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LAW ENFORCEMENT BULLETIN

FEDERAL BUREAU OF INVESTIGATION
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J. EDGAR HOOVER, DIRECTOR

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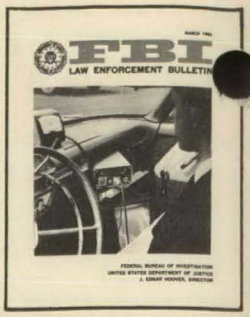

THE COVER — *Speed control. See "Speed Limits — Theory and Practice" on page 2.*

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CONTENTS

MESSAGE FROM THE DIRECTOR

LAW ENFORCEMENT is highly exacting work. It demands mental and physical alertness, single-mindedness, dedication, and enthusiasm for effective performance. To fully discharge his responsibilities and do a creditable job, an officer should devote all his energy to his enforcement duties. Unfortunately, many cannot do this. They are required to "moonlight" in order to give their families a decent standard of living.

My criticism of moonlighting is not against the officers who must hold a second job. Rather, it is against the prevailing systems which unwittingly make this questionable practice necessary. Local governments and communities willing to accept the practice as a substitute for adequate police pay are applying short-range judgment to a long-range problem.

As to law enforcement operations, there are numerous dangers inherent in moonlighting. These include conflict of loyalties, potential corruption, increased absenteeism, low morale, ineffectiveness, personal danger to officers resulting from fatigue, and loss of public respect and confidence. It is true that many police agencies restrict the types of outside jobs which can be held, but this does not mitigate the basic problem.

Moonlighting is condemned by virtually all experienced law enforcement executives in this country. However, most department heads are not in a position to force the issue. Still they know that fighting crime and protecting life and property require all officers to be fully prepared, mentally and physically. Continuous study and training are vital phases of this preparation. Policemen who hold two jobs can devote little time to improving themselves to meet the challenges of law enforcement.

With the increasing demands made upon law enforcement today, enforcement agencies cannot effectively discharge their duties with less than total commitment and effort by their men. The courts, the news media, and the general public demand a professional level of performance by law enforcement, but in most instances, this concern dissipates short of the means to achieve the goal.

Moonlighting is a definite obstacle to professional law enforcement. It plagues large and small departments alike, in all parts of the Nation. Its elimination depends on the support and cooperation of local governmental officials and an understanding public.

As I have stated many times, effective law enforcement is a vital part of community growth and development. It is the heart of law and order, and it cannot be achieved on a cutrate basis. A practice which requires an officer to daily place his life on the line against murderers, robbers, and unpredictable young thugs without just compensation is a bad practice and should be stopped. All communities should pay policemen suitable wages and let moonlighting pass from the scene.

J. Edgar Hoover

JOHN EDGAR HOOVER, *Director.*

MARCH 1, 1966

SPEED LIMITS— Theory and Practice

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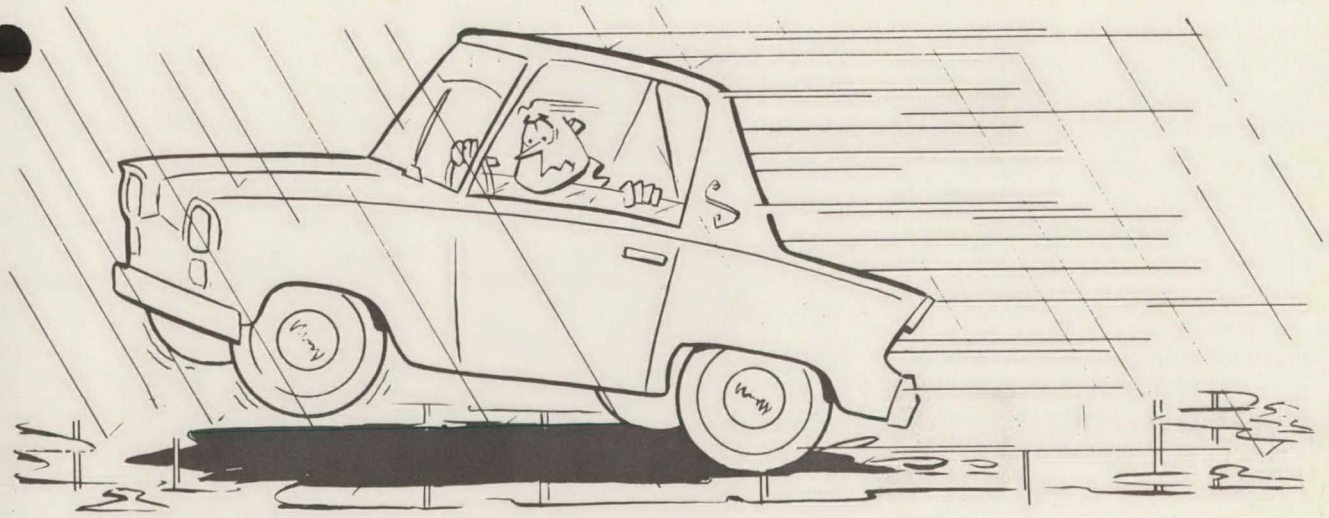
It is a basic truism of traffic engineering that "in the absence of intensive enforcement, drivers tend to operate their vehicles at speeds they feel are reasonable and proper, consistent with conditions and regardless of the posted speed." Drivers in this instance means the elusive "average driver." We think a driver is average if his driving practices seem to conform to those of a majority of the other drivers.

If there were more average or above average drivers, we could undoubtedly eliminate many of the regulatory signs now cluttering our streets and highways. Neither of these situations is likely to be attainable in the foreseeable future, although trends in both directions are apparent. We are then called upon to notify all drivers that certain conditions exist along our streets and highways where sound engineering principles dictate that higher operating speeds endanger persons and property. Legislation is available to maintain and enforce reduced speeds, again for the protection of persons and property.

This article attempts to set down methods that will achieve optimum results for the time expended. The methods are equally adaptable whether the section under study has a posted limit at present or whether a limit is desired. If the roadway is presently posted, the procedure outlined will secure an adequate check on compliance or noncompliance with the posted limit. If there is no limit posted at present, the procedure will yield results that clearly indicate whether posting will solve the speed-

**Mr. Brandt was born in Chicago, Ill., and received the degree of bachelor of science in civil engineering from the University of Illinois in 1954. Between 1954 and 1961 he was traffic field engineer for the Illinois Division of Highways during which time he conducted numerous highway speed investigations. In May 1961 he became city traffic engineer for Racine, Wis. In April 1965 he joined the staff of the Inter-County Regional Planning Commission (I.C.R.P.C.), Denver, Colo., as traffic engineer. In this capacity he serves as a technical advisor to officials of the six counties in the Denver metropolitan area. He is a member of the Institute of Traffic Engineers and the Highway Research Board and is the author of several articles which have appeared in Institute of Traffic Engineers publications as well as the "Vehicular Speed Manual" published by I.C.R.P.C. on which this article is based.*



ing part of the problem.

Emphasis is placed on the fact that this article discusses only procedures for conducting spot speed checks and establishing safe speeds on curves. Additional elements to be incorporated into a complete study of a section of roadway for the purpose of adequately analyzing conditions affecting driver performance and behavior are these:

1. Type of pavement.
2. Cross-section.
3. Width of pavement.
4. Pavement surface.
5. Pavement condition.
6. Presence of shoulders, if any.
7. Condition of shoulders, if any.
8. Miscellaneous appurtenances.
   a. RR. grade crossing.
   b. School crosswalk.
   c. Sidewalks—one or both sides.
9. Traffic volume data.
10. Control of access.
    a. Number of roadway intersections.
    b. Number of business drives.
    c. Number of residence drives.
    d. Average distance between drives.
11. Roadside culture.
    a. Number of business establishments.
    b. Number of residences.
    c. Schools.
    d. Miscellaneous roadside features as vacant lands, shopping centers, etc.
12. Roadside development.
    a. Predominantly rural.
    b. A business district.
    c. A residential area.
    d. Other types, as industrial, etc.
13. Character of traffic.
    a. Predominantly local.
    b. Predominantly through.
    c. Predominantly passenger cars.
    d. Predominantly commercial vehicles.
14. Accident data.
    a. Number and frequency.
    b. Time of occurrence.
    c. Visibility.
    d. Pavement condition.
    e. Classification.
       1. Property damage.
       2. Personal injury.
       3. Fatality.
    f. Apparent cause.
    g. Rate per million vehicle miles.
15. Enforcement activity.
    a. Agency.
    b. Frequency of patrols.
    c. Average number of traffic violation arrests.
    d. Special activity.
    e. Evaluation of program.

The material in this article was the subject of a seminar sponsored by the Traffic Engineering Advisory Committee of Inter-County Regional Planning Commission. Sixty-five participants, including law enforcement personnel and traffic engineers, received basic instruction in the theory and practice of conducting speed surveys, interpreting the results, and in posting speed zones. The gratifying response received locally from the law enforcement profession prompted the preparation of this article for the information of persons having responsibility for this facet of the highway traffic problem.

Finally, it is the objective of speed surveys to determine the safe operating speeds of a majority of motorists; to determine whether these operating speeds are consistent with the principle of protecting persons and property in the section under study; and then to apply the results in such a manner that the requirements of an "engineering and traffic investigation" are satisfied.

Selecting Survey Site

Selection of speed survey sites is quite important if representative results are to be obtained. Normally, sites will be away from the influence of turning vehicles, intersections being especially avoided. The objective is to be in an area where free-flowing vehicles can be observed.

In an urban area consisting of many blocks of built-up areas of the *same*

character, surveys can be profitably conducted every four to six blocks, if suitable sites out of the moving traffic flow can be obtained. Where the character of the roadside development changes, it is necessary to commence a new series of surveys, unless the change in character is only for a short distance. Normally in rural areas, changes in posted speed (other than in stepdown zones) will not be made much more frequently than twice in a mile, all things being equal. The place where speed posting commences, either to a higher or a lower value than the preceding zone, is at that place where the character of the roadside development changes. This normally will have a consequent effect upon the driver and will be noted in speed survey results.

In rural areas without intensive roadside development, it is sufficient to have survey sites one-half to three-fourths of a mile or farther apart. In some rural areas where highway conditions, width, terrain, etc. vary only slightly, sites have been located as far as 8 miles apart with adequate results. Experience dictates that the sites in rural areas selected to determine what speed should be posted should be out of the influence of intensive development. It is conceivable that a small village will warrant the introduction of a slightly lower posted speed limit than that prevailing on the adjacent open highway. In this case one or two surveys in the village will quickly determine whether, indeed, the development has any effect on a majority of the motorists whose vehicles have been observed. It is also advisable to locate a survey site in the transition area between the open highway and the beginning of the built-up section.

Caution should be used in these cases to avoid being influenced by well-meaning citizens who insist that lower speed limits be posted in an area where it is apparent from the results of the speed surveys that the area has no particular effect on the passing motorist. The exception to this situation would be where there is some feature of an unusual nature or a known hazardous location that cannot be seen by the motorist and is of such a character that he should reduce his speed. School crossings are *not* of this unusual nature normally. A hidden, rather frequently used intersection would be unusual under ordinary circumstances. It is also well to remember that sometimes warning signs can be used to advantage in these cases in lieu of speed zoning.

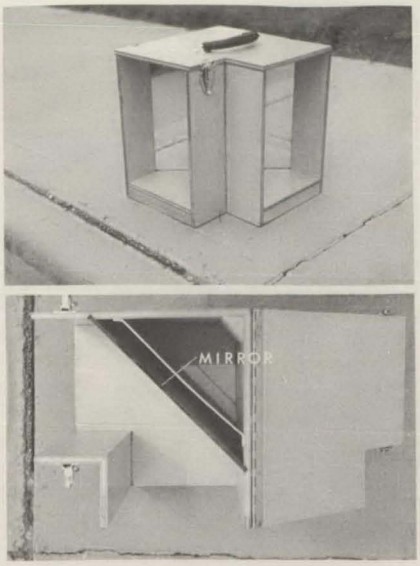


Figure 1.—Enoscope, (top) front view and top view with cover opened.

Further attention in the selection of survey sites should be given to finding locations on long, straight roadways if possible. Where this cannot be done, as for example in mountainous terrain, it would probably be better to use the test car method rather than that described. The test car method will be described later under Other Methods.

The grade of the roadway is also important, and if locations on nearly level sections can be secured, the results will be more representative. In summary, the approach is to locate sites away from the influences of intersections, busy driveways, on tangents, and on the flattest grade available. If none of these conditions can be satisfied, the experienced observer will use other methods to achieve the desired results.

In conducting the survey, the observer should be especially careful to secure a representative sample of speeds of passing vehicles. The novice will generally observe only the fastest vehicles because they are somewhat fascinating, and it is interesting to see just how many high-speed vehicles can be timed. This, however, does not yield accurate results, because there are slow-moving vehicles that are just as important in the overall picture of speed posting and these *must* be included in the study.

It is a good practice to attempt to time every free-flowing vehicle without regard to whether it is going excessively fast or slow. Vehicles following so closely as to be influenced by the speed of the preceding vehicle are not to be timed. Vehicles turning or slowing down for traffic or an intersection are likewise not free-flowing and should not be timed. In this same category are military convoys, funeral processions, carnival caravans, autos pulling house trailers, and other abnormal traffic-flow patterns.

In general the speeds of passenger cars and trucks are recorded separately. If the overall picture will suffice, it is necessary only to record the speeds of the passenger cars, since they are in the majority. Where the traffic volume is usually light, it would be proper to record truck and passenger car speeds together as a total traffic picture, although a separate speed limit for trucks would not normally be posted.

The number of vehicles to be observed to secure a representative sample is basically a statistical problem. Good, sound statistical results can be obtained, however, by specifying a minimum observation time at

any one site of 1 hour or by timing the speeds of at least 100 vehicles, not less. Thus an observer who had timed 80 vehicles in 1 hour would remain at the site until he had timed 100 vehicles. If only 40 vehicles had been timed in 1 hour, the observer would do well to continue the survey for another hour or use a different method, such as the test car method, to determine overall operating speeds. On extremely low volume roads it is often possible to secure an adequate, representative sample in a check period of, say, 3 hours. The sample thus obtained may be a larger percentage of the total daily volume than that obtained on higher traffic volume roadways. Judgment must be used in these cases.

It must be emphasized that the observer should be stationed as inconspicuously as possible. Unmarked cars should generally be used, or the markings on official cars covered, so that approaching drivers cannot observe them. Police cars are not at all suitable for obvious reasons. Good practice also dictates that the observer should be located as far away from the moving traffic lanes as possible. In some locations using a camp chair or other picnic object on the side opposite the highway will have the desired result. Another useful means of securing the desired degree of anonymity is to remove the spare tire from the trunk and rest it against the rear bumper. This gives the appearance of a driver changing tires which is a fairly common occurrence and is usually passed unnoticed.

Any stopped or parked vehicle influences some drivers, and the experienced observer will note when this condition occurs and take steps to arrange the location of sites to minimize this influence. The situation is particularly noticeable in rural areas where the possibilities of concealment are few. In urban areas it is not difficult to locate sites, and placing the observer's vehicle in a driveway will be satisfactory, since this is a normal condition.

The time when observations may satisfactorily be made is very important. It is intended that the survey findings show a picture of normal driving practices. For this reason, those periods when drivers are going to and from work should be avoided. It is suggested that surveys be made on weekdays, other than Friday, between 9 and 11:30 a.m. and 1 and 4 p.m. In some rural locations the observer may extend these times by one-half hour and still get satisfactory results. Needless to say, observations should be made only when the pavement is dry and weather conditions are such that they cannot be said to influence survey results.

