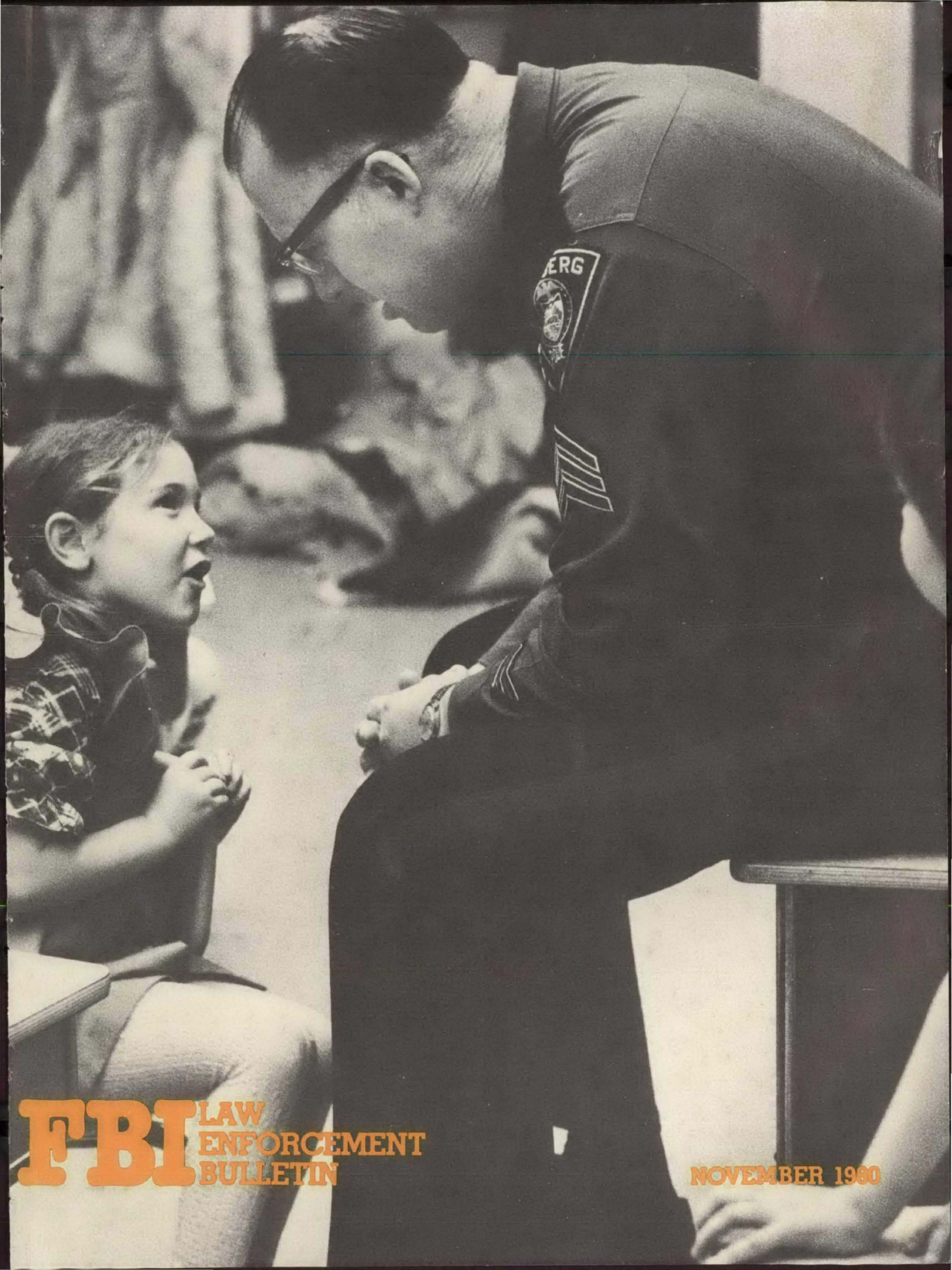


FBI LAW ENFORCEMENT BULLETIN

NOVEMBER 1980

FBI LAW ENFORCEMENT BULLETIN

NOVEMBER 1980, VOLUME 49, NUMBER 11

Contents

The Cover: The Newberg, Oreg., Police Department sends a 6'4" sergeant to kindergarten to explain that being a policeman is a big job. Photograph by Bob Ellis, "Oregonian," Portland, Oreg.

Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

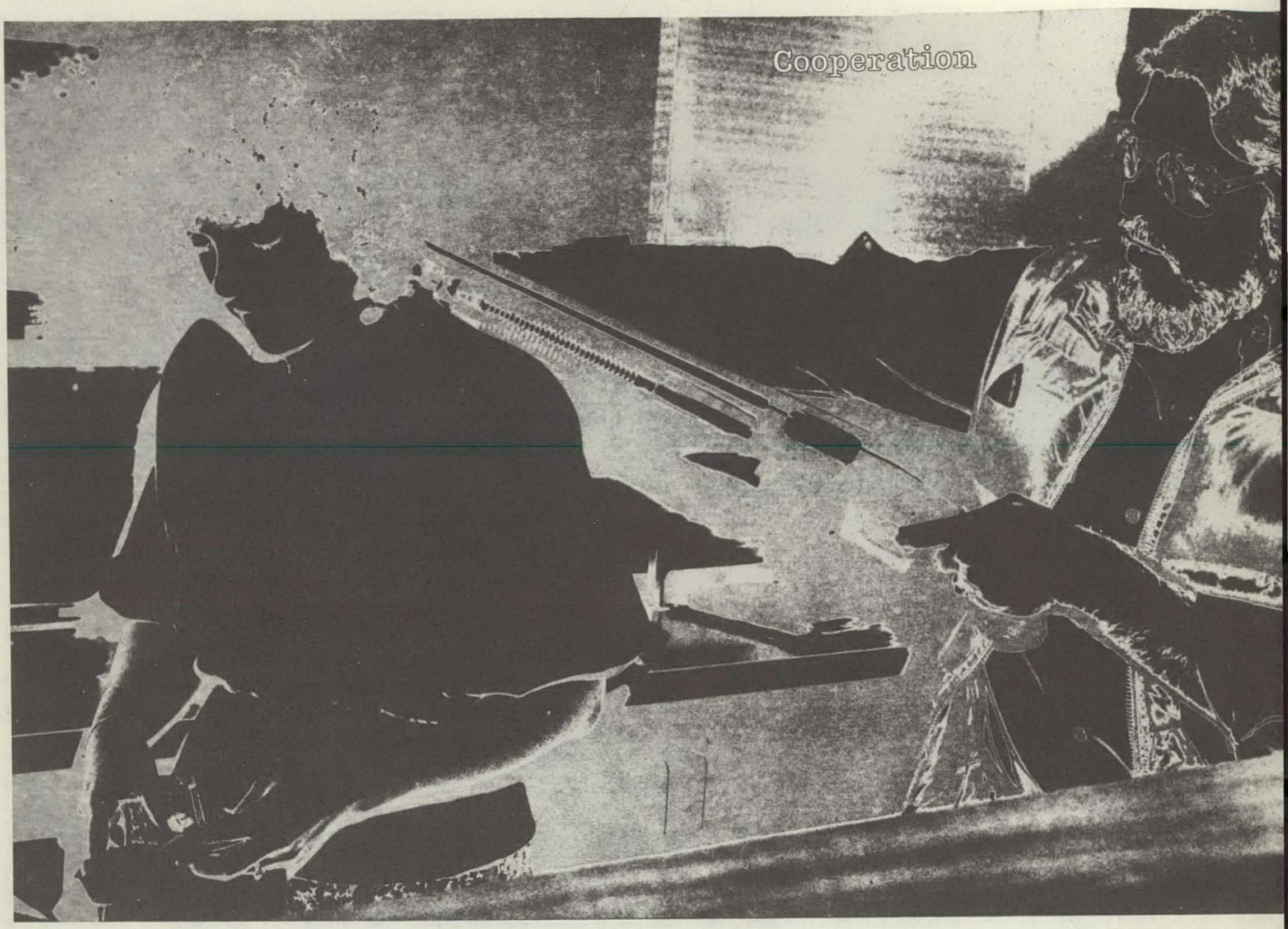
William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through December 28, 1983.

Published by the Public Affairs Office,
Roger S. Young
Inspector in Charge

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Carl A. Gnam, Jr.
Writer/Editor—Karen McCarron
Production Manager—Jeffery L. Summers

ISSN 0014-5688 USPS 383-310



Spokane's Robbery Education Program

By John D. Moore

Crime Prevention Officer/Program Coordinator
Police Department
Spokane, Wash.

Armed robbery is one of the most frightening experiences an employee could possibly encounter while working for almost any type of business. The crime prevention unit of the Spokane Police Department has developed an armed robbery education program for banks, which has also been adapted successfully for employees of high-risk retail establishments.

The program is designed to educate employees in their current work environment, breaking away from the sterile settings of auditoriums and classrooms. It was believed, upon implementation of the program, that environmental design characteristics inherent in the structure of the building can be of benefit to employees, if they are aware of them and know how to use them. Therefore, this program

goes right to them, in their work location, where the actual robbery would take place.

The current program addresses two goals. The first is to educate employees and managers of banks and/or high-risk retail businesses to the dangers inherent in an actual robbery situation. The second goal is to improve the abilities of affected personnel in describing suspects and securing evidence and to familiarize them with the investigative needs of law enforcement officers.

To initiate the program in a particular bank or retail business, the law enforcement coordinator meets with the manager, and in some cases, the security officer. This pre-program organization is necessary to establish a convenient time for the program, either before the business opens or after it closes so that no customers are present. This will ensure total control and safety during the program. The manager is instructed by the coordinator to inform all employees of the program, in which a "mock robbery" will be staged. Pre-program organization also includes establishing a schedule of mock robbery programs to be distributed to all local law enforcement agencies and personnel involved in the program, so they can organize their schedule accordingly. The alarm company *must* be notified of the time and date and be contacted again on the actual day before the robbery program commences.

Robert D. Panther
Chief of Police

Officer Moore (the author) addresses the participants prior to the exercise.

The law enforcement coordinator and the "bad guys" should arrive at the "robbery" site a half hour before the employees. After being admitted by the manager or security officer, the bad guys familiarize themselves with the layout of the business and then find a place to hide until it is time for the "holdup." Employees do not see the bad guys until the actual exercise takes place, since prior visual contact between employees and the robbers will drastically affect the description phase of the exercise.

In any program where a mock robbery is used, a uniformed police officer is required to be present before, during, and after the exercise to assist in securing the building and to assure any passerby that the program is a planned security exercise. It should be noted that during 61 such programs presented in Spokane thus far, the law enforcement coordinator has had to use more than one officer, based upon the size of the building, location of doors, windows, etc. Security is extremely important during the exercise, and a program should not be attempted without an adequate number of uniformed police officers. A marked patrol vehicle, parked in the most prominent or visible place, is also important for security on the outside of the bank or business.

The actual robbery education program begins with a 25-minute employee briefing by the law enforcement coordinator. All employees are informed of the program's educational intent and that a mock robbery will be performed. Officials stress that nobody will be hurt and ask employees to act as they would in a real situation. To familiarize the employees with guns used in holdups, weapons are displayed and the differences between

Security is provided during the course of the program. Uniformed officers are necessary to assure customers the bank is not open, the exercise is not a real robbery, and that this is just a training session.

them, i.e., automatics, revolvers, sawed-off shotguns, etc., explained. Tips on how to respond to commands in a holdup and how to observe, describe, and remember descriptions are given. Also discussed are suggestions for using design characteristics of the building to enhance their abilities to describe a holdup man. The design characteristics discussed will attempt to aid in the description of robbery suspects. The height of countertops, location of signs, and tape markers on doors are some of the things mentioned by the coordinator.

Employees are also urged to remember exactly what was said during the robbery. Words, phrases, etc., should be written down, so that a law enforcement investigator will know what was said during the incident. Additional time may be allotted for instruction on how to adequately prepare their building for a holdup. Also included is a discussion on protecting evidence for the investigator. This is a major part of the critique process and should always be discussed before the robbery exercise commences.

Mandatory safety precautions must be taken during the program itself. Employees and any observers must be asked if there are any firearms or weapons in the building, and any weapons must be secured by the coordinator before the exercise begins. Employees are automatically exempted from participating if they have any medical condition (heart condition, pregnancies, etc.). Any employee not wanting to participate is also exempted, and all observers or exempt employees are assigned to a neutral or nonaffected area of the business. They may watch the exercise, however, and not become part of the mock robbery. The coordinator should inform the robbers of the location of the neutral area prior to the start of the exercise.

After the briefing and confirmation that the alarm company was notified, the employees return to their work areas. The exercise, basically, is known as a "total branch holdup," in which the bad guys take control of the whole business and involve everyone. If any employee is able to activate the alarm, they are to do so, as if the robbery were real. It becomes obvious to many employees how simple tasks suddenly become difficult to perform under the circumstances.

The exercise commences with the appearance of the bad guys who, very convincingly, holdup the bank or business. The holdup is usually over in less than 2 minutes, and the bad guys exit the bank area and return to the original place of concealment. At no time do the robbers leave the building and no money is taken from the building.

The holdup begins with the robbers entering the work area, armed with revolvers or sawed-off shotguns. There is shooting and blanks are used in the weapons. At no time are any weapons fired at or near an employee. Mock robberies have been done without gunfire, although it tends to add an authentic touch to the robbery. It definitely adds to the intensity of the exercise.

During the holdup, the coordinator's responsibility is to evaluate the

performance of the employees and observe their reactions. There are occasions when the coordinator has had to reassure an employee who may have been startled by the frenzied activity. The coordinator's evaluation continues after the holdup as the employees secure the building and protect any evidence which may be present. All employees are given time to fill out description forms provided by the bank management. There have been some cases, when dealing with retail businesses, that description forms are not available. On those occasions the coordinator should provide sample forms for the employees to use. Employees are given a shorter period of time to fill out the forms than would normally be given because of the limited amount of time available. After this is done, they are reassembled in the area where the coordinator addressed them before the holdup. The coordinator can also ask the employees to estimate the total time of the holdup and should have each group of people in the bank or business mark their forms differently. For example, the victim teller should mark her form with a large V, other tellers with an X, others at desks with a Y, and so on. This makes it easier to show how different groups and areas will pick up different characteristics of the holdup men.

