe shows several characteristics (marked with arrows) which identify that shoe as the one which made the bloody impression. With an enlarged version, an expert examiner could testify in court explaining to the jury the basis for the identification.

Fewer Bombings in 1983

According to preliminary figures compiled by the FBI's Uniform Crime Reporting Program, the number of bombing incidents in the United States and Puerto Rico totaled 687 in 1983, a decrease of 14 percent from the 795 bombings reported in 1982. Also showing a decline was the total of actual and attempted bombings attributed to terrorist groups—from 38 in 1982 to 22 in 1983.

Last year's bombings included 519 explosive and 168 incendiary incidents, with actual detonation or ignition occurring in 569. Actual explosive bombings were down 9 percent in volume; incendiary incidents, 35 percent.

As in previous years, the most frequent targets of the bombings in 1983 were residences and commercial operations and office buildings, accounting for 46 percent of the incidents. Vehicles (17 percent) and schools (5 percent) were other leading targets. Sixteen attacks were directed at law enforcement facilities or equipment.

The 1983 incidents resulted in 12 deaths, 100 injuries, and property damage estimated at over $6 million. The number of fatalities declined from 16 in 1982 to 12 in 1983, while injuries rose 1 percent. Among those killed, 10 were the perpetrators themselves, and 2 were the intended victims. Of the 100 injured, 36 were perpetrators, 27 were innocent bystanders, 22 were intended victims, 10 were firemen, and 5 were law enforcement officers.

Regionally, the Western States recorded 204 bombings; the North Central States, 185; the Southern States, 184; and the Northeastern States, 107. Puerto Rico reported 7 incidents.

tional characteristics, such as specific wear characteristics or random manufacturing characteristics, make that shoe an item which is owned and worn by even fewer people.

In many instances, footwear impressions determined to have been made by a suspect's shoe can have further significance in connecting a suspect to a particular crime. Impressions in the victim's blood, made when the blood was wet, impressions on objects which were misplaced or broken during the commission of a crime, and impressions in unusual places, such as a roof or bank countertop, cannot only place a suspect at the crime scene but can show a degree of involvement in the crime or demonstrate those impressions were made within a certain time frame.

Tire Tread Impressions

In situations where tire tread impressions are left at a crime scene and no suspect or known tires exist, the laboratory can examine the design of the impression and possibly determine the style and/or manufacturer of the tire. Photographs making a permanent record of the impression and possibly enhancing the impressions can also be made.

When known tires are obtained, comparisons can be made with the questioned impressions which may determine if those impressions and tires correspond in tread dimensions, design, and wear characteristics. Tires can also be positively "identified" as having made a particular impression if sufficient identifying characteristics are present.

Additionally, if multiple tire tracks with different designs and tread dimensions are found at the scene and can be determined to correspond in design and tread dimensions with each of the respective tires found on the known car, the significance of this evidence is greater.

Summary

Law enforcement officers and crime scene technicians should be alert for shoe impressions and tire impressions at the scene of a crime. Once located, the proper collection and preservation of that evidence is accomplished by properly photographing the impressions, and then, either retaining the impressioned item, making a cast of the impression, or lifting the impression. This evidence should then be submitted to a laboratory where a qualified expert can compare these impressions with the suspect's shoes or the suspect's vehicle tires. In many cases, positive identifications are possible. Evidence which is only sufficient to show similarities in size, design, and wear is still very significant and important, when considered with other items of evidence, in placing the suspect at the scene of the crime. **FBI**

U.S. Information Access Laws

Are They a Threat to Law Enforcement?

". . . the Freedom of Information Act . . . and the Privacy Act . . . provide varying degrees of access to information held by the Federal Government."

By
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Assistant Section Chief
Freedom of Information/
Privacy Acts Section
Records Management Division
Federal Bureau of Investigation
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Late one night, two detectives emerged from a cruiser parked outside a brightly lit amusement park. After strolling lazily through the dwindling crowd for several minutes, they spotted their man. He also saw them as he glided into the shadows of a nearby vendor's booth. The detectives nodded recognition as they approached to accompany the man deeper into the darkness. He was quick to speak, "I've got trouble. Curtis * got some stuff from the FBI with that freedom of information thing and I'm scared to death. I made up my mind; I can't talk to you guys no more. In fact, I'm leavin' tonight—going out west. I'm through with this whole bit."

Was his fear justified?

As the FBI Agent stepped from the elevator into the third floor corridor of the U.S. courthouse, he noticed the highly polished mahogany door bearing the words "Honorable Garland T. Lewis.*" On entering the judge's reception room, he was greeted by one of the secretaries. After announcing his presence over the office intercom, she ushered the Agent into the judge's private office. Identifying himself to the judge, the Agent stated the purpose of his visit and asked the judge whether he would recommend a fellow jurist to a seat on the circuit court. To the Agent's astonishment, the judge replied he was not in a position to comment on the qualifications of the other jurist, a man he had known for years. When pressed for reasons, the judge explained he was quite familiar with the Privacy Act and knew the other jurist could obtain copies of whatever record was made of his comments. The judge confided that his comments would be uncomplimentary and he feared their personal and professional relationship would be severely damaged if the comments were made known.

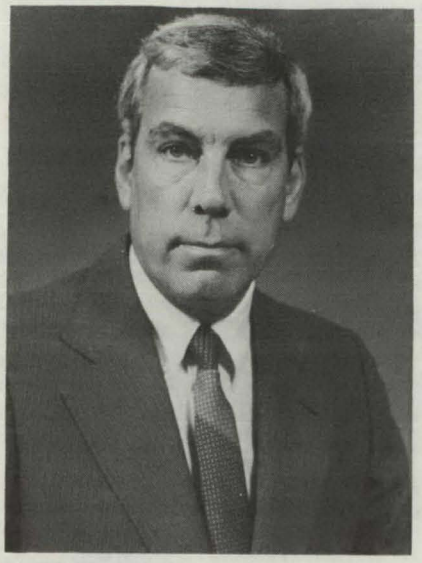
Was his fear justified?

These two fictional accounts dramatize what has become a common reaction to the passage of two Federal statutes—the Freedom of Information Act (FOIA) [1] and the Privacy Act.[2] Both laws provide varying degrees of access to information held by the Federal Government.

The Freedom of Information Act

Originally enacted in 1966, the Freedom of Information Act was designed to open records of the executive branch of the Federal Government to public inspection. While the records of all Federal agencies were subject to the statute in practice, only those of regulatory agencies were affected because the 1966 law contained a provision exempting investigatory files compiled for law enforce-

* Fictitious.



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ment from public access. This was a blanket exemption which was used to withhold from the public all investigative records maintained by the U.S. Department of Justice, the U.S. Secret Service, and similar law enforcement agencies.

Six years later, after 2 weeks of oversight hearings, a House subcommittee concluded that the Federal Government had "dragged its feet" for 5 years in its management of the FOIA. In 1974, Congress substantially amended the 1966 law over the veto of then President Gerald R. Ford; the amendments became law in February 1975.[3]

As a result of the amendments, the blanket exemption for investigatory files compiled for law enforcement was dramatically revised.[4] The word "records" replaced the word "files," which meant that an entire investigative file could no longer be exempt from disclosure. It is possible that the entire file would be subject to one of the FOIA exemptions applicable to all records, not just those compiled for law enforcement, e.g., if the file is subject to national security classification pursuant to Executive order of the President. In addition, the amended law contains only six specific types of investigatory records to which the law enforcement exemption can be applied. Unless a law enforcement record meets the definition of one or more of the six types, release to the public is required. Moreover, even if an investigative record is one of the six types described in the statute, it could contain information not subject to exemption, thus requiring release of that part of the record containing the nonexempt information.

Six types of investigatory records compiled for law enforcement can be withheld from public access.

Records which would interfere with enforcement proceedings

This provision permits the Government to withhold all records which relate to an ongoing and active criminal or intelligence investigation. This exemption can be used also to withhold records of an inactive investigation where there is still a reasonable chance for an eventual law enforcement proceeding or to exclude records of a Federal agency where release to the public could damage an ongoing investigation being conducted by a State or local criminal justice agency.

Records which would deprive a person of the right to a fair trial or an impartial adjudication

This exemption has been used infrequently by Federal law enforcement agencies because most requests are received after legal proceedings have been concluded. It is designed to prevent the release of information which would have an extensive or prejudicial effect on the rights of private parties.

Records which would constitute an unwarranted invasion of personal privacy

This exemption is applied to information pertaining to identifiable individuals which, if released to the public, would result in an unjustifiable invasion of the person's right to privacy. The law requires a Federal agency maintaining the information to balance the interests of the public against the privacy interests of the individual. The result of the balancing test determines whether the invasion of privacy which might occur from disclosure would be justified by the public's right to know.

