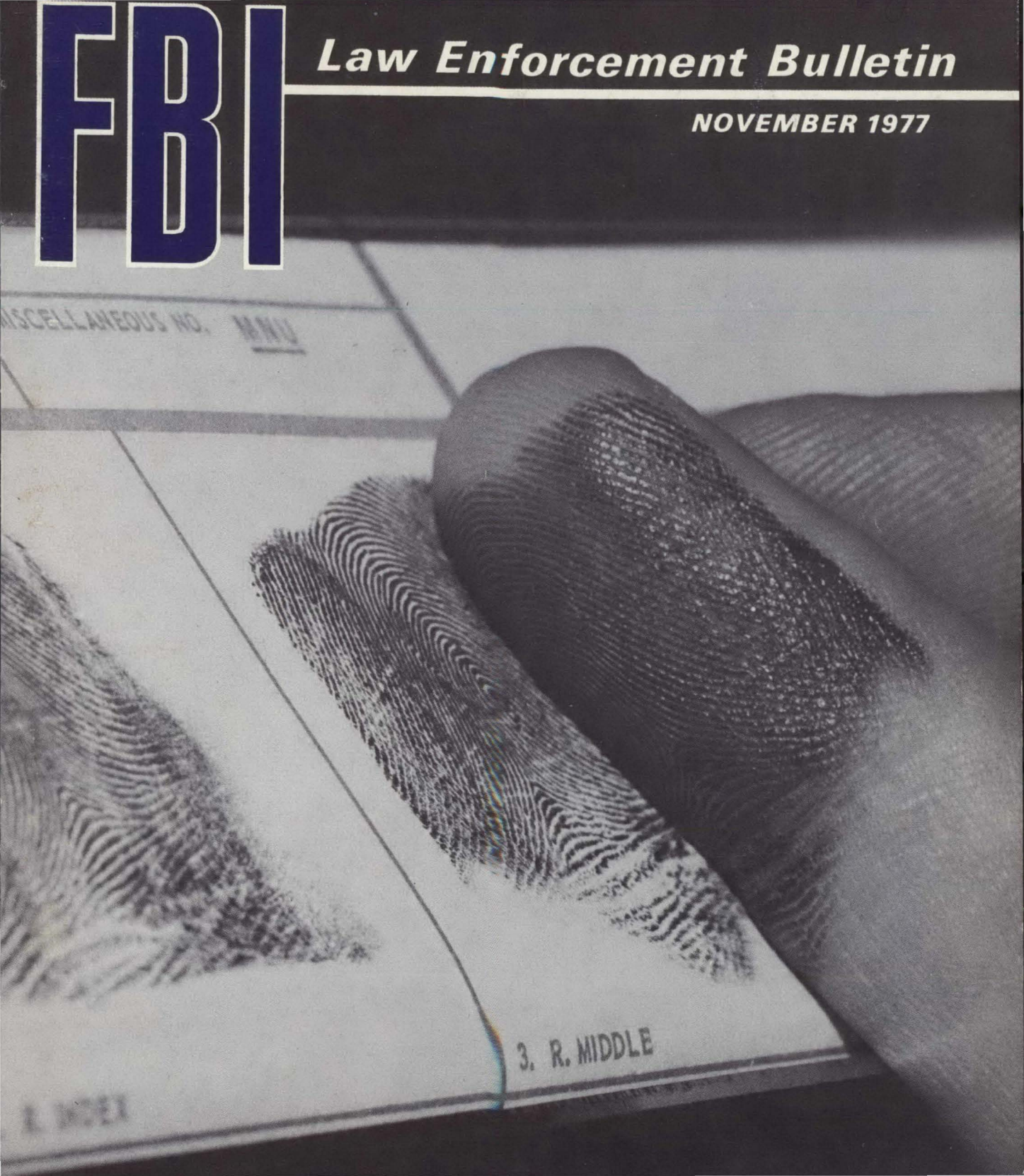
FBI Law Enforcement Bulletin

NOVEMBER 1977



FBI

Law Enforcement Bulletin

NOVEMBER 1977
VOL. 46, NO. 11

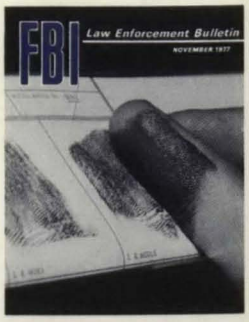
Published by the
FEDERAL BUREAU of INVESTIGATION
UNITED STATES DEPARTMENT of JUSTICE
Washington, D.C. 20535

ISSN 0014—5688

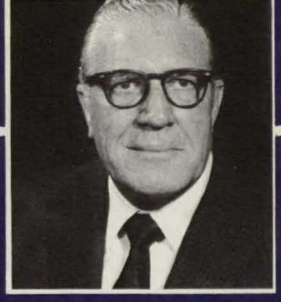
CONTENTS

THE COVER

This month's cover highlights fingerprints. See related article on certification of latent fingerprint examiners beginning on page 24.



From the Director . . .



THE FOLLOWING IS A JOINT STATEMENT of the National Law Enforcement Committee on Operation Identification, which I wholeheartedly support.

The identification and return of stolen property has been a major problem facing law enforcement agencies for decades. In response to this problem, two national organizations representing nearly all of the State, county, and municipal law enforcement administrators—the National Sheriffs' Association (NSA) and the International Association of Chiefs of Police (IACP)—have recently established a committee composed of representatives of the national law enforcement community to find a solution.

Representatives of the Federal Bureau of Investigation, the National Crime Prevention Institute, and the National Conference of State Criminal Justice Planning Administrators met at the invitation of Ferris E. Lucas, Executive Director of NSA, and Glen D. King, Executive Director of the IACP, on July 20, 1977, at the J. Edgar Hoover F.B.I. Building in Washington, D.C.

The committee members determined that law enforcement agencies throughout the United States recover millions of stolen items as the result of criminal investigations and arrests. However, many of the recovered items bear no identifiable markings or serial numbers which could be used to locate or identify the rightful owners. Moreover, in those instances where an item has been serialized by its manufacturer, the average citizen fails to maintain a record of that number.

In 1963, a program was developed to facilitate the identification, recovery, and return of stolen property. This program, commonly known as "Operation Identification," encouraged citizens to mark valuable items with a unique personal identifier so that each item would become more readily identifiable and traceable to its rightful owner in the event of its loss or theft. A number of citizen groups and law enforcement agencies have established Operation Identification programs since that time. However, all of the programs have failed to achieve complete success as the result of one or more of the following shortcomings: (1) Lack of uniformity in the assignment of owner identification numbers; (2) failure to coordinate program activities with other jurisdictions; (3) lack of planning, coordination, or administration of program activities; (4) failure to enlist a significant number of citizen participants in the program; and (5) failure by local law enforcement agencies to utilize Operation Identification as an investigative technique rather than solely as a public relations program.

Recognizing the enormity of the problem of identifying and recovering stolen property, FBI Director Clarence M. Kelley urged the criminal justice administrators who serve on the Advisory Policy Board of the National Crime Information Center (NCIC) to improve the center's capability to facilitate the identification of the owners of stolen property. NCIC is a national computerized information system operated and managed by the FBI, which enables Federal, State, county, and municipal law enforcement agencies to share information with regard to stolen property, wanted or missing persons, and criminal histories. As a result of Mr. Kelley's recommendation, the NCIC Policy Advisory Board recommended that the NCIC files concerning stolen articles be expanded to include an "Owner-Applied Number" along with a full description of the stolen article. Since September 19, 1977,

law enforcement agencies have been able to enter and index any stolen property in the NCIC Article File which is marked with a unique owner-applied number, if that number is reported to the police.

To fully achieve the benefits of the new NCIC capabilities, a nationwide effort to encourage both law enforcement agencies and private citizens to participate in an Owner-Applied Number (OAN) or Operation Identification program is needed, as well as the establishment of a recognized uniform numbering system which will assist in identifying the owner of the property.

The purpose of the newly organized National Law Enforcement Committee for Operation Identification is to promote the involvement of law enforcement agencies in property marking programs as a strategy for discouraging the theft of personal property and a useful technique in criminal investigation.

Without the support and participation of the law enforcement community, such a program cannot succeed. With such support, official and citizen cooperative programs can increase greatly the number of stolen items identified and recovered each year.

A nationwide public information campaign is needed to convince citizens in all parts of the country to participate in property marking. The support of service clubs, labor organizations, civic groups, and private businesses must be enlisted to conduct door-to-door campaigns to assist owners in marking their property in an appropriate manner.

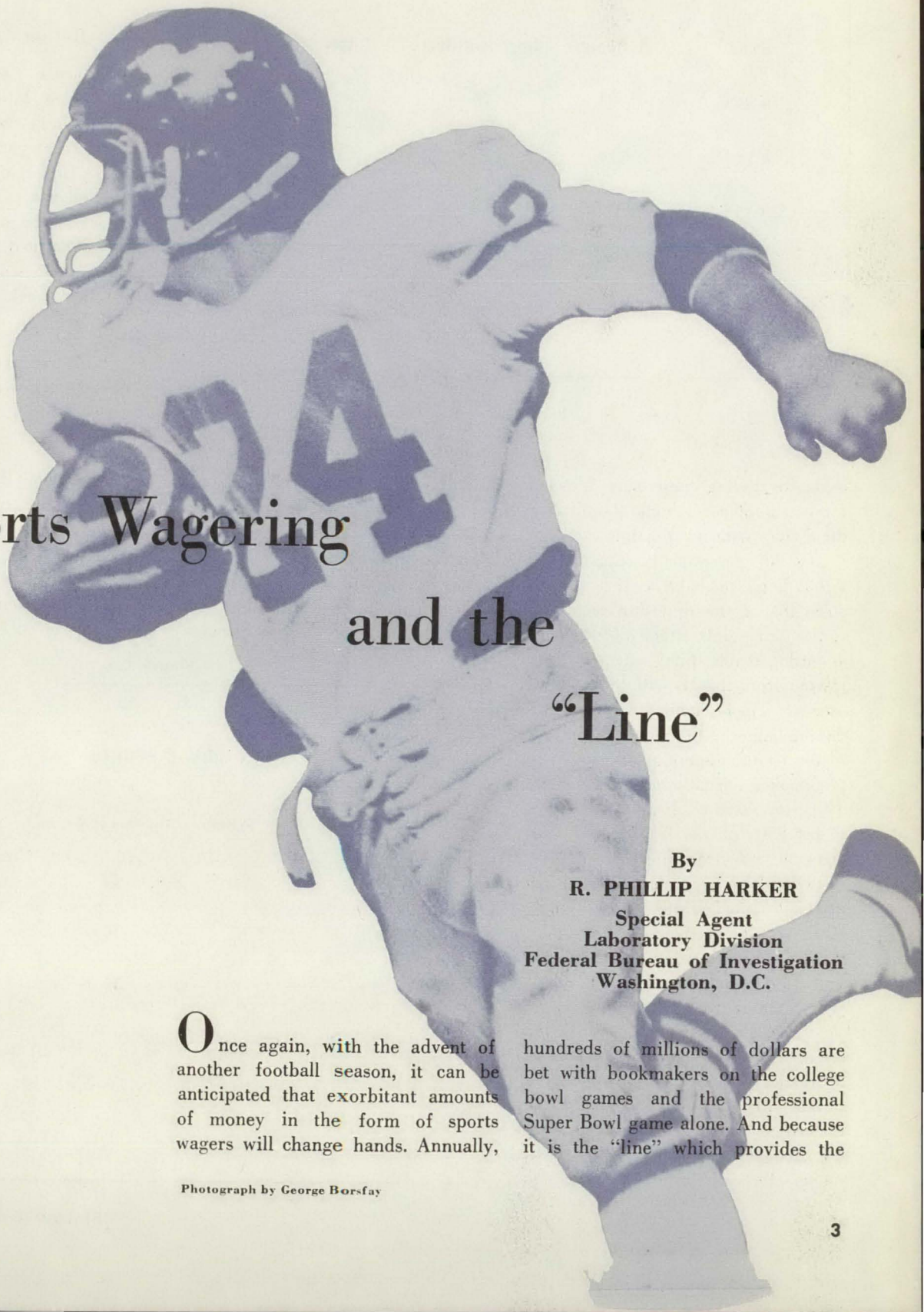
In addition, law enforcement officers must be *trained* to record owner-applied numbers as a part of their descriptions of property stolen in official reports, and they must be able to recognize owner-applied numbers when they recover articles.

Properly administered, and utilizing a nationally accepted uniform numbering system, Operation Identification can assist police administrators in identifying stolen property that has found its way into the legitimate market, returning stolen property to its rightful owners, and gathering direct physical evidence to assist in prosecution of criminal violations involving property theft.

Committee chairperson Ferris E. Lucas reported that the committee in its initial session had identified the following objectives:

1. To develop a uniform owner numbering system that will identify an owner regardless of where he lives or how many times he moves;
2. To prepare and disseminate guidelines for establishing and maintaining successful official-citizen property marking programs;
3. To encourage State and local law enforcement agencies to adopt property marking programs as a crime reduction and criminal investigation technique involving the total law enforcement agency;
4. To provide guidelines for the development of law training programs in property marking and identification;
5. To provide and disseminate to law enforcement agencies a property identification manual that will provide guidelines for establishing local property marking programs, describe the procedures required in law enforcement agencies to establish the program as an investigative technique, and describe what articles would be marked and how and where to mark them; and
6. To encourage manufacturers to mark valuable merchandise and equipment with serial numbers at the time of manufacture, and to encourage retail dealers to assist buyers in marking items purchased with an owner-applied number at the time of sale.

As it proceeds with its assignment, the committee expects to solicit suggestions and advice from law enforcement administrators, business, industry, and citizen groups and will be working closely with the National Crime Information Center and its Advisory Policy Board.



Sports Wagering and the "Line"

By
R. PHILLIP HARKER
Special Agent
Laboratory Division
Federal Bureau of Investigation
Washington, D.C.