The employees are then reintroduced to the robbers, so they can see how they did on their descriptions. The holdup men come into the assembly area and give a brief physical description of themselves. The weapons used during the holdup exercise are now shown to the employees, and the coordinator reviews all description forms, comparing them to the actual robbers. This part of the program demonstrates what people can, and in actuality, do recall during a period of stress. Many characteristics are usually noted by the employee, and they re-emphasize the fact that human beings, when exposed to the same situation, will see and remember things differently.

After the description session with the holdup men, the mock robbery is critiqued. The coordinator brings out weaknesses and strong points during

The law enforcement coordinator displays different types of firearms before the exercise begins.

A cable TV employee "robbing" a bank employee.

After the exercise, the "robbers" come back out to show the firearms used in the "robbery" and assist in the critique of the exercise itself.

the fake robbery, and the holdup men also give advice to the employees regarding their observations during the exercise. Generally, time is given for questions and answers before the program ends. All uniformed police officers are then advised they can leave the area and return to regular duty. It must be emphasized how important it is to have uniformed police officers providing security during the actual exercise, especially when firearms are being displayed by the coordinator or his bad guys.

The overall program, as it is presently put together, is an example of a community effort which shows up in two major areas. First, all businesses and banks are sent a questionnaire 1 week after the exercise so they can critique the mock robbery. If they feel any changes are needed, they are asked to comment on them, as well as safety precautions, etc. The questionnaire is returned to the law enforcement coordinator so any necessary changes can be made. These questionnaires have been responsible for many changes which continue to point toward a very successful program. Second, a local cable television company has provided their expertise and one of their employees to assist in robbery education, as well as in the actual mock robberies. These two factors have made the Spokane Police Department robbery education program a continuing success.

If an employee or business is involved in an actual armed robbery after completing the education program, they are interviewed to determine if the training helped them prepare for the real thing. Patrol division officers, as well as detective division officers involved in the incident, are also consulted as to their reactions on how the training helped the employee or business. All this material is kept for documentation of the education program.

The latest robbery incident in Spokane involving a business employee who had been trained in the armed robbery education program shows a noticeable difference between trained and nontrained personnel. A female employee of a large retail store was the victim of an actual robbery 2 weeks after undergoing the mock robbery program. She was the second victim of the same robbery suspect in the course of an hour, and the differences between the first victim of this robber (who was not trained) and the second victim were very obvious. The nontrained employee panicked and was unable to cope emotionally with the robbery. In fact, the first victim could provide little information to the responding patrol division officers. The second victim not only was able to secure areas involved in the incident but also to provide a very complete and detailed description of the armed robbery suspect. In fact, she had the complete description written down prior to the arrival of the responding officers. Based upon the detailed description of the second victim, the suspect was arrested by detectives.

The ability to know how you are going to perform in an actual armed robbery is very difficult, if not totally impossible. Each person is affected differently, and by placing bank or business employees through as real an incident as possible, we hope to improve their abilities in a robbery, as well as to let them learn how they might react in a real situation.

The reactions from people during the robbery exercise have been similar to those seen on the faces of real victims. We have seen emotions ranging from nervous laughter to tears. Most have commented on their critiques that they now have a much better idea of how they might react and would now know how to control any extreme reaction.

The evaluation of the robbery education programs will continue indefinitely in Spokane; however, we are very confident that the results will continue to show increased employee safety and more definite data for law enforcement investigations. **FBI**

Nonverbal Communications in Interrogations

"Nonverbal communication can be more truthful, meaningful, and expressive than spoken communication."

By MERLIN S. KUHLMAN
Special Agent
U.S. Army Criminal Investigation Command
Fort Riley, Kans.

Recognizing the Value of Nonverbal Communications

The use and understanding of nonverbal communications in police interrogation is a two-way process. The interrogator must be alert for the nonverbals expressed by the interviewee and must attempt to interpret them correctly. Simultaneously, the interrogator must be able to use his own nonverbals correctly when directed toward the interviewee.

Nonverbal communication can be more truthful, meaningful, and expressive than spoken communication. Facial expressions may convey an attitude of sincerity, shock, surprise, humor, sorrow, or concern. The tone of voice, inflections in delivery, emphasis on words, and use of other guttural sounds can mean the difference between a meaningful and interesting communication or one laden with monotony.

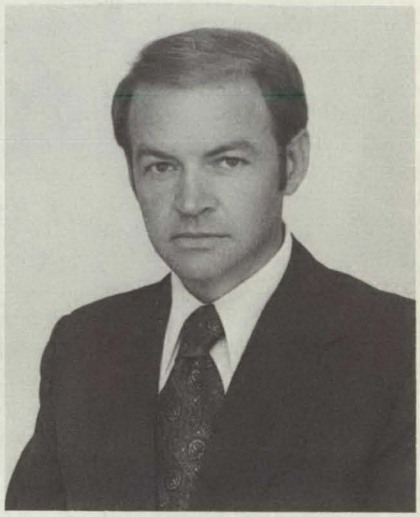
The body space or distance between communicators can have a bearing on the effectiveness of a communication. Body movement and gestures, whether seemingly automatic and involuntary or intentional, are key determinants in the actual meaning of any spoken communication. Maintaining eye contact with an individual may indicate the degree of sincerity on the part of the speaker. Other equally important nonverbals include proper use of time, control of profanity and slang, appropriate physical appearance, and the studied use of personal attire. Proper use, understanding, and employment of all these nonverbals in

conjunction with the spoken word are keys to effective communication.

Manifestations of the Lie

The solicitation of a confession (convincing a person to tell the truth and give up a lie) in a police interrogation creates the most dynamic display of nonverbal communication imaginable; it is left to the interrogator to employ and interpret this "language" correctly. "Nonverbal language is not a precise language; we have to be careful we don't misinterpret nonverbal signals in our eagerness to understand what a person means. . . ."[1] Man's nature is to live within the world of reality, recognizing real things and real situations and speaking from a position of facts and reality. He experiences few problems or anxieties in speaking factually and honestly. He does not have to worry when stating his real name, date of birth, or accounting for recent activities. But to *lie*— to willingly and knowingly relate other than the truth—immediately causes a myriad of biological and physiological processes to take place within the mind and body. To the trained observer, these lies usually manifest themselves involuntarily in the form of nonverbal reactions or counterreactions. Physical signs of deception include perspiration flow, flushing or paleness of skin, pulse rate increase or decrease apparent from appearance of visible veins in the head, neck and throat, dry mouth and tongue, excessive swallowing, respiratory changes, muscle spasms, licking of the lips, thickened and blurred speech, stuttering, and darting eye movements.[2] Other symptoms that may be revealed, particularly when a person fears that his lie has been detected, include some degree of rigidity in the body, the hands begin to "play" with each other, clenched fists, flushing in the face and neck, and a cold clammy sweat in the palm of the hands.[3] When seeking a confession from a suspect, the interrogator must be continually alert for any nonverbals exhibited by the interviewee, paying particular attention to the face. Any interviewer knows that a feeling of warmth is conveyed by looking directly at a person, smiling, or leaning toward him. The more one looks directly into the face of the person being spoken to, the more apt one is to convey a generally positive feeling toward that person.[4] The "language" of nonverbals is "spoken" most prominently by the face, but detection of these nonverbals often requires an alert and trained eye. ". . . facial expressions can change instantly, sometimes even at a rate imperceptable to the human eye. . . . [the face] is the most effective way to provide feedback to an ongoing message."[5] Authors Arthur Aubry and Rudolph Caputo even maintain that "'facial tics' (grossly exaggerated muscle spasms of various parts of the face) are positive indications of lying. These tics take the form of strange grimaces of all the facial muscles in general; sometimes these tics may extend to and involve the arms, legs, and even the whole body will occasionally participate in characteristic muscle incoordination."[6] Facial expressions and movements are not necessarily the only "positive indications" of lying. "Many subjects who are on the verge of confessing will start picking their fingernails, or scratching themselves, or dusting their clothing with hand movements, or they will begin fumbling with a tie clasp or other small object. As politely as the interrogator can, he should seek to terminate such conduct. He may do so by gently lifting the

Special Agent Kuhlman



Lt. Col. D. N. Poiner

subject's hand or by removing the object from his hand, always avoiding any rudeness as he seeks to end such tension-relieving activities." [7] The interrogator should then launch into the final solicitation of the confession, allowing the "telling of the truth" to be the suspect's channel for release of tension.

Failure of the interrogator to interpret nonverbals correctly not only may delay confession but could also lead to false conclusions. All persons do not exhibit the same nonverbals under similar circumstances. Perspiration flow and flushing of the face are two of the most easily misunderstood involuntary physiological reactions. Just as some persons perspire little or not at all, regardless of the stress or circumstances, others may naturally perspire freely and easily under the most calm and stable conditions or environment. Likewise, a flushing or blushing face on an easily embarrassed person does not necessarily mean that the person is concealing the truth. Detection of watery eyes in a suspect *might* mean he is about to cry and confess his crime, or it might mean he is a narcotics user in need of medical attention. If a suspect under interrogation eventually appears weak and submissive, it *might* mean he is about to confess the truth, or it could mean he is simply very tired and needs a rest. A classic example of failure on the part of police to interpret properly nonverbals during an interrogation occurred recently during a homicide investigation in the northeastern part of the United States. A suspect was picked up and held in police custody about 22 hours during which time he was allowed to "rest" about 4 hours and ate only half a candy bar. During the interim interrogations, he made what was later determined to be an "incriminating statement" that police used to further convince the man that he might have committed the crime. The police ultimately obtained from him a confession that was later determined to be false and wrongfully obtained. Repeatedly during the interrogations, the suspect indicated that he was tired, hungry, and concerned about his fate. He became fidgety, occasionally stared into space, and fell prey to the smoothness, warmth, and friendship exhibited by the interrogators, whom he genuinely believed were trying to help him. Studies of the tape recordings of the interviews revealed instances of the suspect's voice "breaking," changes in breathing patterns, and a marked appearance of relaxation after making the first self-incriminating statement. Working without benefit of legal counsel or any immediate family member or friend to lend support, the man was involuntarily communicating very strong nonverbal language that the interrogators, in their eagerness, wanted to interpret as indicators of guilt. The suspect was subsequently cleared of all charges. [8]

The Mentally Disturbed

Additional emphasis should be placed on proper, though cautious, detection and interpretation of nonverbals when interviewing or interrogating mentally disturbed persons. Different interview techniques and approaches may have to be applied by the interrogator when dealing with psychopathic or psychotic persons. "In the commission of a criminal act, the conscience does not act as any sort of brake, and it may be extremely difficult for the individual to distinguish between right and wrong. For this reason, the classical approach to interrogation which plays upon repetition of the theme of good and bad, right and wrong, will have very little or no effect upon the psychoid." [9] Just as the prudent use of time can be an effective nonverbal technique for any communicator, it is even more important during police interrogations, particularly when the interviewee is known or suspected of being mentally disturbed. If silence is not offered at the right time by the interrogator, the interviewee might feel he is being pressured and not being allowed the time or opportunity to talk. [10] Such a simple misuse of nonverbals could easily prove fatal in attempting to obtain the desired confession, or at least, compound the already existent problems in the interrogation. Interrogations of mentally disturbed or mentally ill persons should not include methods of "hot and cold," one interrogator against the other, bluffing, or any emotional approach, such as the cold shoulder technique or an attitude of indifference. Appropriate methods might include use of a hypothetical story, exhibition of sympathy and understanding by the interrogator *if* used with caution (to preclude leading to a false confession), or pointedly direct or indirect approaches. [11] Added caution in interpretation of nonverbals under these circumstances is necessary because the mentally disturbed person frequently exhibits "signs" of possible mental illness not unlike those indicators professed by Aubry and Caputo to indicate a suspect who is lying. The mentally disturbed person might exhibit any of the following indicators, none of which necessarily pertain to his either telling a lie or being truthful:

1) General behavior—negative, withdrawn, suspicious, angry, antisocial, domineering;

2) Motor behavior—unusual twitches, unnatural poses, normal to fluctuating gait and limb movement;

3) Facial expressions—tension, suspicion, anger, silliness, fixed-eye focus or stares;

4) Mood—changing, unstable;

5) Speech—uncoordinated, no inflection; and

6) Poor thought organization and content. [12]

If the interrogator does not read the nonverbals correctly during interviews of mentally disturbed or mentally ill persons, he might begin to feel that he is close to the hoped-for confession when in all probability the suspect is merely relating what the interrogator *wants* to hear. The police are then satisfied because they have a confession, and the suspect is satisfied because he has made the police (although his adversary) happy—all because of the unfortunate misunderstanding of the nonverbal language.

During the interview of a military serviceman suspected of attempted arson, military investigators not well-trained in either interpretation of nonverbals in communication or in interviewing mentally disturbed persons

were needlessly confused by the results of their interrogations. They initially believed that the suspect's sporadic shifts in oral statements from real to seemingly surrealistic situations, his glassy-eyed stares, his reference to fictitious movie characters, and his flowing hand gestures were little more than attempts to imitate a psychotic person or that they were possibly the result of hallucinations from recent drug ingestions. One interrogation continued for over 3 hours, with stern accusations made toward the interviewee. His subsequent "confession" appeared to be so far-fetched that the investigators placed little credibility in it. However, the suspect was ultimately declared to be suffering from "acute paranoid schizophrenia." The investigators could have saved valuable time during the investigation had they been better prepared to "read" the nonverbals being expressed by the subject.