ENOSCOPE SPEED SURVEY

Street U. S. ROUTE 12 — Speed Zone 45 MPH — Weather Clear, 80°

Description of Location: 0.1 mile South of Quintens Rd — Day, Date Thu. 8-8-57 — Hours 12.35 - 1.35 p.m.

Base length 220 feet — Observer Burch

Seconds and 10ths	VEHICLES FROM SOUTH Passenger Cars ~~or Trucks~~ (Cross Out One)	VEHICLES FROM NORTH Passenger Cars ~~or Trucks~~ (Cross Out One)	No. Obs.	Cumulative Vehicles	%	MPH
2						75.0
2.2		//	2	208	100	68.2
2.4	𝍸 /	////	10	206	99	62.5
2.6	𝍸 𝍸 𝍸 𝍸	𝍸 𝍸 //	32	196	94	57.7
2.8	𝍸 𝍸 𝍸 𝍸	𝍸 𝍸 /	36	164	79	53.6
3.0	𝍸 𝍸 𝍸 //	𝍸 𝍸 𝍸 𝍸 ////	41	128	62	50.0
3.2	𝍸 𝍸 𝍸 𝍸 𝍸 /	𝍸 𝍸 ///	39	87	42	46.9
3.4	𝍸 𝍸 𝍸 /	𝍸 𝍸 ///	29	48	23	44.1
3.6	𝍸	𝍸 ///	13	19	9	41.7
3.8	//	/	3	6	3	39.5
4		/	1	3	1	37.5
4.2	/	/	2	2	1	35.7
4.4						34.2
4.6						32.6
4.8						31.2
5						30.0
5.2						28.9
5.4						27.8
5.6						26.8
5.8						25.9
6						25.0
6.2						24.2
6.4						23.4
6.6						22.8
6.8						22.1
Total	118	90	208			

Remarks:

Calculation of 85-percentile speed: $\frac{6}{15} \times 4.1 = 1.6$

53.6

55.2 MPH

75% ile = $\frac{13}{17} \times 3.6 = 2.7$

50.0

52.7 MPH

Figure 2.

Conducting Surveys

Methods used to determine operating speeds of a representative sample of vehicles are, in general, quite simple. The equipment used may be

equally as simple or quite complex. This discussion concerns itself with the use of a novel device known as the "Enoscope" illustrated in figure 1.

The Enoscope consists of a square box with two adjacent sides open for viewing a mirror set at 45° to the axis of the box. Two Enoscopes are normally required for rapid observation from a parked automobile. The Enoscopes can be mounted on inexpensive camera tripods and set up approximately 18 inches to 2 feet above the ground. To make the devices as inconspicuous as possible, it is wise to paint the exterior of the boxes a dull black.

The observer, presumably in a passenger car, places the Enoscopes in front of and behind the car, observing the back Enoscope in the auto's rearview mirror. The Enoscope mirrors are placed and adjusted to project a line of sight at right angles to the roadway toward the observer. When a vehicle crosses this line of sight, a flash will be observed in one of the mirrors. At this instant the observer actuates a stopwatch. When the vehicle passes the second mirror, the watch is stopped and the elapsed time between the two flashes is recorded.

Vehicles traveling in both directions can normally be recorded by this method, except where the opposing lanes are separated by an unusually wide median.

It will facilitate accurate results to have a stopwatch that enables recording elapsed times as rapidly and as precisely as possible. A watch with a 10-second dial (one revolution of the hand for 10 seconds of time) enables the observer to record times to seconds and tenths of seconds very quickly. This results in greater accuracy and fewer missed vehicles. A watch suitable for this purpose is available from scientific supply houses.

The distance between the mirrors is, of course, critical and should be accurately measured. It is common to establish a set distance (called the base) to be used for all observations. Common base lengths are 88, 176, 220, and 264 feet. The speed in miles for these respective base lengths can be determined from the following formulae:

1. When base length is 88 ft.,
$$\text{speed in m.p.h.} = \frac{60}{\text{Time in seconds}}$$
2. When base length is 176 ft.,
$$\text{speed in m.p.h.} = \frac{120}{\text{Time in seconds}}$$
3. When base length is 220 ft.,
$$\text{speed in m.p.h.} = \frac{150}{\text{Time in seconds}}$$
4. When base length is 264 ft.,
$$\text{speed in m.p.h.} = \frac{180}{\text{Time in seconds}}$$

If another base length is used, the general formula to be applied is speed in miles per hour $= \frac{\text{Base length in feet}}{\text{Time in seconds}} \times 0.6818$

An advantage of using the same base length for all surveys is that it enables the preparation of a standard form such as that illustrated in figure 2. In this case the base length is 220 feet as noted. The observed elapsed times are recorded to the nearest 2/10 second; although, for greater accuracy, times can be recorded to the nearest 1/10 second with a consequent lengthening of the form.

It is customary to record, by tally, the speeds of approaching vehicles in the left-hand column under the heading "Vehicles from (*Insert Direction*)." Speeds of vehicles approaching from the rear are recorded in the right-hand column headed "Vehicles from (*Insert Direction*)."

The results of a typical speed survey are shown in figure 2. The column headings are self-explanatory and a separate form is used for each survey site. In the column headed "No. Obs." is listed the total number of vehicles observed in each time group. Normally, vehicle speeds are not separated by direction, because it is generally not considered good practice to have variations in posted speed for the same section of highway when proceeding in different directions.

In the column headed "Cumulative Vehicles" are placed the values obtained by successively adding values entered in the "No. Obs." column *from the bottom up*. In the column headed "%," we place the value obtained from the column immediately to the left divided by the *total* number of vehicles observed and multiplied by 100 to give the results in percent.

To complete the field calculations, we determine the 85th percentile speed. This is a nationally recognized standard or guide for speed posting. The "85th percentile speed" is defined as "that speed at or below which 85 percent of the observed traffic units travel."

Using the data from the sample completed form, we calculate the 85th percentile as follows: It will be noted that 94 percent of the observed vehicles were traveling at or below 57.7 m.p.h., while 79 percent were traveling at or below 53.6 m.p.h. Thus the 85th percentile falls somewhere between 53.6 and 57.7 m.p.h. We determine exactly where by a simple interpolation. The difference between 79 and 94 is 15, and the difference between 79 and 85 is 6. Thus the 85th percentile speed is $\frac{6}{15}$ times the difference in miles per hour between the 79th and 94th percentiles. The difference is between 53.6 and 57.7 or 4.1. Therefore:

$$\frac{6}{15} \times 4.1 = 1.6$$

Adding this figure to the miles per hour value for the 79th percentile speed (53.6) gives the desired result, thus

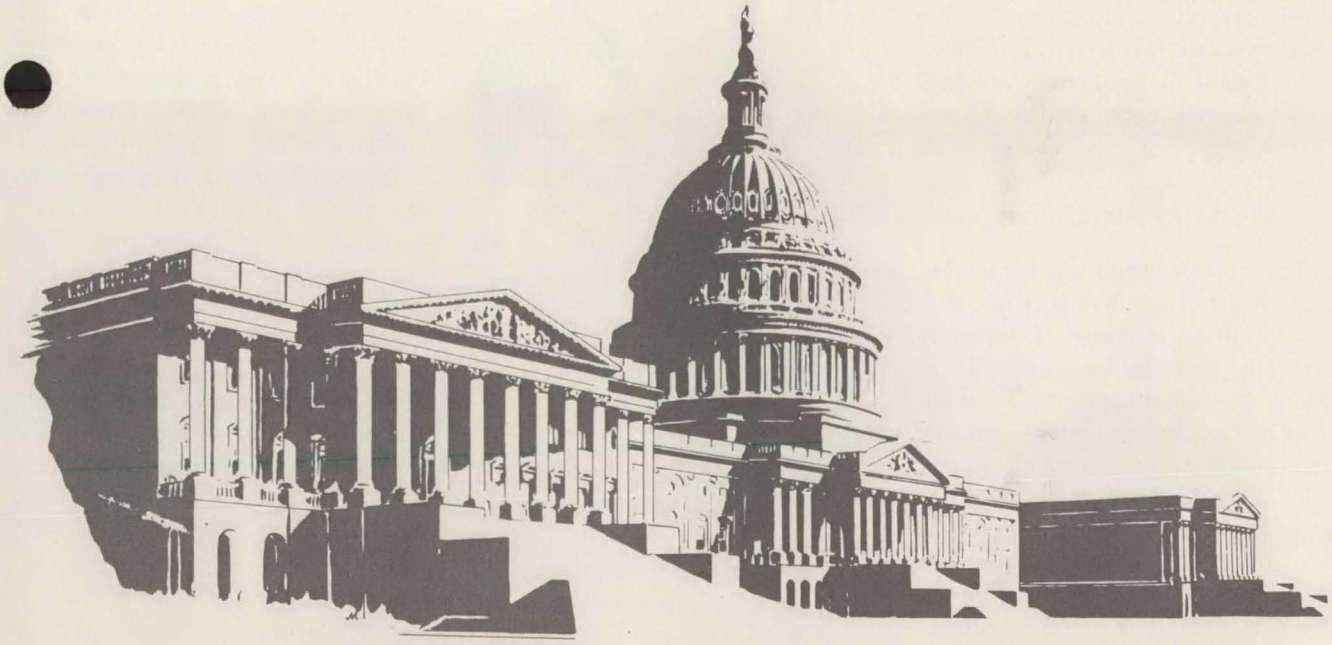
$$\frac{6}{15} \times 4.1 = 1.6 + 53.6 = 55.2 \text{ m.p.h.}$$

(the 85th percentile speed)

We have calculated the 75th percentile speed on the form, although this value is not normally used in speed posting. The reader should follow the methodology in order to become familiar with basic interpolation principles.

It is the intention of all speed surveys to determine the actual operating

(*Continued on page 22*)



SEARCH *of the* PERSON

***"A fertile source of perversion in constitutional theory is the tyranny of labels. Out of the vague precepts of the 14th amendment a court frames a rule which is general in form, though it has been wrought under the pressure of particular situations. Forthwith another situation is placed under the rule because it is fitted to the words, though related faintly, if at all, to the reasons that brought the rule into existence."*—Mr. Justice Cardozo of the Supreme Court of the United States in *Snyder* v. *Mass.*, 261 U.S. 97 (1934).**

This is the third in a series of articles discussing the Federal law on "search of the person."

I. Scope of Reasonable Seizure

1. In General

As shown in the discussion under "Scope of Reasonable Search," the arresting officer who has made a lawful and bona fide arrest may search his prisoner and take from him all instrumentalities, fruits, and contraband of the crime for which the arrest was made and weapons of attack or escape. This rule needs no additional citation of authority. Such seizures are made by officers every day across the Nation and upheld by the courts.

A question concerning the officer's right to *seize*, distinguished from his right to search, occasionally arises from a case in which some of the facts fall slightly outside the general rule. For example, an officer arrests a man for burglary, searches him, and takes from his possession certain burglary tools and things stolen in the burglary. But during the search the officer also finds (1) an unmailed letter from the burglar to his sweetheart telling her that he "pulled the job"; (2) a quantity of marihuana or other drug, unrelated to the burglary; (3) a sum of money which appears to be, and proves to be, the purely personal property of the burglar, unrelated to the crime; (4) clothing worn by the burglar when arrested; and (5) other articles, the nature and ownership of which are not readily apparent. May

the officer seize these things? The short answer is that he may seize them all, yet there are legal points involved in the seizure of each of the five classes of property.

2. Things Purely Evidentiary

The unmailed letter was not used to commit the crime, nor is it the fruit or contraband of crime. It is purely evidentiary—a written admission of guilt. As such, it appears to fall within an ancient and well-established rule of law that things which are purely evidentiary may not be searched for or seized in any manner, even with a search warrant. *Gouled* v. *U.S.*, 255 U.S. 298 (1921); *U.S.* v. *Lefkowitz*, 285 U.S. 452 (1932); *Harris* v. *U.S.*, 331 U.S. 145 (1947); *Abel* v. *U.S.*, 362 U.S. 217 (1960). Seizure of such an item violates the constitutional right against self-incrimination. *Gouled* v. *U.S.*, *supra.* But there is an exception to this rule in lawful searches of the person. Anything found on the person of the accused, including things purely evidentiary, may be taken, retained, and used as evidence, so far as relevant. *U.S.* v. *Kirschenblatt*, 16 F. 2d 202 (1926); *Landau* v. *U.S. Attorney*, 82 F. 2d 285 (1936), *cert. denied* 298 U.S. 665; *U.S.* v. *O'Donnell*, 209 F. Supp. 332 (1962); *Morrison* v. *U.S.*, 262 F. 2d 449 (1958), Note 6; *U.S.* v. *Michkin*, 317 F. 2d 634 (1963); *U.S.* v. *Pardo-Bolland*, 229 F. Supp. 473 (1964); *U.S.* v. *Alvarado*, 321 F. 2d 336 (1963).

There is a sensible reason for the exception to the rule in searches of the person. The only way in which the officer can carry out his right and duty to protect himself and to insure the adequate security of his prisoner is by taking everything from the prisoner as soon as reasonably possible. The officer could not act with the necessary dispatch were he forced to examine each article to determine what he

might seize and what he might not. It should be understood that the law does not authorize search for items of evidentiary value as incident to the arrest of the person; it does, however, empower the officer to seize any and all items found on the arrestee without stopping to consider the nature and character of the articles taken. Once he has lawfully obtained these items, the officer is under no obligation to return them. He is simply prohibited from seeking them out under certain circumstances.

3. Things Pertaining to Another Crime

The officer may seize the marihuana found in this search. An arresting officer has the right to take from the arrested person the instrumentalities, fruits, contraband, and evidence of a crime different from the offense for which the arrest was made. Here again, as in taking from the person those things which are purely evidentiary, a distinction must be made between the officer's right to *search* and his right to *seize*. See *Abel* v. *U.S.*, 362 U.S. 217 (1960). It is an established rule that the right to *search* incidental to arrest refers only to the instrumentalities, fruits, and contraband of the crime *for which the arrest was made* and weapons of injury or escape. *Harris* v. *U.S.*, 331 U.S. 145 (1947); *Abel* v. *U.S.*, *supra*; *US.* v. *Barbanell*, 231 F. Supp. 200 (1964). The arrest merely serves the function of a search warrant for the things seizable in connection with that particular crime. *Papani* v. *U.S.*, 84 F. 2d 160 (1936). It does not in any way allow a general or exploratory search, or a search in connection with other crimes. See the earlier reference to this rule under "The Arrest Must Be Bona Fide."

The fact remains, however, that the officer has a right to make an exhaustive search of the person for *this* crime for which the arrest was made, and he has a duty to make such a search in order to protect himself, prevent escape, and prevent the destruction of evidence. Time and again such a search will reveal things connected with a totally different crime, and one unsuspected by the arresting officer. The officer has a right to seize these things even though he did not have a right to search for them. This rule is perhaps best explained in *Abel* v. *U.S.*, 362 U.S. 217 (1960), where officers of the Immigration and Naturalization Service arrested the defendant in his hotel room on a warrant calling for deportation and lawfully searched him for weapons and evidence of alien status. During the course of this search, Officer Schoenenberger found a piece of graph paper which proved to be an instrumentality for committing the crime of espionage, of which the defendant subsequently was convicted. In upholding the arrest, the search, the seizure of the paper, and the use of it in evidence, and the conviction, the Supreme Court said, "An arresting officer is free to take hold of articles which he sees the accused deliberately trying to hide. This power derives from the dangers that a weapon will be concealed, or that relevant evidence will be destroyed. Once this piece of graph paper came into Schoenenberger's hands, it was not necessary for him to return it, as

it was an instrumentality for the commission of espionage. This is so even though Schoenenberger was *not only not looking for items connected with espionage but could not properly have been searching for the purpose of finding such items* (emphasis added). When an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search, it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for."