". . . the Freedom of Information Act is designed to prevent the public from obtaining certain investigative records compiled for law enforcement."

In this context, a generally accepted concept is that persons who are considered "public figures," i.e., well-known to the public or occupying a position in the public spotlight, enjoy less privacy. As an example, the public could possibly have a right to know of the misconduct of a State governor, although not of the misconduct of a lower-level State employee. It also is generally accepted that a deceased person has no privacy rights, although the surviving relatives may have a privacy interest justifying the withholding of personal information about the decedent which would be embarrassing to the survivors. The exemption is not applied to information pertaining to organizations or corporations. It is used routinely to withhold the identities of most law enforcement personnel whose names appear on investigative records.

Records which would disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by a confidential source

This exemption is applied most frequently by Federal law enforcement agencies, such as the Department of Justice (including the FBI and the Drug Enforcement Agency (DEA) and other investigative components) and the U.S. Secret Service. It is used to withhold information provided in confidence by a variety of sources—paid informants, witnesses, relatives, associates, financial or commercial institutions, and State, local, and foreign law enforcement agencies.

Both Congress and the Federal court system have recognized the need to preserve the Government's ability to give complete protection to informants and other sources who furnish information in confidence during the course of a criminal or national security investigation. Their protection is essential, and the information they provide to the Federal Government must be safeguarded when contained in criminal and national security investigative files being processed pursuant to the FOIA.

Records which would disclose investigative techniques and procedures

This exemption permits Federal law enforcement agencies to withhold records or information which would reveal an especially sensitive investigative technique. Routine, well-known techniques, such as the use of physical surveillance, generally cannot be protected, unless the information is subject to one or more of the other FOIA exemptions, e.g., disclosure which would interfere with enforcement proceedings or which would identify a confidential source. This exemption also can be applied to information reporting the use of an investigative technique employed by a State or local criminal justice agency.

The types of investigative techniques, the withholding of which have been supported by various Federal courts, include laboratory methods used in arson investigations, the use of "bait" money, security devices used by banks, techniques used in the protection of the President, and the specific types of equipment used for electronic eavesdropping.

Records which would endanger the life or physical safety of law enforcement personnel

This exemption is used in FOIA processing of federally maintained criminal and national security investigative records to excise from the records the names and other identifying information of law enforcement personnel at the Federal, State, and local levels when disclosure could be reasonably expected to endanger the life or safety of the officer.

From this it is evident the Freedom of Information Act is designed to prevent the public from obtaining certain investigative records compiled for law enforcement. Information relating to active investigations, informants, and other sources of information, sensitive investigative techniques, and police personnel is given the closest scrutiny by records specialists responding to FOIA requests to protect these legitimate law enforcement interests.

The Privacy Act

The Privacy Act, enacted in 1974 (the same year in which the FOIA was amended), became effective on September 27, 1975. It was the culmination of several years of public and congressional concern over the threat to personal privacy created by the Federal Government's continued acquisition of personal information on

"The principal purpose of the [Privacy Act] is to give U.S. citizens and permanent resident aliens some degree of control over information about them collected by the Federal Government and how the information is used."

U.S. citizens. The principal purpose of the act is to give U.S. citizens and permanent resident aliens some degree of control over information about them collected by the Federal Government and how the information is used. This is accomplished in five basic ways:

1) Each Federal (executive branch) agency must publish in the *Federal Register*[5] a complete description of all records systems the agency maintains. The system notice describes the types of information in the system and the procedures to be followed by a citizen seeking access to this information.
2) The information in the system must be accurate, relevant, timely, and complete to ensure fairness to the citizen.
3) The act permits citizens to review and request amendment of information about them contained in the system.
4) Information collected for one purpose cannot be used for a different purpose without the citizen's written consent.
5) Federal agencies must maintain an accounting of all disclosures of a record, and with certain exceptions, provide the citizen a copy of the accounting.[6]

The act contains provisions which permit a citizen to bring a civil action in Federal district court to enforce the above requirements. Also, the act contains criminal penalties for a Federal agency official or employee who knowingly and willfully discloses protected information to a person or other agency not entitled to receive it or who maintains a records system without publishing a system notice. Additionally, it is a misdemeanor punishable by a fine not to exceed $5,000 for any person, including police personnel, to knowingly and willfully obtain or attempt to obtain a record about a citizen from a Federal agency under false pretenses.

It must be understood the act applies only to records maintained by an agency of the executive branch of the Federal Government. The act does not cover records maintained by Congress, the Federal court system, State and local government agencies, or corporations and other organizations in the private sector.

An exception to this is the act's treatment of uses made of an individual's Social Security Account Number (SSAN). The statute prohibits a Federal, State, or local government agency from denying an individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his SSAN, unless disclosure was required by law in effect prior to January 1, 1975, to verify an individual's identity. Furthermore, the act requires a Federal, State, or local agency which requests an individual to disclose his SSAN to advise the individual if such disclosure is mandatory or voluntary, by what statutory or other authority the number is being solicited, and what uses will be made of the number.[7]

Even though the law contains these restrictions on the use of an individual's SSAN, Congress did not incorporate any provisions into the statute whereby such requirements can be enforced by either Federal or State law enforcement agencies. All other portions of the act can be enforced through both criminal penalties and civil remedies.

A major provision of the Privacy Act controls the dissemination of personal information maintained by a Federal agency. The law prohibits disclosing a record without the written consent of the subject. However, there are exceptions to this written consent rule:

1) To officers or employees of the same agency which maintains the records, who need the records in the performance of their official duties;
2) Records which are required to be disclosed by the Freedom of Information Act;
3) For purposes compatible with the reasons for which the records were collected, providing that all such uses are published in the *Federal Register* as a part of the records system notice. Under this exception, a Federal law enforcement agency, e.g., the FBI, may disclose information for a law enforcement purpose. This would include disclosure to a State or local police agency to assist in conducting a lawful criminal or intelligence activity;
4) To the Bureau of Census;
5) Records used in nonidentifiable form for statistical purposes;
6) To the National Archives;
7) To other Federal, State, or local government agencies within the United States for a lawful

criminal or civil law enforcement activity, if the head of the agency submits a written request which describes the records sought and the criminal or civil law enforcement activity for which the records are needed. This would permit a Federal regulatory agency (also a Federal law enforcement agency, although the latter may disclose the records pursuant to exception 3) to disclose records to a State or local police agency for a law enforcement activity;

8) To any person under emergency circumstances affecting the health or safety of any individual;
9) To any committee or subcommittee of either House of Congress to the extent of a matter within its jurisdiction;
10) To the General Accounting Office in the performance of its official duties; and
11) Pursuant to a lawful order of a court of competent jurisdiction.

State and local criminal justice agencies, such as police departments, sheriff's offices, prosecutors, penal institutions, and parole and probation officers, should experience no difficulty in obtaining criminal justice records from a Federal agency for use in a law enforcement activity. State regulatory agencies, however, may find the Privacy Act restrictions barring access to criminal justice records for use in a regulatory or licensing function unless they obtain the written consent of the individual. This will depend on the rules and regulations of each Federal agency.

Another major provision of the act is an individual's right to request from a Federal agency access to records pertaining to the individual. Unlike the FOIA which gives any person access to all records of a Federal agency, the Privacy Act restricts access to only those records identifiable with the individual making the request. Any person requesting information under the Privacy Act must be a U.S. citizen or an alien admitted for permanent residence.

Once the individual determines what information the agency maintains on him, he can request information believed to be inaccurate, irrelevant, untimely, or incomplete to be amended. A civil action in a U.S. district court may be initiated to compel the agency to amend the record.

There are several Privacy Act exemptions, similar to those of the FOIA, on which an agency can rely to withhold access to information. Two general exemptions permit the Government to withhold information maintained by the Central Intelligence Agency (CIA) and also information maintained by a Federal law enforcement agency, e.g., U.S. Secret Service or the FBI, which was compiled for a criminal investigation. Other specific Privacy Act exemptions permit the Government to withhold the following from access:

1) Records lawfully classified to safeguard national security;
2) Investigatory material compiled for a law enforcement purpose other than criminal, e.g., a civil law enforcement purpose, or which is maintained by a Federal agency, the principal function of which is not law enforcement. Such material cannot be withheld, however, if it was the basis for denying the citizen a right, benefit, or privilege to which he or she would otherwise be entitled under Federal law. When used by the agency as a basis for such action, the citizen must be given access to the records, except to the extent disclosure would reveal the identity of a source who furnished the information in confidence;
3) Records maintained relative to providing protective services to the President;
4) Records required by law to be maintained for statistical purposes;
5) Investigatory material compiled to determine suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent disclosure would reveal a confidential source;
6) Testing or examination material used to determine qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the testing or evaluation process; and
7) Evaluation material used to determine potential for promotion in the military to the extent that disclosure would reveal the identity of a confidential source.

