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The Cover The FBI Laboratory marks its 50th year of distinguished scientific assistance to law enforcement, as noted in the Director's Message on p. 1. Federal Bureau of Investigation United States Department of Justice Washington, D.C. 20535

William H. Webster, Director

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Director's Message

In 1932, 50 years ago this month, the FBI Laboratory was established with one examiner and one microscope. Today, the Laboratory has grown to 119 Special Agents, 309 support personnel, and an equipment inventory of \$12.5 million. From a beginning of 963 forensic science examinations in 1934 (the first year statistics were maintained), the Laboratory conducted more than 51,000 examinations in 1942, and has about doubled this number every decade, reaching more than 910,000 examinations the past fiscal year.

FBI Laboratory services, including both examinations and testimony in support of the findings, are available without cost to Federal agencies and military tribunals in criminal and civil matters and to all State, county, and municipal law enforcement agencies in this country in connection with criminal cases.

As the value of forensic science became apparent to the law enforcement community, larger police departments established local crime laboratories. The number of these laboratories was rapidly expanded in the past decade and a half as a result of funding provided by the "Omnibus Crime Control and Safe Streets Act of 1968." Then, in 1973, individual State and local crime laboratory directors requested the FBI to take a more direct and active role in the areas of training and research. In 1974, the FBI began offering specialized scientific courses for State and local crime laboratory personnel at the FBI Academy. In fiscal 1981, more than 1,300 personnel were thus trained.

The need for forensic science research was recognized by the American Society of Crime Laboratory Directors in their recommendation for a laboratory building at the FBI Academy for this purpose. In June 1981, this building was dedicated, with 7,000 square feet of its space devoted to research facilities used by a permanent FBI Laboratory research staff, research personnel representing academic institutions, and others from specialized areas of forensic science. The Forensic Science Research and Training Center has as research goals: (1) To develop new and reliable methods in forensic science, (2) to develop new methods to overcome problems in forensic science, and (3) to apply current technology to forensic science. This training and research, given proper funding and support, can assist the Nation's criminal justice system by improving the competency of crime laboratory personnel and reducing State and local law enforcement reliance on Federal laboratories for routine case examinations.

From a beginning devoted to proving the worth of forensic science analysis to both the public and the police profession, the FBI Laboratory has moved on to research and training. This has been a vindication of both the worth of forensic science and our system of service to local government.

These achievements make our anniversary an occasion for translating pride into rededication.

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William H. Webster Director November 1, 1982

Investigative Aids

By GILBERT J. BURGOYNE Consultant Network Based Planning Methods Yucaipa, Calif.

Visual Investigative Analysis: Charting a Criminal Investigation



Mr. Burgoyne

Police management techniques and practices have undergone many changes in the past 2 decades, and inevitably, these changes will continue and perhaps even accelerate. It is no longer enough that the police administrator depend on available manpower as the answer to the many problems facing him.

The accelerating complexities of law enforcement demand new dimensions in modern police administration. Perhaps the most profound and promising of these dimensions is the use of more advanced systems in the administration of justice. One of these systems which has slowly emerged and which has shown considerable promise is a charting technique known as visual investigative analysis (VIA).

VIA had its inception in 1968 when the assassination of Senator Robert F. Kennedy provided the impetus for the most extensive investigation in the history of the Los Angeles Police Department. The magnitude of the investigation made it necessary to establish a method of planning, controlling, and monitoring the activities of the special task force of investigators assigned to the case. The department turned to a relatively new technique, PERT, which had been used previously in aerospace, mining, and construction projects with notable success. However, this was the first time PERT was applied in a criminal investigation.

Inevitably the question is raised: "What is "PERT?" PERT, together with its companion technique CPM, is a management planning, scheduling, and analysis tool which makes use of a graphic display, called a network, to depict the various tasks or activities necessary to complete a project.