On the other hand, a police interrogator should neither avoid nor ignore the results of an interview with a person known to be or suspected of being mentally disturbed. Although the use and interpretation of nonverbals can sometimes be complex, the results of the interview or interrogation could well be the key to successful investigation and prosecution of the accused. This concept is not unique to U.S. police methods and has long been a recognized option in the courts of Great Britain:

> "A person suffering from unsoundness of mind may yet give evidence if the judge at the trial . . . is satisfied that he is then of sufficient understanding to give rational evidence; the mere fact that such a person is then suffering from delusions does not render him incompetent." [13]

Transmission of Nonverbals

The proper use of nonverbal communication by the interrogator himself could be the determining factor in obtaining a confession. In most cases, following establishment of an appropriate interrogator/interviewee relationship, the interviewee, whether he wants to admit it, begins to pay sincere attention to his interrogator. If the interrogator complacently listens to the suspect's version of the incident, remains basically expressionless, and casually nods his head as if in agreement with the "facts" related by the suspect, the interrogator will probably bolster the suspect's story and position, which could very well be false. This will delay, if not preclude, reaching the truth, and ultimately, a confession. Conversely, if the interrogator exhibits continual nonverbal indicators of disregard and disbelief for the account related by the interviewee by repeatedly shaking his head in a negative manner, rolling his eyes backward, using negative hand gestures, or looking away from the suspect, he could be discounting some key points being surfaced by the suspect and might miss the opportunity to detect the key point to be challenged. Such action may also "turn off" the interviewee from further cooperation with any interrogator in the future. The interviewee is as alert to nonverbals as the interrogator. The astute interrogator will carefully decide the right time to challenge the suspect's story; he will know the precise moment to turn in his seat, lean toward or away from the suspect, slam his pencil down on the notepad, sternly advise the suspect that his story is false for whatever reasons, and make the final attempt for the confession. If done correctly, with precision and at the proper time, the interrogator's use of nonverbals, coupled with the spoken word, can make the solicitation of a confession as irresistible to the suspect as is a plate of fine food to a hungry man. It is important that the interrogator remember that his own nonverbals are just as important or meaningful as those of the interviewee.

Summary

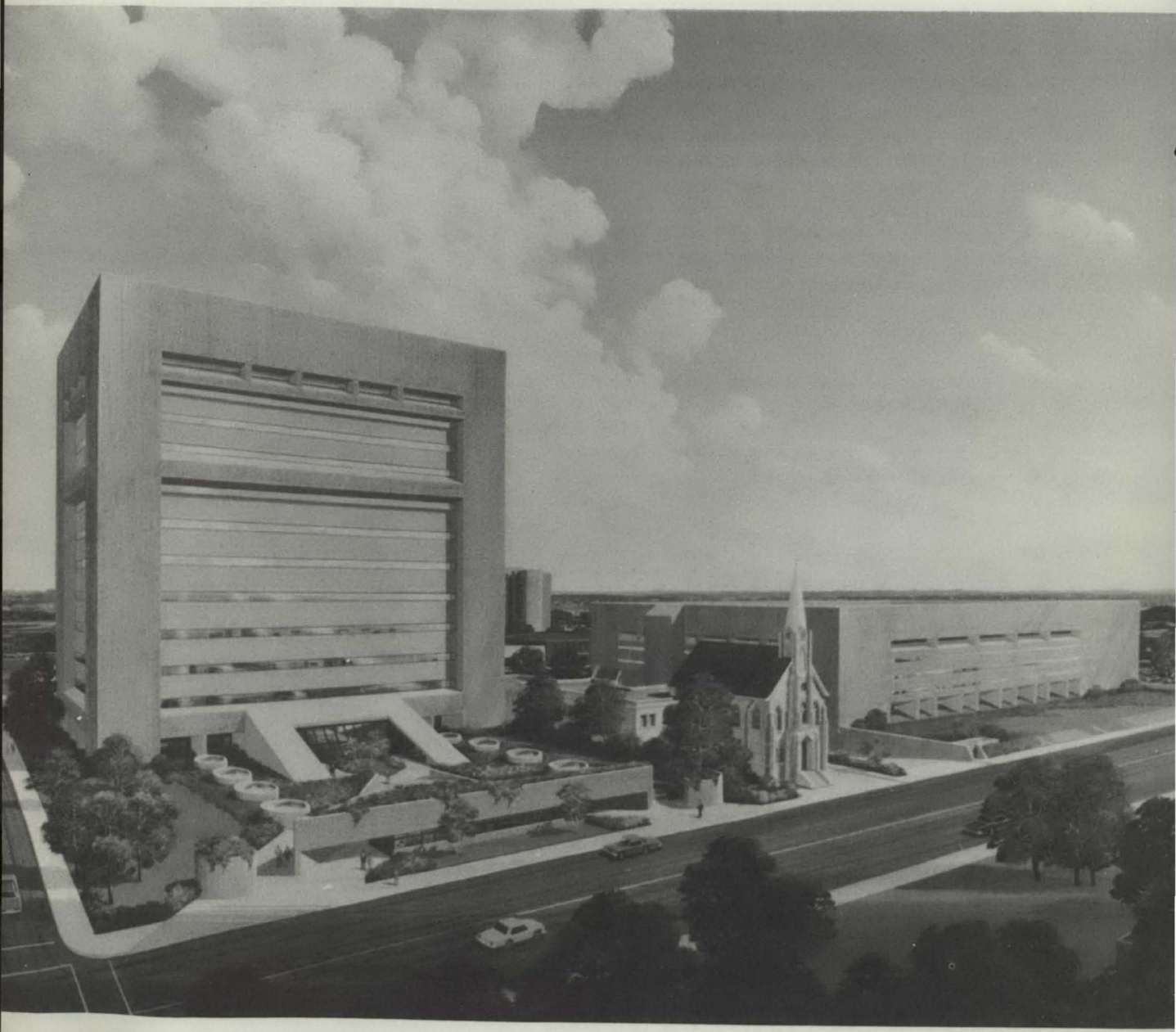
The language of nonverbal communication is dynamic. Correct interpretation of nonverbals can be an asset to the police interrogator conducting interviews and interrogations, saving hours in attempting to hurdle the barriers so often present in the spoken word alone. At the same time, incorrect use or misinterpretation of nonverbals can be disastrous, leading to deadend interrogation or even false statements or confessions, particularly in dealing with the psychopathic or psychotic person. **FBI**

Footnotes

[1] Richard L. Weaver, III, *Understanding Interpersonal Communications* (Glenview, Ill.: Scott, Foresman and Co., 1978), p. 145.
[2] Arthur S. Aubry, Jr., and Rudolph R. Caputo, *Criminal Interrogation* (Springfield, Ill.: Charles C. Thomas, 1972), p. 257.
[3] Ibid., p. 261.
[4] Weaver, pp. 154–155.
[5] Ibid., p. 155.
[6] Aubry, p. 165.
[7] Fred E. Inbau and John E. Reid, *Criminal Interrogations and Confessions* (Baltimore: The Williams and Wilkins Co., 1967), p. 35.
[8] Donald S. Connery, *Guilty Until Proven Innocent* (New York: G.P. Putnum & Sons, 1977), p. 48.
[9] Aubry, p. 16.
[10] Robert J. Wicks, *Applied Psychology For Law Enforcement and Correction Officers* (New York: McGraw-Hill Book Co., 1974), pp. 120–122.
[11] Brian F. Smith, "Police Identification and Interrogation of the Mentally Disturbed" (M.A. dissertation, The George Washington University Law School, 1973), pp. 20–25.
[12] Ibid., pp. 14–15.
[13] Great Britain, Metropolitan Police Detective Training School, Peel Center, *Depositions, Commital Proceedings, and Dying Declarations, D.9 Precis No. 29* (London: Metropolitan Police Detective Training School, Peel Center, Hendon, 1978), p. 2.

Correction: In the article "Police Use of Deadly Force" (August 1980), author James Q. Wilson suggests that Cecil Sledge, a New York City police officer, was black (p.17). In fact, Officer Sledge was white, as Professor Wilson has since learned.

Problems of Today— Solutions for Tomorrow:



Cities within Cities

By
SHERIFF GENE BARKSDALE
And LT. W. LEE FORBES
Sheriff's Planning Unit
Shelby County, Tenn.

A new city is being completed in Shelby County, Tenn., to be populated initially from a list of approximately 600 eligibles. It will contain all the services provided by any other city in any State in the Union, including public works, trash pickup, and fire and police protection. Essential services will be carried out by a permanent staff ranging from an initial 450 to over 700 when the population reaches the maximum 1,200 residents.

The design and construction cost in excess of $22 million and will be completed next year. Planning for staffing patterns, service delivery, operations, and training continues to focus on the relocation of the first residents during the summer of 1981. Average projected costs for all personnel, services, and programs exceed $10 million a year.

Imagine the impact to the local economy in the initial hiring of a staff of 450. Their duties will include the maintenance of over 7 acres with over 1,220 single residences and 41 semiprivate recreation areas and the supervision of various recreational programs, including basketball, volleyball, shuffleboard, and stickball.

Free services provided the participants, who pay no rent, taxes, or fees, include food from six centrally located kitchens, a bakery, the use of multiple dining areas, handling up to 62,000 meals a month, two libraries, two beauty shops, three barbershops, and laundry and drycleaning facilities. Other free services include medical and dental care, chaplains, and counselors. Reserved for the residents' sole use are recreation fields and courts. Also available are private visitation areas and secure property storage. Top this off with a system capable of handling over 50,000 housing assignments per year and complete the scenario by convincing the local taxpayers to fund the city totally and guarantee its operation in the future, no matter what costs are involved.

Reservations are now being considered for the first group of occupants, but there is a catch to qualifying for occupancy. Prime consideration will be given to persons whose address is, at the time of the city's dedication, 150 Washington Ave., Memphis, Tenn.—the current Shelby County Jail.

Since the late 1960's, it has been apparent that the courts were moving in a direction that would preclude the continued use of the current county jails. The use of two jails requiring dual staffing and many transfers was an inefficient and costly way of handling arrested persons. The majority of arrested persons were housed in the city jail until bound to the State court system. At the time of bindover, transfers involving outprocessing from the city jail, mittimus papers issued from the city courts, and intake processing at the county jail were required, placing a tremendous load on all concerned.

The jails were overcrowded and out-of-date, both in size and type, and did not provide adequate housing, treatment programs, or recreational activities for the inmates. Completed in 1926, the current county jail was designed for a maximum 290 inmates. Over the years, an additional facility of 250 beds was built to accommodate the overflow of the downtown jail. The city jail has a capacity of 335, but weekend counts generally exceed that figure, sometimes reaching 500.

The time had come for concerned officials to come up with long term solutions. After a study by outside consultants, a planning grant from the Law Enforcement Assistance Administration was secured to provide a base for future decisionmaking. A local architectural firm was selected to oversee

Shelby County Justice Center.

this phase of the needs study, as well as to provide alternatives from which local government could select the most viable plan.

One option discussed at length in this stage was total consolidation of all jails under the Sheriff of Shelby County. However, the courts would not tolerate for long the conditions present in the local jails. Advantages to the consolidation included economy, efficiency, program fulfillment, and the refocusing of community resources to one inmate installation. After several years, the only viable plan appeared to be the construction of a new jail in the downtown area, adjacent to the existing county, State, and Federal courts.

Scheduled to open in early 1981, the pretrial detention facility has now become part of a $45 million complex. The 13-floor administration building will house all lower courts for both the City of Memphis and Shelby County, as well as the eight resident divisions of criminal court. The administration building will also contain the clerks of the various courts, the public defender, the attorney general, and the administrative divisions for both the Shelby County Sheriff's Department and the Memphis Police Department.

The criminal justice system in Memphis/Shelby County will revolve around the pretrial detention facility. This will totally replace both the county jail and the jail located at the county penal farm. The new facility will also handle the city prisoners now held by the police department, thus relieving them of jail responsibilities effecting a totally consolidated jail operation.

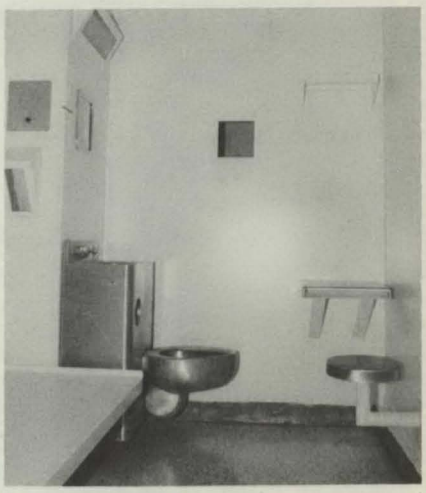
One major concern of those involved from the earliest stages through final approval was the rather loosely defined and ever-changing scope of the phrase "a constitutional jail." Through years of litigation and court suits, the conditions, services, and comforts provided to those incarcerated in jails throughout the United States were being defined and settled, but on a piecemeal basis, with little overall guidance for those faced with the task of building, staffing, and operating these facilities. Couple these ever-changing and ever-broadening guidelines with a local suit relating to jail conditions, and one realizes the tumultuous situation faced by the sheriff's department and local governing bodies attempting to define the final design for the detention facility.

Prior to accepting the design, several basic decisions had to be made concerning size, layout, services, and operations, and each had to be reviewed and weighed in light of recent court decisions. A large part of the time spent was used for research in an attempt to anticipate where the courts were going in the future.

Judicial review of jail conditions spanned periods ranging from the prisoner having no rights to today's standards in new jails, with all the attendant services and programs. An early judicial review in this area revealed that prisoners had little or no constitutional rights. In *Ruffin* v. *Commonwealth,* 62 Va. (21 Gratt.) 790 (1871), the court stated: "He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords him. He is for the time being the slave of the State."

By 1944, the courts decided that a prisoner retained all the rights of any other citizen, except those taken from

Sheriff Barksdale.



Typical cell, 9' × 6', grouped around a common day room. With the addition of a mattress and locker, this cell is ready for occupancy.

him by law. The idea of rights being retained was accepted by the U.S. Supreme Court in a 1974 case and has colored the further application of suits involving the use of the Federal Civil Rights Act.

By 1974, the rights of convicted inmates and pretrial detainees appeared to diverge again—the rights of pretrial detainees were expanded to allow only limitations necessary to guarantee their appearance at the trial, taking into account the security needs of the institution. Basically, an unconvicted person is treated as a convict only in areas where security, health, and discipline are concerned. This ruling initiated questions in the areas of training and staffing of a mixed institution serving the needs of both pretrial and sentenced individuals.