"While the [Freedom of Information Act] is designed to provide public access to varied and numerous categories of subject matter, the Privacy Act limits access to only those records pertaining to the individual making the request."

As can be seen, the Privacy Act differs somewhat from the FOIA in providing citizen access to Government records. While the FOIA is designed to provide public access to varied and numerous categories of subject matter, the Privacy Act limits access to only those records pertaining to the individual citizen making the request. However, both statutes provide for withholding investigatory records compiled for law enforcement, especially information from a confidential source, including a State or local criminal justice agency. Congress, the executive branch, and the courts recognize the absolute need to preserve the confidentiality of information exchanged between police agencies at the Federal and State level which is essential to their mutual law enforcement mission.

Similar to the FOIA's purpose of "providing for a more informed electorate," the Privacy Act contains certain notice requirements designed to inform the American public of the various types of records maintained by the executive branch. For each system of records maintained by an agency, the law requires the agency to publish in the *Federal Register* a comprehensive notice describing the system. The following information must be included:

1) The name and specific location of where the records are stored;
2) The name of the system manager and the address to which a citizen can direct a request for access to records in the system;
3) The categories of records in the system and the categories of individuals on whom records in the system are maintained;
4) All of the routine uses made of records in the system and the purposes of such uses; and
5) The practices of the agency regarding the storage, retrievability, safeguards, retention, and disposal of records in the system.

In addition to the notice requirements, Federal agencies also must comply with other provisions of the Privacy Act. For example, each agency can maintain only information about a citizen that is both relevant and necessary to accomplish an authorized purpose of the agency. Information describing an individual's exercise of a right guaranteed by the first amendment can be maintained only if authorized by law or by the individual or if it is "pertinent to and within the scope of an authorized law enforcement activity." In addition, prior to disseminating information to persons or agencies outside the executive branch, an agency must make reasonable efforts to assure the accuracy, relevance, timeliness, and completeness of the information.

In addition to the criminal penalties discussed earlier, the Privacy Act contains a provision which permits a citizen to bring a civil action in Federal district court for an agency's failure to comply with any of these requirements. This action may also be initiated if an agency refuses to amend a record at the individual's request or if the agency fails to comply with other provisions of the act in such a way as to have an adverse effect on the individual.

Conclusion

Both the FOIA and the Privacy Act were designed by Congress at a time when the public's trust and confidence in the integrity of its Government were severely shaken by the revelations of the Watergate affair and related instances of official misuse of information about U.S. citizens. In theory, public access to Government information is in full keeping with our open society and should be helpful in curbing official misconduct. But the experience of Federal law enforcement agencies in 8 years of managing the FOIA has shown that the American people might be paying a rather high price for the right to inspect and copy Government records. This is due primarily to the indisputable fact that the criminal element in this country and elsewhere has discovered that the FOIA does not discriminate against it. Records of Federal law enforcement agencies are available in varying degree to anyone who requests access, whether the person is the convict seeking to identify the "snitch" who was responsible for his imprisonment, or the international terrorist trying to determine if his activities have been noticed, or the Mafia don searching for the informant within his organization, or the foreign intelligence agent seeking to undermine the Government's efforts to discover his espionage objectives.

The price being paid, therefore, is the proven reduced efficiency of such agencies as the FBI, DEA, the Secret Service, and others in attempting to accomplish their law enforcement mission. Needed personnel have been diverted from investigative duties to manage the FOIA and Privacy Act programs; tremendous costs of these programs cut into agencies' budgets

(over $12 million per year for the FBI alone); and there is always the fear that human error will one day result in the inadvertent disclosure of sensitive information to the wrong person with devastating results.

In addition, there have been numerous examples, such as the two cited at the outset of this article, where paid informants and other sources of information have "dried up" or have shown extreme reluctance to provide the Government with valuable information which would spell the difference between success and failure in meeting a law enforcement objective.

The answer to the question posed in the title of this article is "yes." The present access laws do pose a threat to law enforcement. The threat is not imagined—it is real, it is documented, and the criminal and the subversive both have recognized and taken full advantage of certain weaknesses within the FOIA.

Recognizing this threat, a new law has been introduced in Congress which, if enacted, will amend the FOIA in such a way as to better protect investigative records of the Federal Government. For example, under the proposed legislation, there would be a 5-year moratorium placed on the availability of information collected in organized crime investigations. Foreign nationals no longer would be able to access records maintained by agencies of the U.S. Government, and records of Federal agencies pertaining to informants would be excluded entirely from access by third parties. It is believed enactment of this new law would do much to alleviate some of the current problems faced by law enforcement agencies in complying with the FOIA.

In the meantime, law enforcement must continue to meet the threat; criminal justice agencies at the Federal, State, and local levels cannot afford to throw up their hands in frustration. They must continue to work together to persuade the informant and the ordinary citizen that the Government will exercise every legal means to protect his or her identity. Confronted with the fears of the criminal informant and the Federal judge described above, the law enforcement officer can explain that both the Congress and the courts throughout the country have consistently supported and continue to support the Government's withholding from public access any information provided in confidence. The law enforcement community must be vigilant for signs the FOIA is being misused, and Federal agencies must take every precaution to ensure the law is administered in such a way as to preclude the disclosure of damaging information.

Effective law enforcement can be achieved within an open society, but care must be taken to make certain the rights of the law-abiding are not made subservient to the rights of those breaking the law. **FBI**

Footnotes

[1] 5 U.S.C. § 552.

[2] 5 U.S.C. § 552a.

[3] House Committee on Operations, A Citizen's Guide on How to Use the Freedom of Information Act and the Privacy Act in Requesting Government, Documents H.R. Report No. 95-796, 95th Cong., 1st Sess. 13(1977)

[4] 5 U.S.C. § 552(b)(7).

[5] *The Federal Register,* published daily, contains all the rules and regulations of the executive branch of Government. It may be obtained for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

[6] "A Citizen's Guide," supra, at 16.

[7] Pub. L. 93-579, § 7. (This law is the entire Privacy Act, of which only §3 was codified into 5 U.S.C. §552a.)

ANALYZING COSTS
An Aid to Effective Police Decisionmaking

By
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Police managers face a dual challenge in the 1980's. High crime rates and the fear they spawn mean heavy public demand for crime fighting will continue. At the same time, fiscal problems caused by shrinking tax bases in many jurisdictions and taxpayer revolts in others beset many agencies.

These constraints translate into hard choices for law enforcement. Many departments have had to cut back, sometimes drastically, as a result of fiscal stringencies. Yet, most are being asked to provide the same level of service—or even higher—without raising costs.

Police managers face equally onerous choices. Police must focus on the priorities—the serious crime about which the public is so concerned. But often they must cut personnel assigned to many important support functions to meet the public's expectations.

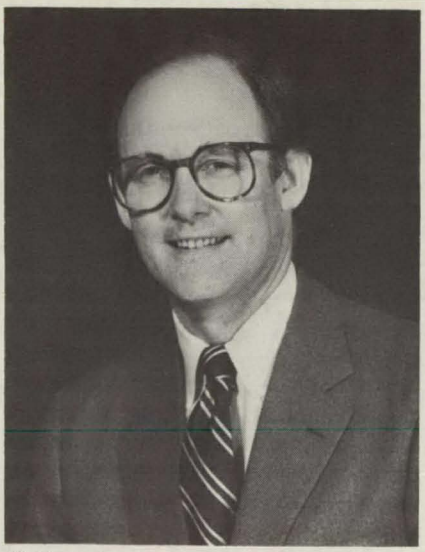
More than ever, such tough decisions must be based on reliable, accurate information on the real costs of police services. Unfortunately, however, existing accounting systems in most departments simply do not mirror reality.

Suppose you, as a police manager, were asked the question: What is the hourly cost of a patrol unit? To derive an answer, you might begin with the hourly wage of a patrol officer, gasoline costs for a patrol vehicle, and a fraction of the costs for vehicle maintenance. But what about the officer's uniform, weapon, or ammunition? There is also the communication equipment linking the patrol car to the dispatch unit. Even a portion of the dispatcher's time could be included.

All of these incremental costs add up to the real cost of a function rather than the more obvious or direct "line item" costs usually associated with delivery or deployment. Personnel overhead, dispatcher time, and building maintenance are among the costs that lie outside the boundaries of the patrol division's budget, but they are just as essential to service delivery as the line items for wages and gasoline. Equally important, they exact a cumulative toll, whether as actual deficits in this year's budget or through depreciation as a lump sum for replacement some time in the future.

