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# Police Communications in an Urban County

## The State of the Art

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# Contents




**The Cover:**
Population growth in many areas has necessitated the development of more sophisticated communications systems.


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# Police Communications in an Urban County

## The State of the Art

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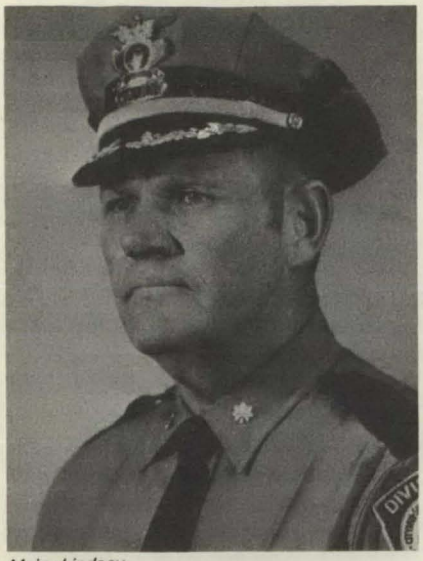


*Major Lindsey*

*Col. Leslie T. Sheppard*
*Chief of Police*

## History and Background

Henrico County, Va., is a modern, progressive community located on the north, east, and west boundaries of the City of Richmond, Va. Like many localities similarly situated on the outskirts of larger cities, it is both urban and rural in makeup and has experienced accelerated growth in the past 30 years, both in population and government services. Its 1950 population of 57,346 was served by a police complement of 21, who responded to 5,396 calls for service, and its 1980 population of 180,725 generated 82,355 calls for service by the present police complement of 486 members. The communications systems during those and the intervening years ranged from the 1950 cumbersome radio monitoring/telephone relay of calls for service through an adjacent jurisdiction to the 1980 VHF dual-channel simplex system, which had been modified and expanded over a 30-year period so that growing demands could be met.

In order to provide needed space, the system was moved in 1965 to a communications center in the Emergency Operations Center, located in the eastern portion of the county. The new 600-square foot location accommodated one police and one fire console, three six-position telephone sets, and four communications officers per shift.

By the spring of 1975, the existi emergency communications syste were overburdened. To remedy the s uation, an additional VHF police cha nel was placed in service, providi one frequency for each end of t county, thus reducing channel conge tion. More telephones were adde along with a central switchboard service them, and additional personn were authorized. Those measur were recognized as stopgap in natu and in 1977, the telephone commu cations network again required upgra ing. As a consequence, the ent communications system became t subject of an intensive study—o which led to the present day configu tion.

## The Study

The major objective of the stu was to develop a radio network whi would eliminate two principal wea nesses: 1) Channel crowding caus by increased emergency service sponse to county growth; and 2) rece tion impairments in several parts of t county, created by its topography, size of approximately 245 squa miles, and the placement of the o transmitter in the eastern section of t county—a condition that was eased the placement of an additional tra mitter site in the western part of t county in 1977.

The three primary areas of t study were designed to define a ra system which would meet the count emergency communications nee provide budgetary cost data for fina cial planning, and decide what ratio ale would be used for the selection the recommended system.

To predict adequately immediate nd future requirements, the following ata elements were collected and ana-zed:

1) Number of calls for service placed on the communications system,
2) Average number of transmissions per call for service,
3) Average message length,
4) Anticipated county growth,
5) Anticipated growth of the division of police and other emergency services on the system.

The final recommendations of the udy were to:

1) Construct a new communications center to be located in the planned public safety building. This would provide for both future expansion and flexibility. The past had shown that communications demands would increase, causing larger space needs. Since future budgetary limitations were likely to restrict expansion, space and flexibility needs should be met early.
2) Provide for an additional transmitter site comparable to the existing one in the east for the western portion of the county. In addition, satellite receivers were to be constructed to enable field unit transmissions to be received from any location within the county.
3) Provide five UHF duplex frequencies for dispatch purposes, plus one channel each for future mutual aid use with other jurisdictions and a simplex frequency for local, tactical use. In calculating channel requirements, a standard of 5 seconds maximum wait to gain access to any frequency during the peak traffic hours of any week was used.
4) Convert to an all-portable operation to provide for constant communication with all field personnel. The key factors considered in this decision were primarily officer safety, which is achieved by constant availability of radio communications, and reduction of vehicle downtime associated with the mobile radio system.
5) Continue to act as a joint service to both fire and police operations—to be a public safety communications center.

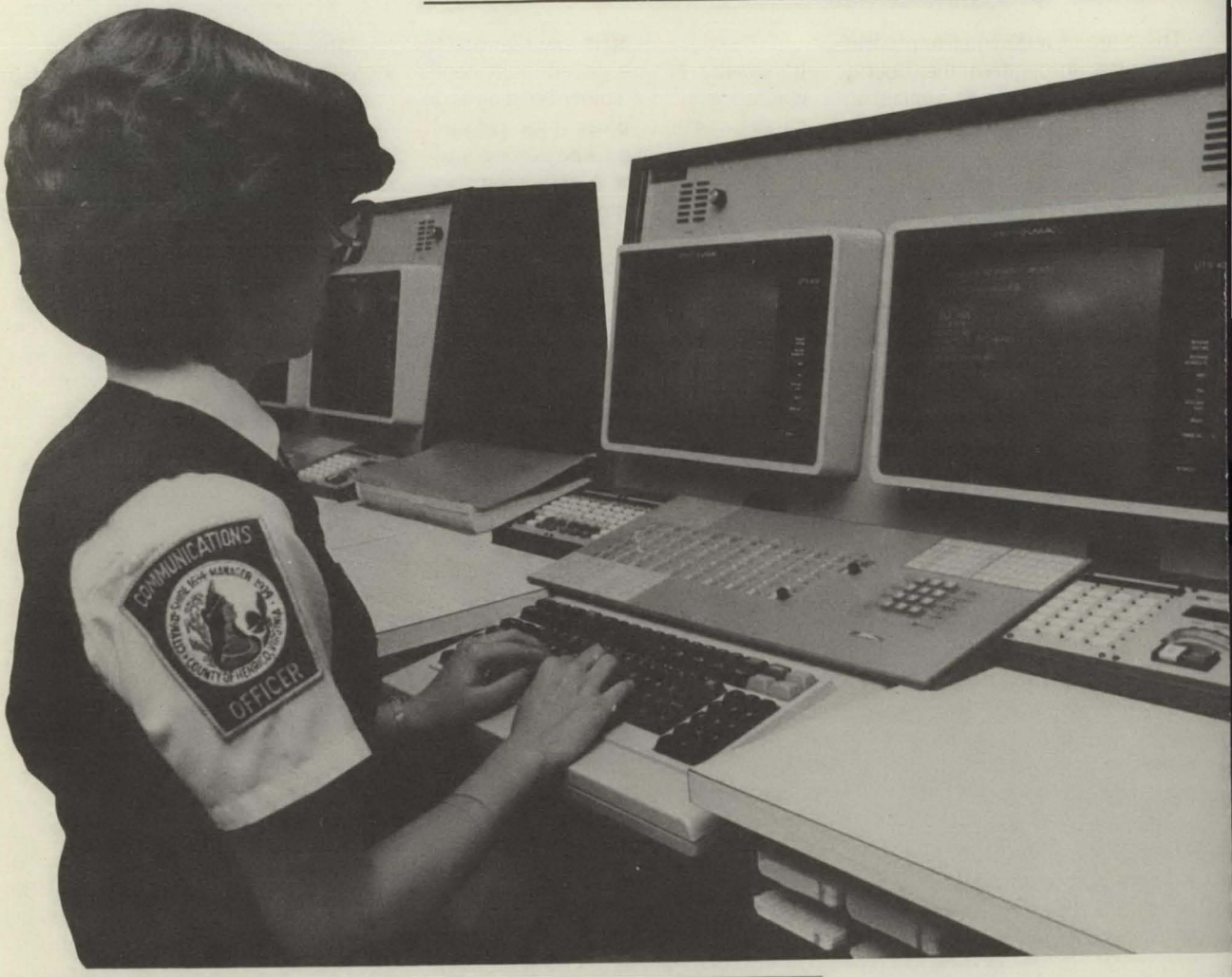
The only significant problem not solved was the restriction on the tower height in the eastern portion of the county, created by its proximity to the metropolitan airport. Relocation was not economically feasible and reception is still not at a desirable level in a few isolated locations at the outermost boundaries.

Certain decisions had major impacts on the functioning of the radio system. One decision was to divide the county into two geographical radio dispatch areas—one in the east and one in the west. Each of these would be subdivided into two dispatch sectors synonymous with indicated patrol sectors. In turn, the patrol sectors were composed of individual patrol areas or "beats," in which one officer was normally responsible for handling calls. Either of the frequencies assigned to the dispatch sectors is sufficient to cover the entire geographical area.

This allowed for flexibility in assigning communications personnel in accordance with anticipated workloads and calls for service. During all shifts, the countywide frequency primarily serves the police administration, investigators, sheriff's department, and the three volunteer rescue squads and is operational along with two patrol frequencies—one each for the eastern and western geographical radio dispatch areas during the day and midnight shifts. From 9:30 p.m. to 1:30 a.m., all five frequencies, including the two additional patrol frequencies, are operational. The increased capability during these latter hours provides improved access time for the greater number of patrol units available during the overlap period when two uniform platoons are on patrol. This overlap occurs during the peak calls-for-service time period and is created by the scheduling of four, 10-hour days for both communications and patrol personnel.

A second decision impacting on the functioning of the radio system was that requests for proposals by companies desiring to provide the radio system be performance-related. The proposal specified a 97-percent radio coverage requirement. The number and location of satellite receivers were not specified, and although the use of governmentally owned sites was encouraged, this was left to the discretion of the successful vendor. This proved extremely beneficial when, in the first several weeks of use of the new system, it was found that additional satellite receivers were necessary because of poor reception from four areas in different parts of the county. These receivers were provided by the vendor without additional cost to the county.

**". . . Henrico County has moved from the 'dark ages' to a 'state of the art' in the area of communications."**




*A telephone-responsive console features a 91 control panel, radio controls, and a playback recorder which permits review of calls receive during the last 30 minutes.*

### System Elements

One-watt portable radios were purchased to ensure adequate battery life during a member's tour of duty. Even though the shifts are now 10 hours long, battery life is not a problem. In addition, sufficient batteries were acquired to permit each shift to have color-coded, fully charged replacements available when reporting for duty. Investigators, undercover personnel, and a limited number of staff officers are provided with vehicular-mounted chargers from which the radio is taken when exiting the vehicle.

For the uniformed officer, additional accessories include a speaker/microphone/antenna combination which is attached to the officer's epaulet by means of a velcro fastening. Each officer is issued a leather carrying case for the radio, which attaches to the gun belt.

In keeping with the concern for officer safety, radios are equipped with a unique identifier. Whenever a unit transmits, a data burst identifies that unit on the console serving the radio's frequency. Should an officer requ immediate assistance and be unable transmit by voice, he may pull a ri located on the radio, signifying a "ma day." This, in turn, causes the rad number on the console to flash and audible signal alerts the console op ator to the situation.

There are now 20 satellite receiver sites located throughout the county. Each site is equipped with a minimum of three complete receivers and a battery that will sustain the receivers for 24 hours in the event of a power failure.

Most satellite receiver sites consist of a 100-foot, self-supporting tower and antenna. The equipment is housed in an all-weather cabinet enclosed by an 8-foot chain link fence. When it was practical, existing structures were used—antennas were mounted on forest fire lookout towers or elevated water tanks. In some instances, it was possible to mount the equipment inside available buildings.

All transmissions to the eastern portion of the county emanate from the communications center to the transmitter located at the emergency operating center, via dedicated land lines. Conversely, field unit transmissions are routed to the communications center via the voted receiver in the east, to the emergency operating center, and then by land line.

Each radio channel has a minimum of two base/repeater stations that are used alternately every 12 hours to reduce maintenance potential which increases when the equipment is not frequently used.

The decision to locate the western transmitter off the government center where the public safety building is located was based on two considerations—aesthetics and economics. The availability of a tower near the government center played a major role in this decision. Although the transmitter receivers are routinely serviced by dedicated land lines, low-powered transmitters located in the public safety building can serve as control stations when required.

**Communications Center and Personnel**

The new communications center, located in the public safety building, is approximately 5,500 square feet, with approximately 1,400 square feet being devoted to current and future console operations. The remaining space houses peripheral radio equipment including console-controlling microprocessing equipment, telephone and computer equipment, a lounge for communications officers, a public viewing area, and fire suppression equipment. Offices are provided for the communications staff, support personnel, and the necessary printing and recording equipment. The former communications center, located in the emergency operating center, has been converted to permit limited operations in the event that the new center has to be evacuated for any reason.

There are two major functions of the communications center's 15 radio consoles. The first function—that of receiving calls for service—is handled by eight consoles. This type of console is telephone responsive, but has radio controls to enable the operator receiving the call to immediately dispatch the appropriate number of field units. More personnel are required to provide this type of service; however, this approach has helped to eliminate dispatch delay, a frequent problem under the old system. This, in turn, has eliminated some of the citizen dissatisfaction in the area of complaint reception. The second function is performed on six consoles that respond to field personnel. One is used to dispatch fire equipment, and five other service the functional police areas and are manned according to the need, based on the time of day. These positions are equipped with considerably more radio capability than the telephone positions. In addition to the five dispatch frequencies, these consoles may monitor broadcasts from adjoining police and fire jurisdictions, transmit and receive on the statewide interdepartmental radio system (SIRS) and on the VHF high-band channel used for covert surveillance, and transmit to the radio pagers issued to key personnel.