Following the same rule, in *U.S.* v. *Sorenson*, 330 F. 2d 1018 (1964), the appellate court upheld a conviction based on a seizure of narcotics found while the officers who had arrested the accused for homicide were searching his room for the murder weapon. For other decisions in point, in all of which the seizure was upheld, see *Moore* v. *U.S.*, 330 F. 2d 842 (1964) (arrest for disorderly conduct—narcotics found on the person); decisions cited in *U.S.* v. *Barbanell*, 231 F. Supp. 200 (1964); *U.S.* v. *Jackson*, 22 F.R.D. 38 (1958) (arrest of parole violator—contraband found); *Albright* v. *U.S.*, 329 F. 2d 70 (1964); *Cogdell* v. *U.S.*, 307 F. 2d 224 (1962), *cert. denied* 371 U.S. 957. See also *Wilson* v. *U.S.*, 325 F. 2d 224 (1963), *cert. denied* 84 S.C.

A New York Supreme Court decision covers a point seldom considered in those cases in which the defendant is arrested on one charge and a search of his person yields evidence of an entirely different crime. Defendant was arrested for abduction and compulsory prostitution. A search of his person at that time revealed a dangerous weapon possessed in violation of the law. Due to failure of proof, the indictment for abduction and compulsory prostitution was dismissed (which the court treated as an acquittal), but the indictment for the weapon was not. Defendant's motion to suppress use of the weapon as evidence against him was denied. The court held that an acquittal on the original charge for which the person was arrested does not automatically make unreasonable the search of his person on that arrest which resulted in finding the evidence of a totally different crime. *People* v. *Roach*, 253 N.Y.S. 2d 24 (1964). The correctness of this ruling is obvious, for the courts have long stated that probable cause for arrest is more than mere suspicion but less than that proof beyond a reasonable doubt necessary to support a conviction. Consequently, so long as the standard for a lawful arrest was met, the search conducted incident thereto was reasonable and the fruits obtained were admissible in evidence against the accused.

"Hiding dope in the internal body cavities and recovering it by regurgitation or excretion is a common method of smuggling dope."

Judge Wisdom, U.S. Court of Appeals, Fifth Circuit, in *Lane* v. *U.S.*, 321 F. 2d 573 (1963).

The New York court also said the general principle is that if the original search of the person is reasonable, any instrumentalities, fruits, or contraband of an unrelated crime uncovered during the course of the search may be seized *provided* that a contemporaneous arrest is then and there made for the unrelated crime. While such a second arrest is unobjectionable and may be desirable, the Federal law appears not to require it. The second arrest has been made in Federal cases, *Charles* v. *U.S.*, 278 F. 2d 386 (1960), *cert. denied* 364 U.S. 831, and *Bartlett* v. *U.S.*, 232 F. 2d 135 (1956), but the court in *Bartlett* described it as a "useless formality." By making the second arrest, however, the officer would resolve all possible doubts concerning the legality of his seizure of the evidence of the unrelated crime and any further search for more of the same article.

4. Things Which Are Purely Personal

The arresting officer may take the arrested person's money or other purely personal property. Taking possession for safekeeping of that personal property of the prisoner which is not evidence in the case is one of the custodial duties which devolve upon arresting authorities. *Charles* v. *U.S.*, 278 F. 2d 386 (1960), *cert. denied* 364 U.S. 831; *U.S.* v. *Thomas*, 178 F. Supp. 466 (1959), reversed for other reasons as *Simpson* v. *Thomas*, 271 F. 2d 450 (1959); 32 A.L.R. 685. A search of the person is not unreasonable simply because the arresting officer took purely personal things from the accused at the time of search incidental to arrest and failed to return them at that time. *Evans* v. *U.S.*, 325 F. 2d 596 (1963), *cert. denied* 84 S.C. 1649.

There is ample reason for allowing the officer to take things which are purely personal. First, he cannot always be certain whether a thing is purely personal or connected with the crime, *Abel* v. *U.S.*, 362 U.S. 217 (1960); *U.S.* v. *Pardo-Bolland*, 229 F. Supp. 473 (1964); and, second, the prisoner might use a personal item such as money in an attempt to escape from jail, or continued possession of it in jail might be dangerous to him or to his property interest in it. *U.S.* v. *Thomas, supra.*

5. Clothing

The clothing worn by the person at the time of arrest may be taken from him, and it may be subjected

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to laboratory examination. *Robinson* v. *U.S.*, 283 F. 2d 508 (1960), *cert. denied* 364 U.S. 919. One court specifically held that the shoes worn by a bank robber during commission of the crime were instrumentalities of the crime and seizable as such. The court also stated, as a matter of opinion, that such items as a hat, mask, and gloves worn during a robbery would also be instrumentalities. *U.S.* v. *Guido*, 251 F. 2d 1 (1958), *cert. denied* 356 U.S. 950. See also *Porter* v. *U.S.*, 335 F. 2d 602 (1964); *Maxwell* v. *Stephens*, 229 F. Supp. 205 (1964).

***"Now and then an extraordinary case may turn up, but constitutional law, like other mortal contrivances, has to take some chances, and in the great majority of instances, no doubt, justice will be done."*—Mr. Justice Holmes of the Supreme Court of the United States in *Blinn* v. *Nelson*, 222 U.S. 5 (1911).**

6. Unidentified Articles

Articles which are unidentified as to either their ownership or purpose may also be taken. The arresting officer often has no way of knowing the nature or significance of an item found on the person, and the courts, recognizing this fact, do not require that he have such knowledge before he seizes the article. *Abel* v. *U.S.*, 362 U.S. 217 (1960); *U.S.* v. *Pardo-Bolland*, 229 F. Supp. 473 (1964). See also *Baskerville* v. *U.S.*, 227 F. 2d 454 (1955).

J. *Use of Force*

In making an otherwise reasonable search of the person incidental to arrest or by search warrant, the officers have full power to use all force necessary to perform their function. The fact that the officers physically restrain the person, or that he is humiliated because the search occurs in a public place, does not make the search unreasonable. *Cohen* v. *Norris*, 300 F. 2d 24 (1962). The duty to search in any case arises from a command of the sovereign, and it is not to be frustrated by the unwillingness of the person involved. For example, officers having a search warrant to search a garage went to the defendant's house and asked for a key. The defendant made threats and attempted to strike one of the officers with a flashlight. The officers threw the defendant on a bed and handcuffed him. The search was upheld over the defendant's contention that excessive force was used in executing the warrant. *Costner* v. *U.S.*, 252 F. 2d 496 (1958).

The use of all necessary force obviously is reasonable in searching the person. Were it otherwise, the law could not accomplish its objectives of (1) protecting the officer, (2) preventing escape, and (3) preventing destruction of evidence. See *People* v. *Woods*, 139 Cal. App. 515 (1956), *cert. denied* as *Woods* v. *California*, 352 U.S. 1006, *Application of Woods*, 154 F. Supp. 932 (1957), aff. 249 F. 2d 614, *cert. denied* 356 U.S. 921, where the officers used a headlock and a hammerlock to force compliance. See also *Draper* v. *U.S.*, 358 U.S. 307 (1959), where the officers found the heroin clutched in the defendant's hand, and *Costello* v. *U.S.*, 298 F. 2d 99 (1962). Unnecessary force must not be used, of course, lest the officers violate the rule stated in *Rochin* v. *California*, 342 U.S. 165 (1952). But this should not be a problem. Common decency will adequately mark the dividing line between necessary force and too much. Excessive force is not present simply because the officers were carrying firearms, not drawn or exhibited, to protect their persons and the search. *U.S.* v. *Joseph*, 174 F. Supp. 539 (1959), aff. 278 F. 2d 504, *cert. denied* 364 U.S. 823.

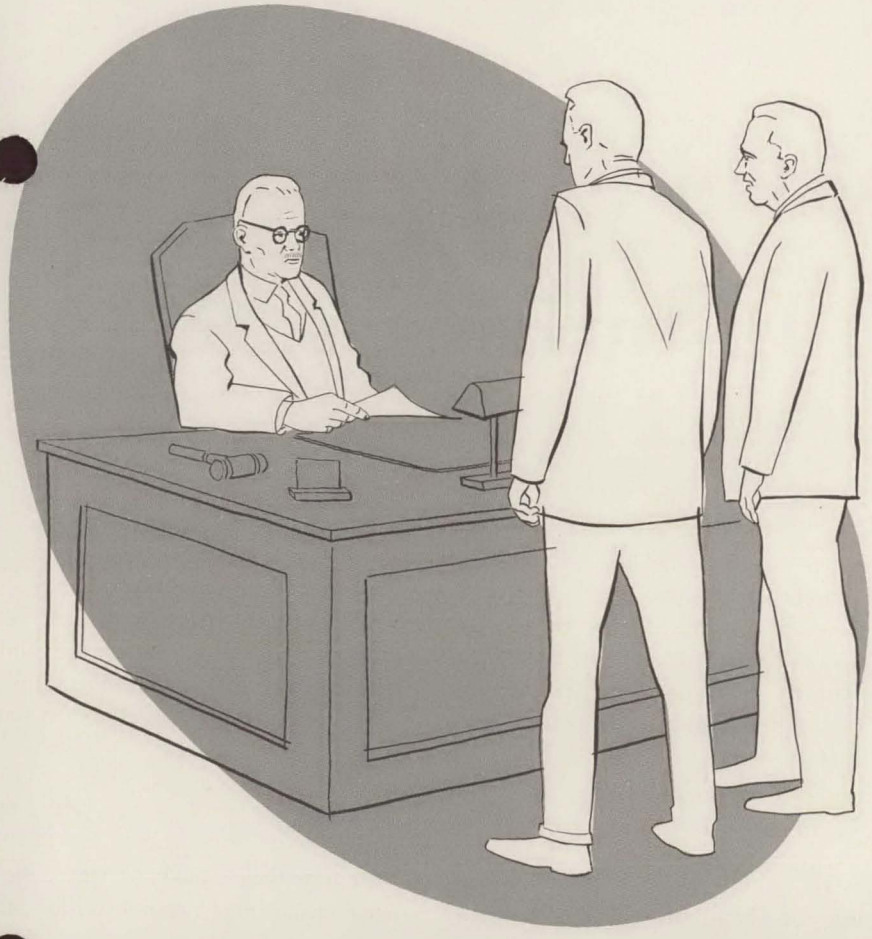
III. The "Frisk" for Dangerous Weapons

The statutes of several States authorize the police to stop and question persons whom they "reasonably suspect" are committing, have committed, or are about to commit a felony or serious misdemeanor. N.H. Rev. Stat. Ann., sec. 594:2 (1955); Del. Code Ann., Tit. 11, secs. 1902, 1903 (1953); R.I. Gen. Laws Ann., sec. 12–7–1 (1956); N.Y. Code Crim. Proc., sec. 180(a) (1964). This detention is not viewed as an arrest; consequently, it cannot support an incidental search for evidence materials. See *Schaffer* v. *Anderson*, 224 F. Supp. 184 (D. Del. 1963). However, if the officer reasonably believes that he is in "danger of life or limb," he may search the suspect to insure that he does not possess any weapons or other items which would imperil the officer's safety. Presumably this authority also extends, within the same limitations, to the immediate surroundings of the person. Thus, a woman's purse which remains within easy reach of a suspect during the period of questioning might lawfully be examined for weapons. See, for example, *People* v. *Pugach*, 15 N.Y. 2d 65, 204 N.E. 2d 176 (1964), where the court justified as an appropriate safety measure the search of the defendant's attaché case, which had been held by the officer during the interview. If the frisk reveals an object which the officer believes to be a dangerous weapon or any other item, the possession of which may constitute a crime, he now has sufficient grounds for an immediate arrest. Accord-

ingly, as incident to that arrest, the officer may conduct a thorough search of the suspect's person for further weapons.

Although these statutes appear to authorize a complete search of the individual, as a general rule the officer would be well advised to confine his conduct to merely "(patting) down the outer garments of the suspect in an effort to detect any hard objects." See bulletin published by the New York State Combined Council of Law Enforcement Officials, 151 N.Y.L.J. p. 1 (June 2, 1964). When limited in this manner, some courts have viewed the procedure as a mere frisk which is constitutionally distinguishable from the usual full-scale search. But see *State* v. *Collins*, 191 A. 2d 253, 150 Conn. 488 (1963).

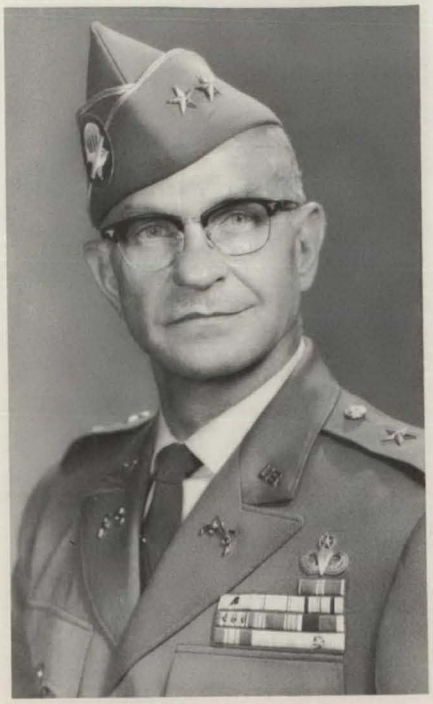
The power to stop and frisk for weapons has also been recognized by courts in several jurisdictions where no comparable statutory authority has been provided. One of the most recent decisions in this relatively new area of the law was handed down by the New York Court of Appeals prior to the effective date of the "frisk" statute in that State. In *People* v. *Rivera*, 14 N.Y. 2d 441, 201 N.E. 2d 32, 252 N.Y.S. 2d 458 (1964), plainclothes detectives patroling an area which had a high incidence of crime observed what they considered to be suspicious conduct by two men outside a bar and grill. The defendant and his companion walked to the front of the bar and grill, stopped and looked inside, continued for a few steps, returned, and looked in the window again. As the officers approached, the men walked rapidly in the opposite direction. They were stopped and immediately "patted down" for weapons. One of the officers detected an object that appeared to be a weapon and removed a loaded revolver from the defendant's clothing. The defendant was arrested and subsequently indicted for possessing and unlawfully carrying a concealed firearm. The defendant's motion to suppress the evidence seized was granted by the trial court and the ruling was affirmed by the Appellate Division. The Court of Appeals reversed, however, holding that incidental to the right to stop and question persons in a public place, the officer may "frisk" the suspect for dangerous weapons. The Court defined a "frisk" as "a contact or patting of the outer clothing of a person to detect by the sense of touch if a concealed weapon is being carried" and ruled that this was a reasonable procedure for protecting the safety of the officers. Id. at 447, 201 N.E. 2d at 36, 252 N.Y.S. 2d at 447. See also *People* v. *Koelzer*, 222 C.A. 2d 20, 34 Cal. Rptr. 718 (1963); *People* v. *Mickelson*, 59 C. 2d 448, 450, 30 Cal. Rptr. 18, 22, 380 P. 2d 658, 662 (1963); *People* v. *Martin*, 46 C. 2d 106, 108, 293 P. 2d 52, 53 (1956) ("the officers were justified in taking precautionary measures to assure their own safety on overtaking the suspects, and it was therefore reasonable for them to order the suspects to put their hands in front of them and to get out of the automobile to be searched for weapons before being questioned."). *Commonwealth* v. *Lehan*, 196 N.E. 2d 840, 845 (Mass. 1964), and see LaFave, Arrest: The Decision to Take a Suspect Into Custody, at 345.



Although no firm rules are available to guide the officer in determining whether or not a frisk of the suspect may be justified, the following criteria have been offered:

a. Nature of the suspected crime and whether it involved the use of a weapon or violence.