Further problems arose in the area of existing construction standards available for use as guidelines in designing the physical plant. At the time of finalization, the State of Tennessee and the Federal Bureau of Prisons had no minimum construction standards for jails. The policy standards of the Bureau of Prisons and the recommended minimum standards for jails in Tennessee did not address the size or type of facility envisioned by local agencies and recommended by the consultants.

The development of basic policy and studies in the areas of long term housing, short term detention, and service delivery to inmates dictated a design that would meet the needs of all concerned, both now and in the future. The design included three separate housing areas and several different flow patterns depending upon the conditions surrounding the inmates' arrest, his court status, or the need for long term housing.

The pretrial detention facility contains six floors, each consisting of slightly over 1.22 acres, with a total area of approximately 7.35 acres in which prisoners will be housed. The basic design is that of single cells grouped into pods ranging from 5 to 24 inmates, surrounding a common dayroom. Trust dormitories adjacent to the kitchen and hesitation holding areas in the booking section are the only exceptions. This type of housing will most easily meet any requirements for classification, separation by charges, or types of protective custody or security that the courts might decide in the future.

As much as possible, functions within the facility are divided by floor in order to handle the differing status of inmates and to preserve a series of continual flows in several areas of the building. To preserve security and to prevent the mixing of inmates with differing classifications, it is extremely important that these flows are maintained. The floors' functions are:

1) Lower Level—intake processing, hesitation holding, booking and property control, ID/fingerprinting, medical screening, crisis counseling, pretrial release interviews, male short term housing (168 cells), female short term housing (42 cells), dressing areas, property storage, laundry, visitation and interview rooms, and release processing;
2) First Floor—female long term housing (103 cells), classrooms, counseling, kitchen and food storage areas, trust dormitory, jail administrative offices, visitation and interview rooms, detective workrooms, pretrial release offices and probation offices,
3) Second Floor—admissions and orientation, medical facilities, counseling and classification offices, chaplains' offices, chapel, libraries, female housing (30 cells), male housing (164 cells), kitchens, and dining areas (male and female);
4) Third Floor—male long term housing (346 cells), counseling offices, classrooms, kitchen, and dining area;
5) Fourth Floor—male long term housing, counseling offices, classrooms, kitchen, and dining area;
6) Fifth Floor—outdoor recreation areas (male & female), indoor gymnasium, and minigym.

Security for the jail includes closed-circuit monitors on the perimeters, in the tunnel between the jail and the court building, and in all elevators carrying inmates. Floor security is based on total observation and control of an inmate while he is moving in the vertical transport systems and excluding personal contact with prisoners from other floors. If an inmate leaves his assigned floor, a search for contraband will be made upon his return, before the inmate can contact others on the floor.

Each floor is color-coded, and inmates are issued clothing to match their floor and classification. This calls attention to all persons off their regularly assigned floors. Floor security is further strengthened by the housing pod concept which allows no more than 24 inmates to congregate in an area, except during scheduled feeding or recreation periods. Each housing pod, no matter what its location, allows observation by jail personnel from all sides by means of walkways. The separation of inmates by felony and misdemeanor charges, as well as by repeat or first offenders, is easily accomplished by using the housing pod concept. Further classification allows grouping by security risk factors and determines all assignments or transfers in housing areas. All door controls, escalators, and elevators are operated by remote control from 20 secured control centers throughout the building. Each control center is connected to all others by a system of in-house intercoms and telephones and serves as the traffic management point for all areas under its control. Multiple intercom points allow swift response to requests for assistance by other staff members.

Operational flows are separated to go with necessary functions and generally concern the overall activity on one floor.

The lower level of the building acts as the central intake and release point for all prisoner traffic, as well as serving as a replacement for the current city jail. Traffic is routed through one vehicular sallyport, and male and female prisoners are separated prior to

entering the jail. Intake processing and booking is segregated according to sex, with separate facilities provided throughout. If intake processing overloads the booking process, individual hesitation holding cells are provided to allow the continued acceptance of prisoners without delaying the arresting officers' return to duties.

After a preliminary search and a complete inventory of personal property and money, the prisoner is allowed two phone calls before the completion of the booking process. Stops at ID/fingerprint and medical screening precede the cell assignment on this level for short term housing. These short term housing areas contain 168 male and 42 female cells with no dayrooms and house the inmate for a period of 24 to 72 hours, depending on the date of arrest and first scheduled court appearance. Statistical studies indicate that by using the various methods of pretrial release, two-thirds of all arrested persons are released during the first 24 hours of detention, with most staying for 6 hours or less.

Until the prisoners either arrange release or make a first court appearance, they remain in their street clothes and continue to be housed on this level. After a first appearance in court or upon commitment to jail, they are included in a regular "dress out" session. After being issued jail clothing, the inmates are moved through the vertical transport systems to the second floor, where they stay for a period not exceeding 13 days.

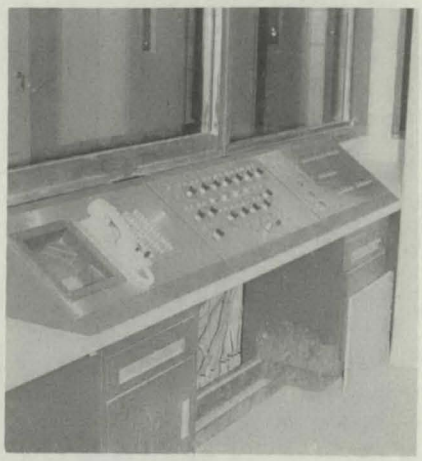
The second floor, Admissions and Orientation (A & O), houses both male and female prisoners and is set up to allow inmate participation in various resident programs. Each person is interviewed by counselors and classification personnel, medical practitioners, dentist, and if requested, chaplains. During their stay on this floor, each inmate is classified as to security risk, and an estimation is made of their future needs for special counseling and treatment programs during their stay. Testing, personal meetings, interviews, staff observations, review of prior criminal history, and a full medical screening contribute to the inmates final assignment in a regular housing area.

Due to the nature of admissions and orientation tasks, the ratio of staff to inmates is higher here than in any other area. The typical housing area is a 16-person pod, clustered around an activities area or dayroom. Counseling offices serving two pods and an audio-visual classroom provide the staff with enough space to implement the comprehensive admissions and orientation programs.

Security for A & O remains maximum, since the staff is unfamiliar with the inmates. Each is considered potentially dangerous until full classification is completed.

Inmates are introduced to the rules and regulations as soon as possible after their move to A & O. A rules and policy booklet is given to each inmate and a comprehensive orientation to the methods and means of getting around the jail is presented. By using the proper pass and coding systems, a prisoner may move around the building without the need of personal escort.

Once an inmate has completed all sessions in A & O, he is moved into regular long term housing areas. Generally about 80 to 85 percent of all admitted persons secure a release prior to this time. Based on evaluations, all others are assigned to a housing area appropriate to their security risk profile. Female inmates are moved down to the appropriate areas on the first floor, while males proceed to either the third or fourth floors.



Typical control panel is operated by one officer. Some control rooms contain up to seven officer stations of this type.

Each long term housing area is divided into minimum, medium, and maximum security levels. The floors consist of a series of 23-man pods surrounding an activities area or dayroom. The different levels of custody entail a reduction in floor space and pod size and an increase in staff observation and activities totally segregated from other prisoners.

Programs in the long term housing areas are setup so that the staff moves into the inmate areas, cutting down on inmate traffic in the vertical transport systems and reducing the time needed to search prisoners who are returning to the floors. Counselors and program personnel have offices and classrooms on all levels of the building, further aiding in building security.

The fifth floor provides the space for recreational activities which are an integral part of any rehabilitation program. A structured series of activities, both in and out of doors, does much to combat boredom and release pent-up energies that could be destructive if expended in other ways. The main outdoor areas are divided so that both male and female prisoners can exercise at the same time. When the female areas are not in use, male inmates may use the unoccupied areas. A covered gymnasium and a minigym are used during inclement weather. Structured programs in basketball, volleyball, shuffleboard, ping pong, and stickball afford all inmates the opportunity to remain active.

To supplement the planning of physical design and operations, the sheriff's department audited its paper flow and information needs. This led to a further look at the information needs of other agencies who would be using the facility, especially the courts who would draw daily case dockets from the jail.

A review of all areas involving paperwork or transfer of information to other agencies revealed two areas of concern to the planning staff—the old computer system appeared inadequate to handle the projected caseload when the jail began handling all arrested persons, and records needed to document the systems were scattered through several divisions of the department.

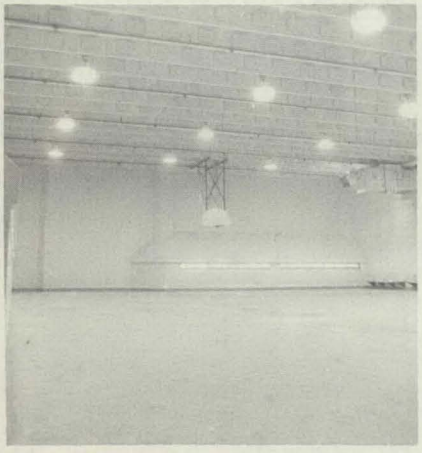
Studies were undertaken to determine the projected information needs of the combined facility. The jail and Bureau of Identification records systems in the sheriff's department were to be combined into one jacket file system, using microfiched history storage. During the move into the new records and information area in the administration building, this new jacket setup will be loaded into a mechanical filing system and gradually converted to a total microfiche file based on a "day-one" booking flow. It is anticipated that this system, based totally on fingerprint identification of all prisoners booked into the jail, will gradually phase out the need for maintaining the majority of the old Bureau of Identification records now kept by various law enforcement agencies. Using the "day-one" booking approach, approximately 90 percent of those persons now involved in the local criminal justice system will, within 24 months, have their records updated and converted to the new, "on-line" system.

The paper records used for booking, ID/fingerprint, release, and general operations in the jail will be forwarded to records by a system of pneumatic tubes connecting the two buildings. They will remain in the jacket system until the case is disposed of by the courts. Upon receipt of the disposition, all paper concerning that arrest and booking cycle will be microfiched and returned to the file jacket which is subfiled by booking number.

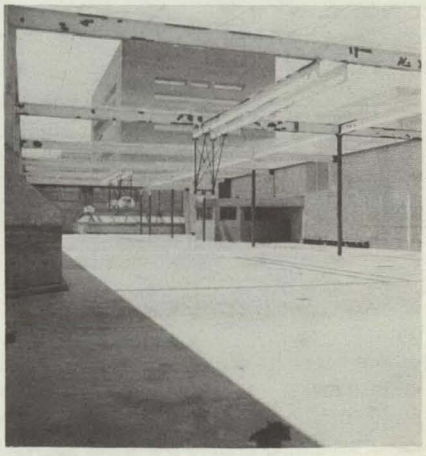
Based on the sheriff's department's prior studies of the Records & Information section, the computerized record system being developed on Shelby County government's computer will provide "real time" access to all information needed to operate the jail and courts systems. By using a concept of total processing of all prisoners booked into the jail, including fingerprints, the basic information collected will be used to generate a series of reports and statistical data for all authorized and interested parties.

Booking data will be made available to the various courts for docketing purposes and will also serve as the generator for several management systems concerned with the efficient operation of the jail. Other areas of responsibility for the sheriff will be supported by data and statistics generated from the jail & records systems through various management reports and performance indexes based on arrests by division, bureau, or unit levels. The same type of information will be available for other agencies as requested. Billings for board charges will be produced for the State and county governments, as well as local and Federal authorities.

In order to provide the up-to-date information necessary to schedule activities, assign and reassign cells, and respond to requests for an inmate's presence in other areas, a subsystem was developed to maintain and monitor the inmates' location at all times. The "inmate tracking system" is based on the assumption that one cannot arrive unless he was sent. Any exceptions to this sequence will cause a security printer to record the event in the main control center. Corrective action by the shift commander can be taken immediately to locate the inmate and update the appropriate records. By requiring that checkouts be made from the control centers in the jail, the system can be used to provide a complete listing of all service areas, medical calls, etc., involving a particular inmate. Upon completion of an arrest cycle, these listings and the paper files can be checked against each other for completeness and accuracy prior to placing on microfiche. Running on a dualed system, with full redundancy in the terminal net and backed with emergency generators, the system should provide 95 percent plus up-time, allowing the jail to operate without the need for much of the paperwork required to support the old systems. By fully processing all persons and properly using



Covered gymnasium provides a recreation area for prisoners.



Outside male recreation area.

the inmate tracking system, many of the lists and reports now completed and maintained manually can be eliminated, and daily system generated listings can be used in case of unscheduled computer down-time.

The staffing and training for the complex brought about another series of studies and discussions concerning the relative merits involved in using commissioned or noncommissioned personnel. The overriding argument that ultimately decided the question was that of the dissatisfaction generated by placing commissioned personnel trained as law enforcement officers in detention duties. A secondary consideration was the difference in personnel costs. It was decided that a new career program would be developed for noncommissioned personnel in the sheriff's department.

The deputy jailer program spans a series of 5 grades with 19 pay steps in each. From entry on duty as a Deputy Jailer I through the Deputy Jailer V, there are both longevity and educational requirements. Individuals who choose not to compete for an increased level of responsibility can advance through merit steps.

This program should allow the sheriff's department to hire and maintain a professional staff that will be trained for the needs of a pretrial detention facility without suffering loss of morale by using commissioned officers for these jobs.

Today's problems in Shelby County reflect those faced by many agencies throughout the United States. Correctional institutions are involved in lawsuits dealing with physical conditions, space allocations, overcrowding, staff competency, staff/inmate ratios, inmate security, and program delivery. We have attempted to meet the required standards and to anticipate future requirements. Single cells, classification groupings, specialized staff requirements, and complete service delivery combine to give the responsible jurisdiction enough flexibility to continue to change with the mandates of the courts and society as a whole. **FBI**

Forensic Science

OBTAINING SALIVA SAMPLES FROM BITEMARK EVIDENCE

By ROGER E. MITTLEMAN, M.D.
Office of Medical Examiner
Miami, Fla.

WILLARD CARL STUVER, M.S.
Public Safety Department
Dade County, Fla.