Both the telephone and service consoles are linked to a second element of the communications center—the county's communications computer. The software which operates the computer is centered around the computer aided dispatch (CAD), which serves five target areas:

1) Unit management maintains control of the various field units' status with respect to availability or nonavailability. Any unit's activities can be traced through the system for an entire tour.
2) Call management maintains control of calls-for-service status, including all pending or inprogress calls.

**"The present communications system now provides efficient response to citizen needs, greater officer safety, and management information. . . ."**

3) Unit services provide specific information to the officer, such as vehicle inquiries, whether a vehicle has been stopped recently, etc.
4) Dispatcher service determines the three closest units able to respond to a given call, indicates certain types of questions to be asked of the complainant based on the type of call for service, and makes the dispatcher aware of certain messages connected with an address.
5) Locational assistance identifies the call as to location and provides cross streets and map page information. It also indicates whether the address is considered hazardous, whether a police officer resides there, or whether previous calls have been received there. The address look-up function of CAD is based on determining in which of 623 geographic areas of the county (small reporting areas) the call is located. These geographic areas use the Census Bureau's Dual Independent Map Encoding (DIME) file, which assigns street segments to census blocks.

Because of the availability of in-house expertise, the CAD system was developed by county personnel, as opposed to outside consultants. The willingness of the county's data processing staff to aid in this development and their capability to modify programs quickly as the need might arise have proven to be both productive and cost-saving.

The CAD system uses two cathode ray tubes (CRT) on each console. One tube provides the available/unavailable status of field units and calls pending or in progress. The status screen provides a flashing cursor beside any unit number that has been out of service in excess of a predetermined time for the nature of the call. Every status screen is automatically updated each time any unit's status is revised.

The other CRT is used for logging complaints and various types of inquiries. Through the computer, inquiries may be made to the Virginia Division o Motor Vehicles, Virginia Criminal Infor mation Network (VCIN), National Law Enforcement Telecommunications System (NLETS), and National Crime Information Center (NCIC). The 15t console is the command position. It i always manned by the platoon ser geant or a senior communications offi cer. This position can perform an function possible on other consoles The supervisor may provide a tele phone to radio connection. Since it i possible to provide cross-channe communications between any two fre

*The field service console has greater radio capability and a high-speed projector for sectional maps.*

quencies controlled by the center, a division member may communicate with a State trooper by the "marrying" of UHF to the low-band SIRS network.

The command console can take over any or all positions. The supervisor can remotely monitor activity at any console, monitor any one of the telephones or radio frequencies taped on a 40-channel recorder, or determine which satellites are being "hit" by a field unit's transmission and which satellite is voted. This is the position which may disable repeaters when rebroadcast is not desirable or remotely activate or deactivate transmitters or receivers at locations across the county. The staff of the center consists of a captain, a lieutenant, 5 sergeants, 3 police officers, 5 senior communications officers, 51 communications officers, and a secretary. Each platoon consists of a sergeant, a senior communications officer, and 10 communications officers. The three police officers comprise the telephone reporting unit (TRU). They are assigned to the day and evening shifts and were responsible for handling 8 percent of the approximately 82,300 calls for service received in fiscal year 1980.

## Planning and Implementation Considerations

Given the cost of the radio system—$1,450,000—and the vast benefits of the system to the citizens of Henrico County as well as to the division, considerable personnel efforts were expended.

Planning for the CAD involved a cross section of law enforcement and communications personnel. The 623 small reporting areas were designed by this group, and a subcommittee of the group, composed of patrol personnel, designed the response table matrix to determine the best unit in a priority sequence to respond to each small reporting area. The division's advisory committee, composed of both civilian and sworn personnel of all ranks, recommended the appropriate time out for each type of assignment. Output requirements for data to be captured were specified by both the command staff and users.

When dealing with computers, contingency plans must be made for downtime. In this system, two computers are available. In the event both fail, procedures exist for a reversion to the manual card system. Status is then tracked on a modified bingo flash board which was designed and constructed by five engineers from the telephone company and a sergeant, all of whom volunteered their time and talent. This device is controlled by relays activated through the telephone touch pads. Any of the 15 console operators may activate or deactivate status lights visible to the entire center when the computer is out of service.

Another contingency feature is a direct-line teletype not connected through the computer. This allows inquiries of a priority nature in the event the primary system fails.

Major personnel efforts were expended in updating the census' DIME file. Time constraints and the need to update the file from its 1976 level of street segments forced the division, and specifically the police planning section, to do its own updating. An accurate and up-to-date DIME file was critical to the success of the locational assistance aspect of the CAD system. Not only was the DIME file updated, but additional files were built to provide names of businesses, apartment complexes, shopping centers, banks, etc., when addresses were not commonly provided, as well as to provide for the development of a street alias file. These files have provided an address match of more than 90 percent of all calls for service received since the system was placed in operation in May 1981.

Training time was significant for both field and communications personnel. Every effort was made to acquaint all division personnel with major aspects of the system, and communications officers underwent intensive training. Information relating to changes or improvements in the system are provided on a monthly basis through the division newsletter.

## Conclusion

In the past 3 decades, Henrico County has moved from the "dark ages" to a "state of the art" in the area of communications.

Through the years, many dedicated public safety people have contributed their efforts to this successful project. In addition, the support of the board of supervisors and the county administration was considerable, indicating their faith in the Department of Public Safety and the needs of the county. The present communications system now provides efficient response to citizen needs, greater officer safety, and management information, which will allow for improved use of resources and a means to maintain an effective communications system. **FBI**

# Police Administrators' Attitudes Toward the Definiton and Control of Police Deviance

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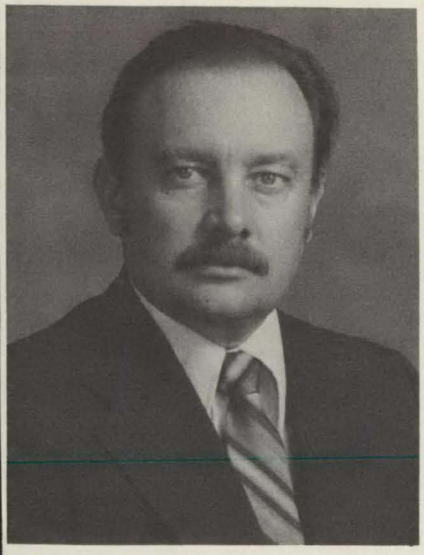
Only within the last 10 years has the problem of police deviance, especially corruption, been the subject of empirical research. Although the topic has been the subject matter of polemical debate since the establishment of the first paid police forces, empirical research to determine the causes of, attitudes toward, and means to control police deviance is still scarce. Even though there have been some noteworthy exceptions to this statement,[1] the pervasiveness of the phenomenon and the serious nature of the problem have not been matched by social scientific research interest. This is especially true in the area of police administrators' attitudes toward the definition and control of police deviance, especially corruption. Yet, few would deny the importance of the chief's role in preventing, controlling, and eliminating police corruption and other forms of police deviance. Police deviance, particularly in the form of corruption, is not only contrary to the police mandate and organizationally divisive and disruptive but in many cases it makes the chief and other members of the department subject to criticism, dismissal, and/or prosecution.

Although all members of the police command structure are, or should be, accountable for the performance of their men, the ultimate responsibility for corrupt behavior and other forms of police misconduct by any police officer and the integrity of the department rests with the police chief. Those areas in which the chief should be active include establishing an internal affairs unit to eradicate all patterns of misconduct, including corruption; being personally honest and being determined that his men will be honest also; and being willing to pay the price for virtue.[2] In addition, it is important that the chief take a public stance against corruption as a means of controlling it.[3] This includes written rules and regulations which explicitly define the administrator's position on behaviors which he believes are corrupt.

Recognizing the importance of administrative action in the prevention and control of police misconduct, we surveyed police chiefs in one southern State in order to determine their attitudes toward the definition and control of police corruption and other patterns of police deviance. Specifically, the chiefs were asked to define certain patterns of police misconduct as corruption, whether their department had rules and regulations covering these behaviors, and what action, if any, they would take if officers in their departments were discovered engaging in these types of behavior. These are the areas which appear to be most directly under the direction of the chief in his efforts to prevent and control police misconduct.



*Dr. Barker*

### Police Occupational Deviance

The patterns of police behavior to be discussed in this study are examples of a general pattern of deviant behavior (norm- or rule-violating behavior) known as occupational deviance, i.e., deviant behavior (criminal and noncriminal) committed during the course of "normal" work activities. Police occupational deviance refers to all deviant acts, i.e., violations of criminal laws, departmental rules and regulations, and ethical police standards, which occur during the course of occupational activity and are related to employment as a police officer.[4] These are acts which can be committed only by a police officer or acts which are made possible, facilitated, or directly related to the police occupational role.

Specifically, the patterns of police occupational deviance to be examined are police corruption and police misconduct not directly related to police corruption. (See fig. 1.)

### Police Corruption

Technically speaking, police corruption is an example of police misconduct, but we view it as a unique form of police misconduct. Specifically, police corruption is any proscribed act which involves the misuse of the officer's official position for actual or expected material reward or gain.[5] In other words, corrupt acts contain three elements: (1) They are forbidden, (2) they involve the misuse of the officer's official position, and (3) they involve a material gain no matter how insignificant. There are at least 10 patterns of corrupt behavior which fit this definition.[6] (See fig. 2.)

### Police Misconduct Not Related to Corruption

Police misconduct not related to corruption, hereafter termed "police misconduct," is any pattern of behavior which meets two basic criteria: (1) It is a form of police occupational deviance and (2) the behavior does not involve a material reward or gain. Examples of police misconduct include police perjury, police brutality, sex on duty, sleeping on duty, drinking on duty, and other rule violations not involving a material reward or gain.[7] The specific patterns of police misconduct to be examined in this study are: (1) Sleeping on duty, (2) hitting handcuffed prisoners, a form of police brutality, (3) having sex on duty, (4) speeding in patrol cars, (5) personal shopping on duty, and (6) drinking on duty.

*Figure 1*

**Deviant Behavior**
(Norm- or Rule-violating Behavior)

**Occupational Deviance**
(Deviant Behavior—Criminal and Noncriminal—Committed During the Course of "Normal" Work Activities)

**Police Occupational Deviance**

| Corruption (Involves a Material Reward or Gain | Misconduct (No Material Reward or Gain) |
|---|---|
| 1) Corruption of authority | Police Perjury |
| 2) Kickbacks | Police Brutality |
| 3) Opportunistic Thefts | Sex on Duty |
| 4) Shakedowns | Drinking on Duty |
| 5) Protection of Illegal Activities | Sleeping on Duty |
| 6) Traffic Fix | Other Violations not involving material reward or gain |
| 7) Misdemeanor Fix | |
| 8) Felony Fix | |
| 9) Direct Criminal Activities | |
| 10) Internal Payoffs | |

*Figure 2*

PATTERNS OF POLICE CORRUPTION

1) **Corruption of Authority**
Officer receives unauthorized free meals, services or discounts, and liquor.

2) **Kickbacks**
Officer receives money, goods, or services for referring business to towing companies, ambulances, garages, etc.

3) **Opportunistic Thefts**
Opportunistic thefts from arrestees, victims, burglary scenes, and unprotected property.

4) **Shakedowns**
Officers take money or other valuables from traffic offenders or criminals caught in the commission of an offense.

5) **Protection of Illegal Activities**
Protection money accepted by police officers from vice operators or legitimate businesses operating illegally.

6) **Traffic Fix**
"Taking up" or disposing traffic citations for money or other forms of material reward.

7) **Misdemeanor Fix**
Quashing of misdemeanor court proceedings for some material reward or gain.

8) **Felony Fix**
"Fixing" felony cases for money or other forms of material gain.

9) **Direct Criminal Activities**
Officers engage in serious felonies, such as burglary, robbery, and larcenies.

10) **Internal Payoffs**
The sale of days off, holidays, work assignments, etc., from one officer to another.

## Method

The principal data-gathering instrument for this study was a four-part mail survey questionnaire. The first part of the questionnaire consisted of 10 open-ended questions designed to gather general information about the respondent and his police department. The second section contained 30 questions concerned with the existence of written rules and regulations governing the 16 patterns of police misconduct. The third part of the questionnaire dealt with the subject's opinion as to whether the behaviors actually constituted police corruption. Finally, the last section was used to determine what actions, if any, the respondents would take if officers in their department engaged in the behaviors.

## Sample

The population consisted of all police chiefs in a southern State. We compiled a list of 307 police agencies from two sources, *Crime in the United States—1978* and a list entitled "Police Agencies—State of _____—February 1979," which was obtained from a police academy in the State. We decided to survey all departments with five or more sworn police officers. Several methods were used to determine the size of each department in the population. *Crime in the United States—1978* listed the number of officers in 277 of the 307 departments, and a member of the police academy staff was able to supply information on 19 of the missing 30 departments. The remaining 11 departments were contacted by phone. The final sampling frame consisted of a total of 190 police agencies having 5 or more sworn police officers—114 departments with 10 or more officers and 76 departments with 5–9 sworn officers.

As a result of the initial mailing and two followup mailings, we received 115 useable questionnaires. This represents an overall response rate of 61 percent. The response rate varied directly with the size of the department from a low of 54 percent for departments with 5–9 members to a high of 76 percent for departments having 50 or more members. (See table 1.)