How do you calculate these hidden expenditures? How do you uncover a fuller picture of the price of police services? A report recently published by the National Institute of Justice (NIJ) measuring the costs of police service answers these questions and suggests ways in which you, as police managers, can obtain the cost information you need for efficient and effective administration.[1] This publication borrows some techniques from private industry for capturing the full costs of a police service. Specifically aimed at police managers, but also of interest to mayors and other municipal officials, the report presents simple cost analysis techniques. The procedures are applicable to a broad spectrum of police agencies, regardless of their size or whether they use sophisticated data processing systems. Ranging from simple techniques, such as rules of thumb for estimating overhead, building maintenance, and similar factors, to more complex approaches involving computer applications, the document is

"In today's fiscal climate, neither agencies nor individual managers can afford to overlook cost analysis as a vital aspect of managerial decisionmaking."



Mr. Stewart

tailored to varying levels of knowledge and skills.

To make sure the techniques presented in the report are appropriate to the organizational and political realities police face, the institute surveyed 50 police agencies to learn about their cost information systems and how they suited their purposes. We found that more than half the agencies rated their cost analysis capability as either fair or poor. Only 27 percent acknowledged using cost information to examine the merits of alternative strategies for meeting departmental objectives.

Even where automated data processing systems for financial purposes exist—as they do in 91 percent of the departments we surveyed—serious problems exist. The system may be under the direct control of a central computer staff, or the computer programs may not be adequate for the level of cost information that police managers need.

Traditionally, financial management has fallen to the budget bureau of the finance department—some place other than the police department. Relying on other agencies for such a critical management function masks the real contributions cost data can make to the work of police managers. Cost analysis can help with key management tasks, such as monitoring line operations, justifying budgetary requests, and evaluating alternative ways to deliver services.

These and other benefits of cost information have yet to be realized in many departments. Almost all agencies routinely monitor and regularly report on crime rates, crimes cleared by arrest or conviction, response time to calls for service, and other statistics. But few accurately and regularly track the costs of patrol, investigations, and the other police services required to maintain favorable statistics and a safe environment.

Cost information is a crucial tool for the effective manager. It is a potent weapon that significantly improves the police manager's influence.

There is no "best way" to measure costs. Rather, there are various strategies that can be applied at different levels of complexity, depending on the particular situation or problem that confronts your police department. At a minimum, however, cost analysis would start with a plan that defines the purpose and intended users of cost information, the service to be costed, and the capacity of existing accounting systems.

The planning also will have to weigh the trade-offs involved in deciding how extensive the cost analysis should be. Is it necessary to know the total cost of a given service, including both direct and indirect costs, or would estimates based only on direct costs meet your management needs? Depending on the level of complexity you require, your steps will include:

1) Measuring direct personnel costs by computing the time required to deliver the service and then calculating the cost of that time in salaries and fringe benefits;
2) Determining direct nonpersonnel costs such as materials and supplies, fixed assets—buildings and equipment—and costs such as uniforms, weapons, badges, handcuffs, etc.; and
3) Tracking indirect costs such as capital and operating costs, utilities, data processing, and other staff support functions. (Many jurisdictions have a set indirect cost rate that can save cost analysts considerable time.)

The final steps in the analysis involve calculating the total cost of the service, then reporting these results in a format decisionmakers can both understand and use.

Capturing the costs of services in this manner gives managers a decisionmaking tool for planning expenditures, for reviewing alternative approaches to service delivery, and for justifying expenses. In short, there is good management of resources before any expenditures or before the risk of a serious cost overrun. A reli-

able cost analysis system also reveals critical relationships among individual budget items, preventing elimination of cutbacks of line items because of a failure to recognize their impact on total service delivery.

Suppose the city council, for example, asks the police department to develop a budget for a 1-year burglary prevention program that would provide 24-hour surveillance in selected business districts. What would you include in the budget? You might start with the hourly costs for the patrolman's wages plus some estimate of the vehicle costs—a figure totaling perhaps $12. Using this basic figure, your budget request for the burglary prevention program might total about $105,000 (24 hours x 365 days x $12).

If the council, however, chose to implement the new program while cutting the police budget in other areas, would the program be able to function at its maximum? What if cuts were imposed on the city garage that services the program's vehicle? Would this result in unforeseen downtime for the car and the program? What about communications and the other items noted earlier that represent the real costs of the function?

In actuality, the true costs of the burglary prevention program would probably run closer to $200,000 when one includes related costs, such as fringe benefits, vehicle maintenance, inservice training, and other cost elements. The impact of cuts in other areas on the program's performance may seriously increase the risks of program failure.

These considerations are highlighted in the NIJ report, which draws on information learned from four jurisdictions selected as case studies for the report. All have used cost information to improve management decisionmaking, and ultimately, the quality of their services.

The Arkansas State Police Department has a different approach to cost analyses than the Sunnyvale, Calif., Police Department. The "job order" concept of the San Diego Police Department does not resemble the costing system used by the Alexandria, Va., Police Department. What these four departments do have in common, however, is their concern with tracking service costs, as opposed to simply tabulating outlays or budgeting by organizational unit. These approaches exemplify the benefits of a comprehensive approach to financial management and a fuller understanding of the use of cost data.

The Alexandria Police Department, for example, conducts periodic analyses of the costs of particular services, such as domestic calls or bank escorts. One such analysis proved especially useful when it revealed the price the department was paying for responding to false signals from silent bank alarms. Measuring the costs of this particular service entailed several key steps.

"Solid cost information . . . is increasingly necessary when police agencies seek reimbursement for dealing with special situations, such as civil disturbances or disasters, at the request of Federal or State governments."

First, the department identified both the *personnel* and *nonpersonnel components* involved in providing the service, such as the patrol officer and the patrol vehicle. Next, the department focused on *production units*—the quantifiable measures of work, such as labor hours, miles traveled, or number of crimes cleared by arrest. In the Alexandria study, the production units were the number of hours spent by personnel in responding to false alarms, a number arrived at by reviewing timecards and activity reports and the annual number of miles driven per false alarm call obtained by reviewing vehicle records.

With this data in hand, the department proceeded to determine the *unit costs* for both the patrol officer and the vehicle. All costs are as of fiscal year 1979. The cost per hour for patrol officers was arrived at by dividing the average annual salary for patrol officers and their fringe benefits by the total number of work hours in a year. For the vehicle, the computation included total vehicle costs—including some percentage of purchase price plus annual operating expenses for gas, oil, and repairs—divided by the number of miles driven in a year.

By individually multiplying the number of production units used by the unit costs for the officer and vehicle and then adding the results, the department determined their *total direct costs* for responding to false alarms—more than $10,000 per year. On a per call basis, the figure worked out to approximately $25 per false alarm. Eventually, this cost study led the department to place restrictions on when a patrol unit would be dispatched to a given alarm, resulting in substantial financial savings.

Solid cost information also is increasingly necessary when police agencies seek reimbursement for dealing with special situations, such as civil disturbances or disasters, at the request of Federal or State governments. Without appropriate documentation and cost accounting procedures, resources could unknowingly be lost because important costs are going untracked. In San Diego, for example, the job order concept of cost analysis enables the department to track all labor and materials for either ongoing operations or specific projects, such as a special event. Because of this, San Diego police were fully compensated for their work at the site of the crash of a commercial airliner and for handling a major strike

in a neighboring jurisdiction. By contrast, the Arkansas State Police was hampered in its efforts to bill the Federal Government for crowd control and guard duty during a riot at Fort Chafee, Ark., because their analysis system was not fully operational at the time.

Other jurisdictions increasingly use cost analysis to make planning and budgeting decisions. In Phoenix, Ariz., police officials confronted an issue that faces many agencies—whether to buy, lease, or rent unmarked police vehicles. In analyzing the comparative costs involved, the department took into account the range of costs associated with vehicle purchase and maintenance, including such things as operating costs, communications equipment, and resale value. The analysis showed that the net cost of a city-purchased vehicle over a 5-year period was approximately $15,000. For the same period, however, Phoenix police determined that yearly leasing would total $14,000.

The analysis revealed that the yearly leases became more economical than city-owned vehicles after 4½ years, when city-owned vehicles lost their resale value. Yearly leases also were substantially lower than the existing monthly rental arrangement, which would be an approximate $23,500 cumulative annual cost. Through careful cost analysis and planning that permitted the department to make a commitment to continue with the leased vehicles for at least 5 years, the Phoenix Police Department was able to realize significant savings in its vehicle budget. In fact, total savings for the city's full fleet of 136 unmarked cars amounted to more than $112,000 (based on 1979 costs).