Once again, with the advent of another football season, it can be anticipated that exorbitant amounts of money in the form of sports wagers will change hands. Annually, hundreds of millions of dollars are bet with bookmakers on the college bowl games and the professional Super Bowl game alone. And because it is the "line" which provides the

Photograph by George Borsfay

TEAM A SCORES

Game	A Score	Opponent Score	Difference
A vs D	31	26	+ 5
A vs E	24	10	+14
A vs F	17	19	-2
	Final Total Differential		+17
	Average Differential For 3 Games		+5⅔ (17:3)

Figure 1.

basis for taking these bets, law enforcement officers should familiarize themselves with its function.

The line theoretically functions as a handicap to balance the relative strengths of the opposing teams. It consists of points either added to the underdog teams' final scores or subtracted from the favorite teams' final scores. Then again, theoretically having balanced the relative strengths of the teams, wagers are accepted by bookmakers usually at 11–10 odds. Thus, for instance, if a bettor desires to bet $500 on the Washington Redskins at −6 (meaning Washington is favored by 6 points, and 6 points are subtracted from Washington's final score to determine the result of the wager), he would actually risk $550 to the bookmaker's $500.

As stated above, the line is only *theoretically* a balancing of the strengths of the teams. However, as a practical matter, the line is really a number of points, either added to the underdogs' scores or subtracted from the favorites' scores, which the bookmakers feel will tend to attract relatively even amounts of wagering on both sides of the contest. If the bookmaker achieves an even balance of wagering on a game and he has no gamble or risk, his profit is assured of being 10 percent, the "juice" or "vigorish" of the losing wagers. In many cases, a true handicap line or power rating line will approach or approximate the bookmaker's wagering line, *but not necessarily.*

Power Rating Lines

There are several nationally known power rating "lines" or systems. In these systems, the starting point is a comparison of the points scored by and against Team A, which is now playing Team B, with the points scored by and against Team B. This is illustrated in figures 1 and 2, which chart the scores of Teams A and B and their previous opponents.

"There are several nationally known power rating 'lines' or systems."

As illustrated, Team A would have won its games by an average 5⅔ points, while Team B would have lost its games by an average 8 points. Therefore, on the average, Team A would be considered 13⅔ points better than Team B (5⅔+8).

Figure 2.

TEAM B SCORES

Game	B Score	Opponent Score	Difference
B vs G	13	33	-20
B vs H	14	10	+ 4
B vs I	6	14	-8
	Final Total Differential		-24
	Average Differential For 3 Games		-8 (24:3)

A power system would then further refine the point spread by weighing additional factors. For instance, 6 points might be added to B's rating for being the home team, 2 points added because of the injury to A's star wide receiver, 5 points added because the opponents of B were stronger than A's, but 3 points subtracted because of an internal dispute between B's quarterback and center. By combining these refinements ($13\frac{2}{3}-6-2-5+3$), the final rating, Team A favored by $3\frac{2}{3}$ points, is determined.

This example greatly oversimplifies these often complex, computerized systems, but it serves to illustrate the general theory. Our rating could theoretically be used as a wagering line, and depending on the accuracy of the weighing of the various factors, such as home-field advantage, weather conditions, injuries, etc., would be a true handicap. In practice, however, this is never used as a line by bookmakers, although they have reason to be interested in such ratings. Bookmakers are interested because they anticipate their bettors will be aware of the ratings and may follow them. Furthermore, if the bookmaker places reliance on the system, he may decide to allow his book to become unbalanced on a game simply because, though he is forced to adopt generally the bookmaking line (as discussed below), he may feel the betting line is bad and the game will in fact turn out otherwise. For example, if the betting line has Team A favored by 12 points, whereas our power rating shows A to be only about 4 points better, the bookmaker may decide to allow an imbalance of betting on A or even "lay off"—rebet with another bookmaker on B—to create an imbalance in his favor.

Frequently, a rather substantial variance between the betting line and power ratings occurs when a popular team plays a relatively unknown team, when a team from an area where wagering is often huge plays a team from an area where little betting occurs, or when a tremendously strong team plays a very weak one. These instances reemphasize the actual use of a betting line—to attract betting on both sides without necessarily weighing the true strengths of the teams. If, for instance, the power ratings show a team is 50 points stronger than its opponent and if 50 were used as a line, it might completely shut off the betting on the favorite. Many bettors would feel that the favorite would win substantially, but to give up 50 points might be too dangerous. On the other hand, many bettors would bet on any team if they received a 50-point handicap. However, it could be that if the bookmaker used a line of 40 rather than 50, he might now attract favorite-team betting, as well as underdog betting.

Photograph by George Borsfay

Necessity and Development of the National Line

To a great extent, the line is developed in Las Vegas, Nev. Not only may the line be formulated legally there and posted publicly in legal bookmaking establishments, but Las Vegas is the recognized hub of wagering and the clearing house for much of the intelligence information used to develop the line. Persons there, who are instrumental in line development, have vast sources of information about the games, as well as knowledge of major trends or "moves" in game wagering, especially by the so-called "smart" or knowledgeable bettors. Each week in Las Vegas, the football line is developed, legally printed, and published. Thereafter, line information is disseminated almost instantaneously, usually via telephone, to various persons throughout the country. Some bookmakers send a trusted associate to stay in Las Vegas and to call-out the line regularly. Others merely pay a small salary to someone already residing in Las Vegas for performing this service. Although gambling in general is thought to be legal in Nevada, there is still a goodly amount of illegal gambling activity among many, including bookmakers. And these bookmakers may be inclined to disseminate personally, or through agents, line information from Nevada. Whichever of the above means is used, this line information is then relayed nationwide to the local bookmakers or their associates. The bookmakers characteristically share in the cost of the line service.

"Every bookmaker, by necessity, has a source for the Las Vegas line."

Every bookmaker, by necessity, has a source for the Las Vegas line. The line may come directly from Nevada, from Nevada indirectly through one or more other cities, or from other local bookmakers who obtain it from sources ultimately obtaining it from Las Vegas. This accessibility is necessary for several reasons: First, as indicated above, the Las Vegas gambling community is considered extremely knowledgeable in all aspects of line development; and second, since other bookmakers and bettors are also aware of this line, the individual must start out using the Las Vegas line as his basis lest he become immediately out of balance, and hence, unable to lay off. For example, if the bookmaker felt the proper line on a game should be Team A favored by 4 points and used this line for taking bets, and if other bookmakers used the Las Vegas line of 12 points, our bookmaker would find immediately that no one would bet with him on the underdog getting only 4 points;

whereas everyone would bet with him on the favorite giving up only 4 points rather than 12. Thus, he would experience a tremendous imbalance of betting on the favorite, which we have indicated is not a desirable situation. Moreover, he could not lay off with other bookmakers, since he must lay off with them at *their* line, which would be 12 rather than 4. And if he should lay off with the other bookmakers on the favorite giving up 12 points when his imbalance is at 4 points, and if the final score showed Team A winning by more than 4 points but less than 12 points, he would then lose not only his imbalance of bets on the favorite at 4 points, but his layoff bets at 12 points—a very dismal situation generally referred to as being "middled."

When the bookmaker obtains *the* line, he then often adjusts it to suit his needs or makes up *his* line. (See fig. 3.) He may well know his usual bettors and be able to anticipate what volume on various games he can expect. If the line he receives is 4 and he knows that his bettors are likely to bet heavily on the underdog (the hometown favorite, perhaps), he might decide to use 3 or 3½ as his line. Then, as wagering progresses during the wagering period, such as often from Tuesday until Sunday on professional football games, he may vary his line upwards or downwards one-half point at a time to tend to attract betting, or conversely, to discourage betting on the other side, in order to balance the betting. The traditional thought is that the use of half points stems from the bookmakers' desires to eliminate "pushes" (or ties) when the bet is a draw. Although half points do have this effect, the real purpose is to facilitate varying the line by small increments. There is a tremendous difference between a line of 3 and 3½ points, but very little practical difference between 25 and 25½ points.

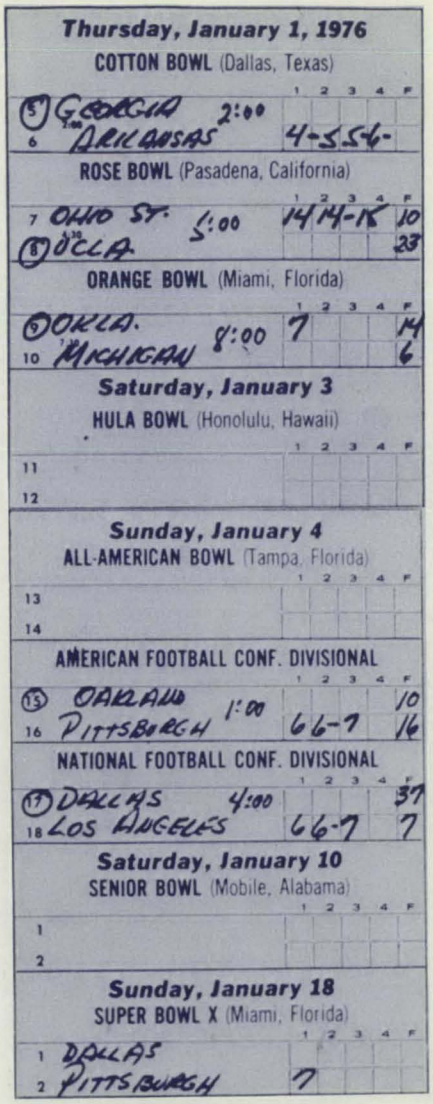


Figure 3.

The bookmaker must know not only the Las Vegas opening line, but he must get frequent updates in the line. A change in the Las Vegas line does not mean that Las Vegas has changed its collective mind as to the anticipated final score (as if the line were a true power rating); it means that there has been an influx of wise money on the game. The bookmaker must be wary of the same influx. Also, the Las Vegas books may either "scratch" a game or "circle" it. To scratch a game means to eliminate further betting or to take it off the board. To circle it means literally to draw a circle around the game on the line sheet, resulting in a limitation of wagering on the game. Bookmakers may take no betting on a circled game or may accept only a limited amount of wagers on it, such as a maximum of $100. In either case, scratching or circling arises because of some unusual factors developing after the opening of betting. These factors include critical injuries, rumors of a fix in the game, or extremely unusual patterns of wagering. This type of information is of vital importance to every bookmaker because by the time he learns of the scratching or circling, he frequently will have been besieged with bets by bettors who have also been privy to the information.

It is worth noting that contrary to popular thought, a crucial injury occurring *after* the opening of betting cannot effectively be handicapped. Bookmakers cannot change the line enough to reflect the value of the loss of a good quarterback, such as possibly 6 or 7 points, or else the bookmaker would be in the position of possibly being "middled," as indicated above. All he can then do is stop further betting and hope for the best.

Likewise, other changes in factors, such as weather and internal disputes, cannot affect the line *after* its opening. These things only cause the game to be scratched or circled. The only factor affecting the line after opening is solely the volume of the wagering.

The question frequently arises as to why a bookmaker cannot use line information published fairly regularly in many newspapers. He cannot for two reasons. First, the bookmakers only trust money. If they could go to the newspapers and bet on the line appearing in it, then they could trust it. However, as far as a bookie is concerned, a line is only a line if he can place bets on it. And second, whatever appears in the newspaper is not timely enough for the bookmaker;

he must be able to learn of the changes in the line immediately and not the next day, at which time he may have already been inundated by smart money.

Cooperation Among Bookmakers

A local bookmaker will remain in almost constant contact with other bookmakers for purposes other than obtaining the national line. Movement by area bookmakers of their lines often indicates the volume of wagering, which the bookie may in turn expect himself. Furthermore, if a bookie expects to lay off to any other bookmaker, he must do so at the latter's line. Consequently, there is a constant exchange of line information among bookmakers, even though technically they are in competition with one another.

Bookmakers also discuss regularly the general volume of betting they are experiencing on various games and transmit hints or rumors about the games, abilities, and financial conditions of certain bettors and the results of contests. This merger of cooperative spirit and competitive effort is a feature unique to bookmaking which, in precise terms, cannot be compared to another form of business activity. Often comparisons are made to insurance companies reinsuring their risks or the Federal Reserve System's movement of money about the system; but since bookmaking is truly unique, these comparisons are inadequate.

Line Changes vs. Layoffs

The two ways a bookmaker tends toward the balance of wagering he desires are either to change his line or to lay off. As stated previously, he often changes the line before opening it, simply in anticipation of the volume of wagering on one side. Thereafter, as the betting progresses, he may choose to vary the line by more than one-half point at a time. Thus, if he is receiving too much wagering on Team A at −4, he may then change the line to Team A at 4½. This will have a tendency to discourage wagering on A and encourage wagering on B. Some bookmakers vary the line only on their judgment; others vary it automatically whenever a certain predetermined imbalance occurs on the game, such as a $500 imbalance.

However, the bookie can accomplish only so much by line changes and may still have what he feels is a dangerous imbalance. Additionally, if he varies his line as much as one-half point, he may run the risk of being "sided," meaning he may lose one side and push or tie the other. If he varies the line one point or more, he may risk being middled or losing both sides, if the final point spread falls in the middle of the two lines. If he cannot achieve a desirable balance by line changes, he can only reach the balance by laying off. The facility of laying off when necessary is a vital feature of bookmaking. Some bookmakers lay off constantly, others only occasionally; but all have the means of laying off when needed. Further, whether a bookmaker lays off or not often depends on his educated opinion as to who will win the game (considering the point spread, of course). The decision may also be affected by his opinion as to the bettors, the respected "smarts," or merely the hometown grads urging their team along with their bets, who are causing the imbalance.

As an example of how a bookie might lay off to achieve an even balance, consider the incoming bets illustrated in figure 4.

It can be seen that the bookmaker's imbalance would be $1,200 on Team A or $1,800−$600. He would, therefore, lay off or bet with another bookmaker on Team A at −4 for $1,200 and be assured of a $60 profit, whichever team won. If Team A won, he would pay his winning bettors $1,800 and collect $660 from his losing bettors, for a loss of $1,140; but he would have won his layoff of $1,200, leaving a net profit of $60. If Team B won, he would collect $1,980 from the Team A bettors, less $600 payoff to the Team B bettors for a gain of $1,380; but he would have lost his layoff of $1,320, leaving again a net profit of $60.

Furthermore, many bookmakers feel that if they have a fairly wide assortment of bettors, they will profit in the long run without laying off, at least on every imbalanced game. This is because they are taking bets on a theoretically even game, including the

Figure 4.