(*Continued on page 26*)



MAJ. GEN. CARL C. TURNER
The Provost Marshal General,
U.S. Army

Military Assistance During Civil Disturbances

When I speak with civil law enforcement officials, I am almost invariably asked, "How do we obtain Army assistance in the event of a civil disorder exceeding the capability of local police authorities?"

In answering this question, I shall not discuss the Army's operational employment of military forces, for, while most of you are probably familiar with the fundamental military techniques, those who are not have either actual experience, school training, or have had the opportunity through reading closely related articles in past copies of this Bulletin to acquire knowledge of the similar techniques used by civil law enforcement agencies.

Term Defined

To establish common understanding, we should first define the term "civil disturbances." For military purposes civil disturbances are group demonstrations, rioting, and other disorders prejudicial to public law and order carried out by civilians within areas under the jurisdiction of the United States.

Army Role

Among the armed services, the Army has primary responsibility for

rendering assistance to civil authorities during civil disturbances. The other services may be called upon to provide assistance; but in the absence of joint or mutual agreements, the Army is responsible for coordinating the activities of all the services.

Using Army Troops

The protection of life and property and the maintenance of law and order within the territorial jurisdiction of a State are the primary responsibilities of State and local authorities. Use of Army troops in civil disturbances under current statutes will occur only—

(1) After State and local authorities have utilized all their own forces and are unable to control the situation;

(2) When the situation is beyond the capabilities of State or local authorities; or

(3) When the Department of the Army has generally or specifically so ordered, except under authority of an officer of the Army in command of troops immediately available in cases of imminent necessity.

This latter provision is intended to cover such contingencies as sudden and unexpected invasion, insurrection, or riot endangering the public property of the United States; of attempted or threatened robbery or interruption of the United States mails; of earthquakes, fire, or flood, or other natural calamity disrupting the normal processes of Government; or other equivalent emergency so imminent as to render it dangerous to await official instructions from the Department of the Army.

Today's modern communication facilities render these situations unlikely. In all cases the officer taking such action must report his action to the Department of the Army by the most expeditious means of communication available, and the circumstances warranting it, in order that appropriate instructions can be issued at the earliest possible moment.

Restrictions

Except where expressly authorized by constitutional or statutory provisions, it is unlawful, under the so-called "Posse Commitatus Act," to employ any part of the Army of the United States or the Air Force for the purpose of executing the laws (18 U.S.C. 1385). Additionally, Federal law prohibits any member of the Armed Forces or other person in the civil, military, or naval service of the United States from ordering, bringing, keeping, or having under his authority or control any troops or armed men at any place where a general or special election is being held, unless such force is necessary to repel armed enemies of the United States (18 U.S.C. 592).

Command Authority

Federal troops are employed as a part of the military power of the United States and act under the orders of the President as Commander in Chief. Thus Army troops assisting civil authorities remain under command of, and directly responsible to, their military superiors. They cannot be placed under the command of an officer of the State defense forces or of the National Guard not in the Federal service, or of any local, State, or Federal civil official. Commanders of Army troops, however, may with the consent of the Governor, or other appropriate official of the State, direct the activities of the State defense forces and State National Guard troops, which are not in Federal service.

Authority for Assistance

Article IV, section 4, of the Constitution makes it the duty of the Federal Government at the request of the legislature of any State (or of the Governor if the legislature cannot be convened) to protect the State against civil violence. Congress has authorized the President to assist with Federal troops for this purpose (10 U.S.C. 331).

Requesting Assistance

In the preceding portion of this article, I have outlined the major prerequisites for Army response to a request for assistance during civil disturbances. Knowledge of these statutory provisions will provide the required background for an understanding of the requirements involved in requesting this assistance.

Application for Army assistance should be made by the legislature of a State, or the Governor when the legislature cannot be convened, directly to the President. This procedure, while seemingly involving excessive delay, insures that State officials have, in every instance, the opportunity to employ all State resources prior to requesting Federal assistance. With today's efficient communication systems, there is little reason to fear that this procedure would be unduly delayed.

Army Readiness

The Army is prepared to meet its responsibilities for assisting civil authorities in civil disturbances when directed by the President. President Johnson was referring to this Army responsibility in his speech of September 26, 1964, when he directed that the Army enlarge its program for demonstration of riot control techniques to include assistance to the Federal Bureau of Investigation in making riot control training available to all the police departments in the United States. The U.S. Army maintains liaison with the FBI to insure that this support will be timely and appropriate.

AMA symbol of emergency medical identification.

Let. from John A. Jarmul
AMA, Chicago, Ill.
10/12/65

Emergency Medical Identification

Police officers, ambulance crews, firemen, industrial first aid specialists, and the staffs of hospital receiving rooms usually are the first to give care to those who suffer injury or sudden illness. The victim often has a health problem that can be aggravated by usually accepted emergency care. This problem may even have been the cause of his present emergency.

The universal symbol of emergency medical identification on a durable signal device, with the few words needed to give a clue to factors needing immediate consideration, can mean the saving of a life or at least the reduction of suffering. The symbol is displayed on a wristlet, anklet, or on a medallion around the neck. When supplemented by an identification card, with additional information about the bearer's health condition, and the person to be notified in the event of injury or sudden illness, the stage is set for an informed approach to emergency care.

Two years ago, American physicians, through the American Medical Association, announced a new universal symbol which tells anyone rendering emergency care to a person who is unconscious or otherwise unable to communicate that its wearer has a special physical condition requiring special attention.

During these 2 years the symbol has gained worldwide acceptance. It has been widely disseminated throughout the United States and is now being utilized in many other nations on the recommendation of the World Medical Association.

The symbol is a hexagon-shaped emblem containing a six-pointed figure, or star of life. Superimposed on the figure is a staff with a snake entwined about it—the staff of Aesculapius, the insignia of the medical profession.

The symbol is used by many individuals. A diabetic, for instance, who is undergoing an insulin reaction, appears intoxicated. Treatment may be dangerously delayed unless he has some way to tell those helping him that he is a diabetic. The symbol also is used to indicate allergies to antibiotics, such as penicillin, or to the horse serum present in tetanus antitoxin so freely used following wounds and burns.

The need for certain medicines must be known. A person taking cortisone is soon in serious trouble if his regular doses are long interrupted. Heart patients taking drugs to prevent blood clots may bleed profusely when injured unless they receive special care. Epileptics could be saved much trouble and unnecessary hospitalization if they carried a signal device or card indicating they may have seizures.

The confusion of the very old and the very young when hurt or lost warrants their wearing a signal device with an address or phone number to help restore them to family or friends.

The American Medical Association recommends that everybody have a card, such as the AMA emergency medical identification card, to show who he is, where he lives, whom to call if he becomes ill or injured, the name of his doctor, and when he was immunized, particularly against tetanus or lockjaw. On this card should be noted any special problems that need immediate attention in an emergency or could cause an emergency.

Some people's problems are so seri-

ous that it is absolutely essential for the person giving first aid to know about them in an emergency. A durable signal device made of metal or plastic should be worn by such people, preferably about the neck or on the wrist or ankle.

Many organizations and manufacturers distribute durable signal devices for emergency medical identification. The names of those organizations reported to have adopted the AMA symbol for use on their devices may be obtained by writing to Emergency Identification, American Medical Association, 535 North Dearborn Street, Chicago, Ill., 60610. The AMA emergency identification card also is available at the same address.

Every police officer, fireman, or others giving emergency care should learn to recognize the universal symbol of emergency medical identification wherever it is found and heed its warning: "Stop! Look for medical information that may save a life!" Recognition of the symbol permits it to be more helpful to those who need special help in emergencies.

Albuquerque Crimdel 8-26-65
Bufi # 63-4296-62

HIDDEN NUMBERS

Rental cars frequently are stolen and driven across State lines. They may be identified by numbers placed on them by the rental companies. The numbers are easily visible to those who are aware of the procedure.

One rental company puts its identifying numbers on the back of rear view mirrors, and another places a small decal containing the number on the gas tank cap. Numbers in both these locations are readily seen by gas station attendants who handle the gas tank cap and wash the front windshield. If alerted, these men can keep an eye open for these numbers and pass on the information to local police.

Casper to Mohr memo 12/28/65 re Annual Law Enforce Conferences "Responsibilities of Law Enforcement in 1965"

Conferences Held on Responsibilities

A series of valuable and timely special law enforcement conferences sponsored by the FBI was held in major cities all over the Nation during October, November and December, 1965. The conferences highlighted the responsibilities facing all levels of law enforcement at the present time and covered points on how the profession can best equip itself to handle these matters.

A total of 227 conferences were conducted, with 18,456 persons in attendance, representing 5,846 agencies and organizations.

Programs dealt with such problems as the rising crime rate, allegations of police brutality, and public apathy. Seminars were included in an attempt to determine the best approach in obtaining the cooperation of the public and to impress upon law enforcement officers the need to improve their public image through professionalism in police work and exemplary behavior. Other topics discussed included the use of computers, modern methods of communication available to law enforcement, the interest of the Federal Government in developing all law enforcement resources, and the need for cooperation at all levels.

Panel discussions were also held outlining and explaining the various scientific aids available to law enforcement agencies.

The conferences were held in conjunction with a national program fostered by President Johnson to have Federal enforcers assist local crime fighters in their fight against the criminal world.

San Diego Crimdel 10/15/65
Bufi #63-4296-46

GOOD SAMARITAN LAW

A "Good Samaritan" law was enacted during the last session of the California Legislature and went into effect September 17, 1965. Prompted by reluctance on the part of many citizens to "get involved," the law permits the State to pay for personal and/or property damage incurred by persons who help prevent the commission of a crime or who assist in the apprehension of a criminal.

The Good Samaritan law provides that persons sustaining damages file a claim, which is studied by the law enforcement agency involved and the Attorney General. The claim is heard by the California State Board of Control and then passed on to the legislators for final action. Numerous safety valves protect the State from abuse of the law.

Albuquerque Crimdel 6/7/65
Bufi # 63-4296-62 Sec. 739

PICK A NUMBER

A successful system used by an airline company for tracing and identifying lost baggage may be helpful to police in criminal investigations where luggage is involved.

The airline provides the owner of missing luggage a manila, open end envelope, 6½ by 9½ inches, on one side of which are spaces to enter description of luggage as to material, trim, color, stickers, initials, and other data. On the reverse side are printed illustrations of 29 types of luggage—each numbered as to type. By referring to the type number, along with information as to color, etc., an accurate, concise, and generally recognizable item can be sought. All correspondence and messages concerning the loss can be enclosed in the envelope.

The progressive action of an alert chief of police leads to a * * *

MARCH ON CRIME

JEAN R. LANE
Chief of Police, County of Maui, Hawaii

"Americans have always been quick to adopt a new fad or game and ingenious enough to invent quite a few of their own.

"There is a new spectator sport which, while not sweeping the country, is at least becoming more and more evident. It goes this way: A group of supposedly upright, God-fearing citizens stands by and watches another law-abiding neighbor or stranger take a literally unprovoked beating at the hands of an assailant. One of the rules—the only rule we suppose—is that even though the spectator may be 6 feet tall and strong as a bull, he does not lift a hand in the defense of the victim.

"The philosophy behind it all is that the police are paid to keep law and order, and it need not become the problem of any other man.

Central Maui showing Ka

"These are changing times, and perhaps it is time for some of our rights, and obligations, to change. Perhaps it is time for the men who are charged with keeping law and order, and protecting us against those who choose to live outside of the laws set up for society, to speak up."

The above quotation is part of an editorial taken from our local paper. The editorial was the result of discussions between officials of the newspaper and the police department on crime problems. The editorial was the introduction to a series of radio

r in foreground, New Kahului town residential district, left center, and old Wailuku town at foot of West Maui Mountains.

talks and newspaper articles aimed at alerting the public to the dangers of apathy toward the potential increase of crime resulting, in part, from the influx of tourists and the undesirables who follow them.

A series of 10 introductory talks was presented on radio over a period of 10 weeks. Each talk was broadcast on the air twice and then printed in the local newspaper. Each of the talks ran from 8 to 10 minutes.

Perhaps a little background on our county and police department would be in order. The county of Maui is made up of three islands having a total land area of 1,129 square miles, 300 miles of coastline, and a population of 47,000. There are no incorporated towns or cities, and the police department, with a personnel of 112, is the only law enforcement agency located in the county.

Hence, the department's functions embody those of a city police department, sheriff's office, State highway patrol, and coroner's office, all in one agency.

Until a few years ago Maui was a typically quiet rural area with its principal industries being the raising of pineapple, sugarcane, and cattle, truck farming, and a sprinkling of tourism. But with the advent of the development of large resort areas, the way of life of many of the local residents has undergone a complete change. Even though the increased number of tourists provided a rising economic base, many of the local people were reluctant to take cognizance of the fact that things had changed. This was particularly true of the merchant who couldn't seem to realize that the days of unlocked doors and the acceptance of people on their face value were gone.

Crimes of theft were steadily in-

creasing, and the threat of violations involving narcotics, prostitution, confidence games, gambling, and many others which creep up wherever undesirables and riff-raff collect in the wake of tourism was becoming evident.

Talks Begun

The time was ripe for action and incidents such as these provided the impetus for a "March on Crime" which began in December 1964. The introductory series of talks began on the topic of "A march on crime by the American people is long past due." The talk dwelt on the point that it is now not so much why we have crime but a question of what the law-abiding citizen can do to help stop the steady growth of our crime rate and eventually to reduce it.

Portion of the Kaanapali resort area and golf course.

In continuing this line of thought, we asked, "Why cannot someone in high office appoint a special committee to establish guidelines on what can be done by organizations, business, and people to curtail this problem." As an example, a representative meeting of the newspaper profession might well establish a concise plan or standard on what the press can do on a nationwide basis to assist law enforcement agencies and to inform and educate the public on the individual's responsibility toward law enforcement. With unlimited exploration it might be found that other avenues of fighting crime may be open to news media which have great influence on public opinion.

The same procedure could be followed in other professions, including national organizations such as management and labor, churches, bar associations, Government agencies, and chambers of commerce. Once organized on the national level, the program could be directed down through State, county, city, and even down to the smallest community groups.

Another view of Central Maui showing New Kahului town residential area in foreground and old Wailuku town in background.

In contemplating these lofty thoughts, I realized that a community does not have to wait to have such a program initiated by an outside source, and so the Maui County program was fostered.

Cooperation

The second subject covered police service and public cooperation, which outlined police responsibilities as well as those of the citizen. It stressed the point that in combating crime, public indifference is the real culprit and that the lack of interest by the public can have a disastrous effect on law and order in a community. FBI Director J. Edgar Hoover's word on this point was quoted, "Crime is a social problem and a community responsibility which crosses all walks of life. Crime, like a disease, can only be treated after identification and full exposure."

A plea was made to the public to call the police when in doubt or should the slightest suspicion exist that a crime has been or is about to be committed. The theme was included in these words of appeal to the public: "Call the police. Your interest in your police department and your calls to the police may help make a better police department and at the same time improve police service and reduce crime. Do your share to make the county the most crime-free place in which to live."

Crime and Prosperity

The next subject, "Crime and Prosperity" in two parts, involved the problems besetting a fast-growing community whose populace is not aware of the pitfalls of dealing with strangers. Businessmen, particularly those dealing with strangers, such as in the U-Drive and hotel businesses, were warned of the dangers of not training their employees to deal with the undesirable or questionable character. An educational program for employees was suggested with the objective of protecting the businessman's property as well as that of reputable visitors.

Emphasis was placed on establishing rules for the cashing of checks. At the same time the importance of promptly reporting bad checks, as well as the responsibility of one merchant's protecting another by prosecuting the culprit, was stressed.