PERT is an acronym derived from the words, Program Evaluation and Review Technique, which had its inception in 1957 when the U.S. Navy Special Projects Office was engaged in the development of the Polaris missile. This vastly complicated project was being conducted at or beyond the state of the art in hundreds of plants throughout the country, and the Navy was faced with the job of coordinating the work of some 3,000 contractors, suppliers, and Government agencies involved in design, development, and fabrication. As a means to control and monitor this complex and far-flung program, a research team was established in conjunction with the naval special projects office, the prime contractor, and the management consulting firm. The result was a new system, PERT, which was credited by the Navy with advancing the successful completion of the Polaris missile program by more than 2 years. Since then, it has become an important managerial tool used extensively in Government projects and in private industry.

CPM (critical path method) had its inception about the same time as PERT, and while not identical, they are closely related. The genesis of CPM took place in 1957 when a major U.S. industrial firm, having become dissatisfied with the 50-year-old standard use of bar charts and bar graphs to evaluate construction schedules and progress, decided to seek a new method to plan and schedule their many projects.

"The general concept of VIA is to provide an innovative scientific method for planning, coordinating, and controlling criminal investigations."

A special team was assigned to explore alternatives to the traditional procedures. The approach was surprisingly simple—devise a master plan by applying logic and mathematics and then translate the plan into a management working schedule. Thus, the critical path method was conceived.

It is not the intent of this article to provide for the mechanics and intricacies of networking; it will suffice to state briefly that PERT/CPM is a set of principles, methods, and techniques for effective planning of objectiveoriented work, thereby establishing a sound basis for planning, scheduling, and controlling programs.

When PERT/CPM was first applied in its original form to the Sirhan investigation, it was quickly determined it was not effective as an investigative aid because of its inflexibility. Subtle changes and modifications were made, and visual investigative analysis became a reality.

The general concept of VIA is to provide an innovative scientific method for planning, coordinating, and controlling criminal investigations. The basic element and salient feature of VIA is the network or chart. The completed chart enables an administrator, at a glance, to monitor the progress of an investigation, to identify and locate readily those reports dealing with a specific activity, to discover weaknesses and omissions in the investigation, and to deploy available resources to greatest advantage. the VIA technique is the ability to portray graphically the significant issues of a case. The relevance and meaningfulness of specific items of evidence can be brought out in full light of their significance to the overall investigation. Traditional problem areas, such as maintaining the chain of continuity of evidence, conducting indepth interrogations of suspects and witnesses, allocating available investigative resources, preventing the omission of pertinent facts, and preparing timely and complete reports, could be more easily resolved or overcome through use of the VIA charting technique.

One of the outstanding features of

During a complex investigation where traditional methods are used, an investigator may not be aware at all times of the true significance of witnesses' statements or other points of information at the time they are obtained. He may also obtain fragmented points of information without being aware that he should have explored the area in more depth. With a properly constructed network at his disposal, which will show the relativity and interdependencies of the important issues of the case, the investigator will obtain a visual perspective of the investigation, enhancing the objectivity in pursuing the investigation.

The VIA charting technique is not a panacea; it is only another tool at the disposal of the investigator. It will not "solve" cases. It will not necessarily make the investigations easier. Many times, questions to be resolved can be explicitly brought out on the chart, requiring the investigator to "dig" for an-

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swers. Oftentimes, the network will show inconsistencies in witnesses' statements or other conflicting data which may obscure some of the important issues.

When properly applied and analyzed, VIA will provide the investigator with information on which to base decisions and will present a clearly perceptive picture of the entire investigation for review by all those concerned with the administration of the investigation. The case supervisor will find the network to be an excellent means for reviewing the progress of an investigation. Much of his time spent reading reports would be considerably reduced, if not entirely eliminated. Perusal of a network that is continually updated with new information will enable him to obtain the same "visual perspective" as the investigator, and he will be better able to monitor the investigation.