And RICHARD SOUVIRON, D.D.S., A.B.F.O.
Dade County Medical Examiner's Office
Miami, Fla.

EDITOR'S NOTE: This article should be of interest to all police personnel; however, only medical examiners or trained forensic technicians should attempt to obtain this type of evidence.

Reference is made to a brand name applicator (Swube). This type of applicator is recommended because it has a friction cap and its design and availability lends itself to this procedure. While brand names may be mentioned in articles published in the Bulletin, this is solely for information and assistance to law enforcement personnel. It should not, under any circumstance, be construed as an endorsement or approval by the FBI.

Bitemarks are most frequently found in violent crimes, especially those that are sex related. To aid in the possible determination of the assailant's blood type, the assailant's secretor status, and the presence or absence of salivary amylase and other proteins, saliva samples should be obtained in all suspected bitemark cases. The importance of bitemark evidence has become prominent as a result of recent trials in Florida, such as the Theodore Bundy [1] and Dorothy Haizlip [2] cases.

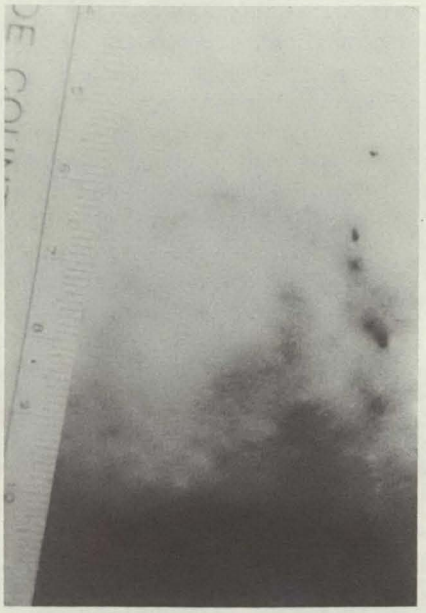
In the latter case, Dorothy Haizlip was found beaten and strangled in her Miami home. Bitemarks were found on her thigh and right breast. The area within the bitemark rings was swabbed and the evidence preserved. Testing of the swabbings revealed alpha amylase and the presence of the A and H antigens. The victim's serotype was blood group O. Subsequent blood and saliva standards obtained from the defendant confirmed that he was a type A secretor.

The basis for all data relative to a bitemark is the preawareness or discovery of the bitemark, followed by photography and saliva collection. Bitemarks may take many different forms, the most common being the bite "ring" made by the anterior (incisor) teeth of each arch. (See fig. 1.) Other bites may be a half ring in which only incisor teeth of the arch are present, as in the Haizlip case. (See fig. 2.) In addition, bitemarks may only be two or three teeth of an arch, not forming a bite "ring" but making more of a "tooth mark." (See fig. 3.)

Figure 1

Bite ring made by anterior (incisor) teeth of each arch.

Figure 2



Half-ring bitemark (Haizlip case).

In homicide cases, the bitemark-related samples should be collected from the victim at the crime scene; however, if the bitemark area is handled with care during transit, the evidence may be collected in the morgue. One should avoid contaminating the bitemark and should position the body so as to avoid touching the surface of the bitemark with absorbant material, such as blood, water, clothing, or paper. The preferred method is to construct a cardboard tent and secure it over and around the bitemark area with scotch tape.

A bitemark saliva collection kit should include the following equipment. (See fig. 4.)

1) Two tubes containing specially treated cotton threads (one tube labeled "control" and the other tube labeled "sample"). (See fig. 5.) The cotton threads are specially treated by thoroughly washing and rinsing a portion of 100-percent cotton sheeting. It cannot be over-emphasized that the sheeting should be thoroughly rinsed following a detergent wash because residual detergent on fabric sizing can interfere with subsequent body fluid typings, and in particular, with the salivary amylase testing. After thoroughly drying the cloth, separate (tease) eight threads approximately 12 to 15 mm long from the piece of sheeting and place them in a 1 dram shell vial. This shell vial should have a 2 to 3 mm hole melted into the plastic stopper. This hole allows the threads to air dry once they have been moistened during the swabbing process.

2) Filter paper (3 mm Whatman).
3) Labeled container for blood specimen. The container must be free of preservatives or other chemicals and must be large enough to contain at least 5 cc of blood.
4) Labeled container (squeeze bottle) for physiological saline solution.
5) One pair of clean forceps.
6) Two double Swube disposable applicators. Each double Swube disposable applicator consists of two cotton-tipped swabs in a clear plastic tube. Two labels should be included in the kit for attachment to the appropriate tube.
7) Cardboard box containing specially treated cotton cloth cut in a square, measuring approximately 3 cm^2. The cotton cloth is obtained from 100-percent cotton sheeting and is treated identically to the cotton threads previously described.
8) Instructions.

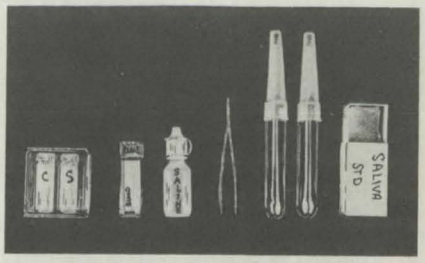
The saliva sample should be collected as follows:

1) Using clean forceps, grasp the clump of threads from the tube labeled control. Saturate the threads with saline, shaking off the excess solution. Obtain a control sample by swabbing an area approximately 1 by 1 inch, adjacent to the bitemark but not part of it. Avoid swabbing areas contaminated by blood. Place the threads back into the control tube. The control area is sampled first so as not to contaminate the forceps with secretor material from the bitemark. The threads from the second vial are used to obtain a sample within the bitemark "ring." The sample is collected and placed in the appropriately labeled container. Care should be taken when swabbing so as not to contaminate the swabbing material with blood or inflict any extraneous wounds with the forceps. The threads must not be touched by the examiner's hands since this could result in contamination by sweat. The specimens will be used to aid in the determination of assailant blood

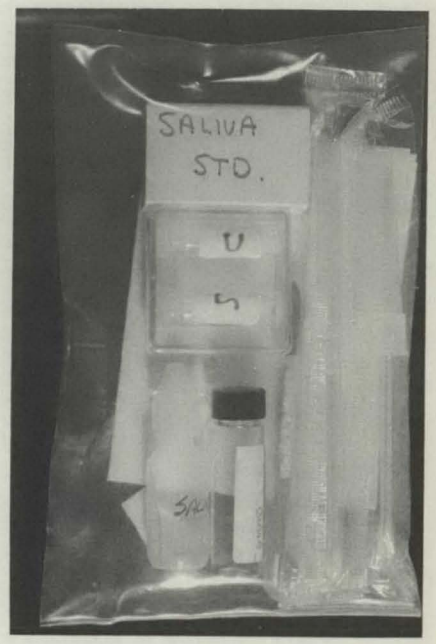
Figure 3

Bitemark made by a few teeth (tooth marks).

Figure 4



Components of saliva kit from left to right: Plastic box with filter paper and tubes containing cotton threads, blood tube, squeeze bottle with physiological saline solutions, tweezers, Swubes, and saliva standard cardboard box with cotton cloth. (The items not pictured here are labels for the swabs and instructions.)



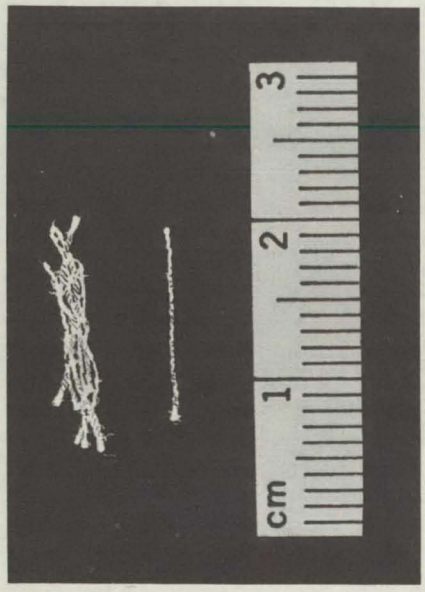
Bitemark saliva collection kit.

type and secretor status in accordance with the usual forensic practices (i.e., the absorption-elution test).

2) Two cotton-tipped applicators from one of the Swube applicators should be used to reswab the area within the bitemark ring previously swabbed with threads. This is done to secure more material on a media adequate for blood typing and amylase testing. Salivary amylase (alpha amylase, AMY-1, Ec. 3.2.1.1) is commonly tested for by the starch-iodine method,[3] dyed starch substrate,[4] or electrophoretic technique.[5] Swabbing should be done by saturating the swabs with saline, draining off the excess water by gently touching it against the filter paper, rubbing thoroughly the area within the bitemark "ring," and placing the swabs into the plastic container. Remember that control swabbings must also be made of the adjacent area, using another Swube container. The samples obtained are also used to determine the assailant's blood type and secretor status by use of the absorption-inhibition tests.

3) In order to be able to interpret the results of the blood grouping tests, whole blood and saliva standards need to be collected from the victim. The cotton cloth from the box provided in the kit should be used to collect the saliva standard from the victim's mouth. The sample is obtained from the buccal mucosa, directly opposite the molar teeth on one side. If the cloth cannot be directly placed in the appropriate area, cotton swabs (Swube) may be used and pressed and rubbed against the cloth in order to transfer the control sample. The cloth is then stored in the cardboard box. Clean rubber gloves must be worn by the examiner for the collection of the saliva control. Five cm^3 of whole blood should be collected from the victim by an appropriate technique and placed in a sterile container that is free of preservatives and other chemicals.

Figure 5



Specially treated cotton threads.

The specimens should be transported to the testing laboratories (usually crime laboratories) as soon as possible after collection. If prolonged storage is anticipated, they should be placed in a cool environment (4° C). Important information can be obtained from the saliva sample which may connect a suspect to a crime. The findings can be of the utmost importance to those persons involved in prosecuting or defending these types of criminal cases.

It is important to remember that contamination of the bitemark will alter or invalidate the blood grouping and serologic studies. In addition, the bite may be made through clothing which will prevent any saliva from being deposited onto the skin, thereby giving a false negative.

The method described here is simple, convenient, and inexpensive. A complete bitemark workup could also be the key that connects a particular crime to a particular suspect. **FBI**

Footnotes

[1] *State of Florida* v. *Theodore Robert Bundy,* Leon County, Fla., Circuit Court, Case No. 78 CF-670.

[2] *State of Florida* v. *Roy Allen Stewart,* Case No. 70-6621, Circuit Court of the 11th Judicial Circuit in and for Dade County, Fla.

[3] W. Roberts, "On the Estimation of the Amglolytic and Proteolytic Activity of Pancreatic Extracts." *Proc. R. Soc.,* London 32: (1881), pp. 145-161; L. C. Nukolls, *The Scientific Investigation of Crimes* (London: Butterworth & Co., Ltd., 1956), p. 200; and D. F. Nelson and P. L. Kirk, "The Identification of Saliva," *Journal of Forensic Medicine* 10 (1963): pp. 14-21.

[4] G. M. Willott, "An Improved Test for the Detection of Salivary Amylase in Stains," *Journal of Forensic Sciences Society,* 14 (1974): pp. 341-344.

[5] J. C. Ward, A. D. Merritt and D. Bixler, "Human Salivary Amylase: Genetics of Electrophoretic Variants," *American Journal of Human Genetics,* 23 (1971): p. 403; A. D. Merritt, M. L. Rivas, D. Bixley and R. Newell, "Salivary and Pancreatic Amylase: Electrophoretics Characterizations and Genetic Studies," *American Journal of Human Genetics,* 25 (1973): p. 510.

Countersnipers are the eyes of the command post. The three-man teams include a team leader, a primary countersniper, and a secondary countersniper who doubles as a photographer.

TACTICAL CRISIS MANAGEMENT:

The Challenge of the 80's

By W. RONALD OLIN
Assistant Chief of Police
Police Department
Lawrence, Kans.

The Central Intelligence Agency recently predicted that "terrorists will try to adapt their tactics to neutralize the countermeasures adopted by government and private security services. They probably will change target selection, improve planning and trade craft, and, possibly, increase their technological sophistication." [1] This prediction has ominous implications for law enforcement agencies in the United States. There appears to be a resurgence of terrorist-type attacks, whether politically or criminally motivated, which require sophisticated law enforcement response. Unfortunately, American police agencies seem to be locked into a "mind set" when dealing with tactical police operations. Most tactical police response is defined by parameters developed in the early 1970's. Unless we carefully evaluate recent innovations in handling crises, law enforcement may not be prepared to deal effectively with the challenge of the decade ahead.

How prepared are most law enforcement agencies to handle a complex tactical police response? Many agencies are only marginally prepared or not prepared at all. While some agencies have tactical units, specialized training has focused on the countersniper option. Response is complicated by some field commanders who rely on the spontaneous use of any officer arriving upon the scene. These arbitrarily dispensed assignments suggest that many administrators are quite assured that their enlightened leadership is more important than any preplanned response.

A great deal of literature is available to police officers and administrators on the various components of response. Many articles are available which describe the equipment or training of Special Weapons and Tactics (SWAT) personnel. Others describe the needs of hostage negotiation and weaponry. This article will review some of the historical developments relevant to police tactics and provide a concrete framework for planning and executing a sophisticated emergency response.

The State of the Art

Tactical response groups were organized to cope with an increasing problem of hostage and barricaded-suspect incidents. As usual, the police response to this phenomenon developed after the widespread use of these tactics by criminals. The resulting sophistication of the police response was enhanced when it was proven that "in those instances where the police used specially trained and equipped personnel, they were able to successfully isolate and contain the suspects and thereby prevented the loss of life of innocent bystanders." [2] Perhaps the most famous tactical team is the Los Angeles Police Department Special Weapons and Tactics (SWAT) team. Los Angeles pioneered the development and training of SWAT. The resulting model of tactical response was copied by many law enforcement agencies throughout the country. Some law enforcement agencies tried to obscure ties with the concept of SWAT because of adverse publicity caused by a popular television show of that name. In those cases, teams were created and the titles changed to "Tactical Operations Unit" [3] or "Emergency Services Unit." [4] However, the basic tactics remained the same.