## Rules and Regulations

Each respondent was asked to indicate whether his department had written rules and regulations covering the various patterns of police deviance. Twenty-eight or 24 percent of the chiefs reported that their respective departments had no written rules and regulations. As one would suspect, this was directly related to the size of the department. Forty percent of the smaller departments, under 9 members, had no written rules and regulations, but only 2 of the departments with over 20 members had no written rules and regulations.

Table 2 reports the results on rules and regulations for each of the 16 patterns of police deviance. Over 50 percent of the departments had no rules and regulations specifically dealing with any of the examples given for the first pattern of police corruption—"corruption of authority." Accepting free meals from restaurants was the

***Table 1***

Response Rate By Size of Department

| Size of Department | No. of Departments | Number | Percentage |
|---|---|---|---|
| 5–9 members | 76 | 41 | 54 |
| 10–19 members | 58 | 34 | 59 |
| 20–29 members | 25 | 17 | 68 |
| 30–49 members | 14 | 10 | 71 |
| 50 or more | 17 | 13 | 76 |
| | 190 | 115 | |

one example where there was an almost even split on departments having rules and regulations forbidding this form of behavior—49 percent had rules and regulations covering this activity, 51 percent did not. For the remaining examples of police corruption, there were only three instances where over 50 percent of the departments had no rules and regulations addressing the form of corruption, viz., accepting money from bondsmen (52 percent)—an example of "kickbacks"—and giving and/or taking money for easy work assignments (55 percent) and giving and/or taking money for vacation time (61 percent), both examples of "internal payoffs." In no example did 100 percent of the departments have rules and regulations specifically addressing or mentioning this behavior.

## OPINIONS TOWARD POLICE DEVIANCE

### Is the Behavior Police Corruption?

In table 3 we are interested in the extent of agreement or disagreement between our definition and the respondents' definition of behaviors which constitute police corruption. As mentioned earlier, we classified the forms of police deviance into two categories: (1) Police corruption—a norm- or rule-violating act which also involves a material reward or gain, and (2) police misconduct—a norm- or rule-violating act which does not involve a material reward or gain. For us, the distinction between the two categories of behavior is the presence or absence of a material reward or gain. We were interested in seeing if the police chiefs also would make this distinction.

The first pattern of corruption to be presented is "corruption of authority." [8] This pattern includes many actions which some find insignificant, and it is the only pattern of corruption which *may* not involve criminal intent or some misuse of the officer's position at the time of the act. Nevertheless, the officer's integrity and position have been compromised. The officer has received some material reward or gain, and one or both parties to the act may expect some favorable treatment now or in the future. There is always the danger

*Table 2*

**DEPARTMENTAL WRITTEN RULES AND REGULATIONS *SPECIFICALLY* ADDRESS OR MENTION THIS BEHAVIOR?**

| PATTERN OF DEVIANCE | RULES & REGULATIONS (Reported in %) | |
|---|---|---|
| CORRUPTION | YES | NO |
| 1) **Corruption of Authority** | | |
| a. Free cup of coffee | 35 | *66 |
| b. Accepting free meals from restaurants | 49 | 51 |
| c. Using badge for free admission to movie | 30 | 70 |
| d. Accepting Christmas gifts | 35 | 66 |
| 2) **Kickbacks** | | |
| a. Accepting money from bondsmen | 48 | 52 |
| b. Accepting money from lawyers for referral | 52 | 48 |
| c. Accepting money from wrecker drivers for referrals | 60 | 40 |
| 3) **Opportunistic Thefts** | | |
| a. Taking items from a burglary | 66 | 35 |
| b. Taking articles or money from a victim | 58 | **42 |
| c. Taking home found property | 54 | 46 |
| d. Taking lumber from construction site | 54 | 46 |
| 4) **Shakedowns** | | |
| a. Money from criminals | 61 | 39 |
| 5) **Protection of Illegal Activities** | | |
| a. Accepting money from bootlegger or prostitute | 61 | 39 |
| b. Accepting money from drug pusher | 54 | 46 |
| 6) **Traffic Fix** | | |
| a. Accepting money from traffic offenders | 74 | 27 |
| 7) **Misdemeanor Fix** | | |
| a. Accepting money for dismissing case | 68 | 33 |
| 8) **Felony Fix** | | |
| a. Accepting money for dismissing case | 67 | 33 |
| 9) **Direct Criminal Activity** | | |
| a. Policemen committing burglaries | 60 | 40 |
| 10) **Internal Payoffs** | | |
| a. Giving and/or taking money for easy work assignments | 45 | 55 |
| b. Giving and/or taking money for vacation time | 39 | 61 |
| MISCONDUCT | | |
| 1) Sleeping on duty | 84 | 16 |
| 2) Hitting a handcuffed prisoner | 69 | 31 |
| 3) Sex on duty | 66 | 35 |
| 4) Driving over speed limit on routine patrol | 71 | 29 |
| 5) Shopping for personal items on duty | 39 | 61 |
| 6) Drinking on duty | 90 | 10 |

N=87

*Some totals may not add to 100 percent because of rounding.

**Indicates a no response.

that an officer engaging in these "petty" forms of corruption may be started on a progression toward more serious ones. Police corruption for many officers often begins with the shared belief among the police peer group that "policemen have a right to a break," and the progression along the continuum of corruption is often so gradual that an officer is deeply involved before he realizes it. As table 3 indicates, this belief may not be shared by the respondents. Seventy-three percent of the respondents disagreed with the statement that accepting free coffee is police corruption. Nevertheless, 35 percent of the departments had rules and regulations specifically covering this behavior. It may be that the free cup of coffee is a traditional, accepted, and expected pattern of behavior in many of the responding departments. As the authors have heard on many occasions, those establishments that give free coffee are "good to the police" and those that do not are not. The implications of being labeled as "not being good to the police" are obvious. For the remaining examples of corruption of authority—free admission to movies, accepting Christmas gifts, and accepting free meals—the majority of the chiefs are either undecided or disagree with the acts being examples of police corruption, except that of an officer accepting free meals. In the last example a small majority, 51 percent, agreed that this is police corruption.

The second example of corruption was "kickbacks" and included accepting money from bondsmen, lawyers, or wrecker drivers. In each example, well over 50 percent of the respondents agreed that the behavior was police corruption. Ninety-three percent agreed that accepting money from either a lawyer or wrecker driver for referrals was police corruption, and 60 percent believed that accepting money from bondsmen was an act of corruption.

*Table 3*

**POLICE ADMINISTRATORS' BELIEF THAT BEHAVIOR IS AN EXAMPLE OF POLICE CORRUPTION**

| PATTERN OF DEVIANCE | BEHAVIOR IS POLICE CORRUPTION (Reported in %) | | | | | |
|---|---|---|---|---|---|---|
| | STRONGLY AGREE (5) | AGREE (4) | UND. (3) | DISAGREE (2) | STRONGLY DISAGREE (1) | X SCORE |
| CORRUPTION | | | | | | |
| 1) **Corruption of Authority** | | | | | | |
| a. Accepting free coffee | 2 | 7 | 18 | 64 | 10* | 2.32 |
| b. Using badge for free admission to movie | 13 | 24 | 26 | 35 | 2 | 3.12 |
| c. Accepting Christmas gifts | 7 | 14 | 21 | 55 | 3 | 2.65 |
| d. Accepting free meals | 14 | 37 | 24 | 24 | 1 | 3.36 |
| 2) **Kickbacks** | | | | | | |
| a. Accepting money from bondsmen | 30 | 30 | 20 | 20 | – | 3.89 |
| b. Accepting money from lawyers | 42 | 52 | 5 | – | – | 4.33 |
| c. Accepting money from wrecker drivers | 53 | 41 | 1 | – | – | 4.4 |
| 3) **Opportunistic Thefts** | | | | | | |
| a. Taking items from a burglary | 80 | 21 | – | – | – | 4.79 |
| b. Taking articles or money from a victim | 76 | 23 | 1 | – | – | 4.66 |
| c. Taking home found property | 34 | 45 | 17 | 4 | – | 4.07 |
| d. Taking lumber from construction site | 67 | 30 | 1 | 0 | 2 | 4.57 |
| 4) **Shakedowns** | | | | | | |
| a. Accepting money from criminals | 84 | 16 | – | – | – | 4.84 |
| 5) **Protection of Illegal Activities** | | | | | | |
| a. Accepting money from bootlegger or prostitute | 81 | 19 | – | – | – | 4.81 |
| b. Accepting money from drug pusher | 85 | 13 | – | – | 2 | 4.78 |

There was also a general consensus among the respondents that each of the examples of "opportunistic thefts" was police corruption. One hundred percent agreed that taking items from a burglary scene was police corruption, and 99 percent also agreed that taking articles or money from a victim was corruption. Ninety-seven percent agreed that taking lumber from a construction site was police corruption, and 79 percent agreed that taking home found property was also an example of corruption.

For the next six patterns of corruption and their examples, "shakedowns," "protection of illegal activities," "traffic fix," "misdemeanor fix," "felony fix," and "direct criminal activities," there was 100 percent agreement that each of the examples was an act of police corruption, except for accepting money from a drug pusher—one of the examples under "protection of illegal activities." For some unexplained reason, two respondents (2 percent) disagreed with the statement that such behavior is police corruption.

There was also general agreement that both examples of the last pattern, "internal payoffs," were police corruption. Specifically, 82 percent of the respondents believed that giving and/or taking money for easy work assignments was police corruption, and 81 percent agreed that giving and/or taking money for vacation time was police corruption.

**Misconduct**

As was stated earlier, the authors did not define the behavior to be discussed here as acts of corruption because they do not involve any material reward or gain. Again, as with corruption of authority, the respondents did not share our view of the behavior. In four of the six acts of misconduct, over 50 percent of the respondents considered the behavior to be corruption. Specifically, 53 percent believed that sleeping on duty was police corruption, 77 percent believed that hitting a handcuffed prisoner was police corruption, 82 percent believed that sex on duty was corruption, and 82 agreed with the statement that drinking on duty was corruption. The respondents certainly had a more liberal definition of corruption than the authors. We believe that the respondents are responding to how "wrong" or unprofessional they

| | BEHAVIOR IS POLICE CORRUPTION (Reported in %) | | | | | |
|---|---|---|---|---|---|---|
| PATTERN OF DEVIANCE | STRONGLY AGREE (5) | AGREE (4) | UND. (3) | DISAGREE (2) | STRONGLY DISAGREE (1) | X SCORE |
| 6) **Traffic Fix** | | | | | | |
| a. Accepting money from traffic offenders | 73 | 27 | – | – | – | 4.73 |
| 7) **Misdemeanor Fix** | | | | | | |
| a. Accepting money for dismissing case | 71 | 29 | – | – | – | 4.71 |
| 8) **Felony Fix** | | | | | | |
| a. Accepting money for dismissing case | 82 | 18 | – | – | – | 4.82 |
| 9) **Direct Criminal Activity** | | | | | | |
| a. Committing burglary | 87 | 13 | – | – | – | 4.87 |
| 10) **Internal Payoffs** | | | | | | |
| a. Giving and/or taking money for easy work | 41 | 41 | 10 | 6 | 2 | 4.24 |
| b. Giving and/or taking money for vacation time | 33 | 48 | 10 | 6 | 2 | 3.99 |
| **MISCONDUCT** | | | | | | |
| 1) Sleeping on duty | 20 | 33 | 15 | 30 | 1 | 3.36 |
| 2) Hitting a handcuffed prisoner | 50 | 28 | 8 | 12 | 1 | 4.05 |
| 3) Sex on duty | 44 | 38 | 10 | 7 | 1 | 4.14 |
| 4) Driving over speed limit on routine patrol | 7 | 28 | 16 | 44 | 5 | 3.0 |
| 5) Shopping for personal items on duty | 8 | 20 | 22 | 49 | 2 | 2.83 |
| 6) Drinking on duty | 54 | 29 | 5 | 9 | 4 | 4.21 |

N=115

*Some totals may not add to 100% because of rounding.

believe the behavior may be. Consequently, behaviors which violate the respondent's "wrongness" or "unprofessional" standard are equated with corruption. This is basically what one of the authors found in an earlier study.[9] In that study, members of a 50-man police department were asked to indicate on a scale of 0–9 how "wrong" they perceived various forms of police deviance to be. Sleeping on duty and sex on duty received scores of 8 and police brutality and drinking on duty received scores of 9. These scores were the same as the scores for the majority of the patterns of corruption.

For the remaining patterns of misconduct, the majority of the respondents did not believe the behavior was police corruption. Only 34 percent believed that driving over speed limits while on routine patrol was police corruption, and 28 percent believed that shopping for personal items on duty was an act of corruption.

### Reactions to Police Deviance

Table 4 presents a summary of the data dealing with the action the chiefs would take if, and when, instances of police corruption were exposed within their departments. The subjects were presented a fixed choice question dealing with each of the patterns of police deviance. Choices of action were: Take no action, give an oral or written reprimand, suspension, request resignation, press criminal charges, and other. We grouped these actions into four categories ranked by severity of action. The first represents those chiefs who would take no action. The second category, labeled "low," contains those responses of suspension and reprimand. The "medium" category contains those responses resulting in the resignation or dismissal of the officer. Our decision to include the firing of an officer in the "medium" category rather than the "high" category was based on the authors' observations of the effects of a police officer being fired. In numerous "real life" situations observed by the authors, when an officer has been fired from one police department, he is often hired by another. This is especially likely if the officer is a certified police officer, i.e., completed his mandated training and receives his certification by the State's Police Officer's Standards and Training Commission. The possibility that the firing of an officer may mean only short term unemployment for the officer does not warrant placing this action in the "high" category. The "high" category was reserved for only those actions resulting in criminal charges against an officer.