The value of networking as a tool for the investigator has been stressed, but its potential as a tool for the prosecutor should not be overlooked. Many times, a complicated case, once it is presented in court, can become a real puzzle to the jury which can, in turn, unduly prolong the trial, and to say the least, delay the verdict. A pictorial presentation enables the jurors to put together the pieces of the puzzle and thus gain a clearer and uncluttered picture of the entire case.

How effective is VIA? In 1975, a questionnaire was submitted to law enforcement agencies in California which had used the VIA technique on major criminal investigations. It was believed that the collection of subjective data in the form of opinions and observations of informed persons who had the opportunity to observe and use the technique would provide a valid premise on which to establish the value or effectiveness of the VIA technique. The results of this query indicated wholehearted approval of VIA. An assistant U.S. attorney in California stated, "I have found the support and materials received from VIA to be invaluable in the preparation and presentation of the case. In my opinion, the charts and graphic analysis have been invaluable prosecutorial tools, both in and out of court." A detective commander of a major police department stated, "From an administrative point of view, it provided a rapid review of the crime and areas needing additional investigation."

However, evaluating the effectiveness and determining the feasibility of innovative methods of doing things are never easy tasks. The chore becomes exceedingly difficult when the program being evaluated does not easily lend itself to the scientific method of inquiry. The visual investigative analysis technique is within the category of programs that is most difficult to examine scientifically.

The numerous, complex variable factors involved in networking investigations make any attempt to develop scientific generalizations extremely difficult. Every crime, and every investigation that follows a crime, is unique; as such, each case requires a unique approach. The VIA method of managing investigations is designed to accommodate the most complex and peculiar requirements of any investigation.

Since the VIA technique is merely one of the many investigative tools that can be used in conducting investigations, it is difficult to isolate and analyze the results of the VIA technique. The effectiveness of investigations is traditionally measured quantitatively in terms of the number of crime clearances, arrests, and convictions. However, this does not seem to be a valid method for determining the effectiveness of investigative techniques used during the investigation. It is entirely likely that even though a case remains unsolved, the techniques used for conducting the investigation were successful and efficient. The successful or unsuccessful outcome of an investigation, therefore, does not singly appear to be a valid measure of the effectiveness of the VIA technique.

Therefore, to prepare valid and meaningful recommendations, an indepth analysis and evaluation of this technique as applied to criminal investigations are essential, taking into consideration all of the variables, including the human factor. The technique is logical and based on commonsense. People sometimes are not. It is not, therefore, surprising that "people problems" are the most difficult obstacles to successful application of VIA to criminal investigations.

The initial reaction to the VIA technique by investigators was significant. The responses varied from top management to the field investigator, and a natural desire to maintain the status quo manifested itself throughout. All agreed that good planning is a project requirement and particularly needed in the field of law enforcement. Some said that networking is the greatest

"One of the outstanding features of the VIA technique is the ability to portray graphically the significant issues of a case."

breakthrough in the investigation of crimes in 50 years; others believed that networking is fine for someone else, but not for them—a "gimmick," no less. It is worthy to note that those investigators who had been exposed to VIA, either by working with technicians on actual cases or in class, applauded the technique as a definite asset to the investigator. It is expected that as VIA matures and its use expands, it will include elements of link analysis and psycholinguistic analysis to enhance its value to the investigator.

Perhaps a word of caution would be appropriate at this point. The VIA method is a logical refinement and modification of established and proven methods of planning and control techniques. In theory, it is deceivingly simple, and the potential appears unlimited. Experience, however, has shown some limitations, particularly in an extensive investigation. These limitations are made manifest if technicians are not carefully selected, the training process is inadequate, the technicians have little or no knowledge of criminal investigative procedures, or when too much is expected of the technique. Once again, it must be stressed: VIA does not solve crimes: investigators solve crimes.