American tactical police response has been locked into the mold as defined in the early 1970's by the LAPD concept of SWAT. LAPD specifies:

> "A SWAT team is composed of five permanent team members (team leader, marksman, observer, scout and rear guard). SWAT teams operate separately or combined with other SWAT teams as squads or platoons, to perform special tactical missions. . . ." [5]

Each SWAT team member was cross-trained in the duties of every man. Some police agencies changed the number of men assigned to a team or the name of the team. But, the evidence indicates that law enforcement's view of tactical response has been clouded by the automatic acceptance of the SWAT team model with little significant change. Some law enforcement agencies have integrated

R. Richard Stanwix
Chief of Police

Assistant Chief Olin

hostage negotiation techniques into the response concept. However, there has been a lack of a concrete model to incorporate a total systems approach for dealing with police tactical emergencies.

The development of SWAT and the aura of elitism inbred into the teams resulted in many articles in police professional journals, newspapers, and magazines, each accompanied by a photo of the particular team completing some exciting maneuver while brandishing the exotic weapons of their trade. The natural reaction of the public was to view SWAT as a "killer team." This citizen perception created pressure on police administrators to demonstrate that tactical police response can be deployed with a minimum of force. Hence, hostage negotiation rapidly evolved into an acceptable practice. Some law enforcement agencies merged their negotiators and tactical teams, while others insisted on separation of the two for optimum results.

Additional innovations accompanied these developments, including the use of scenarios to test the emergency response capability of an agency. Some scenarios pointed out difficulties in proper deployment. In a complex scenario run in Norman, Okla., the merger of tactical response and negotiation demonstrated an "obvious (need) to study further training programs." [6] The scenario also demonstrated that "the police sometimes stressed tactical considerations at the expense of sacrificing intelligence opportunities." [7] Perhaps the problem truly lies in the multiplicity of responsibilities required to resolve professionally a tactical emergency. While many problems were exemplified in scenarios and actual cases, no documentation can be found suggesting that the basic organization of the response was challenged. The traditional tactical response could be described as a simple four-point concept. (See fig. 1.) However, it is necessary to depart from this myopic view and examine a new framework for police tactical response.

Many lessons can be learned by examining past historical incidents.

Members of the assault group practice basic hand-to-hand combat. Fifty percent of all assault training is physical fitness and defensive tactics; the remainder of the training is devoted to classroom and scenario work.

Figure 1

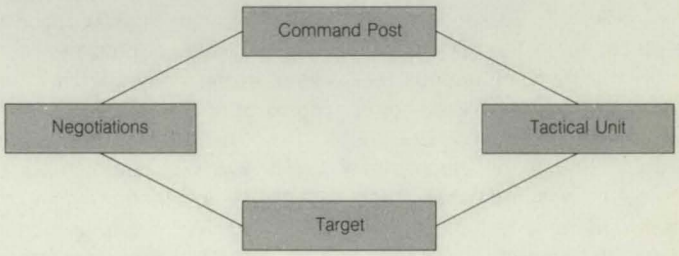


Figure 2

Perhaps one of the most sobering is the Munich massacre on September 5, 1972, in Munich, West Germany at the 20th Olympiad. Black September terrorists killed two and seized nine Israeli athletes in the Olympic village and held them for an anticipated trade with imprisoned terrorists in Israel. After lengthy negotiations were unsuccessful, the terrorists were transported to Fürstenfeldbruck airfield outside of Munich, where a gun battle resulted in the death of the remaining athletes, one police officer, and five of the eight terrorists. The Munich incident was complicated by many police problems, including inadequate intelligence gathering, no police assault capability, a total reliance on countersnipers for resolution of the problem, high ranking police administrators rather than mid-level personnel as negotiators, a language barrier, and a command post too close to the incident to remain emotionally detached. The resulting lesson, which has led to changes by both the Bavarian State Police and the Federal Republic of Germany, is that to be successful a police tactical operation must have intelligence, countersniper, assault, and negotiation capabilities.

These conclusions have been substantiated in other incidents and scenarios throughout the world. The evidence suggests that proper tactical response is too complex to cross train all personnel in all elements of any operation. This is especially true when the personnel train only part-time. Such a conclusion challenges one of the basic assumptions of SWAT. It is also obvious that to improve the tactical response of any law enforcement agency, it is necessary to define precisely the division of labor, the specific job tasks, and the training goals and objectives of each man. A simple alteration of the traditional concept of SWAT can solve the problems specified above. This model has been in use by our German police colleagues for some time. However, few American administrators have so precisely interpreted the lessons of history to mold an improved police response.

A Model Police Response

The resulting police response model is taken from the Bavarian State Police and incorporates a total approach for dealing with tactical emergencies. The model corrects the deficiencies outlined above. The strength of the model lies in the systematic identification of the elements necessary to resolve an incident of this nature. The strict division of labor and specialization is a further refinement of existing response models using four groups—countersniper group, assault group, negotiation group, and intelligence group. (See fig. 2.) This model may not vary significantly from the way some agencies actually handle tactical emergencies. However, it does carefully delineate the necessary criteria for an organized response.

Group One—Countersniper (3 or more men) This group requires a minimum of one three-man team comprised of one leader-communications man and two marksmen. The advantage of separating the countersnipers from the traditional SWAT composition is two-fold. First, most SWAT deployment is made on a team-by-team basis. In some instances, entire teams are used to set up countersniper positions when only three of the men are required to complete the task. If team deployment is not used, then the team must be split to accomplish total coverage. Secondly, the department's best rifle shots are not necessarily those who are young or in the best physical condition. While it is desirable to have combat-ready snipers, the only requirements for a countersniper are the talent to provide precise, controlled gunfire on command and the psychological ability to pull the trigger. A separation of the countersnipers from the assault team accomplishes these needs. Refresher training is also simplified for countersnipers, since daily or weekly practice can be completed with a minimum expenditure of time and money.

Group Two—Assault (7 or more men) The assault group is responsible for inner perimeter control, entry, and armed assault. This group requires a minimum of seven men, one for each side of the target and three or more for any actual assault. The separation of this team from the countersnipers enables the assault group to practice and perfect entry methods into various structures, short range selective fire techniques, hand-to-hand combat, protective assignments, and other specialized tasks.

Group Three—Negotiations (2 or more men) The negotiations group requires a minimum of one two-man team to conduct negotiations in the case of a barricaded suspect. The negotiators should be selected and trained in psychological communication techniques. Whenever possible, the negotiator should speak a foreign language or have translators available on an immediate basis. Two men are necessary in most instances to support each other physically and psychologically during the incident.

Group Four—Intelligence (3 or more men) The intelligence group requires a minimum of one three-man team specifically designated prior to any tactical emergency. This team is responsible for developing background information on the offenders involved. The group leader would be responsible for team coordination and evaluation of the information acquired from all sources. The group leader would then provide the command post with the information. In some cases, technological expertise is recommended to allow for electronic surveillance when legally permissible.

There are several advantages to the four-group concept of tactical response. Many tactical situations are successfully resolved or catastrophically bungled by local agencies before a more specialized alternate agency arrives. The four-group concept outlined above uses a department's personnel in the most advantageous way. The model clearly defines the tasks of each member and should result in less confusion and more control by the

command post. The concept allows separate training and the development of more expertise by each group. Training scenarios can be easily developed to merge the response groups for practiced deployment on a regular basis.

The disadvantage to the four-group response is that it requires a minimum of 15 men. Because of budget and manpower limitations, this model may not be possible except in a medium or large police department. The model also requires a strong operational commander to control the diverse functions which are simultaneously occurring. However, these disadvantages are far outweighed by the advantages to this specific response concept.

The intelligence group is charged with providing timely, efficient intelligence gathering on barricaded suspects or hostage situations. This group develops detailed personal information for use by the other groups and the command post.

One negotiator works on a scenario, while backup personnel record the incident and offer suggestions to handle the crisis more appropriately.

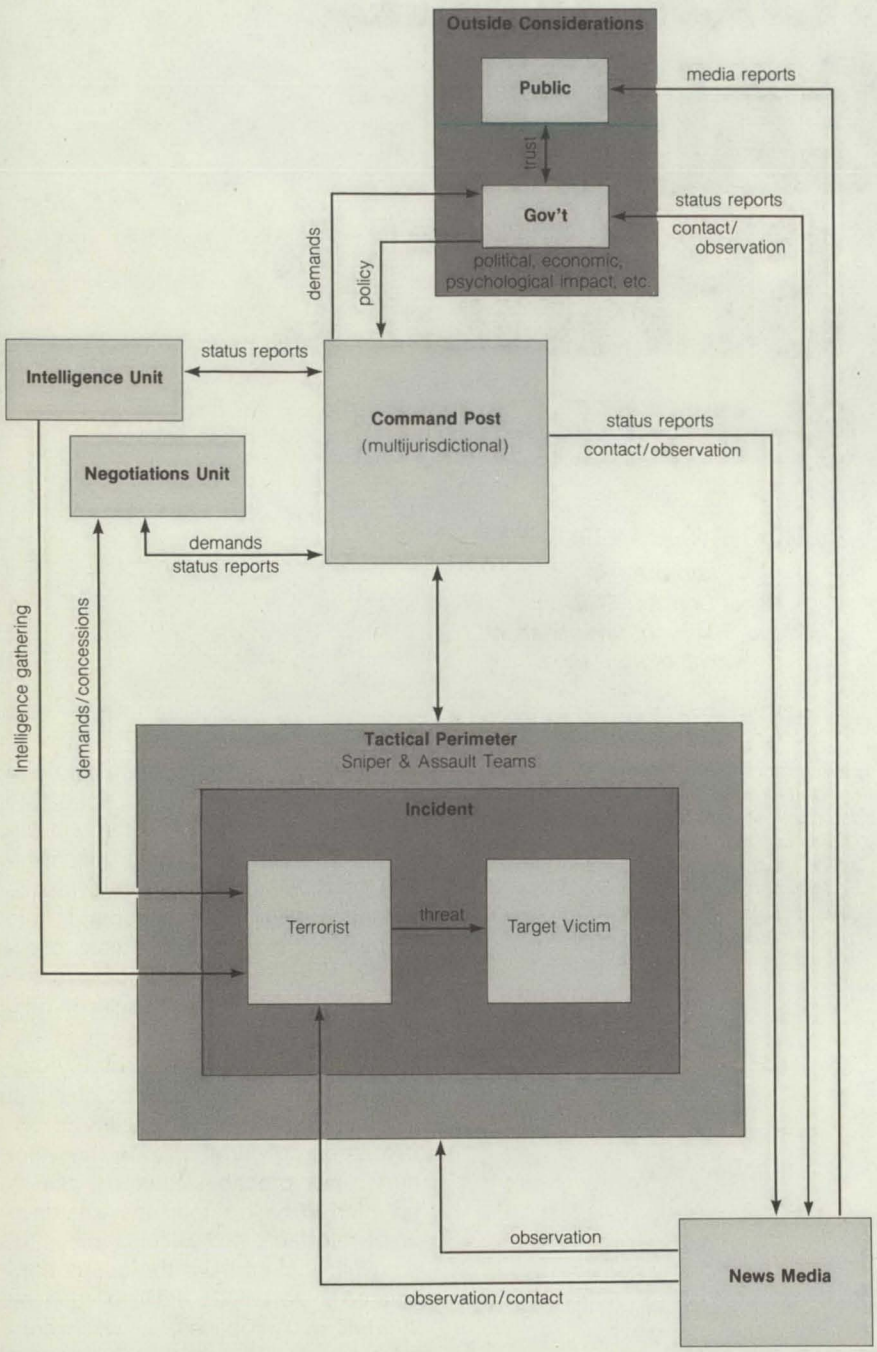
Conclusion

Tactical response is far more complicated than frequently depicted in training models. There are, in fact, many undiscussed areas of concern to any tactical operation. It is necessary to include the news media and the public's reaction when considering tactical response. The citizens have a right to know about these incidents. Agencies must be constantly striving to uphold professionally the trust given to law enforcement by the public and interpreted by the news media. Citizens expect proper handling of emergencies. The law enforcement profession cannot afford to be perceived as brutal, vicious, or disorganized. The resulting impact of an improperly handled tactical situation can be so overwhelming that the after-incident publicity may be more devastating than the actual tactical deployment. An ill-conceived tactical plan that fails may result in lawsuits, the forced resignations of key police personnel, or even unnecessary loss of life to those involved in the situation. In some social environments, it is possible that the perceived abuses of police authority could undermine the citizens' trust in the government, and the result could precipitate rioting or further attacks on law enforcement. The aftershock of terrorist incidents may be international in scope. When trying to understand

the actual forces involved in tactical crisis management, it's necessary to view the overall impact of a crisis on society. Figure 3 shows many of the complicated factors that must be considered during a crisis of this magnitude.

There are several historical precedents, including the rescues by the Israeli commandoes at Entebbe, the Border Police Group Nine at Mogadishum, and recently by the Special Air Services in London, which prove that a planned, practiced tactical response can be successful. It is increasingly necessary that law enforcement agencies be so well prepared in our response that we can rapidly seize the initiative from a criminal even when he has used the element of surprise. The West German model demonstrates that police tactical response can be viewed in ways other than the rather simplistic model of the 1970's. Law enforcement administrators must constantly strive to find ways to improve by studying successes, failures, and the lessons of others. Above all, we must not be locked into one view of response or fear constructive change. It is especially important that we carefully define the problem of tactical crisis management and vigorously pursue innovation in that area. Such a posture is the only way to meet the challenge of the 80's. **FBI**

Figure 3



Footnotes

[1] Central Intelligence Agency, *International Terrorism in 1979: A Research Paper,* (1980), p. 7.

[2] William L. Tafoya, "Special Weapons and Tactics," *The Police Chief,* July 1975, p. 71.

[3] Connie H. Pitts, "A Tactical Operations Unit," *FBI Law Enforcement Bulletin,* January 1975, pp. 10–13.

[4] Massad F. Ayoob, "Special Weapons and Tactics: The New York City Approach," *Law and Order,* October 1975, pp. 56–60.