**"In all but one of the examples, the majority of the chiefs would handle police corruption through in-house or departmental action."**

A study of table 4 reveals several obvious patterns in the actions that the police chiefs would take in response to the discovery of police corruption in their respective police departments. The most interesting point is that in only one instance did over half of the police chiefs indicate that they would take "high" action. Only for those officers discovered committing burglaries did 75 percent of the respondents indicate that they would press criminal charges. Even more surprising is the fact that 25 percent of the chiefs surveyed would take action of a "low" or "medium" nature against officers committing violations of such magnitude as burglary. For every pattern, except direct criminal activities (committing burglaries), the majority of the police chiefs would take either no action or action of "low" or "medium" severity. In other words, the chiefs would impose departmental sanctions. There are several dangers inherent in this reliance on "in-house" justice for acts of police corruption, especially the more serious acts. For one, it lessens whatever deterrent effect more severe sanctions might have. In fact, in an earlier study Barker found that there is an inverse relationship between risk and levels of police corruption. The higher the perceived risk, the lower the level of corruption.[10] There is also always the danger mentioned earlier that an officer can be fired from one department for serious violations of the law and be hired by another department. Lax hiring standards can lead to a few "rotten apples" moving from department to department and continuing their corrupt activities. Furthermore, because police departments operate their own criminal justice system, i.e., receiving, investigating, prosecuting, and adjudicating all complaints internally, it is possible for them to operate as a political society unto themselves without control or review by the people. It is also possible that dispensing lenient punishment for serious violations of the law by police officers will provide ammunition to those who argue that the police must be policed by some outside agency because they are unable or unwilling to police themselves.

For those patterns of police deviance defined as police misconduct, the majority of the respondents would take action in the "low" category, i.e., reprimand or suspension. The only instance where the respondents would resort to "high" severity of action is hitting handcuffed prisoners, an example of police brutality. Four percent of the respondents would press criminal charges against the officer. The reactions to police misconduct appear to indicate that even though the majority of the respondents would classify at least four of these acts as police corruption, they place them in a relatively low form of police corruption.

### Summary

The purpose of this study was to survey police chiefs in one State and determine their opinions toward the definition and control of two forms of police occupational deviance, viz, police corruption and police misconduct.

*Table 4*

**POLICE CHIEFS' REACTIONS TO POLICE DEVIANCE GROUPED BY SEVERITY OF ACTION (SHOWN IN PERCENTAGES)**

| PATTERN OF CORRUPTION | NO ACTION | LOW (Suspension & Reprimand) | MEDIUM (Resignation or Firing) | HIGH (Press Crim. Charges) | OTHER |
|---|---|---|---|---|---|
| **Corruption of Authority** | | | | | |
| Free meals | 28 | 68 | 1 | | 4 |
| Free coffee | 77 | 22 | | | 1 |
| Free movie admissions | 41 | 57 | | | 3 |
| Christmas gifts | 60 | 33 | | | 6 |
| **Kickbacks** | | | | | |
| Money from bondsmen | 24 | 57 | 17 | 1 | 2 |
| Money from lawyers | | 45 | 53 | 2 | |
| Money from wrecker drivers | | 47 | 51 | | 2 |
| **Opportunistic Thefts** | | | | | |
| Taking items from burglary | | 2 | 49 | 50 | |
| Money or items from victims | 1 | 6 | 58 | 31 | 4 |
| Taking home found property | 3 | 73 | 19 | 5 | |
| Taking lumber from construction site | | 12 | 44 | 42 | 2 |
| **Shakedowns** | | | | | |
| Money from criminals | | 3 | 60 | 37 | |
| **Protection of Illegal Activities** | | | | | |
| Money from bootlegger or prostitute | | 4 | 67 | 30 | |
| Money from drug pusher | | 5 | 67 | 29 | |
| **Traffic Fix** | | | | | |
| Money from traffic offenders | | 16 | 68 | 16 | |
| **Misdemeanor Fix** | | | | | |
| Money for dismissing case | | 16 | 68 | 16 | |
| **Felony Fix** | | | | | |
| Money for dismissing case | | 4 | 54 | 43 | |
| **Direct Criminal Activity** | | | | | |
| Committing burglaries | | 2 | 22 | 75 | 2 |
| **Internal Payoffs** | | | | | |
| Giving and/or taking money for easy work assignments | | 68 | 30 | | 2 |
| Giving and/or taking money for vacation time | 4 | 73 | 21 | | 2 |
| **Misconduct** | | | | | |
| Sleeping on duty | | 93 | 7 | | |
| Hitting handcuffed prisoners | | 56 | 35 | 4 | 5 |
| Sex on duty | | 55 | 42 | | 3 |
| Driving over speed limit on routine patrol | 4 | 90 | | | 6 |
| Personal shopping on duty | 28 | 70 | | | 2 |
| Drinking on duty | | 46 | 54 | | |

Specifically, we were interested in the existence of written rules and regulations covering the behaviors, whether the chiefs would agree with our manner of categorizing the patterns of deviant conduct, and what action, if any, the chiefs would take if they discovered members of their department engaging in the patterns of corruption or misconduct. We found that a significant number of police agencies had no formal departmental rules and regulations, and of those with rules and regulations, most departments did not specifically mention the patterns of police deviance we outlined. In fairness to the police agencies, we believe that the wording of the question could have functioned to keep the "yes" responses low. Had we substituted the word "cover" for "specifically" in our question, "Departmental written rules and regulations cover this behavior?" instead of "Departmental written rules and regulations *specifically* address or mention this behavior?" the number of departments responding that they had rules and regulations covering the behavior might have been higher. It is also possible that a rewording of the question may have produced higher responses because the chiefs would have dealt with the patterns of deviance under the vague catch-all regulation found in many departments, i.e., conduct unbecoming a police officer. If this is so, we would have gained no additional knowledge about the disciplinary handling of police corruption and misconduct through a rewording of the question. In any event, this is an empirical question which deserves further research.

The results also indicated a general agreement between the authors and the police chiefs over what behaviors constitute police corruption. The most notable exceptions were the police chiefs' classification of behaviors as corruption which are not generally treated as such by most writers on the subject, viz, sleeping, sex, and drinking on duty and hitting a handcuffed prisoner. There appears to be a general consensus in the literature on the subject that there must be some material gain involved before the act qualifies as police corruption. It appears that this group of respondents is not differentiating between "wrongness" and police corruption. They would define any behavior which they believe "wrong" or unprofessional as corrupt. There is some support for this notion from prior research on the topic. Future studies should attempt to discover exactly a standard or standards police administrators would use to define police corruption.

**"... total reliance on departmental action for criminal violations leads to a small group of deviant actors moving from department to department, and ... contributes to the scandal-reform-scandal syndrome observed in many police organizations."**

In our opinion, the most interesting results of our study occur in the manner in which the chiefs would react to police corruption and misconduct. In all but one of the examples, the majority of the chiefs would handle police corruption through in-house or departmental action. The exception was for a police officer committing burglaries, but even here, 25 percent of the chiefs surveyed would handle this criminal act in-house. One can think of several reasons why a chief may opt for departmental action in many cases. In-house disciplinary action is easier to administer and does not require the standard of proof necessary for court proceedings. Departmental action can also function to keep the activities secret or keep the "lid on" a serious problem. This manner of handling errant and criminal police officers may actually contribute to corruption, because it lessens the deterrent effect of more severe punishment and it contributes to a case-by-case or individual-by-individual approach to corruption control when the problem may be widespread throughout the system or organization. We also believe that total reliance on departmental action for criminal violations leads to a small group of deviant actors moving from department to department, and it also contributes to the scandal-reform-scandal syndrome observed in many police organizations.

**FBI**

**Footnotes**

[1] See T. Barker, "Peer Group Support for Police Occupational Deviance," *Criminology,* vol. 13, No. 3, pp. 353-366; T. Barker, "Social Definitions of Police Corruption: The Case of South City," *Criminal Justice Review,* vol. 2, No. 2, pp. 101-110; T. Barker, "An Empirical Study of Police Deviance Other Than Corruption," *Journal of Police Science and Administration,* vol. 6, No. 3, pp. 264-272; W. J. Chambliss, *On the Take: From Petty Crooks to Presidents* (Bloomington, Ind.: Indiana University Press, 1978); J. E. Fishman, *Measuring Police Corruption,* The John Jay Press, Criminal Justice Center Monograph No. 10, New York, 1978; J. C. Meyer, *Complaints of Police Corruption: An Analysis,* The John Jay Press, Criminal Justice Center Monograph No. 9, New York, 1977; A. J. Reiss, *The Police and the Public* (New Haven, Conn.: Yale University Press); J. Rubinstein, *City Police* (New York: Farrar, Straus and Giroux, 1973); L. W. Sherman, *Scandal and Reform: Controlling Police Corruption* (Berkeley, Calif.: University of California Press, 1978).

[2] W. P. McCarthy, *A Police Administrator Looks at Corruption,* The John Jay Press, Criminal Justice Center Monograph No. 5, New York, 1977.

[3] H. Goldstein, *Police Corruption: A Perspective On Its Nature and Control* (Washington, D.C.: Police Foundation, 1975); P. Murphy, "Police Corruption," *Police Chief,* vol. 40, No. 12, pp. 36 et seq; R. Ward, "Police Corruption: An Overview," *Police Journal,* vol. 48, No. 1, pp. 52-54; R. Ward and R. J. McCormack, *An Anti-Corruption Manual For Administrators in Law Enforcement* (New York: The John Jay Press, 1979).

[4] Barker, *Criminology;* Barker, *Journal of Police Science and Administration.*

[5] T. Barker and J. B. Roebuck, *An Empirical Typology of Police Corruption* (Springfield, Ill.: Charles C. Thomas, 1973); Barker, *Criminology.*

[6] Barker, *Criminal Justice Review.*

[7] Barker, *Journal of Police Science and Administration.*

[8] Barker and Roebuck, *supra.*

[9] T. Barker, "Peer Group Support For Occupational Deviance in Police Agencies" (Ph.D. dissertation, Mississippi State University, 1976).

[10] Ibid.

# A Message on Ballistic Protection

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Since the 1960's, the ballistic protective undergarment (BPU) has been available to the law enforcement community. This soft body armor, as BPU's are otherwise known, has been responsible for saving the lives of many police officers. With this extensive exposure and the fact that numerous reports attribute lives saved to BPU's, why don't officers wear body armor on a daily basis? More seriously, why isn't the armor worn by officers on planned raids or when the use of firearms can be expected?

These questions can be better answered after discussing the factors that play an important role in the purchase of BPU's and the attitudes surrounding an officer's decision to wear a vest.

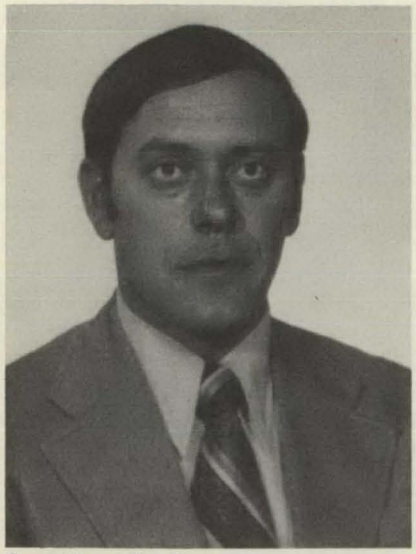
In the early 1970's, the National Institute of Justice of the Law Enforcement Assistance Administration sponsored a body armor wearability program with selected police departments. The institute distributed 5,000 ballistic protective undergarments to 15 police departments across the Nation. For 1 year, officers from the selected departments were to wear the vests "on the street" to determine opinions on wearability. Each vest was constructed of seven plies of Kevlar, a DuPont-developed arimid fiber, and weighed approximately 1½ pounds, affording minimum ballistic protection.

At periodic intervals during the test period, each officer completed a questionnaire designed to canvass his findings. After the evaluations were submitted and computations made, the majority of officers favored wearing the armor continuously.

In 1977, after the National Institute of Justice published technical reports on BPU's, numerous body armor manufacturers escalated their assembly lines to provide the law enforcement community with the much sought after ballistic protective undergarments.

Initially, police officers purchased these vests on an individual basis, followed by numerous department procurements. Some officers, because of resources and lack of research findings, were compelled to purchase a vest from a local supplier, without the opportunity to compare price and protection level against quality. Some individuals and departments were attracted to the seven-ply vest (the "undershirt" model providing minimum ballistic protection) because of ever-present budgetary constraints.

However, before long, both the police officer and his department realized it was imperative for an officer's BPU to protect him against his own service weapon, which in many cases is a .357 magnum. This required the weight of the BPU to be more than tripled, from a 1½-pound undershirt to a 4- to 4½-pound magnum protector.



*Special Agent Pisenti*

Almost immediately, after wearing the new vest for a day or two, officers began to complain about the annoying heat and weight of this garment which might someday save their lives. In many cases, if not a departmental requirement, the vest was removed and thrown in the trunk of a car, never to be worn again.

**The Ins and Outs of BPU's**

To provide the necessary concealability, the BPU is usually attached to the torso by elastic straps and velcro fasteners, which tend to constrict the upper muscle groups and hinder easy breathing. This slight feeling of discomfort can be misconstrued as weight. Repeated wearing can alleviate this problem in much the same way as a person becomes accustomed to changes in seasonal wearing apparel. Therefore, the more important problem must be the amount of heat retention the vest forces on the body, resulting in an excessive amount of perspiration and subsequent discomfort.