Another issue tackled by the Phoenix Police Department cost analysts involved different methods for shuttling prisoners from holding areas to jail facilities. The existing arrangement used police vans, but because of limited equipment and frequent breakdowns, the program was able to handle only about 30 percent of the prisoners. The remainder of prisoners were transported by car at a cost of approximately $25 per prisoner. Through a detailed analysis, the city developed plans for a new expanded shuttle program. Although it appeared more costly overall because it included expenses such as replacing equipment, the new program would enable the city to transfer more than double the number of prisoners than it had previously and lower the cost per prisoner to approximately $22 (based on FY 1979 data). Projected on an annual basis, the savings would total some $55,000 per year. In addition, the expanded capacity would relieve police of much of the burden of the transport of prisoners.

In today's fiscal climate, neither agencies nor individual managers can afford to overlook cost analysis as a vital aspect of managerial decisionmaking. Public pressure for accountability by government agencies continues to grow, questions arise about the use of public safety programs, and within police departments, managers who make decisions about service are increasingly being evaluated by their ability to control costs. Their actions have consequences affecting costs for which they are accountable. Police managers need to be well informed before making critical decisions about public safety.

Cost analysis is a new role for police managers—one not emphasized in traditional training or experience—but it is a challenge as well. It offers managers an opportunity to develop a more complete and systematic approach to decisionmaking. Information on cost analysis can help departments meet that challenge. **FBI**

Footnote

[1] *Measuring the Costs of Police Services,* Abt Associates, Inc., Kent Chabotar, can be obtained for *$9.95* from NIJ's National Criminal Justice Reference Service, Box 6000, Rockville, Md. 20850. Training materials on cost analyses—including video tapes and manuals—are also available from NIJ/NCJRS. The cost is $17 per package, or $15 when multiple sets are ordered.

The Constitutionality of Drunk Driver Roadblocks

"Roadblocks do withstand constitutional scrutiny when carefully conceived and implemented as a species of the administrative search authority."

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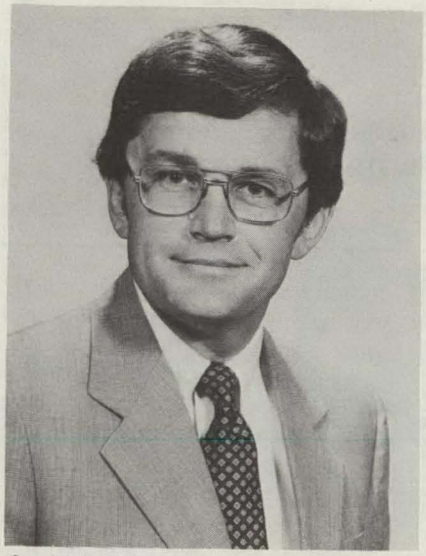
Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

The magnitude of the Nation's drunk driving problem threatens everyone. Drunk drivers cause 25,000 deaths per year.[1] In 1980, over 650,000 people were injured in alcohol-related traffic accidents.[2] It has been estimated that on Friday and Saturday nights, 1 out of every 10 motor vehicle operators is intoxicated.[3] In response, citizen campaigns against drunk driving[4] have encouraged police departments throughout the country to employ more effective measures to remove intoxicated drivers from the road.[5] The sobriety checkpoint or driving while intoxicated (DWI) roadblock is one such measure.

DWI roadblocks are implemented in a variety of ways. For example, officers conducting a roadblock may stop all traffic or some numerically objective number, like every fifth vehicle. After a vehicle is directed to the side of the road, an officer may request to see an operator's license and vehicle registration and may ask several questions to observe the driver's demeanor. If the officer detects signs of inebriation, the motorist may be directed to move the vehicle to a secondary area, step out, and submit to a roadside sobriety coordination or breathalyzer test.[6] The failure to pass either test constitutes sufficient probable cause for arrest.[7]

Routine license-check roadblocks, fish and game license roadblocks, and immigration checkpoints generally predate the development of DWI roadblocks. As outlined in previous issues of the *FBI Law Enforcement Bulletin,*[8] such roadblocks have been the subject of a substantial amount of inconsistent litigation in both State and Federal courts. The records in these cases generally say very little about what goes on at roadblocks, and the court decisions have been criticized for not carefully balancing the competing interests.[9] This failure to provide a uniform assessment of the reasonableness of differing roadblock programs continues today.[10] As a result, police departments employing DWI roadblocks in the past few years have done so at their peril, and when challenged, have been criticized by courts for what is perceived to be a wide variety of poorly planned and highly intrusive roadblock procedures.

The U.S. Supreme Court has not considered the constitutional propriety of DWI roadblocks. Some lower courts find that DWI roadblocks impose unreasonable fourth amendment seizures,[11] while others uphold such roadblocks when they embody specific protections against unnecessary invasions of privacy. In 1983, State supreme courts in Arizona,[12]



Special Agent Campane

Massachusetts,[13] and Kansas[14] examined this issue. This article reviews these and other decisions in recent DWI roadblock cases. It then provides an analysis of a specific procedure for the development of a lawful DWI roadblock program.

Roadblocks as Fourth Amendment Seizures

The fourth amendment requires that all searches and seizures be reasonable. It is now beyond dispute that stopping a motor vehicle and detaining its occupants constitutes a seizure, even though the detention is brief and limited in scope.[15] The reasonableness of any seizure depends on a balance between the government's interest in public safety and the individual's right to privacy.[16] That balance weighs against the individual when a law enforcement officer has sufficient facts to establish probable cause to arrest.[17] It also weighs against him in an investigative detention, when the officer can point to specific and articulable facts amounting to reasonable suspicion that criminal activity is afoot.[18] A DWI roadblock causes the detention of a motorist when there is no probable cause or reasonable suspicion. If the detention is not otherwise reasonable, any evidence seized is inadmissible in a subsequent criminal prosecution.[19] In addition, there is an increased potential for civil liability.[20]

Roadblocks as Administrative Searches

Roadblocks do withstand constitutional scrutiny when carefully conceived and implemented as a species of the administrative search authority. In the administrative search area, the courts impose no requirement for individualized suspicion because the governmental interest in public safety outweighs the limited invasion of individual privacy. Searches at airports, courthouses, and in highly regulated industries fall into this category.[21] Most courts also view roadblocks as administrative searches and require no particularized reason to detain a motorist. However, in balancing governmental interest in highway safety against individual privacy rights, the following three factors have been identified as decisive when the scale is tipped in favor of the government:

1) The gravity of the public interest at stake;
2) The efficiency of the procedure in reaching its desired goals; and
3) The severity of interference with individual liberty.

Although no one factor is determinative, each should be carefully considered in the development and application of a DWI roadblock. Failure to do so may jeopardize the ability to successfully prosecute inebriated drivers.

Documenting the Government Interest

The Supreme Court has repeatedly recounted the tragedy on our highways caused by intoxicated drivers.[22] Lower court DWI roadblock decisions also point out the strong public interest served by law enforcement efforts to deter drunk driving.

". . . [roadblocks] are most effective late at night or in the early morning hours when stationed along roads where bars and taverns are located."

Yet, law enforcement agencies should still justify their own local need for a DWI roadblock at a particular time and place. Statistics should reflect that the site selected for a roadblock is a place where either a significant number of DWI arrests have previously occurred or where there has been an unusually high number of alcohol-related traffic accidents.

For instance, a 1983 Arizona Supreme Court [23] decision holding a DWI roadblock unconstitutional specifically noted that the record disclosed no statistics concerning the extent of the drunk driver problem on Arizona highways. A New Jersey court,[24] on the other hand, upheld a local police DWI roadblock program after observing that such seizures are most effective late at night or in the early morning hours when stationed along roads where bars and taverns are located. The statistics do not have to be voluminous, but they should provide a basis for the roadblock's deployment. In this regard, the New Jersey court stated:

> "Empirical data revealed that seven fatal vehicular accidents had occurred on Main Road . . . during the two years prior to the implementation of [the DWI roadblock]. In most . . . alcohol abuse . . . was a contributing factor. A reasonable conclusion to be reached from this data is that Main Road had become a dangerous thoroughfare because of the large number of intoxicated drivers using it." [25]

Achieving the Desired Results

DWI roadblocks have two purposes: 1) Apprehend drunk drivers before injury occurs; and 2) deter intoxicated individuals from driving. Even if DWI roadblocks are carefully selected with respect to time and location, it is not always true that a higher frequency of DWI arrests occur at roadblocks than at roadside detentions made by roving patrol observations. Advocates of DWI roadblocks should carefully consider their deterrent rationale. If deterrence is effective, fewer DWI arrests are made and fewer accidents occur. This puts the police in a dilemma, for there will thus be a diminishing statistical basis upon which to justify continued use of DWI roadblocks. For this reason, there is a general disagreement in the law enforcement community over whether DWI roadblock programs are sufficiently effective to justify the intrusions they entail.[26]