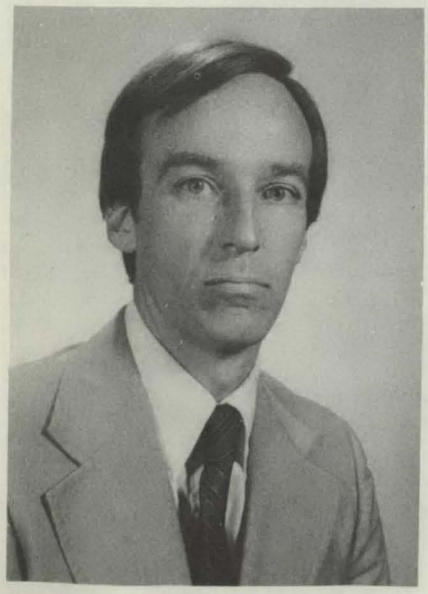
[5] Los Angeles Police Department, "Special Weapons and Tactics Team Concept," 1974, p. 1.

[6] Stephen Sloan and Richard Kearney, "An Analysis of a Simulated Terrorist Incident," *The Police Chief,* June 1977, p. 59.

[7] Ibid, p. 58.

PROBABLE CAUSE TO SEARCH:
USE OF INFERENCES

By ROBERT L. McGUINESS
Special Agent
Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.



Special Agent McGuiness

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issues 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.

Consider this situation. You are in the process of solving a crime. You have identified a suspect through fingerprints or an eyewitness identification which will be persuasive evidence at trial. You wish to seek out additional evidence of the crime, or simply recover the fruits thereof, and believe the suspect may still be in possession of it. However, no one has observed the suspect with this evidence at any particular place. Does this lack of direct evidence foreclose your ability to obtain a search warrant, or on the other hand, may probable cause to search be inferred based upon the existence of certain facts and circumstances? If so, what factors have the courts considered important in drawing such an inference? Two cases, in which contrary results were reached, illustrate

the problem well. They are *United States* v. *Haala* [1] and *United States* v. *Charest,* [2] both Federal cases, from the 10th and 1st circuits, respectively.

In *United States* v. *Haala,* the victim of the crime received a package at her home in Oklahoma sent through the mail from Missouri. It exploded upon opening. An examination of the inner wrappings of the package disclosed latent fingerprints which matched those of the defendant, whom the victim had suspected of being responsible for the act. The victim's suspicions were based, among other things, on an affair the defendant was having with her husband. It was also learned that the defendant was a science teacher who would have the knowledge necessary to construct a bomb of the type employed. Although the postal inspector investigating the case had no evidence based upon direct observation that evidence of the crime was located at any particular place, warrants were nevertheless applied for to search the defendant's automobile, her apartment in Minnesota, and her dormitory room at a university in Iowa, based upon the above facts. The search disclosed several items of incriminating evidence in all three places, which were introduced at the trial resulting in defendant's conviction. On appellate review of the question of probable cause for the searches, the court, without much discussion, found the evidence for probable cause "cogent, indisputable, trustworthy and overall substantial." [3]

Although the court in *Haala* had no trouble in finding probable cause, the case of *United States* v. *Charest* expresses the opposite treatment accorded to the problem by the courts. In *Charest,* the victim was murdered by means of a .38-caliber handgun. An eyewitness to the murder was later uncovered and named the defendant as having committed the murder. A warrant was sought to search defendant's home for the weapon. Again, as in *Haala*, no one had seen the weapon at the premises to be searched. The court found the search warrant invalid and suppressed the evidence seized in the search on the basis that probable cause for the search was lacking. The court pointed out: "Common sense tells us that it is unlikely that a murderer would hide in his own home, a gun used to shoot someone." [4]

Why did the courts treat these cases differently? What factors have the courts looked to as important or controlling in resolving these cases? This article identifies such factors, and in so doing, provides some guidance to law enforcement officers in drafting affidavits for search warrants in cases where there is no direct evidence linking the item sought with the place to be searched.

Before offering such guidance, it is necessary to recount some basic legal principles that will guide the discussion.

First is the firm doctrine that probable cause to arrest an individual does not ipso facto equal probable cause to search any place connected with that individual; [5] different conclusions must be drawn for each determination. For arrest, the conclusion must be drawn that a crime has been committed and that the suspect has committed it; for search, it must be concluded that the evidence sought is presently located in the place to be searched. [6]

The second principle is that probable cause can, in fact, be inferred from other facts and circumstances and need not be based on direct observation. [7] However, the problem is a little more troublesome when attempting to infer probable cause to search as opposed to probable cause for arrest. For instance, where a suspect's fingerprints are found at the crime scene, probable cause for his arrest will usually be present and will continue to exist. However, evidence which was in the suspect's possession at the time of the crime—whether fruits, instrumentalities, contraband, or mere evidence—will not necessarily continue to exist, or to exist at any particular place. The fruits of the crime may quickly be turned into other property, such as where stolen goods are sold for cash. The instrumentalities of the crime may be destroyed. Even if such articles are not changed in form or destroyed, conceivably there are a multitude of places where they may be concealed. This is where a third principle comes into play, namely, that the standard of proof for a search warrant is probable cause, not certainty, and therefore, search warrants will issue where the likelihood exists that the items to be searched for are in existence at a particular place. [8]

Lastly, the principles announced by the Supreme Court as applicable to the review of affidavits by appellate courts are an important consideration. These principles may be summarized as follows:

1) Affidavits for search warrants are to be tested and interpreted by reviewing courts "in a commonsense and realistic fashion"; [9]

2) Deference is to be paid a magistrate's determination of probable cause, and reviewing courts are to sustain that determination in doubtful or marginal cases; [10]

3) Only facts disclosed to the magistrate at the time of application for the warrant may be considered in the assessment of probable cause for the warrant. Facts not made known to the

". . . probable cause to arrest an individual does not ipso facto equal probable cause to search any place connected with that individual. . . ."

magistrate cannot serve to support a warrant. [11]

Having established the principles applicable to the inquiry, the next step is to examine the factors considered important by courts in inferring probable cause to search. It is interesting to note that there are no Supreme Court decisions directly on point and that most of the cases in this area are of fairly recent vintage, having arisen primarily since the time of *Chimel* v. *California,* [12] which limited the area of search incident to arrest and indirectly lent greater emphasis to the warrant requirement.

Perhaps the most frequently cited case on this subject is that of *United States* v. *Lucarz* [13] because of the factors it indicated as having controlled the outcome of previous cases. In *Lucarz,* a postal employee was suspected of stealing registry envelopes containing the previous day's proceeds from the sale of stamps. Evidence indicated that the employee left the building for a time during the day of the theft. Other evidence was developed pointing to his involvement in the theft. However, no one had seen the envelopes in the employee's house or had even seen him enter the house with the envelopes. Nevertheless, a search warrant was sought and obtained for the employee's home. Execution of the warrant resulted in the recovery of $29,000 in currency. The court upheld the magistrate's determination of probable cause on the basis that the items sought under the warrant were "the sort of materials that one would expect to be hidden at appellant's place of residence, both because of their value and bulk." [14] In so holding, the court stated as follows:

> "The situation here does not differ markedly from other cases wherein this court and others, albeit usually without discussion, have upheld searches although the nexus between the items to be seized and the place to be searched rested not on direct observation, as in the normal search-and-seizure case, but on the type of crime, the nature of the missing items, the extent of the suspect's opportunity for concealment, and normal inferences as to where a criminal would be likely to hide stolen property." [15]

Although *Lucarz* was a case in which stolen property was sought, the test has been extrapolated to other situations in which contraband or mere evidence is sought. [16] It is useful to look at the manner in which the courts have applied the factors cited in *Lucarz.* [17] The first two factors may be treated together.

Type of Crime; Nature of Item Sought

In the *Charest* case, where the crime was a single murder and the item sought was a single handgun, the court concluded that it was not likely that the defendant would have maintained the traceable murder weapon in his residence. However, in *United States* v. *Kalama,* [18] where the criminal activity was a continuing one (defendants were alleged to have committed 11 armed robberies), the court observed that it was a commonsense inference that the spree was likely to continue, that the weapons used in committing the robberies would be retained, and that they were likely to be found in the motel room for which a key was found upon defendants' arrest.

This is not to imply that courts have taken a firm stance in not inferring probable cause to search for instrumentalities of a single crime, for in *United States* v. *Bowers,* [19] also involving a single shooting, the court upheld a finding of probable cause to search for a handgun and other specified evidence tied to the shooting at the defendant's residence. [20]

In dealing with the subject of "staleness" of probable cause, [21] courts have sometimes drawn a distinction between items which are incriminating in themselves and those that are not. Such distinction also seems pertinent here. Thus, in *United States* v. *Steeves,* [22] involving a warrant authorized search at defendant's home for bank robbery loot, a bank bag, a handgun discharged during the robbery, clothing, and a ski mask worn during the robbery, the court concluded:

> "We think that it may be conceded to the defendant that [three months after the bank robbery] . . . there was little reason to believe that any of the bank's money or the money bag would still be in the home. But, the same concession cannot be made with respect to the revolver, the ski mask, and the clothing. The ski mask and the clothes were not incriminating in themselves, and . . . the pistol was not unlawful in itself or particularly incriminating. Moreover, people who own pistols generally keep them at home or on their persons." [23]

When the evidence sought is business records prepared in the ordinary course of business, the Supreme Court in *Andresen* v. *Maryland* [24] indicated in a footnote dealing with "staleness"

that "[i]t is eminently reasonable to expect that such records would be maintained in those offices [where prepared]. . . ." [25]

When the item sought is money, courts have usually considered the home to be the likely place for its retention, [26] as illustrated by the case of *United States* v. *Archer,* [27] where bribe money was paid to an assistant district attorney in the Queens, N.Y., District Attorney's Office. A search warrant was obtained to search for the money at the district attorney's home. On review of the warrant on appeal, the court found that the magistrate had a substantial basis for concluding that defendant "would keep the money in his home rather than chance almost certain discovery, or at the least, cause suspicion, should he try to deposit this cash in a bank." [28] The validity of the warrant was upheld.

Opportunity for Concealment

This is a logical factor that has not merited much attention by the courts. It is clear that if a suspect were arrested in his vehicle shortly after the commission of a theft, probable cause to search his vehicle for evidence relating to the theft may exist. [29] However, since there was not yet an opportunity for him to conceal the evidence in other locations, no probable cause would exist to search other locations.

Normal Inferences as to Where a Criminal Would Be Likely To Hide the Property Sought

This last part of the *Lucarz* test has been the most important element simply because it is the ultimate conclusion to be reached and depends upon the other indicated factors, such as the nature of the crime and the type of evidence sought. As such, many cases have simply concluded that it was a fair inference to believe that the items to be seized were at the particular place to be searched, usually the suspect's home, without a great deal more evidence than strong probable cause to believe the suspect committed the crime. [30] Other courts, such as *Charest,* cited above, have not been so ready to make the inference. Nor was the court in *United States* v. *Flanigan,* [31] where it was concluded that the fact that a person had committed a burglary, plus possession by him of some of the goods when arrested, did not in itself constitute probable cause to search his residence for the remainder of the goods (jewelry). The court stated that "[i]t would be inappropriate for us, in this case, to attempt to spell out what might tip the scales. What we do decide is that what was here presented . . . is not enough." [32]

From a comparison of cases like *Charest* and *Flanigan* with cases such as *Haala* and *Lucarz,* it is clear that a "normal inference" to one court means something different to another. Nevertheless, an examination of the cases in which the magistrate's determination of probable cause has been upheld reveals that perhaps other more subtle factors have been present in some of the cases which may have "tipped the scales," to use the words of *Flanigan,* in favor of the reviewing court's finding of probable cause.

Most Likely Place

The fact that the place to be searched appears to be the most likely in which to find the evidence sought has been a factor that has seemed to influence the courts. In *United States* v. *Melvin,* [33] defendant was implicated in the bombing of his own tavern. Of the three places with which he had a connection, namely, his home, automobile, and tavern, the court reasoned that his home, which had been the subject of search under a warrant, appeared to be the most likely place in which to search for evidence relating to the construction of the bomb. The court based its decision on the fact that the affidavit for the search warrant stated that bomb squad officers had indicated that the type of bomb employed would generally have been assembled in a workshop as opposed to a vehicle. Secondly, the court found that the other possible location—the defendant's tavern—was not as likely a place for the construction of a bomb because, being a public tavern, it was subject to regulatory inspections which may have uncovered its making. The court thus concluded that the evidence was sought in the location in which it was most likely to be found and thus upheld the warrant.

Similarly, in *United States* v. *Belcufine,* [34] another bombing case, it was demonstrated that the place to be searched was the most likely place for the evidence sought. The defendant was implicated through fingerprints and other evidence in the bombing of a competitor's business. Soldering was employed in constructing the bomb. The victim stated that the defendant had electrical wiring experience and was apt to have a workshop at his place of business where soldering could be done. Postal inspectors included these facts in their affidavit seeking to search the defendant's business for evidence of the bombing. The court held, without discussion, that "these facts viewed in a commonsense manner were sufficient to establish probable cause. . . ." [35]

"Accumulation of evidence tying the suspect to the place to be searched and the goods to that location is important."

The fact that authority is sought to search more than one place for the evidence, however, has not been treated by the courts as fatal,[36] as demonstrated by the above-cited *Haala* case. *Haala* is not unique, however. In *Porter* v. *United States,*[37] a search was upheld even though warrants were issued to search two vehicles belonging to the defendant. In *Commonwealth* v. *Davis,*[38] warrants issued to search four places (two residences and two vehicles of defendant) were upheld. In both *Porter* and *Davis* the evidence sought was a gun used and clothing worn during a robbery.