Preventive Measures

Attention was also given to police preventive measures. The audience was given some background on progress being made in the field of prevention, such as the development of a well-organized uniformed patrol, the nightly security building checks, and the patrolling of parks, beaches, playgrounds, and other popular places where people gather for business and pleasure. The public's attention was called to the stress laid by the police on checking the places in which teenagers congregate, with an eye on the unscrupulous merchant who might take advantage of the young to enrich his coffers even if it is only with small change.

Preventive measures of checking businesses for proper licensing and liquor establishments to prevent overindulgence were pointed out as aids to adults. The desirability of special patrols to check not only public gathering places but also private parties during the yearend holiday season was emphasized. Thousands of circulars relating to safe driving were distributed.

Other preventive steps cited included the distribution of posters on child molesting and the education of younger students through special classes on pedestrian and bicycle safety. Education programs were conducted in the schools relative to the curfew law for teenagers and regulations on firearms and their use. And circulars were distributed on protection of property from theft, procedure and reasons for reporting thefts, and precautions the victim of a burglary should take before the arrival of the police.

Adult Attitude

The fifth subject matter dealt with attitudes of the adult and crime, a revelation of the tremendous influence unwittingly exerted on our youth by the many commonplace doings of the adult world. As an example, "We as adults have pretty well established a standard by which we live, and having a cocktail or two before dinner is considered to be a normal, accepted social function. But how do our teenagers look at such a practice? They are in their formative years, and their standards of conduct are subject to change with very little pressure. The teenager has neither the experience nor the ability to comprehend the seriousness of excessive drinking. Regrettably, some of our adults are in the same position."

Other areas in which the adult or parent is to blame for a bad image were discussed, including criminal involvement of seemingly reputable citizens. The article concluded with, "We can now see where the overwhelming bulk of today's young people get their standards of conduct. Parents may still be preaching proper ideals, but if they are, they certainly are not practicing what they preach."

Police Image

In the next talk entitled "The Policeman and the Public," emphasis was placed on the policeman's being a definite part of the community. It might well have been directed to the policeman, but the idea was to present to the public the image of an ideal policeman and at the same time give a

clearer picture of the relationship of the policeman and the community and the individual policeman's responsibility to help build good public relations.

To provide and maintain high standards in police services, both the policeman and the public must understand the basic concepts of the service. It was pointed out that the police are not in the business of punishing offenders or trying to rehabilitate them but of detecting and apprehending them.

Emphasis was placed on the fact that every policeman must learn to put aside his personal feelings and prejudices when he dons his uniform. The policeman's actions must be tempered with good judgment, commonsense, restraint, and understanding. This is his duty. A plea was then made for public support. "Now you, as a citizen," we stated, "must realize that you, too, have a duty to yourself and your community to assist the policeman in carrying out the mandate which you have placed on his shoulders."

In discussing the law and young people, I explained the various regulatory laws and the purpose for which they were enacted. Laws and ordinances, such as those dealing with gambling, curfew, and parental controls, were made for the protection of the juvenile and not as an underhanded means of restricting young people as they are sometimes interpreted. As an illustration to back up this idea, these words were injected: "Authorities are of the belief that the mere existence of a curfew or loitering law on the books discourages reputable young people from being out at late hours of the night. Then again it furnishes the not-too-strong parent with a lever to be used to control the child who would not otherwise listen to a parent."

In stressing the good intentions of the department, I pointed out that "When it comes to our young people, it is the desire of this police department to do everything within our power to prevent them from getting involved with the law. It is the job of the police to investigate all things of a suspicious nature relating to juveniles. Officers are trained to make observations of conditions that might be a temptation or an inducement to violate the law. A good officer knows the people of his community and with good contacts is able to prevent people from getting into trouble." Examples of actual incidents were then related, and the talk concluded with a reminder to the citizens that the services of the department are readily available on a personal basis for consultation and guidance on questions involving their children.

Internal Problems

"Policemen Have Problems Too" was the subject of a two-part talk on the policeman's attitude and public relations with regard to internal administrative problems. To handle internal problems, the police administrator and his staff must first realize that the policeman is a human being and has the same emotional stresses and strains as a person in any other field of endeavor. From the time of his appointment, an officer is trained to control his emotions.

The material also dealt with a comparison of the officer's life and that of the average citizen. Policemen have everyday problems like other people. They have wife trouble, children trouble, and financial trouble the same as all of us, and certainly these things have a direct bearing on the standard of police services rendered.

External Problems

Delving into specific external problems, I made an appeal to awaken the parent to more constructive thinking should his child become involved with the law. Juveniles, as most parents are well aware, are unpredictable, and it takes the best in any officer to deal with them. Parents usually believe the stories of their children irrespective of how unbelievable they may sound. It sometimes takes a lot of proof to show and convince the parents that the child is wrong. In such cases the parent should take stock of the situation with an open mind and reflect on his own childhood days.

To foster respect and confidence in police procedures, I assured parents that the laws of Hawaii establish certain requirements in the handling of a juvenile by the police. The law is given further emphasis and force through rules issued by the judge of the juvenile court by which the police are bound. The public was assured that youngsters processed by the police in cooperation with the juvenile authorities would be justly treated and well cared for and would not be subjected to custody with adult criminals.

This talk was concluded with an appeal for better cooperation from the parents to make it easier for the police to help "you and your friends and the community."

Complaints

In the next talk, on "Complaints and the Police," various miscellaneous subjects relative to regulatory laws and the proper attitude expected of the officer were outlined. Though the police department is constantly answering complaints of one person against another, the police officer must view such reports impersonally and must consider the protection of society as a whole as well as that of the individual.

Too often people expect too much of the police or, again, believe that police are meddling in their private affairs. Many times officers are as-

signed to investigate matters that may be no business of the police, but we do make an effort to help. Under certain circumstances, if we didn't, it is possible that some violation of the law might sooner or later occur. So in an endeavor to keep everybody happy, officers sometimes literally take the position of a judge to keep the peace, even though it may only be among members of a family or in a neighborhood dispute.

The public was encouraged to make reports and was told that "Though some may turn out to be false alarms, we welcome the report, and there is no reflection on the person making the report. It is better to have a few reports that are unfounded than to have a citizen fail to make a report on a serious criminal matter just because he may not be sure."

Scene taken from the Lahaina Whaling Spree—an annual celebration in observance of historical whaling days.

Today's Youth

The concluding article discussed youth and the police and was directed to the parent. The introduction led the listener back to his childhood days and pointed out possible escapades involving the parent during his youth and the type of discipline his parents employed to keep him in line. Then the listener's thoughts were brought back to the present with these words of accusation against parents, "On the other side of the ledger, it seems that today our young people are governed by fewer and less restrictive rules of conduct, as evidenced by too many actual cases involving overpermissiveness, overindulgence, and overprotectiveness on the part of the parent."

Parents were reminded that they must have the viewpoint that their children can be wrong and can be violators. When the parent fully realizes this, the first step has been taken toward correcting a wayward child. When the child is in the wrong or has violated the law, the parent must realize that immediate corrective steps must be taken. Too many parents immediately rise to the defense of their child, even before the facts are presented to them. It is a normal reaction to want to defend our young, but being overprotective will not help to correct a youthful wrongdoer. A child must be taught to stand on his own two feet and to face the consequences of his actions.

Examples were given of actual cases of errant youths being straightened out and eventually becoming useful and respected citizens. The series was concluded with this final appeal to the public: "Have confidence in your police department and don't hesitate to offer your cooperation, for no police department can successfully exist without the backing of its community. Help make your department the best by giving your best."

The response of the public was more than gratifying, for before the completion of the 10-week program, inquiries and requests were being received which resulted in 13 additional talks of from 30 to 45 minutes in length. Considerable interest was shown by service clubs, business organizations, and church and parental groups. Meetings were held with different merchant groups to discuss various security measures that could be initiated to protect their establishments, including installation of the latest burglary alarm systems, hiring of private security guards, and educating their employees on the handling of shoplifters. One bank has discontinued its drive-in service to clients because of its vulnerability to holdups. Merchants have begun to be more conscious of their responsibilities in reporting and prosecuting bad check cases, as well as those involving gross cheating and shoplifting. Judging from the additional requests for talks and conferences and the many personal comments received, I believe that the people of this community are now far more alert to their responsibilities in law enforcement and are actually doing something about the Nation's "March on Crime."

SPEED LIMITS

(*Continued from page 6*)

speeds of a representative sample of motorists. Usually the results are interpreted in terms of the 85th percentile speed. This nationally recognized guide indicates "that speed at or below which 85 percent of the traffic units are traveling." Of course, it also indicates that 15 percent of the observed motorists exceed the 85th percentile speed. Traffic engineers comment that this 15 percent group are those at whom enforcement efforts should be directed.

It is useful to plot the resultant 85th percentile speeds on a map of the area. The map should show corporate limits, but preferably the beginning of built-up areas, as this is the point that reduced speed limits should begin. Often a community will request that the reduced speed limit be posted at the corporation line, when in actuality there may be no roadside development at that point to justify a lowered speed limit. This practice is unfair to the motorist and leads to disrespect for legitimately posted speed limits elsewhere.

the difference in posted speeds between adjacent zones does not exceed 15 miles per hour. This is a r that should be observed.

Particular attention should be given to the posting of signs beyond the intersections so that motorists turning into the controlled section may immediately be made aware that a speed limit is in effect.

Also, attention must be given to the beginning of speed zones on curves. In the figure neither curve at the entrance to the town warranted a lower speed, and this was deter-

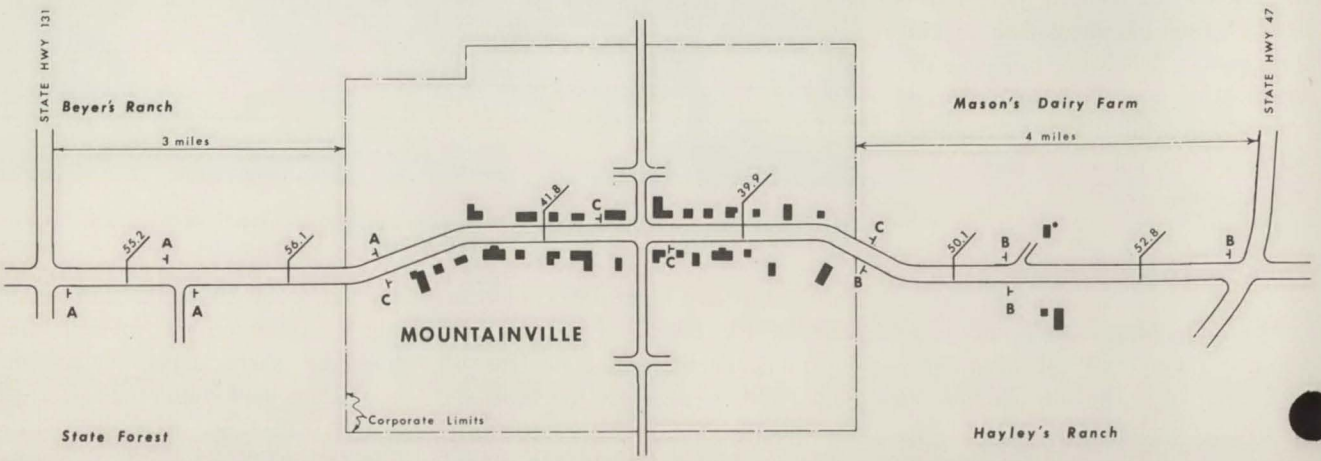


Figure 3.

After calculation of the 85th percentile speeds for several sites along a section of roadway, it will be observed that there is little variation in speeds between sites, *providing the character of roadside development has not changed.* The reason for this is a basic truism of traffic engineering: "that in the absence of intensive enforcement, drivers tend to operate their vehicles at speeds they feel are reasonable and proper *consistent with conditions,* regardless of the posted speeds," and these conditions include roadside development. Therefore, if we post to the nearest 5 mile-per-hour increment to the 85th percentile speed, the majority of drivers will be observed to naturally obey the posted limit.

Figure 3 indicates a section of roadway between two intersections where it is desired to establish a reduced speed zone. Near the middle of the section is a small town with homes and commercial establishments abutting the highway. Speed surveys were conducted on the open highway and in the town. The resultant 85th percentile speeds are indicated. Four speed surveys were conducted on the open highway between the State highway intersections and the beginning of the built-up area of the village. In addition, two surveys were secured in the village.

After analysis, speed limit signs were posted as follows: At points A—55 m.p.h., at points B—50 m.p.h., at points C—40 m.p.h. Note that

mined from readings of the ball-bank indicator. In other words, each curve can be driven safely by the average driver when he is obeying the posted speed limit.

Other Methods

Many agencies are equipped with radar speed-measuring devices, and those units will be found satisfactory for use in engineering investigations of roadway speeds.

The radar speed meter consists of two components: a transmitter-receiver (herein called the transceiver) and an indicator, usually a calibrated meter reading directly in miles per hour. To the latter may be attached a graphic pen recorder enabling the

observer to retain a permanent record of observations directly from the speed meter. Power to operate the meter is obtained by a direct connection to the automobile battery. Later models of the device provide a plug that can be inserted into the automobile cigarette lighter. The indicator dial is usually internally illuminated for nighttime observations.

In principle, the speed meter utilizes the Doppler effect to measure speeds of passing vehicles. A signal, usually 2,455 or 10,515 megacycles per second, is sent out from the transceiver unit. If there is no vehicle in range, the meter remains on zero. However, if the signal wave form is disturbed by a vehicle traveling within range of the transceiver, the signal is returned to the receiver portion of the unit sooner than normal. Associated circuitry interprets the frequency difference between the transmitted and returned signals and conveys this information to the observer as the miles-per-hour speed of the traveling vehicle.

In setting up the equipment, the observer should use care to make sure the transceiver is adjusted to point directly into oncoming traffic. This requirement often dictates that the observing vehicle be parked rather close to the pavement edge. Improper adjustment, such as aiming the transceiver at a point too close in to the observing vehicle, can introduce an appreciable error (termed the cosine error) into the results.

In general, on a two-lane pavement, it is possible to measure speeds of vehicles traveling in both directions. Four-lane divided pavements require separate setups to achieve this result.

Observers desiring to use the radar speed meter are cautioned that this is a radio transmitter, and each unit must be licensed by the Federal Communications Commission before the device is operated. Application for a station license should be made in the name of the operating agency to the local office of the FCC. Each operator must keep a log showing when the unit is operating. The FCC also requires a frequency check of radar speed meters every 6 months.

While adjustments of the electronic components of radar speed measuring equipment must be made by personnel who hold appropriate FCC licenses, periodic checking of the accuracy of the device can be done by the observer. This is accomplished by striking a calibrated tuning fork and holding it a few inches in front of the transceiver unit. The calibrated tuning fork speed should be observed on the indicator unit. If it is not, the unit must be taken in for repairs or tube replacement. Calibrated tuning forks are available from manufacturers of speed meters and are furnished in 5 m.p.h. increments from 20 to 100 m.p.h. Usually only one or two forks will be necessary to check the device.

Using the Test Car

Any automobile in good operating condition may be used to determine safe, normal driving speeds for roadways. The procedure requires the car, two drivers, and a stopwatch and is usually utilized when other methods cannot yield satisfactory results because of low traffic volumes, excessive grades or curves limiting spot speed check locations, very short sections of roadway, etc.

TRIAL RUN SURVEY SHEET

Street_____ From_____

To_____ Distance_____

Day, Date_____ Weather_____

Vehicle Used_____ Driver Run No. 1 to___ _____

Posted Speed_____ Driver Run No.__to___ _____

Run No.	Elapsed Time	Speed in MPH	Run No.	Elapsed Time	Speed in MPH
1			5		
2			6		
3			7		
4			8		

Average Speed in Miles per Hour_____

Computed by_____

Remarks:

Figure 4.