TEAM A-4	TEAM B+4
$500.00	
$300.00	$100.00
$1,000.00	$500.00
$1,800.00	$600.00

1974 COLLEGE FOOTBALL BOWL GAMES

GAME	BETTING LINE	POWER RATING	ACTUAL POINT SPREAD
ASTRO-BLUEBONNET BOWL			
North Carolina State		3	
vs.			
Houston	2½		0
SUN BOWL			
North Carolina			
vs.			
Mississippi State	6½	13	2
PEACH BOWL			
Texas Tech			
vs.			
Vanderbilt	1	10	0
FIESTA BOWL			
Brigham Young			
vs.			
Oklahoma State	10	14	10
GATOR BOWL			
Texas U.	7	3	
vs.			
Auburn			24
SUGAR BOWL			
Florida			
vs.			
Nebraska	12½	17	3
COTTON BOWL			
Penn State	3½		21
vs.			
Baylor		3	
ROSE BOWL			
Ohio State	6½		
vs.			
Southern California		3	1
ORANGE BOWL			
Alabama	10½	13	
vs.			
Notre Dame			2

Figure 5.

handicap, but one in which the bookmaker gets 11–10 odds. For example, if a bookmaker were taking all bets on the flip of a coin characterized by true even odds, but the bettors risked $11 for each $10 the bookie put up, he would not really care how many people bet on heads or how many on tails, even though on any one throw he might lose substantially. However, in the long run, probabilities tell us he would profit almost 5 percent of all money wagered on this even-money proposition at 11–10 odds.

On the other hand, the bookmaker by paying close attention to other bookies' lines can often middle the other bookmakers and win both sides of a game by laying off.

The laying off to achieve an exactly balanced book is fine in theory, but frequently impossible to attain as a practical matter. For just about the time the bookie lays off and reaches the even ratio of bets, he may get a bet on the other side of the game from a regular customer. A bookie will seldom refuse a bet lest he lose his good customer, but rather will just "eat it" or take a gamble, especially in a favorable situation, giving him 11–10 odds.

How Good Are The Oddsmakers?

People often scoff at the "oddsmakers" when a game turns out far differently than the odds. "What do *they* know about it?" they say. But what the public often fails to understand is that the outcome of the game is of small consequence to the linemakers. Their concern is whether the line has stimulated an approximately even amount of betting. It is felt that the most predictable teams to handicap are the professional football teams. Yet, several statistical studies have shown that of the 13 professional games each week, seldom is the line ever within a point of the final score, and only an average of about 4 of the 13 games are within even 6 points of the line.

As an example of comparing the wagering line, a well-known power rating, a predicted final spread from a news media source, and the actual final spread, figure 5 indicates what occurred in the 1974 college football bowl games.

It can be seen that only in the Peach Bowl and Fiesta Bowl games did the betting line come within two points of the final spread. The power rating was within two points only in the Rose Bowl Game. On the other hand, the betting line was off an average of 9.5 points and the power rating 12.4 points.

"The line achieves its overall purpose—to attract hundreds of millions of dollars of wagers annually."

Still the bookmakers are not going hungry. The line achieves its overall purpose—to attract hundreds of millions of dollars of wagers annually.

Use of Deadly Force to Arrest a Fleeing Felon— *A Constitutional Challenge*

By
J. PAUL BOUTWELL
Special Agent
Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

This is the conclusion of a three-part article.

Title 42 U.S.C. 1983 Suits

The essential elements of a section 1983 case are (1) conduct of some *person*, (2) acting under *color of State law*, and (3) which *deprives* another of *rights, privileges, or immunities secured by the Constitution* or laws of the United States. The essence of the action is a claim to recover damages for injury wrongfully done to another person. The liability is personal.

Allegations of misconduct in 1983 suits are drawn from a broad spectrum of rights, privileges, and immunities afforded protection by the Federal Constitution and laws of the United States. The approach is for the complainant to allege a violation of the 14th amendment, section 1, which contains the following language: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The key phrases, "privileges and immunities," and "due process of law," and "equal protection of the laws" are the vehicles by which 1983 protections are usually identified. For example, the guarantee against unreasonable searches and seizures contained in the fourth amendment is applicable to State officers by reason of the "due process" language of the 14th amendment. Thus, an officer acting

"Law enforcement personnel everywhere have a vital interest in what constitutes the legal use of deadly force. Especially is this true of administrators."

contrary to the fourth amendment might be held liable for denying a citizen his constitutional right to due process.

Practically all routine law enforcement work has the potential of becoming the subject of complaint by an irate citizen who demands satisfaction by way of a civil suit under this statute. Therefore, one of the heavy responsibilities of each law enforcement officer is to recognize and protect the rights, privileges, and immunities of persons within the jurisdiction he serves. Section 1983 crystallizes the officer's duty in this respect where constitutional or Federal rights are concerned. Thus, the statute implies that an officer has a specific duty to avoid depriving others of the enjoyment of these guarantees and that, by his failure to comply with that duty, he may incur personal liability for the resulting injuries.

Does this mean that an officer, who is negligent in the use of his firearm, may be sued in Federal court under 1983 for the violation of a constitutional right?

Section 1983 was not intended to be a substitute for State tort action, nor grant a Federal forum for every citizen's claim of injury by a State official. Negligence, as such, is not actionable as a civil rights complaint. The official conduct must deprive another of a constitutional right.[42] Yet, conduct that a State court would classify as negligence has formed the basis of a 1983 suit. Let us look at some examples of constitutional classifications and see how plaintiffs have fashioned their complaints so as to bring

their case into Federal court as a 1983 cause of action.

The Fourth Amendment

The fourth amendment declares in part: "The right of the people to be secure in their *persons* . . . against unreasonable searches and seizures, shall not be violated . . . ." This constitutional provision has long been interpreted to embrace security from arbitrary intrusion by the police. The following case illustrates how one Federal court applied this language to facts that sound of negligence. An officer, after reporting to the scene of a disturbance, observed a young boy leave the scene. The officer pursued, thinking the boy had a gun. The boy carried a tire tool in his hand, which he dropped when the officer yelled for him to "halt." All the witnesses, including the officer, heard the tool drop. The officer testified that as he lowered his gun he accidentally pulled the trigger, putting a hole through the boy's thigh. The district judge found the officer's use of force amounted to gross or culpable negligence; however, he was of the opinion that the plaintiff could not prevail under Federal law since 1983 was not intended as a means of recoupment for injuries caused by the negligence of a State officer acting in the course of his duty. With this the appellate court disagreed. The appeals court reasoned that gross or culpable conduct was the equivalent of arbitrary action; that is, the officer's action was more than just simple negligence. "Our concern here is with the raw abuse of power by a police officer . . . and not with simple negligence on the part of a policeman or any other official." [43] Such arbitrary action is a constitutional violation.

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.

Cruel and Unusual Punishment—The Eighth Amendment

Plaintiffs have also contended that the use of deadly force against a nonviolent fleeing felon is cruel and unusual punishment in violation of the eighth amendment. In a recent case, officers investigating a burglary attempt killed the plaintiff's son as he was fleeing from an arrest. The plaintiff contended that the State statute, which followed the common law "any felony" rule, was unconstitutional on its face and as it was applied because it permitted the administration of cruel and unusual punishment in violation of the eighth amendment. Deadly force can be constitutionally authorized only when necessary to protect "one's own life or safety, or the life and safety of others."

The three-judge court, convened to determine the constitutionality of the State statute permitting the use of deadly force to arrest any felon, held that the statute was not in violation of the eighth amendment. The amendment deals with punishment, and the short answer to the plaintiff's contention was that the State statutes simply were not dealing with punishment. An officer in effecting an arrest cannot use *any* force for the purpose of punishing a person and to do so is a crime under title 18, United States Code, section 242. It may be better as a value judgment to allow nonviolent felons to escape rather than incur the risk of killing them. But that is a policy question for the State legislature, not for the Federal courts to decide in the guise of constitutional adjudication, the court said. The panel went on to hold that the State statute was not unconstitutionally overbroad or vague and was not violative of the equal protection clause of the 14th amendment.[44]

"The use of deadly force by law enforcement officers in effecting an arrest is a well-recognized ground for a 1983 case. Yet, the exact place in the Constitution of a right to be free from such force is not clear and has been the subject of disagreement in the decisions of the Federal courts of appeal."

Due Process

The fifth amendment to the U.S. Constitution provides in part: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ." The 14th amendment applies the same limitation on the States: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

The use of deadly force by law enforcement officers in effecting an arrest is a well-recognized ground for a 1983 case. Yet, the exact place in the Constitution of a right to be free from such force is not clear and has been the subject of disagreement in the decisions of the Federal courts of appeal. Several opinions have expressed the thought that the right arises from the due process clause of the 14th amendment; that is, the right to be secure in one's person, a right to life itself, which stands separate and apart from any specific right found in the Bill of Rights. Such a

right is fundamental and basic to an ordered society and is inherent in the Constitution. It is thus protected by the due process clause. The claim is, therefore, that the State fleeing felon statute violates the due process clause of the 14th amendment because, procedurally, it permits the arbitrary imposition of death by the officer, violates the presumption of innocence, and denies the suspect a right to trial by a jury. Of course, the arguments would apply as well to the use of deadly force against the violent, dangerous felon. Courts, in applying a due process analysis, attempt to balance the interests of society in guaranteeing the right to life of an individual against the interest of society in insuring public safety. They have not agreed on where the balance should be struck.

Two cases illustrate the conflict. Both are from States which follow the common law "any felony" rule, and perhaps best illustrate the constitutional challenge made against the rule. One case is from Connecticut; the other is from Missouri.[45]

Connecticut Case

An officer, while cruising in his patrol car in the ordinary course of his duties, observed an automobile occupied by three young males. Both cars proceeded for several blocks at a lawful rate of speed. Through radio contact, the officer determined the vehicle had been reported stolen. The boys became aware they were being followed and accelerated to about 80 miles per hour. The officer followed in hot pursuit. After traveling several blocks, they reached the end of the road. Both the stolen vehicle and the patrol car slid to a stop, causing a large cloud of dust. Since the occupants of the car were not immediately visible, the officer climbed to the top of a nearby embankment. He observed two men running across a nearby field and called for them to halt. They momentarily turned to face him, but then began to run away. The officer fired his gun at the leg of one of the fleeing suspects, but struck him in the left buttock, causing internal injuries which resulted in his death. It was stipulated that none of the occupants had threatened physical injury to the officer in any manner.

The rule in Connecticut is that an arresting officer may use deadly force if he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes has committed or attempted to commit a felony.[46]

Missouri Case

Two young boys entered the office of a golf driving range at night by means of an unlocked window for the purpose of stealing money. As they departed through a back window, they were intercepted by a policeman. He ordered them to stop, but rather than submit to arrest, they fled in different directions. As another officer, who had just arrived on the scene, rounded the building, he collided with one of the boys. They both fell to the pavement. The officer grabbed the boy's leg, but he broke from the officer's grasp and ran. The officer pursued, but was losing the race. He shouted: "Stop, or I'll shoot," but the boy did not stop. Believing that it was necessary to take further action to prevent escape, the officer fired a warning shot. The bullet, however, struck the youth in the head, causing his death. It was stipulated by the parties that the officer's use of his gun was "reasonably necessary under the circumstances and was authorized by the statutes of the State of Missouri."

The pertinent Missouri statutes read as follows:

"*Justifiable Homicide*

Homicide shall be deemed justifiable when committed by any person in either of the following cases:

* * * * *

(3) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed, or in lawfully . . . keeping or preserving the peace.

Rights of Officer in Making Arrests

If, after notice of the intention to arrest the defendant, he either flees or forcibly resists, the officer may use all necessary means to effect the arrest." [47]

A civil rights action was instituted in each case under title 42, United States Code, section 1983, alleging that the individual officers, acting under color of State law, deprived the fleeing persons of their lives without due process of law. The officers' answers were the same; namely, they acted in good faith plus they had a reasonable basis to believe their conduct was lawful. In each case, the arresting officer simply relied upon the validity of his State statute, which permits a law enforcement official to use deadly force in apprehending a person who has committed a felony.

The plaintiffs' contention was that such statutes as these are unconstitutional, and they should be declared so by the Federal courts. While such declarations may not affect the liability of the current defendants, it would remove the defense of good faith in future damage actions of this kind. They asked the courts in each case to fashion a constitutional standard which would restrict the use of deadly force in effecting an arrest to violent felonies or circumstances where there is substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

In the Connecticut case, the Federal

appellate court rejected the plaintiff's argument: " . . . [S]tates must be given some leeway in the administration of their systems of justice, at least insofar as determining the scope of such an unsettled rule as an arresting officer's privilege for the use of deadly force. Further, in the light of the shifting history of the privilege, we cannot conclude that the Connecticut rule is fundamentally unfair." [48]

In the Missouri case, the Federal district court held that a defense of good faith had been established and therefore denied an award of damages. The court concluded there was no longer a controversy between the parties which would permit the granting of declaratory relief; therefore, the court declined to rule on whether the Missouri statutes were unconstitutional. Even if the statutes were unconstitutional, the court reasoned, the defense was still available to the officer, since he reasonably believed in their constitutionality at the time. No appeal was taken from the denial of damages, but the plaintiff appealed the court's denial of declaratory relief. The Federal appellate court disagreed with the district court and remanded the case for consideration on the merits of the constitutional issue. The good faith defense cannot serve as a reason for denying equitable relief. Furthermore, the appellate court disagreed that the parties lacked sufficient adverse interest. The result of a declaratory judgment in favor of the plaintiff would be to remove the defense of good faith in future damage actions. "Those who would use a statute as a shield must be prepared to defend the constitutional validity of that shield." [49]

On remand, the district court held the Missouri statutes did not violate the U.S. Constitution. To abolish the use of deadly force would deprive the State and its citizens of their rights to security, safety, and a feeling of protection. To pick and choose those crimes warranting the application of deadly force is the duty of the legislature. "It is not the role of a federal judge to legislate for the people of a state." [50]

On the second appeal, the Federal appellate court again reversed and held the Missouri statutes unconstitutional. Statutes as broad as these deny due process in that they create a conclusive presumption that all fleeing felons pose a danger to the bodily security of the arresting officers and the general public. The court reasoned:

> "The police officer cannot be constitutionally vested with the power and authority to kill any and all escaping felons, including the thief who steals an ear of corn, as well as one who kills and ravishes at will. For the reasons we have outlined, the officer is required to use a reasonable and informed professional judgment, remaining constantly aware that death is the ultimate weapon of last resort, to be employed only in situations presenting the gravest threat to either the officer or the public at large. Thus we have no alternative but to find [the statutes] unconstitutional in that they permit police officers to use deadly force to apprehend a fleeing felon who has used no violence in the commission of the felony and who does not threaten the lives of either the arresting officers or others." [51]

On May 16, 1977, the U.S. Supreme Court vacated the judgment of the Court of Appeals and remanded the case with instructions to dismiss the complaint. For a declaratory judgment to issue, there must be a dispute which calls for an adjudication of adverse interest. There was no such dispute in this case. The plaintiff's claim of a present interest was twofold: (1) That he would gain emotional satisfaction from a ruling that his son's death was wrongful; and (2) he has another son, who *if* ever arrested on suspicion of a felony, *might* flee or give the appearance of fleeing, and would therefore be in danger of being killed by defendant or other police officers. As to the first claim, the Court stated that emotional involvement in a lawsuit is not enough to meet the case or controversy requirement, and were the law otherwise, few cases could ever become moot. As to the second claim, the Court stated that such speculation is insufficient to establish the existence of a present, live controversy.[52]

In disposing of the case in the manner described above, the Supreme Court emphasized they were not considering the merits of the court of appeals' opinion. Therefore, the question whether the use of deadly force to apprehend a nondangerous fleeing felon constitutes a violation of the U.S. Constitution remains open. The Missouri case represents the only Federal appellate court opinion which, on the merits, has indicated that it does.