To illustrate the impact networking has had on criminal investigations, it seems relevant to report that an article entitled "Possibilities of PERT Planning in Criminal Investigations" was published in a Russian-language journal. The article, which has been translated into English, points out the value of networking in the administration of a complex criminal investigation. The author states:

"From the point of view of organization of time and reducing investigation time, the application of PERT techniques when planning and organizing the investigation of complex multiepisodal affairs affairs the investigation of which, in PERT language, requires coordination of action among many 'coexecutives' and includes hundreds and thousands of events and operations—can turn out to give the best results." 1

While networking is an invaluable tool for the investigator, it can also assist the police administrator in other areas. The general benefits experienced by users of network planning and control include significant improvement in project planning, management control, progress reporting, identification of problem areas, communication, decisionmaking, and timesaving. All of these are translated into cost savings and more efficient management resources.

How does this fairly simple, almost obvious technique actually enable the user to gain the stated benefits? The answer is systematic, logical discipline. Obviously, the results are only as good as the effort put into the plan. By using network planning, one is subjected to a rigorous discipline which shows up illogical plans. It displays the entire project in fairly great detail from beginning to end. This alone will induce positive action. Otherwise, it is easier to put off tough choices or overlook dependencies that create conflict or dilemmas which require an immediate decision. Another reason this technique helps the manager is that a pictorial view of the interactions between activities allows him to envision a better way of doing things.

In 1975, the FBI, knowing that VIA was being used in California with notable success, decided to apply this relatively new technique to an ongoing nationwide extortion investigation. The writer was requested to prepare a VIA network on this far-flung and complex investigation, and through the use of the network, plus diligent efforts by Special Agents, a suspect was developed and indicted.

Again in 1977, the Bureau used the VIA technique on a kidnaping and murder investigation. The success achieved in these investigations resulted in the establishment of a VIA unit at FBI Headquarters. The initial staff was trained by the writer. Because of the impact VIA has had on the investigation and prosecution of major cases during the past 5 years, the VIA personnel complement at FBI Headquarters has increased from two to eight analysts. The new members of the VIA staff are now trained in the VIA technique by a training program developed by an FBI staff analyst through the expert direction of the writer. Subsequent to and/or concurrent with the VIA classroom training, the analysts are trained in FBI investigative operations and procedures and are closely monitored for a period of 1 year as they apply the knowledge they have acguired. During their tenure with the VIA group, and as experience dictates, the analysts are assigned progressively more difficult cases.

VIA as an investigative and prosecutive aid has been applied to approximately 85 of the FBI's most complex investigations centering on terrorism, organized crime, white-collar crime, and personal and property crimes. In most instances, these investigations were multifaceted and involved massive amounts of information. The relationships among the various activities and individuals involved in the perpetration of the crimes and the subsequent investigation would have been extremely difficult to perceive without application of the VIA technique. VIA provided a "map" evincing relevant information and/or a lack thereof, enabling a more thorough investigation and interpretation of information-the major goals of all law enforcement agencies. One assistant U.S. attorney provided the following comment concerning VIA's effectiveness.

"Concerning the conduct of the investigation and its administration from a legal standpoint, the VIA networking was absolutely essential in this investigation. In terms of preparing the case—it is absolutely invaluable. You can check to see if all your evidence is covered.

"The VIA networks highlighted areas that were incomplete and enabled investigators to zero in on them. We had to account for the subjects' activities on a minute-byminute/hour-by-hour basis. If you can do that, which was essentially done in this case, it serves as an excel-



lent aid to investigators and prosecutors during the interview of subjects and/or during discussions with defense counsels. We told the subjects we had evidence, but more importantly, we showed them we had the evidence—it then convinced them to talk."

In view of the apparent potential of VIA as an aid to law enforcement, one might ask, "Why is it not in greater use?" First, it must be stated that although VIA was introduced in 1968, it is still relatively unknown, even though VIA seminars have been conducted in many cities throughout the country during the past 14 years. Second, establishing a VIA unit and training personnel requires funding. In this day of curtailed budgets, it is difficult for the police administrator to convince the guardians of the budget that VIA is a valid and needed support. Also, there is skepticism. There are still those who say, "It's a 'gimmick,' it will never work."