The procedure is to divide the roadway into sections having the same general characteristics. In figure 3 the roadway between the left State highway intersection and the town would be one section, that portion through the town another section, and that portion between the town and the right State highway intersection a third section.

From a map or from the automobile odometer, determine the length of each section between two definite fixed points on the ground. One driver takes the wheel and drives in a normal fashion between the fixed points. As the first point is passed, the observer in the car actuates the stopwatch. When the second fixed point is passed, the watch is stopped and the elapsed time entered on a form similar to that illustrated in figure 4. During all the trial runs the automobile speedometer should be covered in order that the driver may not be influenced by it.

The runs are repeated back and forth between the fixed points, four times by one driver and four times by the other driver. The speeds are then calculated and an average of these entered on the form. The nearest 5-mile-per-hour increment is the speed posted.

Safe Speeds on Curves

The establishment of safe speeds on curves requires an automobile in good operating condition and equipped with a ball-bank indicator mounted on the dashboard in such a manner that the relationship between the speedometer reading and the position of the ball in the indicator can be determined rapidly.

The ball-bank indicator is an aero-

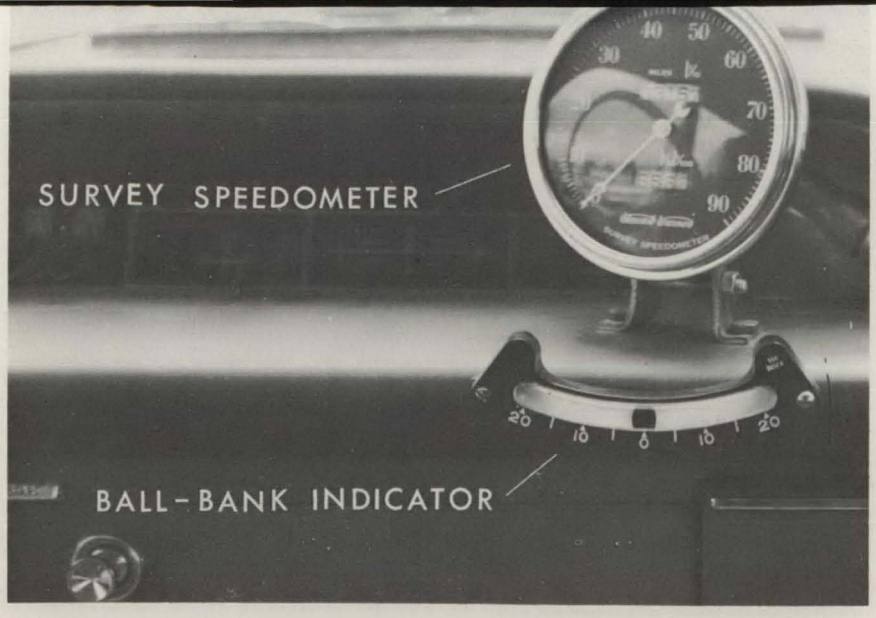


Figure 5.—Ball-bank indicator on auto dashboard.

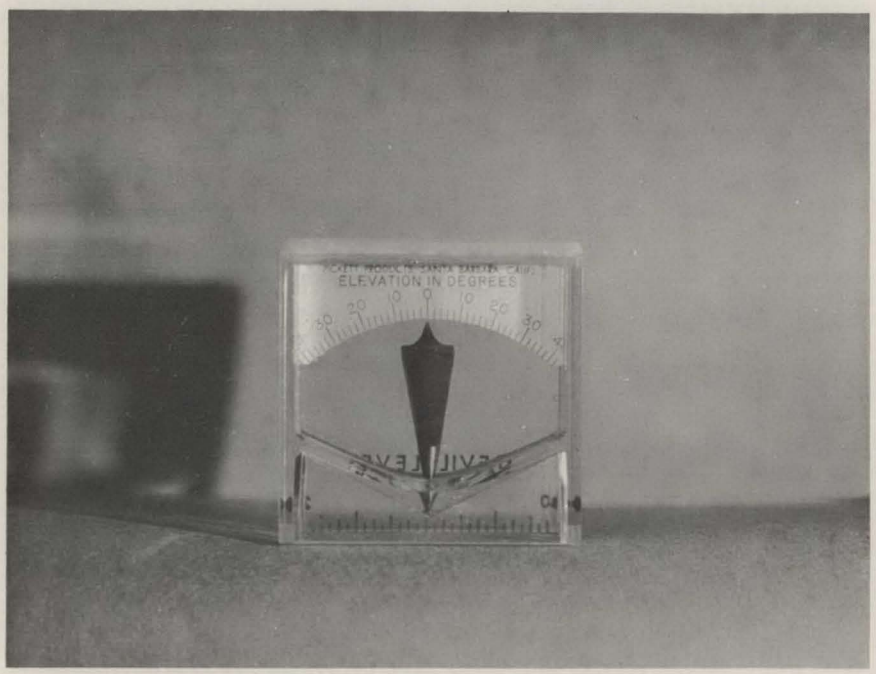


Figure 6.—Devil level indicator.

nautical instrument and consists of a curved hollow tube filled with a nonfreezing liquid and containing a small ball free to move inside the tube. The tube is mounted in a metal housing, and a graduated scale reading in degrees is etched on the housing (fig. 5).

An inexpensive instrument serving the same function as the ball-bank indicator is marketed under the trade name "Devil Level." This is a small, sealed, clear plastic container, 2 in. x 2 in. x 1 in. filled with a nonfreezing liquid. The bottom of the container is fitted with a plastic block having a sharp **V**-groove. A plastic float in the shape of a plumb bob is suspended vertically in the fluid, with the tip of the float riding smoothly in the **V**-groove. A scale at the top of the container is graduated in degrees as in the tube-type device (fig. 6).

Either device is mounted on the dashboard of the survey vehicle. Care should be taken when mounting the indicator to be certain that a zero reading is obtained when the vehicle is parked on a level surface.

The procedure to establish the safe operating speed on a curve is to have a driver and observer make several trial runs through the curve. Four runs are sufficient, and each time a run is made the observer notes the speed of the vehicle when the indicator reads 10°. A reading of 10° is usually taken as the limiting value for comfort and safety, since there is definite discomfort to passengers when the indicator shows a higher reading.

On mountain roads with especially slow speed curves, it is permissible to use a slightly higher ball-bank reading in accordance with the following table furnished by the Colorado Department of Highways:

Safe operating speed	*Ball-bank angle*
20 m.p.h. or less	14°
25 and 30 m.p.h	12°
35 m.p.h. and above	10°

Following completion of the trial runs, the speedometer readings are averaged and the *lower* nearest 5-mile-per-hour increment is the speed posted. This speed is termed an "advisory speed" because it is usually indicated as a warning to motorists rather than as a regulation. Borderline cases should always be resolved in favor of posting the advisory speed on curves, especially on roads not otherwise speed zoned.

After completion of the surveys, analysis, and recording of the resultant 85th percentile speeds on a map, it is necessary to determine where the signs will be physically placed.

As has been mentioned previously, speed limit signs should be placed as near as practicable to the beginning of the zone to which they apply. The following guides will serve to indicate the cases most likely to occur.

Reflectorized speed limit signs of the design shown in figure 7 shall be ...cted:

1. At the beginning of each zone where the speed is altered (fig. 8).
2. At the point of change from one zone to another.
3. At additional locations within the zone where it is necessary to remind motorists of the limit that is applicable. Within municipalities this repetition of a speed sign should be made at intervals not greater than six blocks; elsewhere at intervals ranging from 1,000 feet in problem areas to several miles depending upon existing conditions.

Figure 7.

Advance notice may be given of isolated speed zones by the use of appropriate standard speed-zone-ahead signs. In most cases this sign will be of the same dimensions as the regular speed limit sign. Observation will indicate whether a larger advance sign should be provided. In any case the sign should be located not less than 200 nor more than 1,000 feet in advance of the first speed limit sign. Preference is given to the greater distance when approach speeds are high. This sign must always be reflectorized.

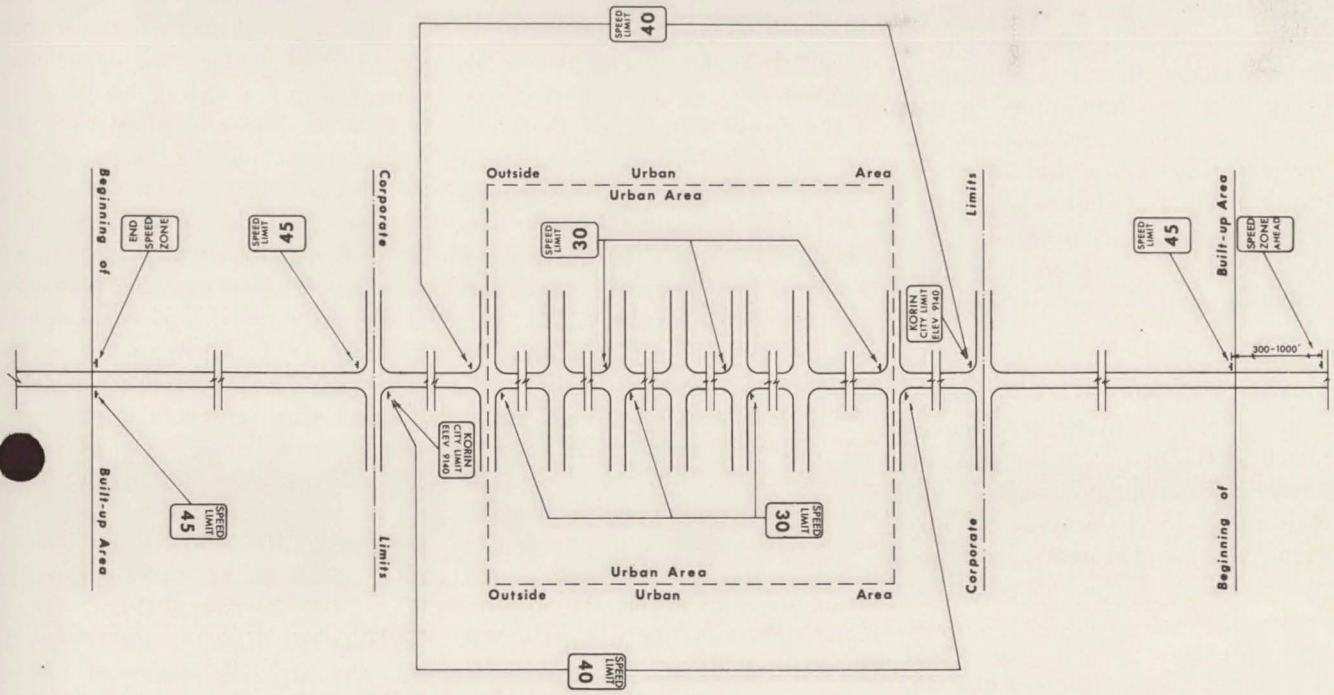


Figure 8.—Typical placement of speed restriction signs in urban areas.

4. Beyond every major intersection.

Speed limits shown shall be in multiples of 5 miles per hour. Sizes of signs specified for various lanes of travel are as follows:

Urban streets:

Two moving lanes or less: 18 x 24 inches.

Over two moving lanes: 24 x 30 inches.

Rural roads:

Two moving lanes, average daily traffic under 750: 18 x 24 inches.

Two moving lanes, average daily traffic over 750: 24 x 30 inches.

Over two moving lanes, rapid service and divided facilities: 36 x 48 inches.

Expressways and freeways:

Any number of through lanes: 48 x 60 inches.

The standard speed limit sign for conventional two-lane roads is 24 by 30 inches. A minimum size sign, 18 by 24 inches, may be used on minor roadways or on some urban streets. Stepdown postings from a speed limit of 70 miles per hour and repeated speed postings immediately following major junction points and the corporate limits of large cities and towns should have signs 48 by 60 inches.

Complement of the appropriate standard speed zone ahead sign is the "End—Mile Speed" sign or the "End Speed Zone." The former indicates to the motorist that he is leaving a controlled-speed zone. The latter sign is used as an alternate. Both signs may be eliminated if the following section of highway is posted with a regular speed limit sign (fig. 7). At least one of the three signs should be used. These signs are of the same size as adjacent speed limit signs and are reflectorized.

SEARCH

(*Continued from page 11*)

b. Presence or absence of assistance to the officer and the number of suspects being stopped.
c. Time of day or night.
d. Prior knowledge of the suspect's record and reputation.
e. Sex of the subject.
f. The demeanor and seeming agility of the suspect and whether his clothes so bulge as to be indicative of concealed weapons. See New York State Combined Council of Law Enforcement Officials, Memorandum to All Law Enforcement Officers in New York State 3 (1964).

It should be borne in mind that the good faith of the officer is vital to the lawfulness of any such search; hence, the scope must be limited to the specific need which provides its justification. The courts will carefully scrutinize this procedure to insure that the power is not employed as a pretense to conduct a more thorough search for incriminating evidence.

IV. Search by Consent

A. *Express Consent*

In a comparatively few cases, search of the person by consent expressly given by him to the officer has been upheld by the courts. A wide review of consent search cases, however, offers convincing evidence that search of the person by consent is, at best, no more than a secondary method to be used when the officer is certain that a search should be made, and there is no other legal way in which he can make it. It is difficult for the officer to prove that the defendant gave his voluntary consent to the search.

The officer who intends to make a consent search of a person must be aware that under the Fourth Amendment the person to be searched has a constitutional right to not be searched except in some way which the law clearly allows, such as by search warrant or incidental to lawful arrest. It is true that he can give the officer a consent to search, which waives this constitutional right. But the courts require a clear and unequivocal waiver-language and circumstances which leave little doubt, if any, that the person genuinely consented to the search. The courts ". . . indulge every reasonable presumption against waiver of fundamental constitutional rights." *Johnson* v. *Zerbst*, 304 U.S. 458 (1938). "Consent to search is not to be lightly inferred." *U.S.* v. *Viale*, 312 F. 2d 595 (1963), *cert. denied*, 373 U.S. 903. The consent given by the person searched does not meet Federal constitutional requirements unless it was completely voluntary and given as an *understanding* and *intentional* waiver of the constitutional right to refuse consent. *Johnson* v. *U.S.*, 333 U.S. 10 (1948). Moreover, the person searched is not required to prove that he did *not* consent; the Government must bear the burden of proving that he *did* consent. *Rigby* v. *U.S.*, 247 F. 2d 584 (1957). Proof must be made by clear and convincing evidence. *U.S.* v. *Martin*, 176 F. Supp. 262 (1959); *Villano* v. *U.S.*, 310 F. 2d 680 (1962). The evidence will usually not be clear and convincing unless it first is shown that the person searched was advised before the search began that he had the constitutional right to refuse a search, and that he then voluntarily, understandingly, and knowingly waived that right. *Johnson* v. *U.S.*, *supra.*

To supply clear and convincing evidence of consent will be particularly difficult in some cases, as where the person searched is for any reason not in a position to clearly understand his rights under the American system. This may be the case with foreigners or citizens of recent foreign origin who do not fully understand the language and customs of this country. *Kovach* v. *U.S.*, 53 F. 2d 639 (1931); *U.S.* v. *Ong Goon Sing*, 149 F. Supp. 267 (1957). The same is true of younger children and of persons of low intelligence.