The courts also question the utility of DWI roadblocks by drawing a distinction between various roadblock law enforcement programs. Violations of operator's license, hunting permit, and immigration laws are not physically apparent through mere observation of traffic. But a drunk driver may exhibit signs of inebriation by the manner in which he or she drives. The courts intimate that well-trained roving patrol observations of individual vehicles may be as effective as roadblocks. At the very least, they involve far fewer detentions of innocent travelers. The Arizona Supreme Court recently noted:

> "If there is an adequate method of enforcing the drunk driving statute, there is no pressing need for the use of an intrusive roadblock device. We have no empirical data in the record before us with which to weigh the reasonableness of the roadblock intrusion." [27]

In addition, courts point to the value of advance media publicity. This should put the public on notice that roadblocks are operational and thus ease a citizen's concern when unexpectedly detained at one. But such publicity may also deter a drunk from driving and ultimately decrease the number of DWI roadblock arrests. If fewer arrests are made because of this forewarning, the justification for the numerous seizures at roadblocks likewise diminishes. Roving patrols then become a more viable alternative. Until such time as this dilemma is more fully addressed by the courts, agencies employing DWI roadblocks may be unable to obtain significant DWI arrest statistics. They should therefore be prepared to justify their procedures for the deterrent value in keeping the drunk off the road in the first place.

Interfering with Individual Liberty

The balancing of interests process can still weigh in favor of the government when the degree of interference with individual liberty is minimized. Subjectively, a motorist's perception of concern, fright, or annoyance should be eliminated by the efficiency of the roadblock's operation. Objectively, the selection and implementation of the roadblock should curtail any chance of arbitrary enforcement.

Supreme Court Roadblock Cases

The Supreme Court has addressed the propriety of roadblocks on two separate occasions. The decisions focus on the intrusive nature of the search as subjectively perceived by motorists and on the degree of discretion the procedure vests in the detaining officers. In *United States* v. *Martinez-Fuerte*,[28] decided in 1976, the Court held that roadblock investigative stops at permanent immigration checkpoints near the Mexican border are reasonable despite the absence of any particularized suspicion to believe immigration laws were being violated. The California border patrol checkpoint stop of Martinez-Fuerte occurred at a State weight station where there were adequate facilities for the temporary detention of motor vehicles. Motorists were warned and then stopped by a series of lighted signals extending a mile from the checkpoint. The officers were in full-dress uniform and visually screened all northbound vehicles. Most motorists were allowed to resume their progress without any oral inquiry or close visual inspection. Detentions at a secondary inspection area lasted on the average of 3 to 5 minutes and were designed to query occupants with respect to their citizenship and immigration status. In the balancing equation to determine whether the stop was reasonable, the Court noted:

> "Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second, checkpoint operations both appear to and actually involve less discretionary enforcement activity. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed checkpoint is not chosen by officers in the field, but by officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources." [29]

Three years later, the Supreme Court commented on the propriety of license-check roadblocks in *Delaware* v. *Prouse*.[30] The Court held that random vehicle stops by police officers on patrol for the purpose of registration, license, or equipment checks must be based on reasonable suspicion of a motor vehicle code violation. The Court distinguished the permanent immigration roadblock upheld in *Martinez-Fuerte* on two grounds. First, the Court reiterated that there is a much lesser *subjective* intrusion perceived by a motorist detained at a roadblock. All vehicles are brought to a halt and subjected to a show of police authority. Each motorist is able to see the other vehicles being stopped ahead and is less likely to be frightened or annoyed by the intrusion. Second, the Court stressed police *objectivity* and expressed concern over the unbridled discretion that arbitrary stops entail. The Court did not believe such random detentions to be sufficiently productive mechanisms to justify the invasion of privacy placed on a motorist who is singled out at random.

Prouse makes clear that checkpoint or roadblock stops are not limited to enforcement of immigration laws.[31] A concurring opinion suggests that other nonrandom stops (such as every 10th vehicle to pass the checkpoint) may also be reasonable.[32] *Prouse* has been consistently cited since 1979 as the constitutional basis for the initiation of DWI roadblocks. Unfortunately, the Court did not provide any further clarification on how best to measure a roadblock in terms of the mechanics of the stop, questioning, and visual inspection, or in terms of the numerical method whereby cars are selected for detention.

Because *Martinez-Fuerte* and *Prouse* establish no more than a framework for assessing the constitutionality of roadblocks, the recent spate of State court DWI roadblock decisions become important in their analysis of the subjective-objective factors and the interference with the liberty of motorists. At the very least, these decisions make clear that DWI roadblock programs need not be permanent, nor require the detention of every vehicle, nor be disguised as routine license checks.

State DWI Roadblock Cases

The first 1983 DWI roadblock case was decided by the Arizona Supreme Court in *State Ex Rel. Ekstrom* v. *Justice Ct. of State*.[33] On two evenings, Arizona police officers stopped every passenger vehicle heading south on Highway 93 near Kingman, Ariz. The DWI roadblock was in operation for approximately 5 hours each evening at a port-of-entry. Although a command officer decided where the

". . . DWI roadblock programs need not be permanent, nor require the detention of every vehicle, nor be disguised as routine license checks."

DWI roadblocks were to be placed, no instructions were provided to the officers. They were not told what to do if a vehicle turned around to avoid detention. They were not told whether to inspect visible cans or bottles, nor whether to shine flashlights in each vehicle. They were not told whether to smell inside each vehicle. Although pylons and lighted flares were positioned 150 yards from the roadblocks to channel all oncoming traffic into the detention site, no warning signs or flashing lights announced the purpose for the detention, nor did the police department notify the public that roadblocks would be operating near Kingman. Vehicles were detained from 30 seconds to 5 minutes. At the Kingman roadblock on the two dates combined, the officers made 13 DWI arrests.

The implementation of these roadblocks was held to be unconstitutional. The court focused on the manner in which the Kingman checkpoints were operated as evidence of a failure on the part of the police to eliminate the chance of arbitrary enforcement.

> "The roadblocks were set up at the discretion of a local highway patrolman and were operated without specific directions or guidelines. Officers were uncertain whether they should simply question the occupants of motor vehicles or whether they should seize the opportunity to cursorily search the vehicles for evidence of a violation. Motorists were taken by surprise, not having had prior notice of the location and purpose of the checkpoints. We find present in the Kingman operation the grave danger that such discretion might be abused by the officer in the field, a factor which caused the Court in *United States* v. *Prouse* much concern." [34]

A concurring opinion in *Ekstrom* explored the conditions under which a roadblock checkpoint might pass constitutional scrutiny. It noted that advance warning of a roadblock by notice on the highway and publicity in the media would not only increase the efficacy of deterrence but would also limit the resulting intrusion on individual privacy because those being stopped would hopefully anticipate and understand what was occurring.[35]

The Massachusetts Supreme Court also held a DWI roadblock unconstitutional in 1983 in *Commonwealth* v. *McGeoghegan*.[36] McGeoghegan found himself 1 of 200 motorists detained late at night at a Revere Police Department DWI roadblock set up on a heavily traveled highway. The roadblock plan was formulated earlier in the day by the police chief and four subordinates. The trial judge found that the roadblock area was poorly illuminated and unsafe for motorists. The mechanics of the roadblock were left to the officers carrying it out, and the officers used their own discretion in deciding which cars to stop. Motorists were backed up on the highway for at least two-thirds of a mile.

The Massachusetts Supreme Court believed the procedure created an unreasonable seizure of McGeoghegan because of both the roadblock's subjective intrusion and objective arbitrariness:

> "[The roadblock fails] to establish sufficient police presence, and adequate lighting and warning to approaching motorists. They do not establish lack of arbitrariness and undue delay. . . . For a roadblock to be permissible, it appears that the selection of motor vehicles to be stopped must not be arbitrary, safety must be assured, motorists' inconvenience must be minimized, and assurance must be given that the procedure is being conducted pursuant to a plan devised by law enforcement supervisory personnel." [37]

In addition the court provided some noteworthy advice:

> "While we do not suggest that advance notice is a constitutional necessity, advance publication of the date of an intended roadblock, even without announcing its precise location, would have the virtue of reducing surprise, fear, and inconvenience. Such a procedure may achieve a degree of law enforcement and highway safety that is not reasonably attainable by less intrusive means. Also, while we do not suggest that roadblocks can only be constitutional if prescribed by statute or appropriate governmental regulation, we think that procedures conducted pursuant to such authorizations and standards would be more defensible than would other procedures." [38]

In 1980, a New Jersey court reached a different conclusion when it upheld the warrantless operation of a local police DWI roadblock in *State* v.