The objective, then, would be to obtain BPU's which are as cool and comfortable as possible, although no vest will provide the ultimate of these two conditions. It is also important to consider other factors—factors which could save an officer's life.

The first area of concern is coverage or the extent of body protection against ballistic threats. A number of officers have, in the past, been mortally wounded in the side because the vest did not provide wraparound protection. Since officers are forced, in many cases, to enter dwellings or approach vehicles with the side of their body completely exposed, wraparound protection is a must. Approximately 600 square inches of upper torso coverage (depending on the size of the vest) is desirable.

BPU's can be obtained with either a round neckline or V-neck. The type obtained would depend on the design of an officer's uniform. If the officer wears a uniform with a tie on a regular basis, a round neckline is desirable; those wearing an open collar may find the V-neck more concealable. However, with the V-neck, an officer sacrifices some ballistic protection.

When properly sized, the bottom of the vest should ride approximately an inch above an officer's belt line, when in the standing position. This will provide enough room for the vest to compress when the wearer sits down.

The outside carrier should be constructed of white cotton/polyester for maximum comfort. The color white is a "tropical color" that reflects the light rays of the sun; cotton/polyester, being basic undershirt material, adds to the comfort. A white carrier also affords concealability if the officer wears dress or uniform shirts that would allow a dark-colored carrier to be seen through the fabric. Shirttails on the carrier prevent the armor from shifting on the torso as body positions change.

Because more than 90 percent of shootings of law enforcement officers occur from the front, maximum protection should be afforded from frontal attacks. For complete wraparound protection, the ballistic material should overlap on the side of the torso. However, the overlap tends to create a vulnerable zone should a bullet strike at an angle of zero obliquity at that point. Therefore, the overlap should face the rear of the body.

## ". . . BPU's are designed for situations when a shooting is least expected."

There are also carriers constructed of nylon on the market. Nylon improves the carrier's durability, making it last longer, and if properly sealed, protects the Kevlar from moisture. However, the use of nylon increases tremendously the amount of heat retention in the body. In most cases, a nylon vest will be hot and uncomfortable.

Kevlar is, in fact, the heart of a BPU and must be protected from moisture impregnation. Water, either from a heavy rain or from excessive perspiration, when allowed to saturate the Kevlar, will ultimately lubricate an impacting bullet, permitting it to pass through the armor. Various concepts have been explored to prevent moisture from entering the Kevlar material. Several manufacturers are using the previously mentioned nylon carriers. Some companies enclose the ballistic fabric in some type of water repellent bag. One concept is to treat the cloth with a water repellent solution; another is to use a petroleum byproduct, such as polyvinyl, with hermetically sealed seams. These processes can keep the Kevlar dry, provided a separation doesn't occur in a seam or the bag itself breaks. A prospective buyer must realize that any covering constructed of a vinyl-type material will create an increase in the body perspiration rate.

A more desirable solution is to have a professional processor treat the Kevlar itself with a water repellent process, thereby eliminating the need for any bag or protective covering. However, this treatment to a small degree will increase the rigidity of the Kevlar, but not enough to seriously hamper comfort.

Several layers or plies of Kevlar must be put together in order to protect the wearer. If these plies are allowed to be placed one on top of another without being attached, "bunching" will occur after a bullet's impact. If multiple impacts are made on the armor, a subsequent shot may hit over an unprotected area of the torso. Consequently, it becomes mandatory to affix the plies together by stitching. One method is to run a double stitch around the outer periphery of the ballistic panel. This procedure does hold the panel together, but also reduces the flexibility of the garment. A bar-tacking system of attaching the plies together is very acceptable, inasmuch as it keeps the panel intact as well as provides the necessary pliability to maximize comfort.

With a vest permeated with a water repellent and tacked with proper stitching, it can become extremely wet and still provide the maximum ballistic protection specified on the manufacturer's label.

The U.S. Army Natick Research and Development Command in Natick, Mass., uses excellent test equipment for wearability evaluations. One machine is called the "copper man," which is actually a copper mannequin containing sensitive electronic equipment to measure the amount of heat released from the body.

Another machine, the anatomical load distribution analyzer, is capable of measuring pressure. Inside a vest are distributed 250 tiny sensors which display pressures placed on them through three colored lights located on a viewing screen. The red light indicates 1½ pounds of pressure; the yellow light, 1 pound; the green light, ½ pound. During testing, an individual dons this vest with the BPU to be evaluated placed over the top. By maneuvering through a variety of body positions, e.g., standing, sitting, twisting, and turning, the comfort and wearability of the BPU can be measured and compared with other similar products. Testing is conducted to establish a fabrication process which will result in the least amount of pressure applied by the vest on any part of the torso. This could be evidenced by fewer red lights and more green lights.

Using the above testing procedures to evaluate a variety of armor, it was determined that a Zepel-D-treated Kevlar with a cotton/polyester carrier was the most comfortable and created the least body perspiration.

### Conclusion

Realistically, no armor on the market today will provide as much comfort as not wearing a vest at all. By realizing that a BPU will only stop bullets if it is worn and that no law enforcement officer can predict whether he is going to be a target during a workday, an officer must make his own decision whether to wear a vest. However, he should consider the fact that BPU's are designed for situations when a shooting is least expected. Remember: "The life you save may be your own." Only you can make the decision! **FBI**

# Abortion
## A Police Response

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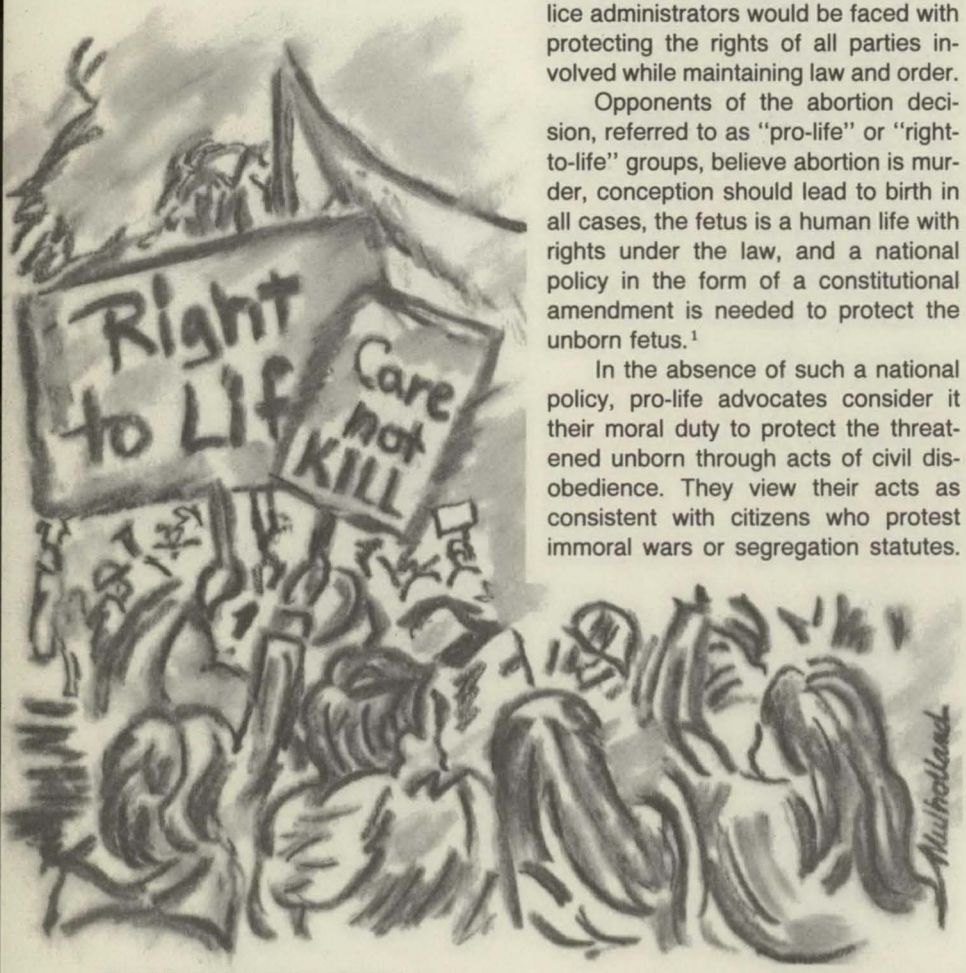


### Issue/Activists

When the Supreme Court ruled in January 1973, that abortions could be legally obtained in the United States with limited restrictions, an emotion-laden line was drawn between proponents and opponents of the Court's decision. It was inevitable, considering the history of this issue, that protest would grow around this decision. Police administrators would be faced with protecting the rights of all parties involved while maintaining law and order.

Opponents of the abortion decision, referred to as "pro-life" or "right-to-life" groups, believe abortion is murder, conception should lead to birth in all cases, the fetus is a human life with rights under the law, and a national policy in the form of a constitutional amendment is needed to protect the unborn fetus.[1]

In the absence of such a national policy, pro-life advocates consider it their moral duty to protect the threatened unborn through acts of civil disobedience. They view their acts as consistent with citizens who protest immoral wars or segregation statutes. They believe their acts are justified in protesting the systematic destruction of the most vulnerable of human species—the unborn child. Acts of trespassing or failure to obey a lawful order of a police officer seem insignificant to individuals convinced they are accountable to a higher order than the State.[2]

Proponents of the Court's decision, in favor of freedom of choice, have a troubling dilemma. They may have supported the civil disobedience of civil rights and antiwar groups, but resent any State interference with the constitutional rights of women to choose abortion freely. The "freedom-of-choice" group believes all children born should be wanted, individual circumstances and conscience should dictate the decision, abortion is a personal matter outside the State's purview, and human life does not begin with conception. Hence, abortion is not murder, but a medical procedure.[3]

As these two groups struggle to defend what each considers an "inalienable right" (freedom of speech, freedom of assembly, freedom to obey their moral dictates), the police administrator must establish a position upon which these constitutional guarantees can be protected without abuse of others or unlawful acts. It is a mistake for police personnel, whether managers or officers, to ally themselves with either position.

### Escalation of Tactics

Following the pattern of earlier antiwar and civil rights activists, pro-life groups in the St. Louis metropolitan area have experienced frustration in

*Colonel Kleinknecht*

*Major Mizell*

recent years over unrealized goals. This has led to an escalation of tactics. Citizens who had been content to walk informational picket lines, hand out literature, and bring their views to the media through traditional methods found themselves trespassing on private property and ignoring the instructions of the police. What began as peaceful, lawful acts turned into confrontations and unlawful behavior requiring the attention and resources of the St. Louis County Police Department.

While police personnel were capable of responding to the assaults, trespassing, etc., of greater concern was the potential violence inherent in a large crowd, complete with leaders and a high emotional quotient. No matter how peacefully assembled or important the issues, even well-meaning, law-abiding citizens can become unpredictable when part of a crowd.

**Police Response**

The first abortion clinic in the St. Louis area opened in the City of St. Louis immediately following the U.S. Supreme Court decision of 1973. Opponents of this decision focused their resources and efforts at this clinic until the owners obtained a restraining order from the court. The pro-life group then moved its operation several miles to the unincorporated area of St. Louis County. The group did not change strategies, but simply crossed jurisdictional lines and continued their protest. When the number of arrested persons mounted to over 100, the group moved their protest to University City and eventually to the City of Bridgeton.

At each of these clinics, the pro-life members began their protest by peacefully demonstrating outside the building. Next, they entered the building without the owner's consent, refused to leave when requested to do so, and blocked entrances and exits. At the clinic in unincorporated St. Louis County, this action continued each Saturday for nearly 4 months. On anniversary dates significant to the pro-life group, the crowd would number nearly 200 persons. The size of the group was dependent on weather conditions and the response by the freedom-to-choice group.

Unlike the majority of police responses, the ongoing activities of pro-life members permitted advance coordination of police resources and tactics. The time was used to plan an ongoing response which would enforce county ordinances and State statutes without a threat to life and property. At the same time, demonstrators were able to exercise their rights.

While there may be alternative police responses which would achieve the same objectives, the police administrator should begin by:

1) Meeting with the building owners and tenants,

2) Studying the physical layout of the demonstration site,

3) Planning deployment of patrol personnel,

4) Learning the identity and method of operation of the leaders,

5) Providing instructions for onsite supervisors,

6) Monitoring the police response on a daily basis, and

7) Seeking legal advice and instruction from legal counsel representing the police agency.

The owner of the building should be contacted in person to assure police protection will be given the facility,

**"Owners and employees of the adjacent businesses, as well as the abortion facility, should have their legal rights explained and should be told what the police can or cannot do in each circumstance."**

and every effort made to prevent normal business operations from being disrupted. It is the owner's responsibility to post signs in the exterior areas indicating that only patients and others with appointments have the legal right to enter the building, parking lot, or property. These signs should be in a conspicuous area and of sufficient size to strengthen a trespassing arrest.

The owner or agent of the abortion clinic (employee, tenant, or tenant's employee) should be instructed to use the same wording when warning trespassers. This will lessen the chance of confusion in court testimony as to what the trespassers were told. The owner or his agent should *ask the patient* trying to enter the clinic, "Do you want to enter this office?" If the answer is in the affirmative, the owner or his agent should tell the trespasser that he is blocking the entrance and ask him to move. If the trespasser does not comply with the request, the police officer should repeat the above and add that he will have to arrest the person for trespassing and failure to obey a lawful order of a police officer, if he does not clear the entrance so that the patient may enter. It is the responsibility of the owner to lend support in the prosecution of all arrested persons.