Another situation in which it is difficult for the prosecution to prove consent is that in which some legal question or flaw appears concerning the "arrest" which preceded or accompanied the search of the person. It may be that there was no arrest at all—nothing more than a momentary police detention of the person on the street for investigation—or that the arrest proves to be illegal because it was made without a proper warrant or probable cause. In such cases the prosecution sometimes attempts to show that the search was legal, regardless of any illegality in the arrest or detention, because the defendant consented to a search of his person. Most courts take a skeptical view of such consent on the ground that ". . . nonresistance to the orders or suggestions of the police is not infrequent in such a situation; true consent, free of fear or pressure, is not so readily to be found. . . . In fact, the circumstances of the defendant's plight may be such as to make any claim of actual consent 'not in accord with human experience' and explainable only upon the basis of 'physical or moral compulsion.'" *U.S.* v. *Fowler*, 17 F.R.D. 499 (1955); *Wion* v. *U.S.*, 325 F. 2d 420 (1963); *Ray* v. *U.S.*, 84 F. 2d 654 (1936). "The Government's argument that Faliero (illegally arrested) consented to a search of his person—on which was found incriminating evidence—defies ordinary commonsense." *U.S.* v. *Viale*, 312 F. 2d 595 (1963), *cert. denied*, 373 U.S. 903. And it has been said that "No sane man who denies his guilt" would be willing to consent to a search for evidence against him. *U.S.* v. *Wallace*, 160 F. Supp. 859 (1958); *Higgins* v. *U.S.*, 209 F. 2d 819 (1954); *U.S.* v. *Evans*, 194 F. Supp. 90 (1961).

Examples will illustrate the practical application of the judicial views expressed above. Officers in Delaware, acting under the Uniform Arrest

Act which allows detention prior to arrest, detained one Schaffer for questioning. Detective Fugate asked Schaffer to empty the contents of his pockets and Schaffer did so, revealing a $20 bill linked to a burglary. When the case reached the Federal court on petition for habeas corpus after conviction in State court, the Federal court held that Schaffer's surrender of the bill was not voluntary and that the bill should not have been used in evidence. The court said:

"Despite petitioner's argument to the contrary, in my opinion, it is not, as a matter of law, impossible for a defendant to waive his constitutional rights by consenting to a search and seizure during a period of custody or when confronted with a show of legal authority. The existence of consent is a question of fact to be determined under all the circumstances. . . . Had Detective Fugate, before asking Schaffer to empty his pockets, warned him that anything found therein might be used against him as evidence, the result might have been otherwise." *Schaffer* v. *Anderson*, 224 F. Supp. 184 (1963).

In a Texas case two officers detained the defendant on a city street and interrogated him, under circumstances which the court held to be an arrest that was illegal for want of probable cause. The officers asked the defendant if he had a weapon, whereupon defendant pulled back his coat to show none and then opened his suitcase, took out a pistol, and handed it to the officers. Defendant was charged with the interstate transportation of a firearm by a person convicted of felony. The court granted his motion to suppress use of the firearm as evidence, holding that in revealing the gun he had only "submitted" to the officers and that this was no different from the officers' searching the suitcase themselves. *U.S.* v. *Butler*, 223 F. Supp. 24 (1963). If a person under illegal arrest empties his pockets on police command to do so, there is an unreasonable search of the person. *Kelley* v. *U.S.*, 298 F. 2d 310 (1961); *U.S.* v. *Viale*, 312 F. 2d 595 (1963), *cert. denied*, 373 U.S. 903.

The fact remains, however, that some searches of the person by consent are upheld by the courts. Boston officers arrested a man for drunkenness, having reason to believe that he was wanted for mail robbery, but did not book him on the drunk charge. Indicating that the arrest would have been legal had the officers booked the defendant for drunkenness, the Federal trial court held the arrest illegal. While defendant remained in custody under the illegal arrest, the postal inspectors arrived. An inspector told the defendant that he was investigating a mail robbery, that defendant had a right not to talk, a right not to answer any questions, and a right to counsel. Another inspector asked the defendant if they might look at what he had in his pockets, whereupon the defendant brought out and emptied a wallet containing two marked bills which were evidence of the mail robbery. This consent search was upheld by both the trial court and the Circuit Court of Appeals. The latter court, pointing out that the Government's burden of proof is greater when consent is claimed to have been given while the defendant is under arrest, said:

"But not every statement or surrender of property made during an illegal arrest is created inadmissible because of the illegal arrest. That fact does not require the rejection of evidence volunteered by the defendant for reasons sufficient to himself and made without force or compulsion or promise of reward. . . . The question of whether consent to a search was voluntarily given is one of fact . . . with the burden resting on the Government to affirmatively show that there was no duress or coercion, actual or implied." *Burke* v. *U.S.*, 328 F. 2d 399 (1964).

In a different type of consent search, doctors employed by the Federal Government went to defendant during an investigation to determine whether he was using blood plasma which did not meet legal standards. They explained that they had no power to seize his plasma but that they would take it if he voluntarily turned it over to them. Defendant then wrote out in his own hand a statement which said, in substance, that he was voluntarily surrendering the plasma for destruction. This plasma was used as evidence against the defendant in a criminal trial. The court upheld its use, finding that it was not obtained by trickery or unfair inducement. The doctors had not, intentionally or unintentionally, induced the impression that the plasma would not be used as evidence. *U.S.* v. *Steinschreiber*, 219 F. Supp. 373 (1963), aff. 326 F. 2d 759. In *Tatum* v. *U.S.*, 321 F. 2d 219 (1963), the court held that defendant, a man with 13 years' experience as a police officer and investigator, gave officers a voluntary consent to search his car. His experience as an officer was a relevant factor, indicating little fear of the officers, and a knowledge of the probable consequences of consent. See also *Grillo* v. *U.S.*, 336 F. 2d 211 (1964), and *Martinez* v. *U.S.*, 333 F. 2d 405 (1964), both upholding consent searches.

Compare the notification of rights given by the officers to the defendant in the successful consent searches in the *Burke* and *Steinschreiber* cases with the absence of warnings in the *unsuccessful* consent searches in the *Schaffer* and *Butler* cases. Warning of rights is obviously a necessary prelude to a valid consent to search in most cases.

Other illustrative cases are the following: Officers checking a man's identity in his bedroom on suspicion of counterfeiting found him sleepy, nervous, fumbling, and unable to extract *an identity card* from his wallet. An officer offered to help and was given the wallet. He did not examine the identity cards but opened a zippered pocket and found counterfeit money. Declaring the search unrea-

sonable, the court said: "By no stretch of logic can it be said that Royster consented to the search of the closed pocket of his wallet." *U.S.* v. *Royster*, 204 F. Supp. 760 (1961). Police officers accosted a known narcotics addict on the street and asked him if he had marihuana. The addict denied possession and "consented" to a search of his person. The officers found marihuana and arrested the man. The Federal court suppressed the evidence because it was found by an unreasonable search and declared illegal the arrest based on the search. The court followed the rule stated in the *Higgins* case, *supra*, that no sane man denying guilt will give a truly voluntary consent to search which is certain to discover the evidence against him. *U.S.* v. *Busby*, 126 F. Supp. 845 (1954). Officers who had illegally arrested a woman (insufficient probable cause) for a narcotics violation asked her where the money was located and she said it was in her purse. The officers then took the money from the purse. The court held that the woman's mere indication of the location of the money did not amount to consent to search the purse. *Whitley* v. *U.S.*, 237 F. 2d 787 (1956). But where a woman being interviewed in her home by immigration officers concerning a possible Federal violation simply surrendered an important document on request of the officer, the Federal court held that there had been no unreasonable search or seizure. *Paquet* v. *U.S.*, 236 F. 2d 203 (1956), *cert. denied*, 352 U.S. 926. See also *U.S.* v. *Kyle*, 20 F.R.D. 417.

It seems fairly well established that in the view of most Federal courts, a person under illegal arrest or one not under arrest but denying guilt to the officers cannot give a genuinely voluntary consent to a search of his person unless first advised of his right to refuse a search. But this rule does not cover all situations. Sometimes a suspect stopped on the street or highway for inquiry only will readily admit his guilt in answer to the officer's accusation or pertinent question. See *Kelly* v. *U.S.*, 197 F. 2d 162 (1952), where an officer stopped a suspect on the highway, asked him what he had in his car, and the suspect answered, "Just a little shine (moonshine whiskey)." See also *U.S.* v. *Cole*, 311 F. 2d 500 (1963), *cert. denied*, 372 U.S. 967, where a narcotics suspect, confronted on the street by Federal narcotics officers who had identified themselves to him, said, "All right, you have got me. The stuff is in my pocket." In any such case of confession or admission of guilt before arrest or search, the voluntary confession or admission strengthens the officer's testimony that the suspect then consented to a search of his person. "If a valid confession precedes a search by police, permission may show true consent to search." *Higgins* v. *U.S.*, *supra; U.S.* v. *Mitchell*, 322 U.S. 65 (1944), reh. denied, 322 U.S. 770; *Burge* v. *U.S.*, 332 F. 2d 171 (1964). The question need not be debated, however. The proper action for an officer to take when a suspect openly and voluntarily admits guilt is to arrest the suspect for the crime and then search him incidental to arrest rather than by consent.

B. *Implied Consent*

The Federal courts have had little occasion to discuss search of the person by a consent that is not expressly given but implied from notice and acceptance of liability to search, or otherwise. A decision of interest, however, is found in the unreported opinion of Judge Bootle, Federal District Court, Middle District of Georgia, October 18, 1962, in *U.S.* v. *McCollough*, Criminal Action 7975. Defendant, a civilian employee on an Air Force base, drove his automobile to and from work, passing under a sign stating that "All vehicles are subject to search upon entering Robbins Air Force Base, while on the base, and upon leaving." A pamphlet issued drivers by the military authorities also contained notification of such searches. A routine search of defendant's car made by military police as defendant was leaving the base disclosed a quantity of stolen Government property. Although there was no search warrant, no prior arrest to which the search was incidental, and no *express* consent given by the defendant, the search and seizure were upheld as reasonable.

A similar decision is found in *U.S.* v. *Crowley*, 9 F. 2d 927 (1922). that case general orders of a certain military base were that intoxicating liquors could not be carried into the base and that suspected cars would be stopped and searched. A taxi driver, "who well knew the regulations, and who had had his car inspected before," was driving his taxi into the base when a sentry told him to get out and allow a search. The driver tried to withdraw his vehicle, but this was not allowed. The search disclosed liquor and the driver was turned over to civil authorities for prosecution under the Volstead Act. In upholding the search, the court said the driver "may be presumed as consenting" to the search when he presented his car at the entrance to the camp. This decision and that in *McCollough* could possibly apply to a search of packages or a dinner bucket carried on the person under similar circum-

stances of adequate advance notice of liability to search upon entering or leaving. Note, however, that in both *McCollough* and *Crowley* there was a fact not found in most searches of the person—the power of the military to search on military bases. See *U.S.* v. *Grisby*, 335 F. 2d 652 (1964).

It may be, also, that an employee, in accepting employment, impliedly consents to search by his employer of the packages which he carries out of the office or plant, or his working quarters, where there is no actual agreement to such a search in the contract of employment but there is notification that such searches will be made. In such a case, however, the employer's right to search for *his* purposes does not go so far as to authorize law enforcement officers to search the employee for *their* separate purposes, at least in the absence of an emergency. *U.S.* v. *Blok*, 188 F. 2d 1019 (1951).

V. Abandoned Property

Among those interests which the fourth amendment was designed to protect are the right of privacy and the right to the undisturbed enjoyment of one's property. Thus, the safeguards of the amendment are considered by the courts to be inapplicable to those items which are intentionally abandoned by the accused. Accordingly, the general rule is that personal property of any kind dropped or thrown by the accused to the ground, street, or floor during a lawful arrest and search of the person, execution of a search warrant, during surveillance or a lawful interrogation prior to arrest, or while fleeing to avoid arrest, may be taken by the officer, examined, retained, and used as evidence if it bears on the case. The legal theory is that there was neither a search nor a seizure, that the property was simply abandoned, and that an officer has a right to take abandoned property for use as evidence. *Hester* v. *U.S.*, 265 U.S. 57 (1924); *Abel* v. *U.S.*, 362 U.S. 217 (1960).

This rule of law, so well-established that extended explanation is unnecessary, is illustrated by the following cases, in all of which the courts upheld the officers in taking the things and using them as evidence: *McClure* v. *U.S.*, 332 F. 2d 19 (1964), after a scuffle during an arrest in an automobile, an officer picked up a package of heroin from the street; *U.S.* v. *Lewis*, 227 F. Supp. 433 (1964), a package of narcotics thrown out the window of an apartment by a woman under surveillance landed in the public courtyard of the building; *U.S.* v. *Zimple*, 318 F. 2d 676 (1963), *cert. denied*, 375 U.S. 868, a man under legal arrest dropped an envelope to the floor of the police station; *Application of Zerga*, 218 F. Supp. 759 (1963), officers lawfully present in the public part of a candy store saw a bookmaking suspect drop a piece of paper to the floor when he saw them; *Mares* v. *U.S.*, 319 F. 2d 71 (1963), two men approached on the street for questioning in early morning hours ran, and one of them dropped a sawed-off shotgun; *Jackson* v. *U.S.*, 301 F. 2d 515 (1962), *cert. denied*, 369 U.S. 859, police officers lawfully interrogating a known narcotics addict in the driver's seat of a car saw a man in the back seat throw a package through the open door onto the sidewalk; *U.S.* v. *DeCiccio*, 190 F. Supp. 487 (1961), two men under foot surveillance ran and, as they did so, threw some objects away; *Trujillo* v. *U.S.*, 294 F. 2d 583 (1961), a narcotics suspect under foot surveillance dropped two small packages to the sidewalk; *Young* v. *U.S.*, 297 F. 2d 593 (1962), *cert denied*, 369 U.S. 891, arresting officers found some of the marked money on defendant's person and some on the floor nearby; *Moore* v. *U.S.*, 296 F. 2d 676 (1961), an officer investigating a very recent theft of mail saw a suspect throw an envelope to the ground and partially cover it with his foot; *Murgia* v. *U.S.*, 285 F. 2d 14 (1960), *cert. denied*, 366 U.S. 977, narcotics suspects pursued by customs officers dropped a package out of the car; *Burton* v. *U.S.*, 272 F. 2d 473 (1959), *cert. denied*, 362 U.S. 951, defendant, hailed by officers but not yet arrested, dropped an envelope to the street; *Haerr* v. *U.S.*, 240 F. 2d 533 (1957), defendant and two others, stopped for questioning by border patrol officers, suddenly drove off at high speed and threw out two boxes; *Lee* v. *U.S.*, 221 F. 2d 29 (1954), when officers lawfully interrogating a man in his car asked him to step out, they saw him drop something wrapped in a paper napkin to the street; *U.S.* v. *McNeil*, 91 A. 2d 849 (1952), a man fleeing from officers who wanted to question him dropped three boxes; *Hester* v. *U.S.*, 265 U.S. 57 (1924), bootleggers, surprised by officers in open fields, threw away a jug and a bottle which had contained moonshine whiskey. See also *Mason* v. *U.S.*, 257 F. 2d 359 (1958), *cert. denied*, 358 U.S. 831 (dropping object from car); *Conti* v. *Morgenthau*, 232 F. Supp. 1004 (1964) (dropping object during execution of search warrant for premises); *Cutchlow* v. *U.S.*, 301 F. 2d 295 (1962) (officer picked up jar of heroin thrown from window of house in which arrest was being made); *Burton* v. *U.S.*, 272 F. 2d 473 (1960), *cert. denied*, 362 U.S. 951; and *Vincent* v. *U.S.*, 337 F. 2d 891 (1964).