VII. CONCLUSIONS

Critics of the common law rule claim the use of deadly force against a nondangerous fleeing felon is an abuse of deadly force. The possible remedies against such abuse—namely, civil liability or criminal prosecution, or both—are ineffective deterrents. Where the State has a justifiable homicide statute which codifies the common law "any felony" rule, it operates to form a shield for the officer, not only against criminal liability but also against civil liability. Thus, civil courts, while not technically bound to do so, usually recognize in the State statutes a legislative policy toward which they will defer in defining tort liability. Even while doing so one court pointed out: ". . . the preferable rule would limit the privilege

"The administrator should be as concerned with an officer who is afraid to use his sidearm when the situation requires its use as he is with the officer's reckless and unjustified use. He fulfills his administrative duty when he addresses both issues."

to the situation where the crime involved causes or threatens death or serious bodily harm, or where there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed." [53]

Every modern law enforcement executive knows well his duty to insure efficient and effective firearms training before an officer is assigned a weapon. Yet, the executive's responsibility does not rest there. He realizes, in addition, that the officers under his command are entitled to clear and specific instruction on the circumstances under which the use of a firearm is permissible. This takes form in written departmental policy.

One law enforcement executive has remarked that "a policy without teeth is just about as effective as a patrol car with four flat tires." Policy must be reinforced by effective instruction from recruit training at the academy through advanced inservice or firearms training throughout an officer's career.

Notwithstanding departmental policy and excellent instruction in both the skill and proper use of a sidearm, the final decision to use it must rest with the individual officer. That decision will be formed in some measure by his own moral and ethical judgment concerning the use of deadly force. The administrator should be as concerned with an officer who is afraid to use his sidearm when the situation requires its use as he is with the officer's reckless and unjustified use. He fulfills his administrative duty when he addresses both issues.

A recent Police Foundation report [54] makes the point that many departments lack adequate recordkeeping procedures designed to identify and monitor officers' conduct involving the use of excessive force and repeated involvement in shooting incidents. The authors point out ". . . the lack of systematic centralized data collection in many departments inhibits the rational development of new policies, training programs, and enforcement procedures." [55]

One important misconception about deadly force that became evident in the several cases reviewed in this article is that officers think they have the ability to shoot to wound when the person shot at is fleeing the scene. In case after case, the testimony of the officer was to the effect that he actually shot at an arm or leg, but the bullet struck the head, the neck, or the back. One coroner's report stated: "Given a moving target, in a range of seventy-five yards, or less, the target will probably be hit, but not where the gun was aimed. Therefore, the police officer should not think he is going to inflict a nonfatal wound by shooting at an arm or leg. He should fully expect the shot to be fatal." [56]

Contrary to the popular image of police work, a decision to use deadly force against a fleeing suspect is a rare one for most law enforcement officers. Yet, of all the decisions an officer is called upon to make in emergency arrest situations, whether to use deadly force can turn out to be the most agonizing and tormenting of all. Officer Marshall's testimony about his decision to shoot at a fleeing felon, which led to the Connecticut case of *Jones* v. *Marshall*, is a powerful example of the conflicting emotions affecting an officer faced with a decision whether to use deadly force.[57] In another case, the permanent paralysis of a 15-year-old boy who was caught with a stolen car and the distressed emotions of the defendant police officer following the shooting emphasize the tragedy of the legal, but unwise, use of deadly force.[58]

Law enforcement personnel everywhere have a vital interest in what constitutes the legal use of deadly force. Especially is this true of administrators. They should follow any effort to restrict its legal use, whether that restriction comes through legislative reform, their own State court decisions, or continued constitutional attack in Federal courts. Beyond this, the administrator has a more difficult responsibility. He must decide when the use of deadly force is wise and prudent and support that decision with clear policy and effective training.

FOOTNOTES

[42] *Paul* v. *Davis*, 47 L. Ed. 2d 405 (1976).

[43] *Jenkins* v. *Averett*, 424 F. 2d 1228, 1232 (4th Cir. 1970). See also *Reed* v. *Philadelphia Housing Authority*, 372 F. Supp. 686 (E.D. Pa. 1974).

[44] *Cunningham* v. *Ellington*, *supra* note 39.

[45] *Jones* v. *Marshall*, *supra* note 10; *Mattis* v. *Schnarr*, *supra* note 6.

[46] Conn. Gen. Stat., § 53a–22.

[47] Mo. Rev. Stat., *supra* note 18.

[48] *Jones* v. *Marshall*, *supra* note 10, at 142. See also *Wiley* v. *Memphis Police Department*, 548 F. 2d 1247 (6th Cir. 1977); *Wolfer* v. *Thaler*, 525 F. 2d 977 (5th Cir. 1976), *cert. denied* 425 U.S. 975 (1976); *Hilton* v. *State*, 348 A. 2d 242 (Me. 1975).

[49] *Mattis* v. *Schnarr*, *supra* note 6, at 1020.

[50] *Mattis* v. *Schnarr*, 404 F. Supp. 643, 651 (E.D.) Mo. 1975).

[51] *Mattis* v. *Schnarr*, *supra* note 6, at 1020.

[52] *Ashcroft* v. *Mattis*, *supra* note 7.

[53] *Jones* v. *Marshall*, *supra* note 10, at 140.

[54] Police Foundation, "Police Use of Deadly Force" (1977).

[55] *Id.* at 141.

[56] Coroner's Report in *Jones* v. *Marshall*, 383 F. Supp. 358 (D. Conn. 1974), *aff'd* 528 F. 2d 132 (2nd Cir. 1975), reported in Goldstein, Dershowitz, & Schwartz, *Criminal Law: Theory and Process* 331 (1974).

[57] Goldstein, Dershowitz, & Schwartz, *Criminal Law: Theory and Process* 327–30 (1974).

[58] *Schumann* v. *McGinn*, *supra* note 2, at 541.

Law Enforcement Exploring

By
BRIAN D. ARCHIMBAUD
Associate Director
Law Enforcement Exploring Division
Boy Scouts of America
North Brunswick, N.J.

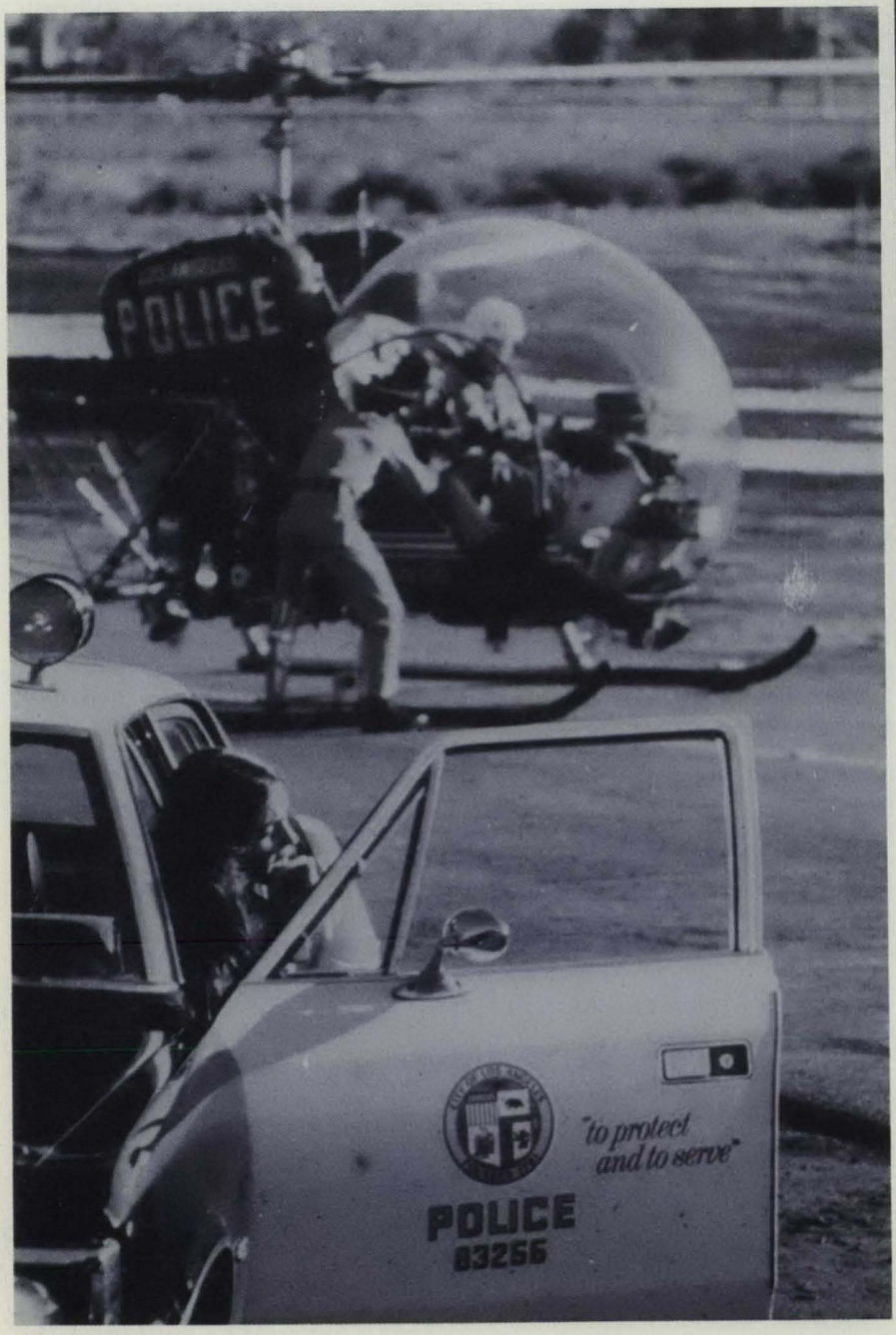
Law Enforcement Exploring introduces young people to the criminal justice field; this program can also provide police agencies improved youth contact, supplemental manpower, and potential recruits.

Explorers' value to sponsoring law enforcement agencies can be specific and dramatic, as exemplified by the actions of two Explorers from Post 1016, chartered by the Los Angeles County Sheriff's Department, who were presented the 1977 Law Enforcement Assistance Award by the U.S. Secret Service. The annual award recognizes an Explorer who has performed ". . . an act which assisted in the prevention or solution of a serious crime or an act which assisted in leading to the apprehension of a felony suspect wanted by a law enforcement agency." Following a shooting incident, these two Explorers called for assistance, warned bystanders, and gave first aid to a deputy shot by the suspects he had been questioning.

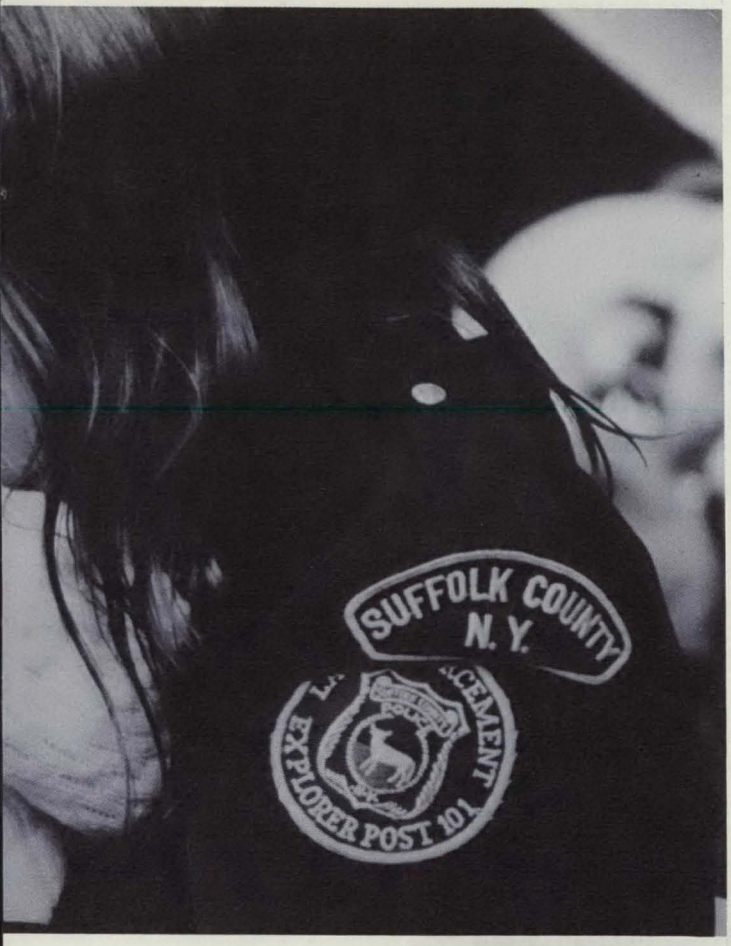
Other nominees for the 1977 award included: An Oregon Explorer who gathered information leading to the arrest of two heroin dealers; a Miami teenager who translated for an officer in an armed standoff with a non-

and
RICHARD C. CLEMENT
Chief of Police
Dover Township
Toms River, N.J.