Where the facts indicate that one place appears to be significantly more likely to contain the evidence than another, some courts have indicated that the former must be searched first before applying for a warrant to search the latter.[39] *State* v. *Joseph*[40] is illustrative. There, a warrant was sought to search defendant's car for counterfeit money that he was seen selling from such car a few hours earlier. A warrant was also sought to search the home of defendant's parents where the car was parked. The court struck down the warrant for the parent's home, indicating that the vehicle was the more likely place. "There is a lack of any factual data that would give rise to a probability of a transfer of the bogus cash from the vehicle to the home."[41]

Connection of Place To Be Searched to Defendant

Unlike the *Porter* decision, mentioned above, where it was alleged that the two vehicles to be searched belonged to the defendant, no such allegation was made in *United States* v. *Bailey.*[42] In *Bailey,* defendants were arrested for a bank robbery which had occurred 6 weeks earlier. Defendant *Bailey* was arrested in an automobile; codefendant *Cochran* in a house. Search warrant applications were made for both the car and the house. The court refused to uphold the warrants, stating that with respect to the car, there was no indication that defendant *Bailey* owned it, had been seen in it prior to the robbery, or that it had been used in the robbery. With respect to the search of the house, the court found the probable cause to be no better:

> "The affidavit simply discloses that Bailey had been seen at the house and that Cochran was arrested there. No facts are recited from which it could be inferred that Bailey and Cochran were other than casual social guests at the residence. At the trial, there was evidence that Bailey and Cochran had leased the house, but that fact was not before the issuing magistrate."[43]

Connection of Place To Be Searched to Illegal Activity

In narcotics cases, where there is no information tying the drugs to the suspect's premises, warrants to search the premises for the contraband have been struck down as lacking probable cause.[44] However, where the officer has seen the suspect leave his home and then has seen an apparent narcotics transaction take place,[45] or where the suspect indicated that if narcotics were needed to call him at home,[46] the courts have found probable cause to search his residence.

Experience and Expertise of Officer

Where affiants have alleged in a search warrant application that it was their experience that the type of items sought would be found at a particular location, the courts have accorded these statements weight. In *United States* v. *Spearman,*[47] the affidavit alleged that an informant had purchased narcotics at defendant's apartment and that the affiant had seen defendant in a particular automobile on numerous occasions; no specific information was alleged, however, that narcotics were ever seen in the car. Warrants were sought to search not only the apartment but the car as well, with the officer including the following statement with the above facts: "It is commonplace for dealers of heroin to have heroin that is packaged for sale in the place where they live or sell from, in their vehicles or on their persons."[48] The court sustained the warrant, concluding that the magistrate was justified in inferring that the automobile would also contain heroin.

It appears that an even better showing is made where the officer can cite some further facts upon which his experience statement is based. In *United States* v. *Trott,*[49] for example, it was alleged that the type of evidence to be searched for (records and ledgers of drug transactions at defendant's home) was seized from a codefendant's home previously in connection with an arrest.

Miscellaneous Factors

Other circumstances which are common to most cases upholding searches of this type are:

1) Generally, there is ample probable cause to believe the person whose premises are to be searched committed the crime;[50]

2) The searches are done pursuant to warrants, thereby having a judicial sanction for the search; and

3) The premises are those of the suspect and not those of a third party.[51]

This is not to suggest that the above conditions are critical because, for instance, probable cause to search can exist independently of probable cause to arrest.[52] Nevertheless, these factors are common to almost all of the decided cases addressing this issue.

Conclusion

An officer contemplating a search where personal observation of the articles sought is lacking should be mindful of the factors which have influenced the courts in sustaining searches of this type. If the officer has adduced facts to indicate that the place to be searched is the most likely place for the evidence to be, these facts should be clearly noted in his affidavit. An officer's experience as to where he has found such evidence in the past may be taken into consideration by a magistrate and should be detailed. Accumulation of evidence tying the suspect to the place to be searched and the goods to that location is important. Careful drafting of the affidavit cannot be overemphasized; more artful preparation may have led to a different result than that reached in *United States* v. *Bailey.*[53] Authority for searches based on inferences is abundant. It remains for the law enforcement officer to use his investigative and drafting skills in supplying the magistrate with a persuasive set of facts upon which probable cause may be found and upheld upon review. **FBI**

Footnotes

[1] 532 F. 2d 1324 (10th Cir. 1976).
[2] 602 F. 2d 1015 (1st Cir. 1979).
[3] *Supra* note 1, at 1328.
[4] *Supra* note 2, at 1017.
[5] *Zurcher* v. *Stanford Daily,* 436 U.S. 547, 556 n. 6 (1978).
[6] *Id.*
[7] *Johnson* v. *United States,* 333 U.S. 10, 13–14 (1948); *United States* v. *Lucarz,* 430 F. 2d 1051, 1055 (9th Cir. 1970).
[8] *Spinelli* v. *United States,* 393 U.S. 410, 419 (1969); *Porter* v. *United States,* 335 F. 2d 602, 604–05 (9th Cir. 1964), *cert. denied,* 379 U.S. 983 (1965).
[9] *United States* v. *Ventresca,* 380 U.S. 102, 108 (1965).
[10] *Id.* at 109. Many appellate decisions on this subject have indicated that the cases before them were "close," but sustained the warrants on the basis of these two principles emanating from the *Ventresca* decision. *See e.g., United States* v. *Melvin,* 596 F. 2d 492, 498 (1st Cir.), *cert. denied,* 100 S. Ct. 73 (1979); *United States* v. *Brown,* 584 F. 2d 252, 257–58 (8th Cir. 1978), *cert. denied,* 440 U.S. 910 (1979).
[11] *Whiteley* v. *Warden,* 401 U.S. 560, 565 n. 8 (1971); *Aguilar* v. *Texas,* 378 U.S. 108, 109 n. 1 (1964). The outcome of at least one appellate court case appears to have been affected by the failure of the officers to explicitly set forth the known facts in their affidavit. *See United States* v. *Bailey,* 458 F. 2d 408 (9th Cir. 1972).
[12] 395 U.S. 752 (1969).
[13] 430 F. 2d 1051 (9th Cir. 1970).
[14] *Id.* at 1055.
[15] *Id.*
[16] *United States* v. *Brown,* 584 F. 2d 252 (8th Cir. 1978), *cert. denied,* 440 U.S. 910 (1979) (contraband); *United States* v. *Scott,* 555 F. 2d 522 (5th Cir.), *cert. denied,* 434 U.S. 985 (1977) (mere evidence).
[17] However, even courts which apply the *Lucarz* test do not generally subject the facts before it to a penetrating analysis under this test. Nevertheless, it is clear that these factors do have a bearing on the probable cause determination. *See, e.g., United States* v. *Pheaster,* 544 F. 2d 353, 373 (9th Cir.), *cert. denied,* 429 U.S. 1099 (1977).
[18] 549 F. 2d 594 (9th Cir. 1976), *cert. denied,* 429 U.S. 1110 (1977).
[19] 534 F. 2d 186 (9th Cir.) (per curiam), *cert. denied,* 429 U.S. 942 (1976).
[20] The *Charest* court distinguished *Bowers* on the basis that in *Bowers* the search was for not only a single handgun but for other items as well. *Supra* note 2, 1017. It is questioned, however, whether this is a meaningful distinction, since the *Bowers* court could have invalidated the search for the handgun for want of probable cause, while upholding the search for the other items. Such a conclusion would be based on the principle that where an affidavit states probable cause for the search for some items, but not others, the seizure of those for which probable cause exists is lawful. The other evidence is subject to suppression for lack of probable cause. *See* 2 W. LA FAVE, Search and Seizure sec. 4.7 (f) (1978) (hereinafter cited as LA FAVE).
[21] "Staleness," the concept that probable cause for search may dissipate with the passage of time, is an additional, highly relevant factor in assessing probable cause to search. For a discussion of the doctrine of "staleness" see 1 LA FAVE sec. 3.7 (a).
[22] 525 F. 2d 33 (8th Cir. 1975).
[23] *Id.* at 38.
[24] 427 U.S. 463 (1976).
[25] *Id.* at 478 n. 9.
[26] *See, e.g., United States* v. *Mulligan,* 488 F. 2d 732, 736 (9th Cir. 1973), *cert. denied,* 417 U.S. 930 (1974) (bank burglary loot).
[27] 355 F. Supp. 981 (S.D.N.Y. 1972), *rev'd on other grounds,* 486 F. 2d 670 (2d Cir. 1973).
[28] *Id.* at 990.
[29] *Chambers* v. *Maroney,* 399 U.S. 42, 47–48 and n. 6 (1970).
[30] *See, e.g., United States* v. *Pheaster,* 544 F. 2d 353, 373 (9th Cir.), *cert. denied,* 429 U.S. 1099 (1977); *United States* v. *Archer,* 355 F. Supp. 981, 991 (S.D.N.Y. 1972), *rev'd on other grounds,* 486 F. 2d 670 (2d Cir. 1973).
[31] 423 F. 2d 745 (5th Cir. 1970).
[32] *Id.* at 747.
[33] 596 F. 2d 492 (1st Cir.), *cert. denied,* 100 S. Ct. 73 (1979).
[34] 508 F. 2d 58 (1st Cir. 1974). Another interesting bombing case from the first circuit is that of *United States* v. *Picariello,* 568 F. 2d 222 (1st. Cir. 1978).
[35] 508 F. 2d at 62.
[36] It appears that there is no case which directly holds that probable cause means more than 50 percent probable. See 1 LA FAVE sec. 3.2 n. 150. In this connection, with respect to inferring probable cause to search, Professor LaFave states as follows:

> "To the extent such rulings permit searches to be made upon something less than a 50% probability as to any one particular place [of the suspect], they do not appear objectionable. The fact remains that it is unlikely that the privacy of an innocent person will be disturbed under such circumstances." 1 LA FAVE sec. 3.2, at 487.
>
> "On the other hand, something more might be required where one of the possible hiding places is that of a possibly innocent party." *Id.* at n. 154.

[37] 335 F. 2d 602 (9th Cir. 1964), *cert. denied,* 379 U.S. 983 (1965).
[38] 466 Pa. 102, 351 A. 2d 642 (1976).
[39] However, where the more likely place is that of a third party, Professor La Fave suggests that it would nevertheless be more reasonable to search the defendant's premises first than that of the third party for the evidence sought. See 1 LA FAVE sec. 3.2 at 489–91 and n. 166.
[40] 114 R.I. 596, 337 A. 2d 523 (1975).
[41] 337 A. 2d at 527.
[42] 458 F. 2d 408 (9th Cir. 1972).
[43] *Id.* at 412.
[44] *See, e.g., United States* v. *Gramlich,* 551 F. 2d 1359 (5th Cir.), *cert. denied,* 434 U.S. 866 (1977); *Commonwealth* v. *Kline,* 234 Pa. Super. 12, 335 A. 2d 361 (1975).
[45] *United States* v. *Valenzuela,* 596 F. 2d 824 (9th Cir.), *cert. denied,* 441 U.S. 965 (1979).
[46] *Commonwealth* v. *Frye,* 242 Pa. Super. 144, 363 A. 2d 1201 (1976).
[47] 532 F. 2d 132 (9th Cir. 1976).
[48] *Id.* at 133.
[49] 421 F. Supp. 550 (D. Del. 1976) (mem.).
[50] *See, e.g., United States* v. *Haala, supra* note 1.
[51] For a case in which a third party search was upheld, see *United States* v. *McNally,* 473 F. 2d 934 (3d Cir. 1973).
[52] 1 LA FAVE sec 3.1.
[53] *Supra* note 42.

WANTED BY THE FBI

Photographs taken 1975.

Photograph taken 1978.

Larry Porter Chism

Larry Porter Chism, also known as Gary Joseph Buomi, Gary Joseph Buoni, Larry Chism, and Larry P. Chism.

Wanted For:

Interstate Flight—Kidnaping, Theft of Property

The Crime

Chism, who is being sought as a prison escapee, was serving a lengthy sentence for armed robbery and kidnaping at the time of escape. He is reported to be a heroin addict and is alleged to have escaped custody by overpowering a deputy sheriff and subsequently kidnaping two individuals.

A Federal warrant for his arrest was issued on December 22, 1978, at Little Rock, Ark.

Criminal Record

Chism has been convicted of kidnaping, armed robbery, narcotics violations, and contributing to the delinquency of a minor.

Description

Age	31, born December 19, 1948, Forrest City, Ark.
Height	5'10".
Weight	145 to 155 pounds.
Build	Medium.
Hair	Brown.
Eyes	Brown.
Complexion	Light.
Race	White.
Nationality	American.
Occupation	Cashier, clerk-typist, farmer, law student, logger, and salesman.
Scars and Marks	Birthmark on left thigh, scars on both arms.
Remarks	Reportedly wears thick lens glasses.
Social Security Nos. Used	431-82-5804, 431-82-5894.
FBI No.	367 973 N5.

Caution

Chism should be considered armed, dangerous, and an escape risk.

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.

Classification Data:

NCIC Classification:
18TTO8PO1321TTO92011

Fingerprint Classification:

18 M 9 T 10 13

L 1 T 10

Right ring fingerprint.

Change of Address
Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City State Zip

Increase in Bombings

During the first 6 months of 1980, bombings increased 4 percent in volume as compared to the same period of 1979. Explosive bombings were up 6 percent, while the occurrence of incendiary incidents remained relatively stable.

Of the 616 bombings that occurred in the United States and Puerto Rico, 420 were explosive and 196 were incendiary in nature. In some instances, more than one device was used; 451 devices were used in the 420 explosive bombings and 250 devices were used in the 196 incendiary attacks.

The incidents resulted in 12 deaths, 70 injuries, and over $3.3 million damage in property. Two-thirds of the fatalities, 8 of the 12, were the subjects themselves. Three of those killed were the intended victims and one was an innocent bystander. The 70 people injured as a result of the bombings was a decrease from the 85 injured in the first half of 1979. More than half of those injured were innocent bystanders, while bombing perpetrators themselves constituted 31 percent of the victims.

Regionally, within the United States, the Western States had 222 bombings; the North Central States, 172; the Southern States, 155; and the Northeastern States, 65. Puerto Rico reported 2 bombing incidents.

U.S. Department of Justice
Federal Bureau of Investigation

Official Business
Penalty for Private Use $300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS–432

Controlled Circulation Rate

Washington, D.C. 20535

Interesting Pattern

This pattern presents no problem as to the classification. It contains the basic minimum requirements for a loop, sufficient recurve, a delta, and a ridge count across a looping ridge. It is classified as a loop with one ridge count.