In addition, personal contact should be made with adjacent businesses. The importance of notifying the police of assembling demonstrators in advance should be stressed. Contacts should be renewed over the weeks and/or months to monitor any problems before they become critical. Owners and employees of the adjacent businesses, as well as the abortion facility, should have their legal rights explained and should be told what the police can or cannot do in each circumstance.

It is important for police personnel to identify the leadership of the group. This can be accomplished by personal contacts at the protest site or reviewing newspapers, especially those published by religious groups. Newspapers can possibly alert the police to key dates and planned demonstrations.[4]

Communication with the leaders of these groups will be beneficial in the exchange of information. You should explain the police department's position that as long as the demonstrators refrain from unlawful acts, their rights to demonstrate peacefully will be protected. If an unlawful act is observed, the police will do their job—arrest the violator.

Police personnel can also seek the cooperation of group leaders in identifying those people within the group who can be relied on to manage or control the group should the need arise. Recommend to the leaders that these marshals should wear some type of identification and should be trained to intervene if they observe other members becoming abusive or violating any preagreements. These marshals should be able to relay police instructions in a nonthreatening manner to the rest of the group.

### Police Personnel

After the police commander has visited the demonstration site and determined how and in what numbers police personnel will be deployed, he should next review the legal issues with his personnel. This should include what constitutes assault, trespassing, and failure to comply with a lawful order.

The police commander should stress the importance of a neutral application of these laws. Personal feelings on the issue have no place in the police response. In some police departments, the assignments may have to be voluntary due to the religious reservations of some officers. In addition, police officers should be instructed to refrain from any response to inflammatory verbal taunts.

### Effecting the Arrest

While the number of officers in the detail depends on the circumstances, one lieutenant, a sergeant, and eight police officers were assigned to cover the demonstrations in St. Louis County. One police officer took up a position *inside* the abortion clinic to insure the safety of the patients; the other officers were stationed at the front and rear entrances.

When illegal action was taken by demonstrators, they were first warned by the owner, his agent, or clinic manager/employee and then by the police lieutenant. After an opportunity to leave peacefully had been exhausted, the officer chosen beforehand to make arrests would inform the individuals they were under arrest and read them their rights. It is important to designate *one* officer to make all arrests and prepare the police incident reports. This procedure proved useful in prosecuting the arrests, since only the lieutenant and arresting officer were required to testify. Other officers were designated carriers to remove the arrestees to prisoner conveyance vans.

To facilitate the large number of arrests, it was necessary to have at the demonstration site prisoner conveyance vehicles, plastic handcuffs, booking equipment, and photographic equipment. When the arrested demonstrators reached the prisoner convey-

ance van, each arrestee was photographed with an identification placard containing name, date, time, and complaint number, along with the arresting officer. Since there were several arrests, sometimes involving the same persons but on different dates, the photographs were available to refresh the officer's memory of the incidents and facts.

Officers assigned to this detail should not display their support of or opposition to any of the individuals participating in the demonstration. Arrestees detained in the prisoner conveyance vans should not be left for a prolonged period of time. This is especially important during summer months in order to avoid charges of inhumane treatment. Likewise, night sticks should be displayed only when necessary.

The influence the leaders have over the group should not be overlooked. Rather than challenging it, the police commander should use the leader's influence to manage the situation.

## Legal Issues

St. Louis County views the arrests made during these demonstrations as simple trespass cases. Those arrested were knowingly present on the property of another and refused to leave when asked to do so by both the owner or his representative and by the police.

From the defendants' perspective, the cases involve violation of a minor law to achieve a greater good, i.e., the saving of human lives. This reasoning—that a crime under certain conditions is not a criminal act if it is committed to prevent injury—is termed "the defense of justification." This defense requires the court to rule, based on the evidence, whether the facts and circumstances do, in fact, constitute justification as set out in the Missouri Revised Statute (MoRS) 563.026.[5] To prove to the court the applicability of this defense, the defendants planned on introducing medical testimony as to when life begins and to show gory photographs of an aborted fetus.

When the county prosecuting attorney learned the strategy to be used by the pro-life defendants, a pretrial motion was filed in an attempt to limit evidence to the issue of trespassing. The motion has the purpose of excluding testimony which the county viewed as inflammatory, prejudicial, and irrelevant to a charge of trespassing.

## Court Response to Date

Municipal courts in St. Louis County to date have yet to levy any fines or sentences in the more than 400 arrests made in the City of Bridgeton or University City. Many cases in St. Louis County have yet to be decided. But, whatever the outcome, as in so many other ironies in police work, the police must continue to enforce the law guaranteeing the rights of all parties involved. The morale problems caused in some police departments using scarce manhours to arrest and rearrest the same protestors should not be overlooked by the police administrator.

While the police officer may have little interest in performing duties perceived as having little to do with crime, protecting the legal rights of all persons involved in an incident should be stressed by all police administrators.

## Summary

The St. Louis County Police Department achieved its objectives—several hundred emotional demonstrators were handled over a lengthy period of time without major injury to anyone. Laws were enforced with a minimum degree of disruption to the clinic and adjacent businesses, while demonstrators were able to exercise their constitutional rights of speech, assembly, and religion. This is a credit to law enforcement professionals called upon to maintain order in an environment often in turmoil. **FBI**

**Footnotes**

[1] Arych Neier, "Theology and the Constitution," *The Nation,* December 30, 1978, p. 726.

[2] Roger M. Williams, "The Power of Fetal Politics," *Saturday Review,* June 9, 1979, p. 14.

[3] Andrew Hacker, "Of Two Minds About Abortion," *Harpers,* September 1979, pp. 16–19.

[4] Police administrators faced with ongoing demonstrations in their jurisdiction should watch precipitating legislative-judicial actions at the national level. For example, pro-life advocates have become more active and recruited members in response to new legislation, such as the Hyde Amendment or the class action suit denying federally funded abortions for indigent patients. U.S. Supreme Court and State supreme court reviews can revive an issue which has become nearly dormant at the local level.

[5] MoRS 563.026 justification (generally). Unless inconsistent with other provisions of this chapter defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute any crime other than a class A felony or murder is justifiable and not criminal when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding the injury outweighs the desirability of avoiding the injury sought to be prevented by the statute defining the crime charged.

The necessity and justifiability of conduct under subsection 1 may not rest upon consideration pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this section is offered, the court shall rule as a matter of law either the claimed facts and circumstances would, if established, constitute a justification.

The defense of justification under this section is an affirmative defense.

# MISSTATEMENTS IN AFFIDAVITS FOR WARRANTS: *FRANKS* AND ITS PROGENY

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

It should come as no surprise to law enforcement officers that some of the information included in an affidavit [1] to establish probable cause for a warrant may later turn out to be incorrect. The necessary reliance on second and third hand sources for the facts and the marshaling of information under exigent circumstances make this true. How does this affect the validity of the warrant? Does it matter that the incorrect information was known to be false? Suppose it is just the result of negligence? What if the incorrect information is not essential in establishing probable cause? Does it make any difference if the fault lies with you as the affiant rather than with someone else who has provided the information? Does the defense have a right to test each of the statements in an affidavit in order to determine its accuracy? This article addresses these questions.

## Early Background

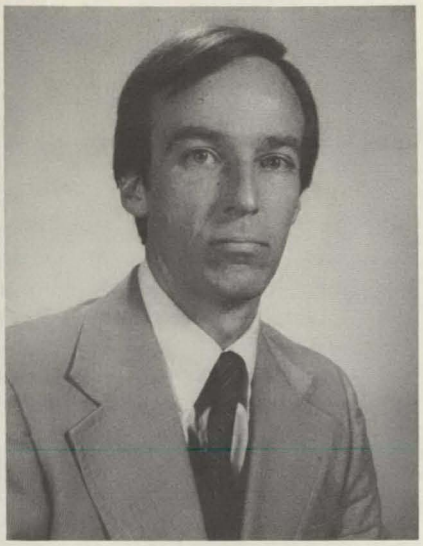
In fourth amendment [2] search and seizure law, the Supreme Court made it clear as early as 1933 that simply because officers act pursuant to a warrant does not insulate evidence seized thereby from being suppressed if the facts presented to the magistrate are deemed insufficient by a reviewing court to establish probable cause. Thus, in *Nathanson* v. *United States,* [3] where the officer's affidavit merely stated his belief that goods subject to seizure were located at the premises of Nathanson, without reciting facts to support such belief, the Supreme Court held that the warrant was not issued upon probable cause. The warrant therefore was declared invalid, and the evidence seized under it suppressed.

The principle that a warrant can be challenged after its issuance was later relied upon by the Court to invalidate arrest warrants [4] as well as search warrants. After *Mapp* v. *Ohio* [5] made the Exclusionary Rule of the fourth amendment applicable to the States, it was similarly relied upon to strike down warrants in State cases.[6] In each of the Supreme Court cases dealing with this issue, the party challenging the affidavit contended that it was insufficient on its face to support a finding of probable cause. In none of the cases was the affidavit attacked on the basis that its statements were not accurate.

It might be said that prior to the Supreme Court's initial analysis of this subject in the 1964 case of *Rugendorf* v. *United States,* [7] there were few cases, State or Federal, stating that the fourth amendment permitted a challenge to the accuracy of statements in an affidavit.[8] The rationale of the courts was that the truthfulness of the allegations in the affidavit had already been considered by the magistrate and that allowing the defendant to contest such before the trial judge would denigrate the role of the magistrate, causing him not to exercise the high degree of responsibility called for in reviewing affidavits.[9] Moreover, it was argued there was already an effective deterrent to an affiant intentionally furnishing false information—he could be prosecuted for perjury.[10]

## *Rugendorf* v. *United States*

In *Rugendorf* v. *United States,* [11] the defendant challenged the accuracy of two statements in a search warrant affidavit. One alleged that the defendant was the manager of a meat market; the other that he was involved with his brother in the meat business. The affiant, a Special Agent of the FBI, had no personal knowledge of these facts. The information came from a fellow Agent who, in turn, derived the first item of information from a police officer and the second item from a confidential informant. In finding the affidavit sufficient to establish probable cause for the search, the Court stated that even "assuming, for purposes of this decision, that such attack may be made" on the affidavit, the factual inaccuracies alleged "were of only peripheral relevancy to the showing of probable cause, and, not being within the personal knowledge of the affiant, did not go to the integrity of the affidavit." [12] The Court thus held that inaccu-



*Special Agent McGuiness*

rate information in an affidavit which is not necessary to a finding of probable cause and which does not impinge upon the integrity of the affiant will not cause a warrant to be invalidated. Of course, *Rugendorf* left unanswered most questions concerning the testing of affidavits.

Following the *Rugendorf* decision, the stone cracked on which this principle of "no challenge" had been etched. The Supreme Court's intimation in *Rugendorf* that an affidavit's accuracy can be challenged was the catalyst for bringing this question before the lower courts. By 1978, approximately 21 States permitted a testing of the affidavit for veracity, as did 10 of the 11 Federal circuit courts of appeals.[13] However, there was a wide variance among the States and among the Federal appellate courts as to what type of initial showing of falsehood was necessary to trigger a hearing on the issue and what type of misstatement would cause the warrant to be declared invalid.[14] This was not surprising, considering the types of mistakes that can develop.

A mistake in an affidavit consists of three components: (1) How the mistake was made—deliberately (or with a reckless disregard for the truth), negligently, or innocently through no one's fault; (2) the significance or degree of the mistake—whether material or immaterial to a finding of probable cause; and (3) the person responsible for the mistake—the affiant (or government source), confidential informant, or a third person (victim, witness, or other private citizen). (See chart 1.) The result of this analysis is that 18 different combinations of mistakes can be put together. Conceivably, there could have been a Supreme Court decision considering each. However, the Court accepted a case in 1978 which was to resolve all of these questions in one decision. Moreover, the court addressed itself to the precise question of what type of factual showing by the defendant was necessary to initiate a hearing concerning the alleged misstatements.

***CHART 1***

**Categorizing Mistakes**

| HOW MADE | DEGREE | MAKER |
|---|---|---|
| 1) Deliberate or made with a reckless disregard for the truth | 1) Material | 1) Affiant—Government Source |
| 2) Negligent | 2) Immaterial | 2) Confidential Informant |
| 3) Innocent—Unavoidable | | 3) Witness or Victim |

**". . . the Supreme Court made it clear as early as 1933 that simply because officers act pursuant to a warrant does not insulate evidence seized thereby from being suppressed. . . ."**

### The *Franks* v. *Delaware* Case (1978)

The factual setting of *Franks* v. *Delaware*[15] was as follows. A woman was raped in her home by an individual who broke in and accosted her at knife point. She gave a physical description of her assailant and described his clothing as consisting of a white thermal undershirt, brown leather jacket, and dark knit cap. The defendant was developed as a suspect, and a search warrant was sought in order to search his apartment for the clothing worn and the knife used in the rape. Part of the probable cause for the search was a statement in the affidavit that the affiants (two city detectives) had contacted the defendant's supervisors at his place of employment, who stated that the defendant's usual attire consisted of a white thermal undershirt, brown leather jacket, and dark knit cap. The description of the assailant's clothing thus matched that given by the rape victim. The warrant was issued, and the evidence seized.