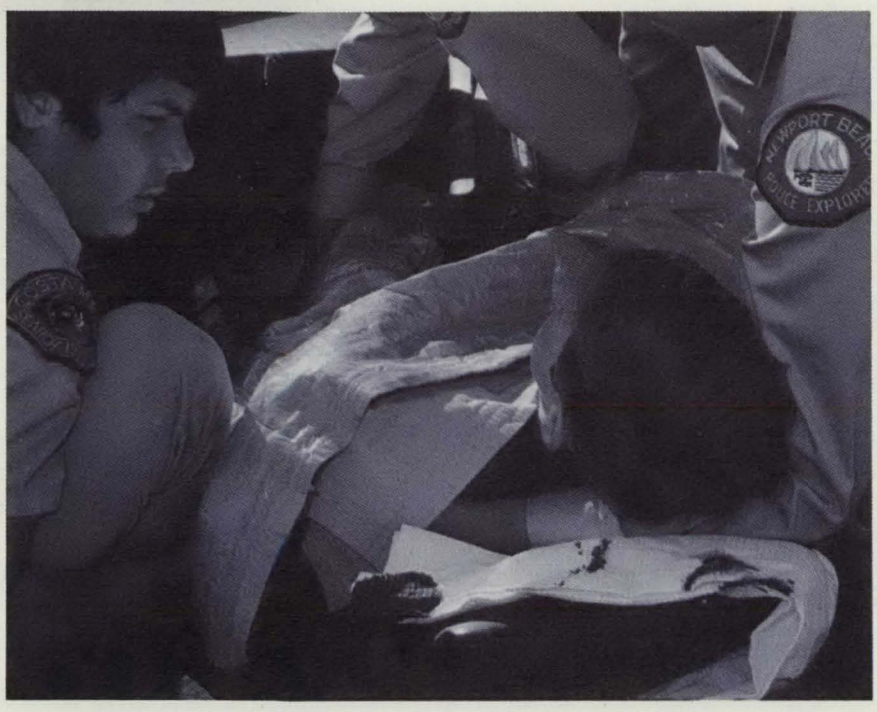
"Explorers are not used in *place* of law enforcement personnel, but to *supplement* them."



"[W]ith the continued supp
community, Law Enforcement
even more service to the publi
and American youth."



"Explorers' value to sponsoring law enforcement agencies can be specific and dramatic . . . ."



the law enforcement g will be able to give nforcement agencies.

English-speaking murder suspect; three young Illinois women who helped locate the body of a murder victim; a Long Island Explorer working a police switchboard who helped detectives track down a very successful antique thief; an Arkansas youth who chased, caught, and subdued an offender who had assaulted two police officers and committed several crimes; and a California Explorer on a ride-along detail who made a timely assist call when the officer and an off-duty patrolman went in foot pursuit of an armed prowler. (The prowler, a prison escapee convicted of several motel burglaries and wanted by the FBI in New York for bank robbery, seriously wounded the off-duty officer.)

Exploring is the young adult division of the Boy Scouts of America (BSA). Tracing its roots back 65 years to the early days of the Sea Scout program, Exploring has continued to evolve and mature to serve the changing needs of American youths. Today, it is a nationwide movement of 350,000 young men and women between the ages of 15 and 21 participating in career exploration programs designed and administered by Exploring, BSA, with the cooperation and support of business, industry, and service organizations.

As a service to high schools, the Exploring Division conducts career-interest surveys in schools across the Nation each spring. Law enforcement perennially scores high on the list of career interests among these surveyed teenagers. Exploring addresses itself to the acute need of young people for solid hands-on career experience. Law Enforcement Exploring assists police and sheriff departments, State police and highway patrol agencies, and private, industrial, and military security facilities in providing these young adults with an introduction to the rewarding careers available in law enforcement.

At present, over 30,000 young men and women are actively enrolled in 1,400 law enforcement posts from Alaska to Florida in communities of every size—from megalopolitan cities to the smallest hamlets. Of the 80 different interest areas that posts explore nationwide, the number involved in law enforcement ranks second only to those pursuing interests in medicine and the allied health fields.

Though Exploring's objectives are those of the Boy Scouts of America—character building, citizenship training, and mental and physical fitness—Exploring departs significantly from traditional scouting. Law Enforcement Explorers wear uniforms similar to those of the agencies that sponsor them. While a prodigious wealth of program support and resources is available from the Exploring Division and local BSA councils, Law Enforcement Exploring does not have an operating manual like the "Scout Handbook," nor does it have an advancement program by levels of skill.

Flexibility is one of the keys to the success of Law Enforcement Exploring, as it operates in a wide variety of law enforcement agencies and environments. Working closely with the local BSA council, the sponsoring law enforcement agency tailors the program to its *own* needs, plus those of the local community. The agency has the responsibility of providing a meeting place, adequate adult leadership, and program facilities and resources. The result: everyone benefits—the Explorers, the agency, and the public.

Training programs can vary greatly, depending upon the resources of the sponsoring agency. The Los Angeles County Sheriff's Department, for example, sends its annual crop of 350 new Explorer recruits through

"Exploring addresses itself to the acute need of young people for solid hands-on career experience."

a demanding 155-hour special academy for Law Enforcement Explorers. Graduates of the 18-week curriculum, which includes such topics as criminal law, radio communications, firearms safety, first aid, narcotics control, fingerprinting, and community relations, are promoted to the rank of Deputy Explorer. The department's impressive "Law Enforcement Explorer Manual: Policy and Procedures" is 30 pages long.

But not all law enforcement agencies can fit this kind of Explorer academy into their budget. Many smaller agencies rely upon more informal, one-on-one training procedures.

Writing in the July 1977 issue of "The Police Chief," Sydney P. Smith, Assistant Police Administrator for Belvedere, Calif., describes one innovative solution to a specific training problem. "The Peninsula Law Enforcement Explorer Academy has risen to meet the needs of metropolitan San Mateo County [Calif.] law enforcement. Its 18 independent jurisdictions of moderate and small size have pooled their resources into a multiple-agency academy system for their collective needs. The result has been a better-qualified Law Enforcement Explorer, a more dedicated and less transient participant, and a uniform standard of economical and excellent training. . . ."

With the exception of training, the Exploring program is designed to pay for itself. Individual Explorers are responsible for paying their own national registration fees ($3.50 annually). Posts raise money for other expenses, such as uniforms, equipment, and the cost of traveling to regional and national meetings, by various fundraising projects, some of which are quite ingenious. For example, Law Enforcement Post 2282 of the Michigan State Police, Bridgeport Barracks, raised over $700 one weekend operating a "Soak a Smokey" booth at a local fair. Troopers wearing fatigue uniforms agreed to sit in a dunking machine rented by the post for the occasion. Law Enforcement Explorer Post 70 of the Syracuse, N.Y., Police Department has hosted an annual race of quarter-midget cars in downtown Syracuse for the past 2 years. In rural Tillamook County, Oreg., Explorer Post 775, Tillamook County Sheriff's Department, raised enough money via a letter-writing campaign to absentee homeowners to buy two radio-equipped vehicles and one four-wheel-drive vehicle for their weekly night security patrols. (See the October 1976 FBI Law Enforcement Bulletin.)

Post 775 has done a tremendous job of helping the Tillamook County Sheriff and his small department bring more effective law enforcement to the county. Elsewhere, Explorers are involved in a wide range of law enforcement activities—from conducting bicycle safety programs with young children to serving as "demonstrators" or "arrestees" in simulated crowd or mass arrest field exercises. Law Enforcement Explorers have been deployed successfully on stationary surveillances. They have contributed significantly to community crime prevention via literature handouts, library research, house and property identification programs, and crime prevention lectures and demonstrations to the public.

At station desks from coast to coast, Explorers answer phones, greet the public, and render a host of administrative services—from filing and sorting to dispatching, translating, and giving guided tours to the public. In other divisions, they provide additional services and conserve manpower by assisting with crowd and traffic control at public gatherings, helping with search-and-rescue efforts, and staffing police information booths at fairs and shopping centers. In ride-along programs, Explorers handle the police radio, help with the paperwork, and double the number of watchful eyes in the cruiser.

Explorers are not used in *place* of law enforcement personnel, but to *supplement* them. Explorers free officers to concentrate on the most important aspects of their jobs. Utilizing Law Enforcement Explorers to their full potential can mean big savings in manpower and dollars for the sponsoring agency.

In addition to their extensive involvement with law enforcement on the local level, Law Enforcement Explorers also travel to State, regional and national training seminars, conventions, and competitions. More than 800 Explorers met recently in Tampa, Fla., for a weekend of friendly, instructive competition. One competitive event tested the Explor-

er's police skills in dealing with a simulated highway accident. Two automobiles, wrecked in an actual collision, were placed near each other. Three or four Explorers from each post were judged on their ability to quickly assess the situation, administer first aid to the "victims" (played by Medical Explorers), use effective crowd and traffic control, call for assistance, and begin the investigation—in short, do everything required of two police officers at a real accident scene.

Law Enforcement Exploring is one of four Exploring specialties to develop its own national organization—the National Association of Law Enforcement Explorers (NALEE). Law Enforcement Explorer delegates campaign for, and elect, new NALEE officers at the National Explorer Presidents' Congress held each spring in Washington, D.C. Florida and Connecticut boast similar State organizations.

Some Law Enforcement Explorers get school credits for their involvement in the program. In September 1976, the Volusia County, Fla., School System accepted the 3-year, 588-hour program of the Daytona Beach Explorer Unit 22 as an accredited class. Explorers in grades 10–12 receive one full vocational credit for each year in the program. Other educational systems throughout the country are in various stages of recognizing Law Enforcement Exploring as a valuable career educational tool.

Law enforcement agencies have realized the several rewards of the program for years. First, Law Enforcement Exploring provides both officers and teenagers an excellent opportunity to reach a better mutual understanding. Terry Wies, a member of Fraternal Order of Police Post 21, Lima, Ohio, and one of six recipients of the 1977 J. Edgar Hoover Foundation scholarships awarded to Explorers embarking on careers in law enforcement, believes, "The most important aspect I've learned is that a police officer is not merely a symbol in a blue uniform, but a human being with real compassion and human problems."

Second, Exploring offers law enforcement agencies a means of recruiting local youth with strong potential for developing into career law enforcement officers. Post Adviser James P. Vuocolo reports that "about 30 percent" of the former members of Post 137, Dover Township Police Department, Toms River, N.J., have gone into the law enforcement curriculum at nearby Ocean County, N.J., Community College. He adds, "Two of our former members are working right now in a Manpower program in the department. Two more have gone into the military police, one is in naval intelligence, and three are on waiting lists to join local agencies. Of approximately 150 Explorers who've been in the post, at least 10–15 are pursuing fulltime careers in law enforcement today."

To find out more about how you can help Law Enforcement Exploring help you, contact your local BSA council or the National Director, Law Enforcement Exploring, Exploring Division, Boy Scouts of America, North Brunswick, N.J. 08904, or phone (201) 249–6000.

Third, Explorers' direct assistance to law enforcement agencies cannot be overemphasized. The East Greenville—Pennsburg, Pa., Police Department employs 7 men and sponsors 25 Explorers in Post 66. Enthusiastic Law Enforcement Explorers can be a godsend to a department with a limited staff and budget.

In a letter to his fellow Law Enforcement Explorers, NALEE chairman Robert L. Tompkins neatly summed up the present state of Law Enforcement Exploring. "There is no end to the capabilities our program has to offer. We have the support and backing of almost all major law enforcement agencies. We have a program that has proven successful over the past decade. But most importantly, we have the teenagers, Explorers, with a sincere interest in law enforcement to make the entire program the most outstanding of its kind in the United States."

In 1976, the Exploring Division, BSA, received a 1-year grant from the Institute for Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration (LEAA). This grant, earmarked for creation of an impact program for Law Enforcement Exploring across the country, made possible: (1) The creation of a national Law Enforcement Exploring Committee; (2) the development of a Law Enforcement Exploring techniques booklet, with publication scheduled for late 1977; (3) a concentrated membership drive within designated local councils in each of BSA's six regions; (4) the identification and contact with a broader spectrum of law enforcement and criminal justice agencies; and (5) the creation of audiovisual and other promotional materials. Refunding is anticipated for another year.

A particularly valuable product of the LEAA grant has been the identification of 37 target sites for intensive development. With the help of LEAA funding, Law Enforcement Exploring should realize a 20 percent increase in membership over an 18-month period. And with the continued support of the law enforcement community, Law Enforcement Exploring will be able to give even more service to the public, law enforcement agencies, and American youth.

Civil Rights Statutes and the Law Enforcement Officer

By
JOSEPH G. KELLY
Special Agent
Federal Bureau of Investigation
Washington, D.C.

Conspiracy Against Rights of Citizens

Section 241, title 18, United States Code, is aimed at criminal conspiracies to injure, oppress, or intimidate citizens in their exercise of federally secured rights:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> "If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> "They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

This is the second part of a three-part article, the conclusion of which will appear in next month's issue.

As a conspiracy statute, it is unique in that the conspiracy alone completes the crime and the statute, unlike the general Federal Conspiracy Statute,[10] does not require proof of an overt act in furtherance of the object of the conspiracy.

The application of section 241 can probably best be seen by comparing it with its companion statute, section 242, title 18, United States Code.

Unlike section 242, which can be violated by one person acting alone, section 241, as a conspiracy statute, requires participation by two or more persons. Section 241 contains no color

of law requirement and can be violated by two or more private persons acting solely in their capacity as private persons.

However, like section 242, section 241 can be violated by persons acting under color of law, as well as by private persons who commit acts prohibited under the statute in concert with individuals acting under color of law, such as in joint activity with agents of the State. Section 241 also requires "specific intent" as an element of proof.

Statutory Rights

Section 241 has been used to enforce statutory rights created by individual Federal laws or statutes, which themselves do not contain criminal sanctions.