Note that in most of these cases the officer is not able to immediately identify the thing dropped as an instrumentality, fruit, or contraband of crime; he is not certain of what it is. This does not matter. Since there are no search and no seizure (seizure in law means *dispossession by force*, actual or constructive, *Weeks* v. *U.S.*, 232 U.S. 383 (1914)), the officer is

free to pick the thing up, examine it, and retain it as evidence if it appears to be useful.

As can clearly be seen from the cases cited above, good police work sometimes places a suspect in the position of abandoning something which he had hoped he could hide. Examination of the abandoned thing leads, in turn, to probable cause for arrest when the object is found to be contraband or an instrumentality or fruit of crime. A good example is found in *Keiningham* v. *U.S.*, 307 F. 2d 632 (1962), *cert. denied*, 371 U.S. 948. About 2:30 p.m., an hour important to a certain gambling operation, a veteran inspector of police saw the defendant alight from a cab. The defendant knew the officer and the officer knew the defendant as a numbers operator. The officer walked on up the sidewalk, stopped, looked back, and saw that the defendant had situated himself between the show windows of a bookstore and appeared to no longer possess the briefcase which the officer saw him carry out of the cab. Walking back, the officer saw the briefcase on the sidewalk several feet from the defendant. The officer started a conversation, during which the defendant disclaimed all knowledge and ownership of the briefcase. The officer then opened the briefcase, found numbers game paraphernalia, and arrested the defendant on the basis of the probable cause thus discovered, plus what he already had, such as the defendant's being a known operator and having been seen carrying this briefcase. The material was admitted into evidence. The courts held that the briefcase had been abandoned in the presence of the officer and that his examination of it was neither a search nor a seizure as a matter of law.

It is worth noting in passing that less experienced officers, confronted with a situation like that in *Keiningham*, have arrested the suspect on the basis of their *suspicions only, without probable cause*, and then proceeded to examine the bag which the suspect had been seen carrying. They did not first establish by questioning, as the officer did in *Keiningham*, a clear abandonment of the bag. If the defendant then asserts a possessory interest in the property and denies any voluntary abandonment, the court may view the acquisition of such property as falling within the search and seizure prohibitions of the fourth amendment. The result in such case is that since the arrest was illegal, the search which was based thereon would also be illegal. Where the suspect fails to assert this interest, however, the seizure of such property ordinarily would come within the abandonment rule.

Keiningham and other cases cited above also prove the error of considering an abandonment in law to be the same thing as abandonment in the usual dictionary sense. When the law-abiding citizen abandons a thing in the dictionary sense, he intends to be rid of it totally, once and forever.

He has no present intent to ever retrieve the thing. To the contrary, this cannot be said of the defendant *Keiningham* and other cases. His is intended to be no more than a temporary abandonment to fool the police, a stratagem in a battle of wits. Let the officer walk on down the sidewalk and out of sight, and see what happens to the bag containing these things so valuable to the defendant. Yet this temporary abandonment, calculated to throw the police off the trail, or rid the suspect for the moment of the incriminating evidence, is all that the courts have required for an *abandonment in law*. The suspect's act is a "guilty abandonment," *Application of Zerga*, cited above, and this is enough to be an abandonment in law even though all the rules of human nature leave little doubt that he hopes to be able to retrieve the thing after he shakes off police suspicion.

As one would expect, certain qualifications are attached to this broad rule allowing officers to seize abandoned personal property. One these is that there is no abandonment in the legal sense if the act of dropping or throwing was in response to some prior illegal act of the officer. An *illegal arrest* is one such act. For example, in *Williams* v. *U.S.*, 237 F. 2d 789 (1956), officers arrested the accused without a warrant, probable cause, "or other validating circumstances." While under illegal arrest he dropped a cigarette package containing narcotics to the floor of the precinct station. The appeals court reversed the conviction, stating that since the narcotics "were procured as a result of the illegal arrest, the motion for their suppression made at the trial should have been granted." In *U.S.* v. *Festa*, 192 F. Supp. 160 (1960), the defendant was illegally arrested, and while under this arrest he removed certain envelopes from his pocket and dropped them to the

floor of the store, where they were retrieved by an officer. The court held this evidence not admissible; the defendant "abandoned the exhibit solely because he was under unlawful arrest." In these situations, as in others, the courts will throw out all evidence obtained by the officers through direct exploitation of the "primary illegality," which is the illegal arrest. *Wong Sun* v. *U.S.*, 371 U.S. 471 (1963).

Another phase of this qualification comes into play when the officers make an *illegal entry* into any dwelling, office, vehicle, or other place protected by the fourth amendment against unreasonable searches and seizures. In these cases, also, there is no abandonment in law. In *Work* v. *U.S.*, 243 F. 2d 660 (1957), the officers illegally entered the home of the defendant, a narcotics suspect. She walked past them, out of the house and across the porch, and placed in the trash can standing on her premises what proved to be a phial of narcotics. The appellate court reversed the conviction, holding that recovery of the narcotics was the direct consequence of the officers' unlawful entry and their search and seizure were thus made unreasonable. Further, the defendant's act was one of hiding the thing on her own property, not one of abandonment. The courts reached the same result in *Hobson* v. *U.S.*, 226 F. 2d 890 (1955), where an occupant of a house threw a package of narcotics into the backyard when officers illegally broke into the house. The seizure of the narcotics was unreasonable because the discovery of the narcotics was the direct result of their own illegal entry into a dwelling protected against unreasonable search and seizure by the fourth amendment. See *Rios* v. *U.S.*, 364 U.S. 253 (1960), applying the rule to a vehicle.

There is a second reason, pointed out in both *Work* and *Hobson*, why a seizure under these circumstances is

unreasonable despite the fact that retrieval of the same thing thrown by the same person into *open fields* or any *public place* would not be an unreasonable seizure. The dwelling house and the curtilage (yard) surrounding it are protected against unreasonable search and seizure by the fourth amendment, whereas the open fields and public places are not. As the appellate court said in *Hobson*, "The enclosed back yard in which the thrown package landed was part of the curtilage of the defendant's home and was subject to the same protection as the home itself . . . even after the package was thrown out it remained upon protected premises. Without its seizure and examination it afforded no incriminating evidence." Thus, from a comparison of *Work* and *Hobson* with the abandonment cases discussed earlier, it can be seen that if officers are lawfully questioning a suspect on the sidewalk, or in the public part of a store, hotel, or other building open to the public, or even in his own open field, and he drops some unknown article wrapped in paper or cloth to the ground, the officers may pick that thing up and examine it. If they find contraband or an instrumentality or fruit of crime, they may then arrest him for possession or other crime for which the possession furnishes probable cause. Their taking is reasonable because the suspect abandoned the thing in a place not protected by the fourth amendment. But if the man is standing in his own home, office, or other building protected by the fourth amendment, or in his own vehicle, which also is protected, and drops the same thing to the floor, any officer picking it up and *examining* it has made an unreasonable search and seizure, assuming, of course, that there has been no prior lawful arrest and there is no search warrant or consent. As the Supreme Court said in *Rios* v. *U.S.*, cited above, "A passenger who lets a package drop to the floor of the taxicab in which he is riding can hardly be said to have 'abandoned' it. An occupied taxicab is not to be compared to an open field . . . or a vacated hotel room."

But suppose this same suspect, seated in his living room, office, or vehicle, or other place protected by the fourth amendment, and simply being questioned by the officers, who are lawfully present, drops to the floor or throws elsewhere in the premises a thing *identified on sight* by the officers as contraband—the stolen goods in the case, narcotics, moonshine whiskey, etc., or an instrumentality or fruit of a known offense. Does the rule stated above prevent the officers from acting simply because they are on protected premises? It does not. The officers may arrest the man, recover the article, and carry both off to

jail, or they may recover the article first. The rule prohibits the officers from *searching* (picking up something of uncertain identity and examining it) on *private premises* protected by the fourth amendment without having a search warrant, a lawful arrest to which the search is incidental, or consent. The law does *not* prevent officers who are lawfully on private, protected premises (going to a man's home to interview him concerning a crime of which he is suspected is lawful presence, *Ellison* v. *U.S.*, 206 F. 2d 746 (1953)) from picking up the recognized instrumentalities, fruits, and contraband of crime seen by them in open view in that place without a search. In *Ellison*, officers standing on a man's front porch waiting to interview him concerning a burglary, in which he was the prime suspect, saw articles taken in the burglary lying on the ground near the porch. They took those articles, arrested the man, and used the articles as evidence against him. Their action was upheld, the court saying, "If an officer sees the fruits of crime—or what he has good reason to believe to be the fruits of crime—lying freely exposed in a suspect's property, he is not required to look the other way, or disregard the evidence his senses bring him. Law enforcement is difficult enough without requiring a police officer to free his mind of clues lying flatly before him."

In *Davis* v. *U.S.*, 327 F. 2d 301 (1964), officers wishing to interview a man about a narcotics violation went to his home and were legally admitted. Once inside, they saw marihuana in plain view in trash containers. The officers arrested the man and took the marihuana. The courts upheld them, stating that "once legally inside the room the officers were not required to remain blind to the objects." In *Zap* v. *U.S.*, 328 U.S. 624 (1946), reversed on *other grounds*, 330 U.S. 800, an officer was in a firm's private offices inspecting certain books of account kept by the firm in connection with a Government contract, such inspection of records having been consented to as a part of the business agreement. During that inspection the officer saw a check which the defendant, owner of the business, had used to make a fraudulent claim against the Government. The officer simply took the check and used it as evidence on a charge of fraud against the Government. His action was upheld. In *U.S.* v. *McDaniel*, 154 F. Supp. 1 (1957), aff., 255 F. 2d 896, *cert. denied*, 358 U.S. 853, 363 U.S. 849, officers investigating a murder case, for which the two defendants had been jailed, went to the home of the defendants for the purpose of interviewing two female companions of the defendants who were known to be there. On being properly admitted by the women, one officer walked in and saw a torn towel in plain view. Having information already received that a towel was used in commission of the homicide, the officer took the towel for use as evidence. His action was upheld, the court saying, "One of the guides [on lawful search and seizure] is that the interior of a home may not be searched without a search warrant except in connection with and incidentally to an arrest taking place in the premises. That statement, however, is subject to an exception that if, without a search and without an unlawful entry into the premises, a contraband article, or an article which is needed by the police, is seen in the premises, the police are not required to close their eyes and need not walk out and leave the article where they saw it. Any other principle might lead to an absurd result and at times perhaps even defeat the ends of justice." See also *U.S.* v. *Myers*, 219 F. Supp. 908 (1963), aff., 329 F. 2d 280, similar to *Ellison*, discussed above.

(To be concluded in April)

San Antonio Crimdel 9/10/65

LIQUOR ON TAP

Bufi #63-4296-45

Juveniles in a southwestern city have devised a novel method of transporting alcoholic beverages in their cars—contrary to statutes prohibiting the practice. To do this, a bottle of liquor is substituted for the cleaning liquid used to supply the windshield wiper. The other end of the hose is detached from the windshield wiper and brought to a point behind the dashboard of the car. The operator steps on the foot pedal which ordinarily activates the windshield cleaner and a quantity of liquor—approximately an ounce and a half—is squirted into a waiting cup.

San Antonio Crimdel 7/29/65

FALSE PRETENSES

Bufi #63-4296-45

During a 2-month period a swindling outfit in a Southwest city sold to local businessmen advertising totaling $6,000 which was supposed to appear in a safety manual. The safety manual turned out to be a complete reprint of the State driving manual.

Houston Crimdel 7/15/65

A HAIR-RAISING SEARCH

Bufi #63-4296-19

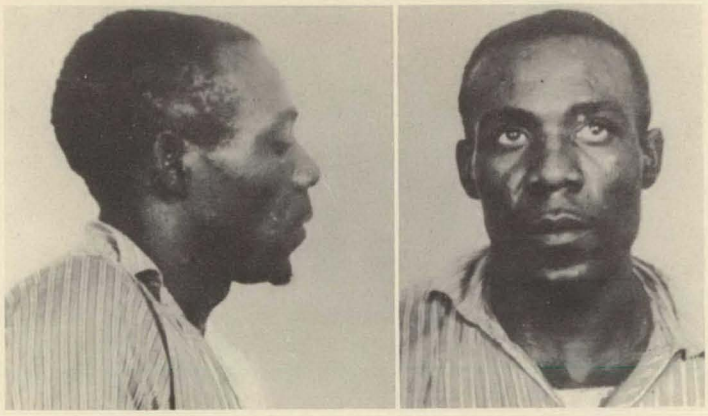
The present-day hair styles for women may—for some—have their use as well as their beauty.

Three individuals, one of them a woman, were held as suspects in the holdup of a service station in a southwestern State. When investigating officers failed to find any of the loot on the men, they called in a female dispatcher of the police department who found the money, some $105, hidden in the woman's hair.

All three were charged with theft.

U.S. GOVERNMENT PRINTING OFFICE: 1966 O—203-189

WANTED BY THE FBI



RUFUS DUNN, also known as: Ulysses Dawson, Rufus Duncan, Rufus M. C. Durm, Rufus Mack Durm, Rufus Durms, Rufus Gumm, Rufus McDurm, "Bum" and others.

Unlawful Flight To Avoid Prosecution—Murder

RUFUS DUNN is currently being sought by the FBI for unlawful interstate flight to avoid prosecution for the crime of murder.

The Crime

After being released from the Orange County Jail, Orlando, Fla., on April 8, 1963, Dunn allegedly returned to his home at Apopka, Fla., and brutally beat to death his common-law wife in a savage attack that took place over a period of approximately 36 hours. Dunn reportedly quarreled with the victim and then allegedly beat her with his fists, a plastic hose, and a piece of wire.

A Federal warrant was issued on May 8, 1963, at Orlando, Fla., charging Dunn with unlawful interstate flight to avoid prosecution for murder.

The Fugitive

Rufus Dunn has been convicted of drunkenness, petty larceny, vagrancy, and violation of motor vehicle registration laws.

Description

Age	38, born Sept. 8, 1927, Vienna, Ga. (not supported by birth records).
Height	5 feet, 8½ inches.
Weight	160 to 165 pounds.
Build	Medium.
Hair	Black.
Eyes	Brown.
Complexion	Dark.
Race	Negro.
Nationality	American.
Occupations	Car washer, farm laborer, general laborer.
Scars and marks	Scar above left eye, scar on right side of neck, scar on right shoulder, scar on left forearm, two scars on right arm, scar on right wrist, scar on left side of chest.
FBI No	989,772 A.
Fingerprint classification	19 M 31 W IOO M 31 W OII 15

Caution

In view of the alleged savage attack for which Dunn is being sought, he should be considered armed and dangerous.

Notify the FBI

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

T. J. Brownfield to Casper Memo 1/3/66

TRAINING ASSISTANCE

re: Police Training Desk Statistical Accomplishments for Calendar 1965

During the year 1965, the FBI, upon request from other law enforcement agencies, provided assistance at 5,381 training schools attended by 167,473 persons—an all-time high. FBI personnel contributed 44,502 hours of instruction time during these sessions, giving particular attention to command and supervisory training programs and to such specialized fields as searches and seizures, due process in criminal interrogation, and probable cause for arrest.

In the implementation of the President's request that the FBI train local law enforcement in riot and mob control and prevention techniques, FBI instructors gave assistance during the year in 1,085 schools, attended by 44,156 persons.

NEW FBI BOOKLET

A cost-free 26-page booklet entitled "99 Facts About the FBI: Questions and Answers" is available to anyone desiring additional information about the jurisdiction and activities of the FBI. Copies may be obtained by written request to the Director, Federal Bureau of Investigation, Washington, D.C., 20535.

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UNUSUAL PATTERN

The unusual appearance of this pattern is due to the height of the looping ridges in relation to the delta. The delta is found at point D and the core at C. This impression is classified as a loop with 14 ridge counts.