The defendant sought suppression of the evidence on grounds that the aforementioned statement of the supervisors was not true. The defendant alleged that the affiants had never talked to the supervisors as stated in the affidavit, and while the supervisors may have been contacted by a police officer, the information they furnished was "somewhat different" from what was stated in the affidavit. At the suppression hearing, the defendant's counsel sought to call the detectives and supervisors as witnesses on this point. The trial court refused this request and denied defendant's motion to suppress on the basis that Delaware law did not permit a challenge to the veracity of a warrant affidavit at a suppression hearing. The court explained that challenges in Delaware were limited to questions of the sufficiency of the affidavit on its face. The Supreme Court of Delaware ultimately upheld the trial judge's ruling, finding Delaware's rule not to be in violation of the fourth amendment of the U.S. Constitution.[16] The defendant sought and was granted review of his case by the U.S. Supreme Court.

The State of Delaware made several persuasive arguments as to why an affidavit for a search warrant should be beyond attack as to its underlying accuracy.

1) Extension of the Exclusionary Rule to this situation would exact too great a price from society. The Supreme Court responded by saying that a flat ban on exclusion would denude the fourth amendment's probable cause requirement of all meaning.

2) Application of the Exclusionary Rule would overlap existing penalties of perjury and contempt for filing false affidavits. The Court answered that sanctions for perjury are unrealistic, since the district attorney is not going to prosecute that which he may have ordered.

3) Magistrates are equipped to conduct a rigorous inquiry into the truth of an affidavit and a further testing is unnecessary. The Supreme Court disputed this contention, stating that an *ex parte* hearing is not likely to be that rigorous since the magistrate has no information that may contradict that of the affiant.

4) Allowing such a challenge would denigrate the magistrate's function, causing him to be less stringent in his determination. The Court replied that since the affidavit can already be challenged for sufficiency, it did not believe a challenge for truthfulness would in any way diminish the importance of a magistrate's function.

5) Allowing the challenge would confuse, delay, and divert attention from the resolution of the main issue in the case, the guilt or innocence of the accused; the challenge also would be used by the defense as a means of discovery and identification of informants. The Court answered that the rule fashioned by *Franks* would protect against baseless challenges generated simply by a desire for discovery or to learn the identity of informants.

6) To a great extent, accuracy is beyond the ability of the affiant to insure, since facts in an affidavit may come from many different sources. The Court agreed with this contention and indicated that the rule announced would pertain only to the affiant's truthfulness.

Having addressed the State's arguments, the Court moved to a discussion of the rule established by the decision. The Court declared that the wording of the fourth amendment itself suggests the correct resolution of this issue. By stating that probable cause must be supported by oath or affirmation, the fourth amendment necessarily implies that there will be a truthful showing of probable cause. Not truthful in the sense that each statement in the affidavit necessarily will be accurate and correct, since probable cause appropriately may be based upon hearsay and hastily garnered facts, but truthful in the sense that each statement is believed or accepted by the

***CHART 2***

**Warrant-nullifying Mistake**

| HOW MADE | DEGREE | MAKER |
|---|---|---|
| 1) Deliberate or made with a reckless disregard for the truth | 1) Material | 1) Affiant—Government Source |

affiant as true. The Court recognized though the onerous task of proving or defending each statement in an affidavit. Therefore, it held that in order to mount a challenge to the affiant's truthfulness, the defendant must offer proof, (such as statements from witnesses) that the affiant lied or acted with a reckless disregard for the truth with respect to specific statements in the affidavit, and the court to which the challenge is made must determine that such alleged misstatements are material to the establishment of probable cause. If these conditions are met, a hearing must ensue, at which the defendant has the burden of proving by a preponderance of the evidence that the affiant lied or acted with a reckless disregard for the truth. If this is proven, and by omitting the false material, the affidavit's remaining content is insufficient to establish probable cause, the warrant must be invalidated, and the fruits of the search suppressed.

Thus, the Court held that only one type of mistake, that represented by a combination of type 1 factors from the three columns in chart 1, is sufficient to mandate a hearing, and if proven, cause the warrant to be voided. (See chart 2.)

The *Franks* decision seems to reflect a fair compromise between the obligation of truthfulness on the part of law enforcement officers in establishing probable cause and the legitimate concern of the Government to avoid the litigation of groundless issues and the suppression of relevant evidence where the officer is not responsible for a material distortion of the truth.

**Situations Inviting Mistakes**

It is not difficult to conceive of good faith mistakes being made by an officer in the course of assembling facts for a warrant. Affidavits for warrants are frequently prepared in haste and under trying and exigent circumstances, thus inviting errors.[17] The sheer complexity and length of an affidavit may encourage errors. Even the most routine investigation contains the seeds for inaccuracies where the information is obtained second, third, and fourth hand. A few post-*Franks* decisions are illustrative.

In *United States* v. *Crowell,*[18] an officer seeking a search warrant for the defendant's home stated in his affidavit that phencyclidine (PCP) (a controlled substance) was found in the defendant's trash in the form of white crystals. Actually, it was in the form of brown flakes. The court rejected the attack on the validity of the warrant, stating that the discrepancy "appears innocent and a result of simple carelessness. . . ."[19]

In *United States* v. *Tasto,*[20] the facts showed that the defendant had in his home three of the chemicals necessary for the manufacture of PCP. The officer mistakenly averred in his affidavit that if one other chemical were added, PCP could be produced. In fact, three more chemicals were required. The court found that the defendant had not met the burden of establishing that the misstatement was deliberate or reckless and that having observed a significant number of the ingredients necessary for the production of PCP at the house, probable cause was nevertheless established.

*United States* v. *Young Buffalo*[21] illustrates how the sheer volume of material in an investigation can raise the question of error when attempting to synthesize it. The case is also helpful in that it addresses the question of an officer's responsibility to check out facts in his possession. In *Young Buffalo,* the officer, in his affidavit for a search warrant, gave a composite physical description of a bank robber from each of several robberies under investigation, in an attempt to show that it fit the physical description of defendant. The defendant contended that the "composite descriptions" were not consistent with the descriptions actually given by the witnesses and the affiant sought to mislead the magistrate by this tactic. The affiant also averred that the defendant owned a motorcycle fitting the description of that used in one of the robberies and had rented a white-over-maroon vehicle matching the description of one used in another robbery. The defendant alleged that he did not own the motorcycle at the time of the robbery in question (apparently because it was destroyed in an accident), and routine checking by the affiant would have revealed this. Furthermore, he stated the rented vehicle was actually maroon-over-white.

**". . . a defendant has no right under the Due Process Clause of the 14th amendment to routinely demand the identity of a Government informer at a suppression hearing on the issue of probable cause to arrest."**

With respect to the alleged incorrect composites, the appellate court recognized that the affiant was required to sift through a large amount of information from seven robberies in order to synthesize descriptions of the robber. Considering this, the trial judge's determination that the variances were minor and that the affiant had not lied or acted with a reckless disregard for the truth was found not clearly erroneous. Regarding the other alleged inaccuracies, the court found that simply because the affiant learned that the motorcycle had been in an accident prior to the robbery raised no duty to inquire further as to its condition, nor was there a duty to view the rented automobile to confirm its color.

When an officer employs double and triple hearsay to establish probable cause, it is easy to understand how some statements in the affidavit may be erroneous. In *United States* v. *Edwards,*[22] an FBI Agent filed an affidavit for a search warrant. Part of the information for the affidavit came from an agent of the Drug Enforcement Administration (DEA), who acquired it from a Los Angeles police officer, who in turn received it from a customer service agent of an airline. As it was transmitted along the line, the information was slightly changed. The court stated the FBI Agent was not negligent in failing to cross-check the information, and even if he were, such negligence would not be sufficient to void the warrant.

In *United States* v. *Astroff,*[23] the affiant, a DEA agent, was found by the trial court to have been negligent in recounting information from another officer, which was material to probable cause. The DEA agent stated that a railroad police officer reported that inspection of four suitcases in a train's baggage car found them to contain marihuana. Actually, no one had looked inside the luggage. Because of the odor emanating from the suitcases, the contents were suspected of being marihuana. The court nevertheless upheld the warrant because the misstatement, rising only to the level of negligence on the agent's part, was not sufficient to nullify the warrant.

### Misstatements by Fellow Officers and Informants

While the *Franks* decision is a model of clarity, there are a few questions which later cases have addressed and further clarified. As previously noted, the deliberate falsehood that can be challenged is that of the "affiant, not any nongovernmental source." This raises two questions. First, if a person is a government source, such as a fellow law enforcement officer, does this person stand in the place of the affiant for purposes of the *Franks* test?

In *United States* v. *Cortina,*[24] a Federal appellate court impliedly answered this in the affirmative. The court found an intentional misstatement to have been made by one officer to a fellow officer of the same agency who filed an affidavit for a search warrant. The officer-affiant had no knowledge of the misstatement, which related to whether a confidential informant had actually furnished certain information. The court treated the deliberate falsehood as though the affiant himself had made it and struck down the warrant. This notion finds support in *Franks* itself. In reviewing the *Rugendorf*[25] decision, the *Franks* Court stated that *Rugendorf* "took as its premise that police could not insulate one officer's deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity."[26] However, in another post-*Franks* decision, where inaccurate information was relayed from an officer of one agency to an officer of another agency, the First Circuit Court of Appeals stated that the error should not be attributed to the affiant.[27] In this case, however, the misstatement appeared to be the result of simple negligence, not deliberateness.

The second question raised by the phrase "affiant, not any nongovernmental source" is whether a typical criminal informant should also be considered a "government source" whose falsehoods would vitiate the warrant. The Second Circuit Court of Appeals has answered this in the negative. In *United States* v. *Barnes,*[28] an informant provided information which was included in the officer's affidavit. The informant later recanted some of this information, and the defendant made a *Franks* challenge to the affidavit. The court noted that the officer-affiant was unaware that the information was false, and in rejecting the claim, held that "[a]n informant, whether paid or not, is simply not a Government 'agent' "[29] whose false representations will nullify a warrant.

### Reckless Disregard for the Truth

Another phrase requiring some clarification is "reckless disregard for the truth." The Court in *Franks* did not define it, but an appellate court had

occasion to do so in *United States* v. *Davis*.[30] This decision is also instructive on the question of whether omissions of facts can trigger a *Franks* hearing. In *Davis*, the defendant contended that the failure of the affiant to describe the circumstances under which a codefendant furnished information to the Government, which information was used in an affidavit for a search warrant, manifested a reckless disregard for the truth. The circumstances alluded to were as follows: The statements of the codefendant came on the heels of an illegal arrest, promises of leniency were made in return for the information, and it was intimated that a girlfriend of the codefendant might be subject to sexual abuse if sent to a women's detention facility. The court noted that *Franks* had not defined "reckless disregard" and observed:

> "Unfortunately, the Supreme Court in *Franks* gave no guidance concerning what constitutes a reckless disregard for the truth in fourth amendment cases. . . . By way of analogy, however, we can draw upon precedents in the area of libel and the first amendment. In *St. Amant* v. *Thompson*, 390 U.S. 727 (1968), cited with approval in *Herbert* v. *Lando*, 441 U.S. 153 (1979), the Court observed that reckless disregard for the truth requires a showing that the defendant 'in fact entertained serious doubts as to the truth of his publication.' *Id.* at 731. This subjective test may be met not only by showing actual deliberation but also by demonstrating that there existed 'obvious reasons to doubt the veracity of the informant or the accuracy of his reports.' " *Id.* at 732 (alternative citations omitted).[31]

Applying this test, the court concluded that the affiant's failure to include these facts did not amount to a reckless disregard for the truth. Moreover, the court addressed the subject of whether an omission of information could result in an affidavit being challenged and voided. Its language is helpful on this point:

> "In reaching this conclusion, we are not holding that a case never could arise in which an omission would render a warrant susceptible to attack under *Franks*. Police could take a statement so out of context or could engage in conduct so overbearing and suggestive that failure to describe these factors would constitute a deliberate falsehood or a reckless disregard for the truth. Nevertheless, we cannot require officers to describe in minute detail all matters surrounding how they have obtained statements, for such a requirement would make the process of applying for a search warrant a cumbersome procedure inimical to effective law enforcement. Moreover, such a result might encourage rather than discourage improper police behavior: facing ever more stringent requirements for obtaining warrants, police might forego applying for one whenever they think they might have a tenable case for proceeding." [32]

Five other U.S. circuit courts of appeals have also concluded that an omission may cause a warrant to be quashed, but that any such omission would have to be intentional and for the purpose of deceiving the magistrate.[33] Thus, where an officer did not allege the types of cases in which the informant had supplied reliable information in the past, or how the informant concluded that what he saw was in fact narcotics, the court did not find these omissions fatal to a finding of probable cause.[34] The fact that an omission is intentional is difficult to prove. As the Fifth Circuit Court of Appeals explained:

> "Doubtless it will often be difficult for an accused to prove that an omission was made intentionally or with reckless disregard rather than negligently unless he has somehow gained independent evidence that the affiant had acted from bad motive or recklessly in conducting his investigation and making the affidavit. Nevertheless, it follows from *Franks* that the accused bears the burden of showing by a preponderance of the evidence that the omission was more than a negligent act." [35]

**Revealing the Identity of Informants**

A troubling question to the law enforcement community is whether the *Franks* case causes informants to be more readily revealed as a result of challenges to affidavits. The decision itself clearly states that it does not suggest whether a trial court must ever require an informant's identity to be revealed once a showing of falsity has been made. Previously, the Supreme Court held in *McCray* v. *Illinois*[36] that a defendant has no right under the Due Process Clause of the 14th amendment to routinely demand the identity of a Government informer at a suppression hearing on the issue of probable cause to arrest. The post-*Franks* case of *United States* v. *Cortina*[37] deals with the informant's identity in a

**". . . officers should be aware that courts may require an *in camera* hearing to insure the existence of the informant and the fact that the officer has not misrepresented the informant's information."**

*Franks* context, that is, where there is a challenge to the truthfulness of the information establishing probable cause.