Conspiracies to deprive a citizen of a right created by a Federal statute, which statute itself contains no criminal sanctions to punish interference with the right so granted, may, in the absence of an expressed congressional intent to the contrary, be punishable under section 241.

For example, the Homestead Laws, which provide the machinery for obtaining title to land in the public domain upon complying with certain conditions, contain no criminal sanctions to punish those who interfere with the right the statute grants. The Supreme Court of the United States has held that a conspiracy to run a homesteader off his land to deny him his statutory right to obtain title to it, was punishable under section 241.[11]

Constitutional Rights

A misconception is that the rights encompassed in the Constitution and its amendments are secured from interference by private persons, and consequently, all conspiracies by private persons to interfere with such rights come within the ambit of section 241.

The Supreme Court of the United States has held that the prohibitions of the Bill of Rights run only against the Federal Government and its agents, not against private individuals. Similarly, the prohibitions of the 14th amendment run only against the States and their agents, not against private individuals.[12]

The Constitution, of course, deals primarily with the relationship between the Federal Government and State governments and the relationships between those governments and private persons. Consequently, the invasion of the rights of one private person by another private person or persons rarely constitutes a deprivation of constitutional rights, within the meaning of the statute, and section 241 accordingly has very limited application to the conduct and activities of private persons.

The ordinary outbreak of mob violence, private violence directed against members of religious groups, or the denial by students of a public figure's right to speak on campus may appear to be denials of the constitutional rights of freedom of assembly, freedom of religion, or freedom of speech; but in the absence of special circumstances, they are not violations, because such rights are guaranteed only against official action and not against the private behavior of one individual towards another.

Robert Cushman summarized it well in his book *Civil Liberties in the United States:*

> "Constitutional guarantees of civil liberty are in the main protections which the citizen enjoys against abridgement by the action of government, state or national. No individual can possibly violate the federal Bill of Rights, which begins with the words, 'Congress shall make no law,' and which has been held to restrict only the federal government. Nor can an individual violate the Fourteenth Amendment, which clearly says 'no state' shall do the things forbidden. When the civil liberties of the citizen are interfered with by other [private] individuals, in general it is the state government, not the federal government, which can act to prevent or punish this abuse." [13]

Rights of Federal Citizenship

The relatively few rights secured from interference by private individuals have been designated over the years by the courts, which has described them as basic substantive rights of Federal citizenship which are inherent in and flow directly from the personal relationship of the citizens to the Federal Government.[14] These include the right to vote in Federal elections;[15] of a voter in Federal elections to have his ballot fairly counted;[16] to be free from violence while in Federal custody;[17] to assemble and petition the Federal Government;[18] to testify in Federal courts;[19] to inform a Federal officer of a violation of Federal law;[20] to furnish military supplies to the Federal Government for defense purposes; [21] to enforce a decree of a Federal court by contempt proceedings; [22] as a Federal officer, not to be interfered with in the performance of his duties; [23] to be free to perform a duty imposed by the Federal Constitution; [24] and to travel freely from one State to another.[25]

For example, Mr. Justice Stewart in speaking for the Court in the case *United States* v. *Guest* stated:

> "Although the Articles of Confederation provided that 'the people of each State shall have free ingress and regress to and from any other State,' that right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution."

The protection of rights of Federal citizenship is, of course, not restricted solely to instances of interference by private persons. Such rights are also obviously protected from interference by persons acting under color of law.

Because of the extremely limited number of rights which are secured against interference by private persons, section 241 has never been effective in the protection of individual rights from private interference.

14th Amendment Rights

Until the Supreme Court decision in the case of *United States* v. *Price* in March 1966, section 241 was not effectively used to secure 14th amendment rights, particularly in connection with acts of police brutality.

The reason was a continuing dispute between constitutional experts, and indeed, between the Supreme Court Justices themselves, as to what rights were covered under the statute. One view held that section 241 covered only those basic rights of Federal citizenship discussed previously, and consequently, applied only to acts of brutality committed by Federal officers.

Another broader view, advanced in 1951 in *United States* v. *Williams*, was that section 241 covered all constitutional rights, including 14th amendment rights, and consequently, applied to acts of brutality by State and local officers as well.[26]

In the *Williams* case, Mr. Justice Frankfurter voiced the narrower view on behalf of four Justices; Mr. Justice Douglas, the broader view on behalf of four others. The deciding vote was cast by Mr. Justice Black, but on entirely different grounds; namely, that the prior acquittal of all the defendants, except Williams, of the substantive offense (section 242) made the issue of their conspiracy with Williams to violate section 241 res judicata.

As a result, the question as to whether section 241 covered 14th amendment rights remained unanswered, and in the absence of a Supreme Court majority favoring the broader view, the narrower one prevailed.

In the *Price* case, the Supreme Court finally resolved the question it had left unanswered in the *Williams* case 15 years earlier, when it held that where State participation was involved in the conspiracy, section 241 did indeed cover 14th amendment rights, including protection against State action depriving any person of life, liberty, or property without due process of law.

Mr. Justice Fortas, speaking for the Court, stated: "[T]his language [of section 241] includes rights and privileges protected by the Fourteenth Amendment; that whatever the ultimate coverage of the section may be, it extends to conspiracies otherwise within the scope of the section, participated in by officials [agents of the State] alone or in collaboration with private persons . . . ."

(Continued Next Month)

[10] 18 U.S.C. sec. 371.

[11] *United States* v. *Wadell*, 112 U.S. 76 (1884).

[12] *Barron* v. *Baltimore*, 32 U.S. 243 (1833); *United States* v. *Cruikshank*, 92 U.S. 542 (1876).

[13] Robert E. Cushman, *Civil Liberties in the United States, A Guide to Current Problems and Experience*, Cornell University Press, Ithaca, N.Y. 1956 (page 124).

[14] *United States* v. *Williams*, 341 U.S. 70, 104 (1951).

[15] *Ex parte Yarbrough*, 110 U.S. 651 (1884).

[16] *United States* v. *Mosely*, 238 U.S. 383 (1915); *United States* v. *Classic*, 313 U.S. 299 (1941); *United States* v. *Saylor*, 322 U.S. 385 (1944).

[17] *Logan* v. *United States*, 144 U.S. 263 (1892).

[18] *United States* v. *Cruikshank*, *supra* note 12; *Powe* v. *United States*, 109 F. 2d 147 (5th Cir. 1940), cert. denied, 309 U.S. 679 (1940).

[19] *Foss* v. *United States*, 266 F. 881 (9th Cir. 1920).

[20] *In Re Quarles*, 158 U.S. 532 (1895); *Motes* v. *United States*, 178 U.S. 548 (1900); *Nicholson* v. *United States*, 79 F. 2d 387 (8th Cir. 1935); *Hawkins* v. *United States*, 293 F. 586 (5th Cir. 1923).

[21] *Anderson* v. *United States*, 269 F. 65 (9th Cir. 1920), cert. denied, 255 U.S. 576 (1921).

[22] *United States* v. *Lancaster*, 44 F. 885 C.C. W.D. Ga., S.D. (1890).

[23] *McDonald* v. *United States*, 9, F. 2d 506 (8th Cir. 1925); *United States* v. *Patrick*, 54 F. 338 C.C. M.D. Tenn. (1893).

[24] *Brewer* v. *Hoxie School District No. 46*, 238 F. 2d 91 (8th Cir. 1956).

[25] *United States* v. *Guest*, 383 U.S. 745, 758 (1966).

[26] *Williams*, *supra* note 14.

Certification and Application Procedures for Latent Print Examiners

The International Association for Identification (IAI) has adopted a program for the certification of latent print examiners. Application forms for certification are now being developed by the certification board, formerly the subcommittee on fingerprints of the IAI, which developed this program after a year's study. Members of the board are: Robert L. Johnson, Chairman, U.S. Secret Service, Washington. D.C.; Spiro P. Vasos, California Department of Justice, Sacramento, Calif.; John W. Tyler, Bureau of Forensic Sciences, Richmond, Va.; George J. Bonebrake, Federal Bureau of Investigation, Washington, D.C.; Douglas M. Monsoor, Department of Public Safety, Lakewood, Colo.; Singleton C. Taylor, Jr., Police Department, Shreveport, La.; and Sgt. Michael J. Fitzpatrick, St. Louis County Police Department, Clayton, Mo.

Section I—General Qualifications

An applicant for certification must be of good moral character, high integrity, good repute, and must possess high ethical and professional standing.

Section II—Educational Qualifications

A degree shall not be required; however, 5 years following adoption of a certification program, an applicant applying for certification must have a minimum of an associate's degree or equivalent. For 10 years following adoption of a certification program and thereafter, an applicant applying for certification must have a bachelor's degree in any field or an equivalent diploma recognized by the IAI. Educational requirements are not applicable to recertification.

Section III—Technical Training

A. Minimum of 40 hours of formal training in the classification, filing, and searching of inked fingerprints, and

B. Minimum of 40 hours of formal training in latent print matters.

Section IV—Experience

A. Minimum of 1 year full-time experience in the classification, filing, and searching of inked fingerprints, and

B. Minimum of 2 years full-time experience in the comparison and identification of latent print material and related matters, or

C. If less than 1 year experience in the classification, filing, and searching of fingerprints, then must have minimum of 3 years experience in the comparison and identification of latent print material and related matters, or

D. If less than full-time experience for the given time periods is possessed, times must be accumulated to reach an acceptable minimum.

Section V—Endorsements

All applicants for certification must submit two letters of endorsement. If the applicant is employed by a public law enforcement agency, one letter shall be from a superior within the applicant's department or agency and one shall be from an associate in the

field of fingerprint identification certified by the IAI and who is a member of either a State or regional division and/or the parent body.

If the applicant is in private practice, both letters shall be from members of the criminal justice system, provided however that one of the two shall be from someone in the field of fingerprint identification certified by the IAI and is a member of a State or regional division and/or the parent body.

Section VI—Examinations

Certification shall be determined by testing to encompass three areas:

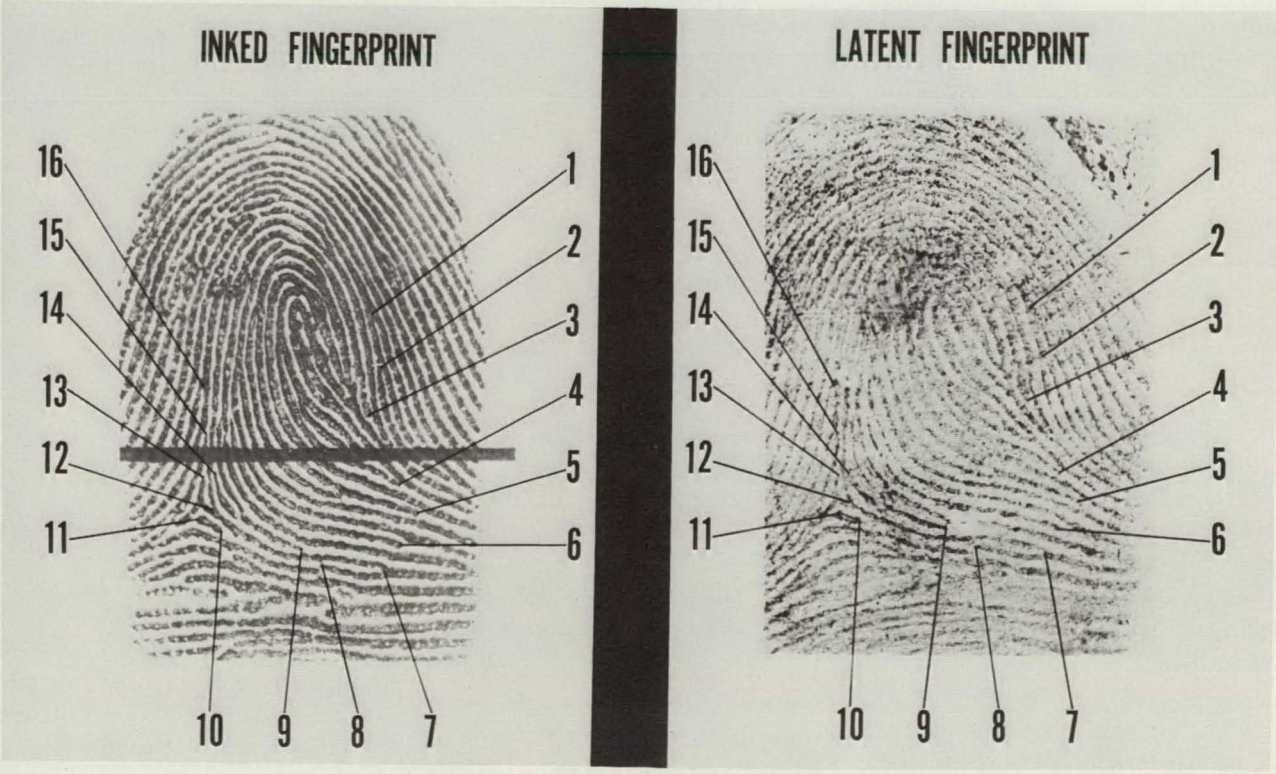
A. Written test—The applicant will be required to pass a test covering both the technical aspects and the development of the science of fingerprint identification.

B. Classification of inked fingerprints and comparison of latent prints to inked prints.

C. Either oral board testing and/or presentation of a case for review to include latent print, inked print, charted enlargements, and court-qualifying questions and answers. If the applicant *has* already testified in a court of law as an expert, he may submit a case for review or submit to oral board testing. If the applicant *has not* given testimony in a court of law as an expert, he shall be required to undergo oral board testing.

Each State or regional IAI shall establish a committee of three active members, knowledgeable in latent print matters, to administer the certification procedures and make recommendations to the IAI Certification Committee.

Each applicant for certification shall submit his application for testing, accompanied by the necessary documentation and letters of endorsement, to the State or regional division of the IAI of the State or region in which he practices. If no State or regional division exists within the State or region in which he practices, the applicant shall submit the application to the nearest State or regional division to the State or region in which he practices.



The State or regional division which receives the application shall review the application and forward it, along with their recommendations, to the certification committee.