Coccomo.[39] Written policy required the detention of every fifth vehicle on a lightly traveled road early in the morning when nearby bars and taverns were closing. The roadblock was placed on a dangerous thoroughfare that had been the scene of an unusually high number of vehicular fatalities. Numerous arrests for DWI had resulted since the program was instituted. Flares were appropriately positioned to alert drivers. A uniformed officer directed every fifth vehicle to an adjacent parking lot where a license-check was conducted. Signs of inebriation could also be observed.

In upholding the seizure of Coccomo, who was subsequently arrested for DWI, the court focused primarily on the objectivity with which the officers applied the detentions:

> "It is apparent that the Roxbury Township police follow specific defined standards in stopping motorists. Their system is completely objective in its operation. The criterion they employ is purely neutral; no discretion is involved. The evil implicit in the use by police of standardless and unbridled discretion to stop vehicles, which has been prohibited by *Prouse,* simply is not present here."[40]

State v. *Deskins,*[41] a 1983 Kansas Supreme Court decision, is significant in its approval of a Topeka police agency's DWI roadblock. One evening in 1982, approximately 40 officers from various jurisdictions set up a DWI roadblock on Topeka Avenue. Approximately 3,000 vehicles were stopped during the 4 hours the roadblock was in operation, and 15 persons, including Deskins, were arrested for DWI. The roadblock was established in a well-lit area of a four-lane highway. Several marked police cars, with flashing red lights, were located at each of the four corners of the roadblock. Sufficient officers were present to ensure that the time of each detention was minimal. All vehicles going in either direction were stopped and subjected to a license check. The officers operating the roadblock had no discretion to pick and choose who would or would not be stopped. The officers were in uniform and readily recognizable as being police officers. The location was selected by supervisory personnel and not the officers in the field.

Applying the balancing test of administrative search law, the court believed the initial stop met the minimum requirements for a constitutional momentary seizure, and based upon obvious evidence of Deskin's intoxication, held it to be lawful. The court made clear, however, that its decision applied only to the facts surrounding this particular roadblock and suggested, as had the Massachusetts Supreme Court earlier, that minimum uniform standards for the operation of vehicular roadblocks be adopted and established by the legislature or State attorney general rather than left to the determination of local law enforcement officials.

The *Deskins* decision is significant for another reason. Although courts agree that numerous conditions and factors must be considered in determining whether the operation of a particular DWI roadblock is unreasonably intrusive in its interference with individual liberty, *Deskins* is the first court to specifically point out many of those considerations. In its 11-factor analysis, *Deskins* provides a basis by which a police department can begin to design a DWI roadblock program with some assurance that if each point is addressed, the program will have a viable opportunity to pass the intrusive severity factor in the balancing test. These conditions are:

1) Advance notice to the public at large through media publicity;
2) Location selected and procedure developed by superior officers;
3) Degree of discretion left to the officer in the field;
4) Method of warning to individual motorists approaching the roadblock;
5) Reason for the location designated for the roadblock;
6) Time and duration of the roadblock;
7) Maintenance of safety conditions;
8) Average length of time each motorist is detained;
9) Physical factors surrounding the location, type, and method of operation;
10) Degree of fear or anxiety generated by the mode of operation; and
11) Any other relevant circumstances which might bear on the test.

In applying these 11 points to Deskin's detention, the court noted:

> "Not all of the factors need to be favorable to the state but all which are applicable to a given roadblock should be considered. Some, of course, such as unbridled discretion of the officer in the field, would run afoul of *Prouse* regardless of other favorable factors."[42]

"The procedure should be designed to advance a dual purpose: Avoid police discretion and minimize the psychological and physical intrusiveness of the searches."

Because *Deskins* is the first State supreme court decision upholding the reasonableness of a DWI roadblock program, its 11-step test should be seriously considered. Supervisory officers should determine a DWI roadblock's location and time of operation. The procedures employed should be drafted as department policy and written carefully in accord with formulated standards and neutral criteria. Roadblocks should be stationary but need not be permanent. When traffic flow is light, consideration should be given to stopping all vehicles. When traffic flow is heavy, vehicles should be stopped at regular intervals. In addition, executive-level officers should monitor the roadblock's operation to ensure compliance with written procedure.

Consideration should also be given to publicizing the potential for roadblock detentions. The checkpoint location should be selected for safety and visibility to oncoming motorists. Adequate advance warning signals, well-illuminated at night, should inform motorists of the nature of the intrusion. Officers should be in uniform and in sufficient quantity to prevent dangerous backups. A secondary detention location, such as a parking lot, should be nearby where further investigation can be safely pursued. The time limits on the average length of a detention should be no more than a few minutes unless reasonable suspicion is developed. Obviously, motorists should be told why they are being detained.

Conclusion

The fourth amendment requires that the seizure of motorists at DWI roadblocks be reasonable. Essentially, the test of reasonableness consists of a balancing of the legitimate State interest in highway safety against the individual's interest in privacy and freedom of movement.

The test has not, however, been easy to apply to warrantless roadblock procedures in general or to warrantless DWI roadblocks in particular. For the police agency believing in the efficacy of DWI roadblocks, the challenge is ahead. The design and implementation of roadblock procedures should be carefully tailored to address each of the three key factors in the administrative balancing test. First, document the DWI problem in the local community, particularly the DWI accident and arrest frequency at the location where a roadblock is contemplated. Second, monitor its operation carefully to ensure its effectiveness in reaching the goal of deterrence as well as detection. Roving patrols may be more efficient in detection but may not have the equivalent deterrence value. Third, and most important, the severity of the interference with individual privacy must be minimized to the extent reasonably practical. The procedure should be designed to advance a dual purpose: Avoid police discretion and minimize the psychological and physical intrusiveness of the searches.

As noted earlier, no one factor is determinative. As with any balancing test, its application to a particular set of facts is complex. Whether DWI roadblocks can withstand constitutional challenge may depend in large part on the professionalism, efficiency, and fairness demonstrated by the law enforcement officer in the field.[43] If future court decisions continue to find DWI roadblocks violative of the fourth amendment, police agencies should consider applying for area search warrants.[44] In the alternative, it may be prudent to promote the suggestion raised by the Massachusetts and Kansas Supreme Courts: A DWI roadblock is such a pervasive investigative technique that its approval requires the thoughtful consideration of the State legislature and the adoption of an appropriate statute or administrative regulation. **FBI**

Footnotes

[1] *Hearings on S. 671, S. 672, S. 2158, Federal Legislation to Combat Drunk Driving Including National Driver Register, Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science & Transportation,* 97th Cong., 2d Sess., at 65 (1982), cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State,* 663 P.2d 992, 99 (Ariz. 1983) (Feldman, J., concurring); Note, *Curbing the Drunk Driver Under the Fourth Amendment: The Constitutionality of Roadblock Seizures,* 71 Geo. L.J. 1457, n.1 (1983) [hereinafter cited as Note, Geo. L.J.].

[2] *Hearings Before the Subcomm. on Surface Transportation,* cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[3] *Hearing to Examine What Effect Alcohol & Drugs Have on Individuals While Driving, Before the Subcomm. on Labor & Human Resources,* 97th Cong., 2d Sess., at 1 (1982), cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[4] *See* Starr, "The War Against Drunk Drivers," *Newsweek,* Sept. 13, 1982, at 34 (discusses various activities of citizen groups against drunk driving); Note, Geo. L.J., *supra* note 1, at 1457, n.1. (summarizes the publicized citizen campaigns against drunk driving and recent State drunk driving legislation).

[5] At least 13 States are conducting or considering the deployment of drunk driving roadblocks. *See* Note, Geo. L.J., *supra* note 1, at 1460, n.16.

[6] Reasonable suspicion of intoxication justifies the detention of a vehicle at a secondary area and the removal of the driver from the passenger compartment. *See Pennsylvania* v. *Mimms,* 434 U.S. 106 (1977); *United States* v. *Miller,* 608 F.2d 1089 (5th Cir. 1979), *cert.*

denied, 447 U.S. 926 (1980). Reasonable suspicion also justifies the roadside sobriety coordination test. This test consists of a combination of physical activities: Walking heel to toe in a straight line, turning without staggering, touching the tip of the nose, reciting the alphabet, standing on one foot, tilting the head back with eyes closed without staggering. *See, e.g., State* v. *Little,* 468 A.2d 615 (Me. 1983); *Commonwealth* v. *Kloch,* 327 A.2d 375 (Pa. Super. Ct. 1975). *See also People* v. *Helm,* 633 P.2d 1071 (Col. 1981) (consent justifies the field sobriety test and intoxication does not subvert the voluntariness of the agreement); *cf. People* v. *Carlson,* 667 P.2d 310 (Col. 1983) (En Banc) (absent consent, probable cause required to administer field sobriety test). No decision has been found specifically litigating the prearrest justification for a breathalyzer test. *See generally Commonwealth* v. *McGeoghegan,* 449 N.E.2d 349 (Mass. 1983) (breathalyzer test performed to establish probable cause to arrest).