A confidential informant furnished information concerning the illegal operations of two businesses. The informant's report consisted primarily of statements she overheard of persons associated with the businesses in which they disclosed certain wrongdoings. The information served as a basis for an affidavit for a search warrant seeking to search such businesses for books and records. The warrant was issued, documents were seized, and the defendants subsequently indicted. Prior to trial, the defendants sought suppression of the documents, contending they never made the statements attributed to them in the search warrant affidavit and furnishing affidavits to this effect. They asked for a *Franks* hearing to prove their contentions. The trial judge, applying principles of the *Franks* case, denied the hearing on the basis that the defendants did not make the threshold showing required by *Franks*. The defendants' offer of proof did not establish that it was the officer who lied; it just as likely could have been the informant.

Later, a determination was made by the Government that the informant would testify at the trial. Pursuant to a discovery requirement, the Government furnished to the defense the officer's statements regarding interviews with the informant. The defense noted that the information attributed to the informant in the affidavit was not reflected in such statements and again sought a *Franks* hearing. The trial judge, confronted with this new evidence tending to show that it may have been the officer who lied, granted the request. As a result of the hearing, the court found that the officer in fact lied with respect to material facts in the affidavit, and the evidence was suppressed. The ruling was affirmed on appeal.

Unlike the *Cortina* case, which denied a *Franks* hearing initially when there was no proof that it was the affiant, as opposed to the informant, who may have lied, the trial court in *United States* v. *Arrington*[38] allowed a full *Franks* hearing to resolve the question. In connection with the hearing, the court examined the officer-affiant *in camera* and was satisfied that the officer had not misstated the informant's information. The court then denied to the defense disclosure of the informant's identity and whereabouts. On appeal, the court affirmed the trial court's resolution of the matter and questioned whether a full hearing was required, since the officer's credibility had not been put directly in issue.

In *United States* v. *House*,[39] the same factual setting as in *Arrington* was present, with the defendant primarily challenging the existence of the informant. Again, a full hearing ensued. The trial court examined a sealed statement of the informant in which the name of the informant was deleted. The trial court ruled that it was satisfied from this examination that the informant existed. The defendant argued on appeal that this was not satisfactory, contending that the Government should have been required to at least identify and produce the informant for an *in camera* examination. On appeal, a Federal court found no error in the trial court's resolution of the disclosure problem.

The same situation was present in the case of *United States* v. *Brian*,[40] with the court taking an approach somewhere between *Cortina* and the *Arrington* and *House* cases. The defendants sought the production of informants and informant files in order to acquire evidence that the officer-affiant lied in the search warrant affidavit. The court recognized the difficulty of mounting a challenge to an affidavit when informant information is involved, because there is no way of establishing that it is the affiant who lied unless the informant is interviewed. The *Brian* court concluded that the proper procedure to resolve these situations is initially an *ex parte*, *in camera* interview of the affiant, and if necessary, of the informant, so that the judge may be assured that the affiant did not perjure himself in the affidavit. If the judge is so satisfied, a full *Franks* hearing need not result.

This approach was also taken by the trial court in *United States* v. *Licavoli*.[41] The defendant challenged the truthfulness of statements contained in an FBI Agent's affidavit for a search warrant, which was based on information from two confidential informants. The defendant alleged that he ascertained the identities of the informants and determined that the information they furnished to the FBI was not as stated in the affidavit. He therefore requested a *Franks* hearing to prove such. Rather than conduct a full hearing, the trial court conducted an *in camera* hearing, interviewing one of the informants and examining an affidavit of the other. The court concluded that it was satisfied that the affiant had not been guilty of any impropriety and denied a full *Franks* hearing. A Federal appeals court found nothing improper in the trial judge's handling of the matter.

## Applying *Franks* in Other Contexts

Is the *Franks* decision, a search warrant case, equally applicable to affidavits for arrest warrants and applications for electronic surveillance? The fifth circuit thought so in *United States* v. *Martin*,[42] where it applied the *Franks* analysis to the challenge of an arrest warrant. Other Federal courts have applied the *Franks* test to orders for electronic surveillance under Title III of the Omnibus Crime Control and Safe Streets Act of 1978.[43]

Two other situations are worthy of mention. In *United States* v. *DePoli*,[44] the defendant sought suppression of evidence resulting from a "mail cover" on grounds that the formal request, required by Post Office regulations, contained allegedly false information. The court denied the hearing because the alleged misstatements, even if proven false, were not material. It intimated that the *Franks* decision should not be extended to cover challenges to statements made in seeking access to information under agency regulations. Similarly, in *United States* v. *Parsons*,[45] the court suggested that the *Franks* decision should not be extended to inaccurate information presented at grand jury proceedings seeking indictments.

## Conclusion

*Franks* v. *Delaware* makes it clear that only where the defense has proof that the affiant lied or acted with a reckless disregard for the truth with respect to some material statement in the affidavit will a hearing regarding such be required. A deliberate falsehood by a nonaffiant, fellow officer may fall within the *Franks* rule, but an informant's misrepresentations will have no effect on the validity of the warrant. To be guilty of "reckless disregard for the truth," the officer must have entertained serious doubt as to the truth of the information he inserted in the affidavit. Deliberate omissions of facts bearing on probable cause will also incur the *Franks* penalty, but a defendant will have a difficult task in proving that the omission was intentional. The post-*Franks* decisions express due regard for the confidentiality of informants, but officers should be aware that courts may require an *in camera* hearing to insure the existence of the informant and the fact that the officer has not misrepresented the informant's information. **FBI**

**Footnotes**

[1] An affidavit is merely a written statement under oath. Black's Law Dictionary 80 (Rev. 4th ed. 1968). While it is usually the case that facts supporting a warrant are reduced to writing, this is not required by the fourth amendment. *See United States* v. *Hill*, 500 F.2d 315 (5th Cir. 1974), *cert. denied*, 420 U.S. 931 (1975).

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

[3] *See Nathanson* v. *United States*, 290 U.S. 41 (1933).

[4] *See Giordenello* v. *United States*, 357 U.S. 480 (1958).

[5] 367 U.S. 643 (1961). The Exclusionary Rule is a term used to describe the remedy of suppressing evidence when it is seized in violation of the fourth amendment. 1 W.LaFave, Search and Seizure, sec. 1.1 (1978).

[6] *See Aguilar* v. *Texas*, 378 U.S. 108 (1964).

[7] 376 U.S. 528 (1964).

[8] *See North Carolina* v. *Wrenn*, 417 U.S. 973 (1974) (White, J., dissenting from denial of certiorari); Kipperman, *Inaccurate Search Warrant Affidavits As A Ground For Suppressing Evidence*, 84 Harv. L. Rev. 825 (1971).

[9] Note, *Testing The Factual Basis For A Search Warrant*, 67 Colum. L. Rev. 1529, 1530 (1967).

[10] *Id.*

[11] *Supra* note 7.

[12] *Id.* at 532.

[13] *See Franks* v. *Delaware*, 438 U.S. 154 (1978) (Appendix B).

[14] *Compare, e.g., United States* v. *Carmichael*, 489 F.2d 983 (7th Cir. 1973), with *United States* v. *Thomas*, 489 F.2d 664 (5th Cir. 1973), *cert. denied*, 423 U.S. 844 (1974).

[15] *Supra* note 13.

[16] *Franks* v. *State*, 373 A.2d 578 (Del. 1977).

[17] *See United States* v. *Axselle*, 604 F.2d 1330, 1336 (10th Cir. 1979).

[18] 586 F.2d 1020 (4th Cir. 1978) (per curiam), *cert. denied*, 440 U.S. 959 (1979).

[19] *Id.* at 1025.

[20] 586 F.2d 1068 (5th Cir. 1978), *cert. denied*, 440 U.S. 928 (1979).

[21] 591 F.2d 506 (9th Cir.), *cert. denied*, 441 U.S. 950 (1979).

[22] 602 F.2d 458 (1st Cir. 1979).

[23] 578 F.2d 133 (5th Cir. 1978) (en banc).

[24] 630 F.2d 1207 (7th Cir. 1980).

[25] *Supra* note 7.

[26] *Supra* note 13, at 163 n.6.

[27] *United States* v. *Edwards*, 602 F.2d 458, 465 (1st Cir. 1979).

[28] 604 F.2d 121 (2d Cir. 1979), *cert. denied*, 446 U.S. 907 (1980).

[29] *Id.* at 151–152 n.16.

[30] 617 F.2d 677 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 967 (1980).

[31] *Id.* at 694.

[32] *Id.*

[33] *United States* v. *Melvin*, 596 F.2d 492, 499–500 (1st Cir.), *cert. denied*, 444 U.S. 837 (1979); *United States* v. *Vazquez*, 605 F.2d 1269, 1282 (2d Cir.), *cert. denied*, 444 U.S. 981 (1979); *United States* v. *Martin*, 615 F.2d 318, 329 (5th Cir. 1980); *United States* v. *House*, 604 F.2d 1135, 1141 (8th Cir. 1979), *cert. denied*, 445 U.S. 931 (1980); *United States* v. *Botero*, 589 F.2d 430, 433 (9th Cir. 1978), *cert. denied*, 441 U.S. 944 (1979).

[34] *United States* v. *House*, 604 F.2d 1135, 1141 (8th Cir. 1979), *cert. denied*, 445 U.S. 931 (1980).

[35] *United States* v. *Martin*, 615 F.2d 318, 329 (5th Cir. 1980).

[36] 386 U.S. 300 (1967).

[37] *Supra* note 24.

[38] 618 F.2d 1119 (5th Cir.), *cert. denied*, 449 U.S. 1086 (1980).

[39] *Supra* note 34.

[40] 507 F. Supp. 761, 765–767 (D.R.I. 1981).

[41] 604 F.2d 613 (9th Cir. 1979), *cert. denied*, 446 U.S. 935 (1980).

[42] *Supra* note 35.

[43] *United States* v. *Vazquez*, *supra* note 33; *United States* v. *Barnes*, *supra* note 28; *United States* v. *Licavoli*, *supra* note 41.

[44] 628 F.2d 779, 784–85 (2d Cir. 1980).

[45] 585 F.2d 941 (8th Cir. 1978), *cert. denied*, 439 U.S. 1133 (1979).

# WANTED BY THE FBI

*Photograph taken 1978.*

*Photograph taken 1980.*

**Cindy Sue Brown**

Cindy Sue Brown, also known as Cindy Sue Baldwin, Cindy Jackson, Sandy Jackson, Cindy Sue Lewis, and Lori Peterson.

**Wanted for:**

Interstate Flight—Murder, Armed Robbery, Probation Violation

**The Crime**

Brown is being sought in connection with the shooting murders of a mother and her 12-year-old son which occurred during an armed robbery.

A Federal warrant was issued for Brown's arrest on January 9, 1981, in Atlanta, Ga.

**Description**

| | |
|---|---|
| Age | 22, born January 12, 1960, Atlanta, Ga. |
| Height | 4'11" to 5'. |
| Weight | 87 to 90 pounds. |
| Build | Small. |
| Hair | Brown. |
| Eyes | Green. |
| Complexion | Fair. |
| Race | White. |
| Nationality | American. |
| Occupations | Cashier, clerk, venipuncturist. |
| Scars and Marks | Scar on left knee. |
| Social Security Nos. Used | 255-13-6772. 255-13-0772. |
| FBI No. | 738 600 V9. |

**Caution**

Brown has been previously convicted on narcotics violations and she should be considered armed and extremely dangerous.

**Notify the FBI**

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

**Classification Data:**

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*Right thumbprint.*

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Investigation
Washington, D.C. 20535

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Title

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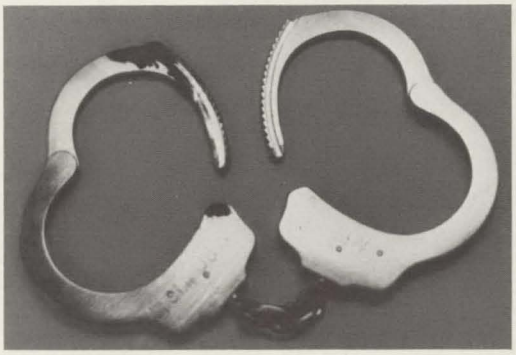
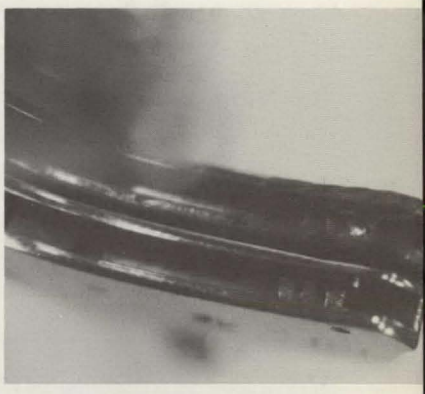
City State Zip

# Chewing Gum Escape

A suspect recently escaped from custody even though one wrist was handcuffed to a chair with metal tubing measuring approximately 1 inch in diameter on the back support. The handcuff was not double-locked, allowing the suspect to ratchet the mobile portion of the handcuff and thereby expose the locking mechanism. Chewing gum was then forced into the ratchets and locking mechanism, which was depressed with an unknown tool, causing the gum-filled ratchet to overide the locking mechanism.

*(Submitted by the Milipitas, Calif., Police Department.)*





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# Interesting Pattern

The pattern presented this month is of interest because of the unusual ridge formation found at the center. The impression is classified as an accidental type whorl with an outer tracing.