The IAI committee shall review the application and recommendation of the local division and determine whether the applicant meets the criteria for testing. If the application is in order and the minimum criteria for testing is evidenced, the IAI committee shall forward testing materials, indicated as "A" and "B," to the State

or regional division submitting the application for the administration of testing. The testing shall be carried out under the supervision of the State or regional division receiving the application.

Following completion of testing, indicated as "A" and "B," the completed test materials shall be returned to the IAI committee, along with documentation substantiating prior testimony, if this is the case, to the certification committee. The committee shall communicate with the State or regional division the instructions for further testing of the applicant. If the "case presentation" alternative is indicated, the certification committee shall advise the last date that the applicant may submit the data to the State or regional division for examination and the final date by which it must be received by the committee for review.

If prior expert testimony cannot be documented, the applicant must undergo oral board testing. The IAI Certification Committee shall set a latest date that the State or regional division may conduct that testing, prior to making its recommendations to pass or fail the applicant to the committee.

If an applicant, through circumstances beyond his control, cannot arrange testing as indicated above, he may apply to the committee for alternative testing procedures.

Section VII—Temporary Waivers

The certification committee recognizes that there are currently members of the IAI who are eminently qualified for certification by their experience and training and who have testified in courts of law to latent print identifications. For these individuals, the following temporary waiver mechanism will apply: only members on record with a State or regional division or the parent body, in good standing as of January 1, 1978, shall be eligible for consideration under the temporary waiver.

The temporary waiver clause shall expire 12 months (August 4, 1978) following adoption of a certification program.

An applicant for certification under the temporary waiver must, as of January 1, 1977, meet all of the requirements for certification established by this action, except that formal training, testing, and a letter of recommendation from a certified member shall be waived in lieu of a complete biographical resume and two letters of recommendation from members of the criminal justice system. However, the certification committee may, at its discretion, require the applicant to undergo testing.

Section VIII—General Provisions Concerning Certification

A. The right to deny certification is reserved.

B. A certificate granted and issued may be suspended or revoked by the board of directors upon recommendation by the certification committee for any of the following reasons:

1. A misstatement or misrepresentation or concealment or commission of a material fact or facts in an application or any other communication.

2. Conviction of an applicant for certification or holder of certification by a court of competent jurisdiction of a felony or any crime involving moral turpitude.

3. Issuance of a certificate contrary to or in violation of any of the laws, standards, rules, or regulations of the IAI, or determination that the person certified was not in fact eligible to receive such certificate at the time of its issuance.

4. Unethical conduct or other conduct by a holder of a certificate which brings the specialty of latent print identification into disrepute.

C. Action to suspend or revoke may only be taken after at least 30 days advance notice of the charges or reasons for such action has been given to the individual concerned and an opportunity for such person to be heard has been provided by the IAI.

D. Applicants who are denied certification by the IAI may appeal such action to the IAI Board of Directors, in writing, within 60 days after the issue date of such notification.

E. Persons holding a valid, unrevoked certificate of qualification issued by the IAI are entitled to use the designation "Certified Latent Print Examiner," in conformance with the standards of the IAI.

F. Certification in latent print examination shall be issued for a period of 3 years, subject to renewal upon application by the member. Such application for renewal shall be subject to standards in effect at the time of request for renewal and payment of the established renewal fee. Failure to apply for renewal will automatically place the member in a delinquent status. Failure to resolve delinquent status within 1 year will result in revocation of certification. To avoid delinquency or revocation of certification, the applicant shall request that his certification be placed into an inactive status, subject to consideration for renewal upon application.

G. Certificates issued by the IAI are nontransferable. They remain the property of the IAI, but every person to whom a certificate has been issued shall be entitled to its continued possession unless and until such certificate is revoked.

H. Membership in the IAI is not mandatory for certification.

Efficiency Reporting— *Friend or Foe?*

By
MICHAEL G. SHANAHAN
Chief of Police
University of Washington
Seattle, Wash.

If there is an arena in which the American police executive has been embattled and only marginally successful, it is in the development of personnel efficiency reporting. The forces at work against administering an evaluation system have proven formidable. Energies expended involve high risks and require more than grudging forebearance on the part of those involved. In fact, police departments that have a truly workable system do so primarily because recipients of fitness reports recognize the personal advantages and protections that accrue with a properly controlled program.

Chief Michael G. Shanahan

Although salaries comprise the bulk of budgetary considerations for law enforcement agencies, there is greater refinement in predicting levels of functioning for communications and vehicular equipment than for the basic service delivery system—the commissioned officer. This is easily understood, since police radios and patrol cars are not protected by civil service regulations. They are not members of collective bargaining units, nor are they the recipients of disability benefits. When no longer usable, they may be surplused and traded for new issue. Personnel and their management, on the other hand, are far more complex. They have the

capacity individually and collectively to influence the success or failure of any evaluation process.

"Personnel and their management . . . are far more complex. They have the capacity individually and collectively to influence the success or failure of any evaluation process."

At the outset, it should be noted that a cautious approach to efficiency reporting is critical, since political and social considerations outweigh technical administrative arguments. Simply put, there must be a feeling that the effort makes sense, and that the final product serves as a "motivator" [1] instead of a "dissatisfier." [2] If there is a single mistake that will doom the process to certain failure, it is a rush to implementation coupled with perceived fears of exposed professional inadequacies.

In 1970, the University of Washington Police Department (UWPD) nearly tripled its staff to a 100-employee level. This came as a result of campus protests. Coping with public demonstrations in addition to personnel administration drove home the absolute necessity to develop an evaluation procedure. The department needed to determine the quality of persons hired, as well as identify a basis from which intelligent promotional decisions could be reached. "Make-it-or-break-it exams" or "show-and-tell oral boards" did not reflect the most critical consideration—job performance.

"The department needed to determine the quality of persons hired, as well as identify a basis from which intelligent promotional decisions could be reached."

Not only was departmental leadership frustrated by being forced to consider people for promotion based primarily on their academic and training credentials or seniority, but line officers wanted due credit for good street decisions and honest efforts. Consequently, the move toward a fair and acceptable performance evaluation was initiated. The objective was not just measurement of police officers, but of their supervisors as well. Invested in the activity were years of practice, counseling, training, and report writing. In return, officers provided advice and patience; even more important, they did not sabotage the project. As a result, the final document is not seen as just another form which creates more paperwork or a scheme developed by some out-of-town consultant; it is the true reflection of the value system which commissioned personnel of all grades are willing to impose upon themselves.

In the final analysis, efficiency reporting serves as the department's "management tool" for counseling and developing personnel. Further, it

PERFORMANCE OF DUTY FACTORS—PERSONAL QUALITIES

ADAPTABILITY: Ability to orient oneself to changing conditions through applied reasoning and personal skills.

#1	#2	#3	ENDORSER	
___	___	___	_____	1. Eagerly adapts to new and changing situations.
___	___	___	_____	2. Adapts to new situations without lengthy explanations.
___	___	___	_____	3. Adapts to new and changing situations after a full and complete explanation.
___	___	___	_____	4. Does not easily adapt to basic changes in procedure or policy.
___	___	___	_____	5. Is unable to adapt; resists changes vigorously.

APPEARANCE: Outward physical impression conveyed to the public and other members of the department.

___	___	___	_____	1. Consistently presents a neat and confidence-inspiring appearance.
___	___	___	_____	2. Appearance is above average; uniform and person are cared for in a very presentable manner.
___	___	___	_____	3. Appearance is average; no evidence of special attention needed.
___	___	___	_____	4. Appearance is below average; some degree of neglect toward personal appearance is evident.
___	___	___	_____	5. Appearance is below minimum standards; uniform and person are in constant neglect.

COOPERATION: Ability to work with others as a team member.

___	___	___	_____	1. Participates freely and easily in all group situations.
___	___	___	_____	2. Works well with most members of the department and general public in group situations.
___	___	___	_____	3. Participates in an acceptable manner without any negative impact on group efforts.
___	___	___	_____	4. Is inclined to be uncooperative and is not effective in helping to achieve group requirements.
___	___	___	_____	5. Presence is counterproductive to group objectives. This officer's presence usually increases tensions among those present.

DEPENDABILITY: Level of work load which can be successfully placed upon the individual.

___	___	___	_____	1. Can be relied upon for any duty requirement; is not only capable of doing a superlative job, but can perform any task which may be required, even at short notice.
___	___	___	_____	2. Can be relied upon to do a completely satisfactory job in regular assignment; needs little supervision in new or unfamiliar duties.
___	___	___	_____	3. Does adequate, reliable job in regular duty assignment.
___	___	___	_____	4. Can be depended upon only on highly structured assignments; needs constant instruction.
___	___	___	_____	5. Is unreliable; needs continuous direct supervision.

ENTHUSIASM: Levels of interest conveyed to others through participation in department functions.

___	___	___	_____	1. Motivates others by eagerness and willingness to perform all duty assignments.
___	___	___	_____	2. Maintains a level of enthusiasm sufficient for self-motivation in all duties.
___	___	___	_____	3. Response to duties meets general expectations.
___	___	___	_____	4. Is seldom enthusiastic about duties and performs general assignments perfunctorily.
___	___	___	_____	5. Performs almost all duties in a reluctant manner.

INITIATIVE: Demonstrated involvement in enterprising job activities or general professional developments.

			_____	1. Constantly suggests and develops new opportunities to improve self and department.
___	___	___	_____	2. Often finds better methods of improving self and department.
___	___	___	_____	3. Develops new procedures for performance of routine tasks.
___	___	___	_____	4. Able to start police actions for which trained.
___	___	___	_____	5. Does not originate problem-solving actions.

Figure 1.

"In the final analysis, efficiency reporting serves as the department's 'management tool' for counseling and developing personnel."

has facilitated the extension of authority to those who need it most—middle management and line supervisors. This system has reduced exposure to the public spectacle of disciplinary actions while increasing the positive impact that raters and endorsers can make on individual careers. For the most part, sergeants and lieutenants now determine future promotions. Such important considerations are not left solely to the vicissitudes of civil service procedures.

There are some "Do's" and "Don'ts" to be recommended that have been learned through costly experience. It must also be remembered that to be successful, efficiency reporting must go beyond line officer level. Supervisors must also be held accountable by those above them who are directly knowledgeable of the interest or lack thereof that they have taken in their subordinates. Only if there is accountability up the chain of command will street-level officers be willing to expose themselves to, and provide support for, such an undertaking. In implementing an efficiency report system, at least the following considerations must be made:

JUDGMENT: Amount of logic and practicality applied to decision making.

#1	#2	#3	ENDORSER	
___	___	___	___	1. Makes decisions of the highest quality, taking into account all factors involved.
___	___	___	___	2. Decisions made are the correct ones, resulting in the officer's being able to work efficiently in duty assignment.
___	___	___	___	3. Decisions made are within procedural boundaries.
___	___	___	___	4. Makes few decisions, some of which involve misperception of pertinent details or unfamiliarity with department guidelines.
___	___	___	___	5. Unable to make correct decisions and needs constant supervision. Can only handle the most routine calls.

PROFESSIONAL KNOWLEDGE: Application of law enforcement principles to assigned duties.

___	___	___	___	1. Shows consistent high profile use of police training and instruction for accomplishment of assigned duties.
___	___	___	___	2. Is able to show direct application of learned techniques and instruction for job completion.
___	___	___	___	3. Is able to accomplish assigned duties in accordance with training received.
___	___	___	___	4. Requires frequent instruction to redevelop basic skills and techniques for job accomplishment.
___	___	___	___	5. Displays little utilization of basic training and techniques necessary for accomplishment of routine assignments.

LEADERSHIP: Level of individual ability to positively direct, guide, or influence departmental activities or affairs.

___	___	___	___	1. Officer is a recognized leader. Commands confidence, respect and is able, when necessary, to take charge of any situation.
___	___	___	___	2. Officer demonstrates qualities of leadership in performance of routine duties. Will be supported by peers.
___	___	___	___	3. Officer has leadership qualities but does not always display them.
___	___	___	___	4. Officer possesses limited ability to inspire confidence and respect.
___	___	___	___	5. Officer does not inspire respect or confidence in others.

ACCEPTANCE OF CONSTRUCTIVE CRITICISM OR COUNSELING: Response to supervisory input related to job performance.

___	___	___	___	1. Officer willingly accepts criticism when appropriate and avoids defensiveness.
___	___	___	___	2. Officer accepts criticism in a positive manner and works to improve performance.
___	___	___	___	3. Officer accepts criticism and makes appropriate corrections.
___	___	___	___	4. Accepts criticism only selectively. Relatively ready with excuses or alibis and does not readily accept blame for mistakes.
___	___	___	___	5. Accepts little or no criticism. Will usually try to shift blame for errors or omissions.

WRITING SKILLS: Ability to convey meaning through preparation of written documents.

___	___	___	___	1. Written work is concise, clear, accurate; rarely if ever needs revision or correction.
___	___	___	___	2. Written work is generally clear and accurate; seldom needs to be redone.
___	___	___	___	3. Written work is acceptable.
___	___	___	___	4. Written work regularly needs revision for errors in clarity, spelling, completeness, or accuracy.
___	___	___	___	5. Written work almost always needs revision. Errors are numerous.

ORAL EXPRESSION: Ability to convey meaning through verbal communication.

___	___	___	___	1. Exceptionally able to express self clearly and effectively on all subjects; uses appropriate language for any situation; organization and presentation of subject matter are good.
___	___	___	___	2. Conveys clear understanding on subjects and situations; organization and presentation of topics are properly done.
___	___	___	___	3. Reasonably clear in expression; does not digress; gets main points across.
___	___	___	___	4. Sometimes unable to express subject matter clearly; cannot communicate effectively in some situations on certain subjects; has tendency to digress.
___	___	___	___	5. Does not communicate effectively on most subjects; main points of presentation are poorly organized; digresses frequently.

Figure 1.
(continued)

DO's

1. Involve all levels of personnel in the development and planning process.
2. Allow at least 1 to 2 years training and experience with the developed product before going on record.
3. During the shakedown period, insure that raters and endorsers are individually critiqued on their *demonstrated* techniques of counseling and objectivity.
4. Provide that no efficiency report is retained for more than 4 years. (UWPD uses 3 years.)
5. Insure that reviewing officials chart scores to preclude a halo effect which only causes a detraction of the report value and an inflated picture.
6. Provide a relief pressure valve so that those rated can disagree with the evaluation if they believe that such is indicated.
7. Include within the departmental procedures manual *detailed instructions* on report preparation. UWPD instructions comprise 6 pages. You will need them at any civil service or court challenges.
8. Limit document access to senior officials, personnel officers, selection boards, and rated personnel.