[7] For a more detailed description of the mechanics of DWI roadblocks, *see* Note, Geo. L.J., *supra* note 1, at 1463.

[8] *See* Schofield, "Routine License Checks and the Fourth Amendment," *FBI Law Enforcement Bulletin,* September 1976, at 27; Schofield, "The Constitutionality of Routine License Check Stops, A Review of *Delaware* v. *Prouse,*" *FBI Law Enforcement Bulletin,* January 1980, at 25.

[9] *See* Note, Geo. L.J., *supra* note 1, at 1470–82.

[10] *Compare United States* v. *Obregon,* 573 F.Supp. 876 (D. N.M. 1983) (license-check roadblock held reasonable); *People* v. *John B.B.,* 438 N.E.2d 864 (N.Y. Ct. App. 1982) (roving patrol burglary-area roadblock held reasonable); *State* v. *Shankle,* 647 P.2d 959 (Ore. Ct. App. 1982) (license-check roadblock held reasonable); *State* v. *Tourtillot,* 618 P.2d 423 (Ore. 1980) (hunting license-check roadblock held reasonable); *State* v. *Halverson,* 277 N.W.2d 723 (S.D. 1979) (hunting license-check roadblock held reasonable) *with Koonce* v. *State,* 651 S.W.2d 46 (Tex. 1983) (license-check roadblock held unreasonable); *United States* v. *Munoz,* 701 F.2d 1293 (9th Cir. 1983) (national park wood-cutting permit-check roadblock held unreasonable); *Garrett* v. *Goodwin,* 569 F.Supp. 106 (E.D. Ark. 1982) ("saturation" roadblock on interstate highway enjoined); *State* v. *Hilleshiem,* 291 N.W.2d 314 (Iowa 1980) (vandalism-check roving area patrol held unreasonable).

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

[12] *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[13] *Commonwealth* v. *McGeoghegan, supra* note 6.

[14] *State* v. *Deskins,* 673 P.2d 1174 (Kan. 1983).

[15] *Delaware* v. *Prouse,* 440 U.S. 648 (1979); *United States* v. *Brignoni-Ponce,* 442 U.S. 873 (1975).

[16] *Brown* v. *Texas,* 443 U.S. 47 (1979).

[17] *Beck* v. *Ohio,* 379 U.S. 89 (1964).

[18] *Terry* v. *Ohio,* 392 U.S. 1 (1968).

[19] *Mapp* v. *Ohio,* 367 U.S. 643 (1961).

[20] *See, e.g., Garrett* v. *Goodwin, supra* note 10. Seven motorists and three passengers filed a civil suit seeking declarative and injunctive relief, alleging that the Arkansas State Police policy of "saturation" roadblocks violated the fourth amendment as conceived and as applied. Without admitting guilt, the State police entered into a consent decree regulating their use of roadblocks on interstate highways.

[21] *See, e.g., United States* v. *Davis,* 482 F.2d 893 (9th Cir. 1973) (airport search); *McMorris* v. *Alioto,* 567 F.2d 897 (9th Cir. 1978) (courthouse search); *Camera* v. *Municipal Court,* 387 U.S. 523 (1967) (building code inspectors); *See* v. *City of Seattle,* 387 U.S. 541 (1967) (fire code inspectors).

[22] *See South Dakota* v. *Neville,* 103 S.Ct. 916, 20 (1983), and citations therein.

[23] *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[24] *State* v. *Coccomo,* 427 A.2d 131 (N.J. Super. Ct. 1980).

[25] *Id.* at 134.

[26] *See, e.g.,* Buracker, "The 'Roadblock' Strategy as a Drunken Driver Enforcement Measure," *The Police Chief,* April 1984, at 59.

[27] *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1, at 996; *accord, State* v. *Deskins, supra* note 14 (Pruger, J., dissenting), at 1188.

[28] 428 U.S. 543 (1976).

[29] *Id.* at 559.

[30] 440 U.S. 648 (1979).

[31] *Id.* at 663.

[32] *Id.* (Blackmun, J., concurring) at 663–64.

[33] 663 P.2d 992 (Ariz. 1983).

[34] *Id.* at 996.

[35] *Id.* (Feldman, J., concurring) at 1001.

[36] 449 N.E.2d 349 (Mass. 1983).

[37] *Id.* at 353.

[38] *Id.*

[39] 427 A.2d 131 (N.J. Super, Ct. 1980).

[40] *Id.* at 135.

[41] 673 P.2d 1174 (Kan. 1983).

[42] *Id.* at 1185.

[43] *See* La Fave, *Search and Seizure—A Treatise on the Fourth Amendment,* vol. 3, section 9.5 (Supp. 1983), at 84 (suggesting warrantless roadblocks for general purposes should be upheld under some circumstances, although not specifically mentioning DWI roadblocks).

[44] *See, e.g., State* v. *Olgaard,* 248 N.W.2d 392 (S.D. 1976) (area warrant needed to operate a nonpermanent DWI roadblock); *Almeida-Sanchez* v. *United States,* 413 U.S. 266 (White, J., dissenting) (suggests the utility of an area motor vehicle stop search warrant). *See generally* Note, Geo L. J., *supra* note 1, 1484–85.

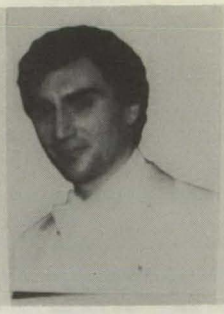
UCR Survey To Be Sent Out Soon

A joint FBI/Bureau of Justice Statistics Task Force is conducting a complete review of the UCR program through a contract with Abt Associates, Inc. As announced in the May issue of the *FBI Law Enforcement Bulletin,* a critical part of this review is a mail survey of law enforcement agencies. In a few weeks, this survey will be mailed to the heads of all law enforcement agencies serving populations in excess of 10,000 and to all other agency heads who returned the coupon included in the May issue, indicating their interest in participating. We urge those included in the survey to ensure that their views are counted by responding promptly to the questionnaire.

WANTED BY THE FBI

Photograph taken 1977

Photograph taken 1979



Photograph taken 1981

Photograph taken 1982

Nicholas Gregory

Nicholas Gregory, also known as Michael Aiello, Joseph Conway, Nichlas Gregory, Nicholas Joseph Gregory, Nick Gregory, Henry Kellagas, Michael E. Kesselman, Robert Mann, Gregory Nickastopolas, Anthony Pisano, Joseph Rimpotis, John Rizzo, Richard White, "Greek," "Horse," "Nick the Greek," "The Greek"

Wanted For:

Bank Larceny; Probation Violation

The Crime

Nicholas Gregory, a reported narcotics user, is being sought by the FBI for bank larceny, probation violation, and alleged participation in the robbery of $11 million from a Bronx, N.Y., armored courier corporation.

A Federal warrant was issued on February 5, 1983, in the Southern District of New York and on March 23, 1983, in the District of New Jersey, Camden, N.J.

Description

Age	40, born September 4, 1943, New York, N.Y.
Height	5'11".
Weight	160 to 180 pounds.
Build	Medium.
Hair	Dark brown.
Eyes	Brown.
Complexion	Olive.
Race	White.
Nationality	American.
Occupations	Construction worker, contractor, laborer, salesman, siding contractor.
Social Security Numbers Used	120-52-1314, 071-52-4950, 060-32-4638, 060-30-4936.
Remarks	Wears a gold chain with the medal of the Madonna; has some ability to speak and understand the Greek language; is a heavy gambler.
FBI No.	742 896 D.

Caution

Gregory allegedly suffers from severe episodes of depression and has become violent while in that state. Consider him armed and extremely dangerous.

Notify the FBI

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

Classification Data:

NCIC Classification:

22570518161367041412

Fingerprint Classification:

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I.O. 4945

Right index fingerprint

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Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City State Zip

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The unusual and questionable pattern presented here is given the preferred classification of a loop with 13 ridge counts. It is referenced to a double-loop whorl with an inner tracing because of the looping information appearing over the loop.

U.S. Department of Justice
Federal Bureau of Investigation

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The Bulletin Notes

that on March 20, 1983, Deputy Daniel P. Kern of the Hamilton County, Ohio, Sheriff's Office, who was off duty, saw a car hit a pole and catch fire. The impact jammed both doors, but Deputy Kern was able to kick out a window, enter the burning car, and rescue the driver. The Bulletin joins the Sheriff's Office in recognizing Deputy Kern's lifesaving action.

Deputy Kern