DON'Ts

1. Don't attempt an evaluation system if your department is passing through a period of crisis.

2. Don't sell the process to supervisors as a way to keep book. They are being rated also.
3. Don't include loyalty as a trait to be rated. It must be assumed. Absence of loyalty will be reflected under other categories.
4. Don't use the report as a vehicle to set individual salaries.
5. Don't negotiate away content or use. This is a management document and should be protected under management rights.
6. Don't use the evaluation at disciplinary hearings, unless there has been a series of submissions involving different raters and endorsers supporting established facts.
7. Don't be satisfied with what you think is your final product.
8. Don't give in to those whose own feelings of inadequacy motivate them to attack the process by watering down completeness of the report. Garbage in will be garbage out.

There is an interesting phenomenon that seems to develop when the efficiency reporting system functions properly. It is positive, and in no way undermines departmental morale. As the system takes hold, officers and supervisors, while sharing a sense of membership, feel personally accountable for their own careers. The process identifies individual objectives. It triggers self-examination and intellectual honesty. Generally, rated personnel will not discuss their successes or failures in a group social setting as long as they believe a report was fair and reflective of true performance.

Some might argue that this "isolation" is destructive and adds to job stress. If properly channeled, this stress is healthy. Additionally, employees are given a structured avenue for development without being subject to peer pressure. It is impossible for police executives to award promotions to entire groups, and this is where the buddy system fails to provide positive reinforcement. The career officer soon learns that important counsel and advice can be received from supervisors. Those who can provide good leadership become more visible to both subordinates and superiors as a consequence. Those who focus on the promotional aspects, however, have missed the basic purpose. That area represents only a byproduct. The real value is the dialogue generated and increased disclosure of unit efficiency or the lack of it.

A five-page officer evaluation form was developed by the UWPD over a 7-year period. It covers a wide variety of information, from personal data to the development of an overall profile chart. The form shows by category where officers rank in relation to their contemporaries; it assists in avoiding a halo effect and prevents rating officials from being able to gloss over and give an "atta boy" or "you're doing just fine" approach to counseling.

The evaluation form's composition and quality is exemplified by the material captioned: Performance of Duty Factors—Personal Qualities, Demonstrated Performance of Present Duty, Promotion, and Individual/Departmental Profile. (See figs. 1–2.)

DEMONSTRATED PERFORMANCE OF PRESENT DUTY

Rater #1 | #2 | #3 | ENDORSER

1. Performs this duty better than any other officer I know.
2. Performance of this duty equalled by few officers.
3. Performs this duty as well as most officers.
4. Performance of this duty meets minimum standards.
5. Performs this duty in an unsatisfactory manner.

PROMOTION

Rater #1 | #2 | #3 | ENDORSER

1. Promote ahead of contemporaries—individual possesses ability to attain highest levels of command within the department.
2. Promote ahead of contemporaries.
3. Promote with contemporaries.
4. Not ready for promotion at this time.
5. Not recommended for promotion (performance does not warrant consideration).

INDIVIDUAL/DEPARTMENTAL PROFILE

ADAPTABILITY
APPEARANCE
COOPERATION
DEPENDABILITY
ENTHUSIASM
INITIATIVE
JUDGMENT
PROFESSIONAL KNOWLEDGE
LEADERSHIP
ACCEPT/ACTING ON CRITICISM
WRITING SKILLS
ORAL EXPRESSION
PERFORMANCE OF PRESENT DUTY
PROMOTABILITY

1
.2 .4 .6 .8
2
.2 .4 .6 .8
3
.2 .4 .6 .8
4
.2 .4 .6 .8
5

Top line represents the performance of the upper 10% of the officers.
Bottom line represents the performance of the lower 10% of the officers.
Solid middle line represents the departmental average.
Dotted line represents the performance of the rated officer.
Entries in this section at the option of the rated officer.

I have been shown the contents of this report and have been counseled by my rating and endorsing supervisors regarding the remarks therein on the date which appears below.

DATE:_____ SIGNATURE _____

Rated officers wishing to add comments will be limited to a one-page typewritten document. This document will be double-spaced and will be submitted to the reviewing authority within ten working days of receipt of report.

Figure 2.

A similar supervisors form was also developed, but is geared differently to include such categories as Development of Subordinates or Directing and Controlling Operations.

Negative remarks may not be included in the form, if they have not been brought to the attention of rated personnel at an appropriate time during the period covered. Physical fitness is measured separately via the University of Washington Police Officer Physical Efficiency Battery with scores recorded in training files.[3]

"Currently, there are great pressures being placed upon police executives from outside their organizations. The latest of these involve multimillion dollar reverse discrimination suits. This problem emphasizes the importance of developing defensible evaluation reporting systems on the part of police labor and management."

Currently, there are great pressures being placed upon police executives from outside their organizations. The latest of these involve multimillion dollar reverse discrimination suits. This problem emphasizes the importance of developing defensible evaluation reporting systems on the part of police labor and management. The absence of sound evaluation systems engenders cynicism, mistrust, rumor, and ignorance of departmental decisionmaking.

When departmental records depicting equipment status exceed in importance those afforded personnel, there is a confusion of priorities. Police officers provide the most basic 24-hour public service local government has to offer. Citizen demand for police assistance is increasing along with the rewards for effective service. Combine these facts with the improved quality of recruits and training over the past 10 years, and the case for efficiency reporting is more than a good idea—it is a mandate.

FOOTNOTES

[1] Frederick Herzberg, *Work and the Nature of Man*, The World Publishing Company, Cleveland and New York, 1966, p. 75.

[2] Ibid., p. 74.

[3] Marcella D. Woods, "The University of Washington Police Officer Physical Efficiency Battery," *The Police Chief*, February 1976, p. 59.

Car Theft Prosecution Study Set

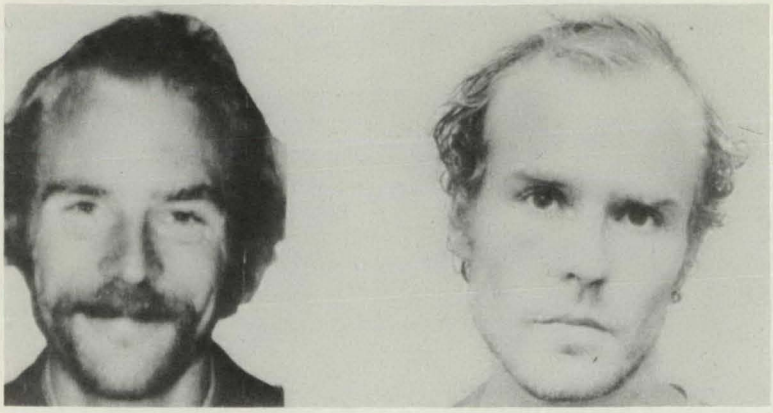
Under 1970 U.S. Department of Justice prosecutive guidelines for interstate car thefts, only ring cases are now prosecuted federally. Individual Dyer Act violations are referred for State and local action. A study is being initiated to determine the results of these referrals, as there are indications these individual cases are not being pursued.

The cooperation of State and local authorities is sought for this study, which is to be done by the Blackstone Institute in Washington, D.C., at the request of the Law Enforcement Assistance Administration. The study has the full support of the Criminal Division of the Department of Justice and the Interagency Committee on Auto Theft Prevention. Its purpose is to learn the problems faced by State and local authorities in handling these cases, to develop new policies, including possible financial aid, and to assist local and State prosecution of interstate theft of motor vehicle cases.

In conducting the study, Blackstone Institute will work with the Federal Bureau of Investigation and the U.S. Marshal's Service. During September and October 1977, these two agencies kept a record of all auto theft cases referred to local and State law enforcement agencies for prosecution, and Blackstone will determine the results of these cases. Blackstone will also trace all interstate auto theft cases that are not referred to the U.S. Attorney by picking up stolen vehicle locates placed with the National Crime Information Center (NCIC) during the same test period. Locating agencies will then be asked to indicate whether arrests have been made in connection with each vehicle recovered, and if so, whether arrestees have been prosecuted by the arresting authority or are being referred to out-of-State authorities for prosecution. Blackstone will then check those cases where subjects have been arrested to determine what prosecutive action resulted.

Many police departments, sheriff's offices, and local or State prosecutors can expect to hear from the Blackstone Institute during November and December of this year. Information provided will be held in strictest confidence and will be used solely for general analytical and statistical purposes. No information concerning individual subjects will be disclosed or released, and at the completion of the study, all information identifying individuals by name will be destroyed or deleted. The prompt and full cooperation of all agencies contacted by Blackstone will be greatly appreciated. Accurate and complete information will substantially enhance the potential of this study to contribute to the solution of this serious law enforcement problem, a problem which involves nearly 1 million stolen cars a year—a total economic loss of over $1.6 billion.

WANTED BY THE FBI



Photograph taken 1970. Photograph taken 1971.

DON LOUIS CHURCH, also known as Don Luis Church, Robert Cummings, Don Iglesia, Don Inglesia, Robert Alan Walker, James Wallace

Unlawful Flight To Avoid Prosecution—Possession and Detonation of Destructive Devices With Intent To Terrify and Intimidate

Don Louis Church is presently being sought by the Federal Bureau of Investigation for unlawful interstate flight to avoid prosecution for the crime of possession and detonation of destructive devices, with intent to terrify and intimidate.

The Crime

On February 27, 1971, a bombing occurred at the Berkeley Center Building in Berkeley, Calif. A second bombing followed on March 3, 1971, at the South Berkeley Branch of the Bank of America. Evidence connecting Church with the bombings was found in the abandoned apartment he occupied with his paramour, Mary Kathleen Brooks. Formal charges were placed against Church by the Berkeley, Calif., Police Department on May 28, 1971, and on June 21, 1971, he was apprehended. He was released on $10,000 cash bond on April 28, 1972, but subsequently failed to appear for trial.

A Federal warrant was issued for Church's arrest on June 27, 1972, at San Francisco, Calif.

Description

Age	34, born January 29, 1943, Seattle, Wash.
Height	6 feet 2 inches.
Weight	175 pounds.
Build	Slender.
Hair	Blond.
Eyes	Blue.
Complexion	Fair.
Race	White.
Nationality	American.
Occupations	Gas station attendant, salesman, writer.
Scars and Marks	Cut scar corner of left eye.
Remarks	May be wearing mustache, beard, and considerably longer hair style; possibly in the company of Mary Kathleen Brooks, Identification Order 4490, and couple's son, age six, known as "Mouse Face" or "Foco."
Social Security Number Used	535-42-3724.
FBI No.	716,077 H.

Fingerprint Classification:
14 M 1 U IIO 14 Ref: T T U 17 1 17
S 1 T II T R R 1 2 2
NCIC Classification:
140308161408TT091312

Caution

Church has been known to possess numerous weapons in the past, including a shotgun and pistols. Consider both Church and Brooks armed and extremely dangerous.

Notify the FBI

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

Right index fingerprint.

U. S. GOVERNMENT PRINTING OFFICE : 1977 O - 246-002

FBI LAW ENFORCEMENT BULLETIN

FOR CHANGE OF ADDRESS ONLY—NOT AN ORDER FORM

Complete this form and return to:

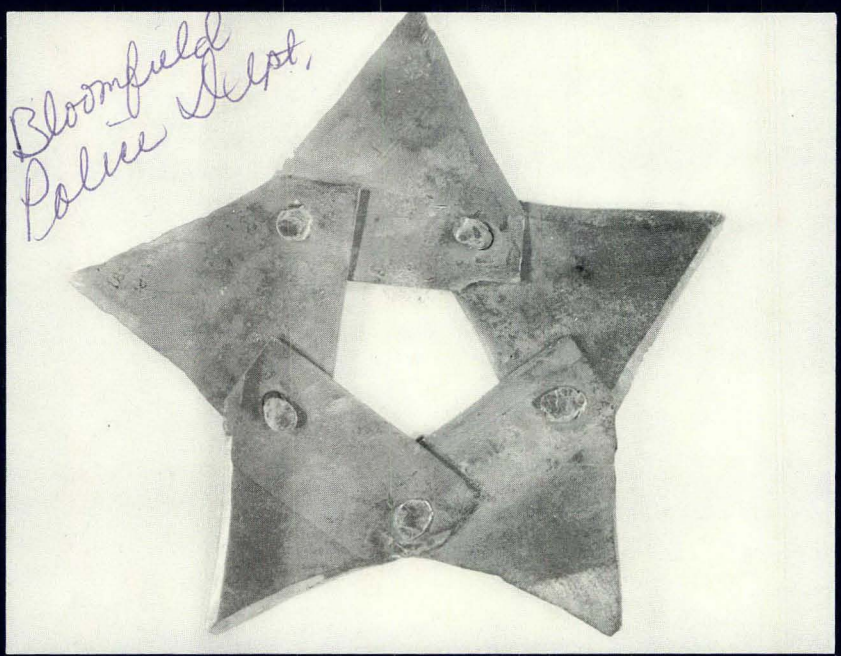
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

_____
(Name) *(Title)*

_____
(Address)

_____
(City) *(State)* *(Zip Code)*

THROWING KNIFE



Pictured above is a homemade throwing knife found by a Bloomfield, Nebr., police officer.

This potentially dangerous weapon, which measures 7¾″ across, was made by riveting five mower blades together. Although the knife was dull, it was able to penetrate a telephone pole from a distance of 50 feet. When sharpened, it could be even more dangerous.

Law enforcement personnel should be made aware of such inconspicuous weapons which are easily made and readily available.

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

OFFICIAL BUSINESS

ADDRESS CORRECTION REQUESTED

U.S.MAIL

POSTAGE AND FEES PAID
FEDERAL BUREAU OF INVESTIGATION
JUS-432

CONTROLLED
CIRCULATION
RATE

QUESTIONABLE PATTERN

The impression above at first glance appears to be a loop-type pattern. However, upon closer examination, it can be determined that the necessary looping ridge and sufficient recurve is missing. Therefore, the pattern is correctly classified as a tented arch.