Although the propitious initial application of VIA created considerable interest within the profession, the machinery of law enforcement sometimes seems to perpetuate the status quo. Change is gradual; progress seems imperceptible. But as a former chief of the Los Angeles Police Department stated: "The application of these methods will probably soon become routine in complex criminal investigations."

FBI

Footnote

A. P. Syrov, "Possibilities of PERT Planning in Criminal Investigations," *Pravovaya Kibernetika*, 1970.

"Crime analysis is a set of systematic analytical processes providing timely and useful information on crime patterns and trends."

The value of crime analysis to effective law enforcement operations has been demonstrated. Programs sponsored by the U.S. Department of Justice have allowed law enforcement agencies to apply the benefits of analysis to an ever-expanding range of operational and administrative functions.¹

From the local police administrator's perspective, today's economic realities require the greatest efficiency possible in the use of law enforcement resources.² Crime analysis can bring about greater efficiency, as well as effective use of resources, but the analysis process itself places manhour requirements upon the department.

Analytical processes are continually developed; however, a priority objective within the law enforcement field is the proliferation of existing techniques. The Justice Department, State and local agencies, and public service organizations are involved in this effort. The National Retired Teachers Association and American Association of Retation procedures is looked upon as a viable approach to continuing crime analysis efforts. NRTA-AARP contributions to this are but a part of a much larger effort.³ The end result, however, is worthy of attention from all quarters.

What Crime Analysis Can Do

Crime analysis is a set of systematic analytical processes providing timely and useful information on crime patterns and trends.⁴ Information collected by the patrol officer for incident and followup reports and information received from other sources is organized, analyzed, and disseminated in usable form to officers. Crime analysis is an information tool that assists law enforcement in pinpointing crime problems in the community, allowing the officer to be more effective in his task of protecting the community by resolving problem areas.

Effective crime analysis impacts all areas and operations of a law enforcement agency by refining and distributing useful information. Analysis

Meeting the Need for Crime Analysis Through Volunteers tired Persons (NRTA-AARP) are

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examples of public service organizations.

Some agencies are now using volunteer assistance from their respective communities to help meet the manpower requirements of crime analysis. In many cases, volunteers are retired community members who are now proving their ability to enhance crime analysis operations.

The combination of technical assistance and cost-effective implemenfacilitates patrol alinement and deployment, provides investigative leads, gives direction to crime prevention efforts, upgrades administrative processes, and strengthens management decisions.

Departments implementing crime analysis have increased the investigative and crime prevention responsibilities of their patrol officers. Work assignments are based on analysis information, and officers are more accountable for crime in their sectors,



Mr. Stiles

including investigative followup. With training in preventive techniques, patrol officers are given the responsibility and means for preventive action based on reliable information.⁵

Crime analysis has modified the patrol deployment system in many departments to correspond with service demand. For example, one department has assigned patrol squads according to greatest need, and officers are kept on the same beats as much as possible to enhance their familiarity with the areas. The squad supervisor maintains close contact with the crime analysis unit to determine patrol deployment, assess training needs, and conduct performance evaluations. A rise in the burglary cases solved and a decline in burglary occurrences indicate the effectiveness of this approach.6

The following statements about crime analysis from leading practitioners in the field serve to highlight the general benefits of crime analysis to departments:

- "It has provided excellent support to tactical and strategic planning. The commitment and support of crime analysis personnel have enabled us to do so much more than we could before, such as with investigative leads."
- "Directed patrol is well structured, and the forced feedback from patrol commanders monitors the efforts and progress of their shifts."
- "We can better trace information through the system. We recently had an MO pattern that fit a known burglar who was supposedly in jail. Our analysis unit checked further and found that the guy had escaped the day before."
- "The structured information flow of systematic centralized crime analysis provides us with a total

picture of the problem. Importantly, it monitors the changes in the problem as well."

- "It enables the most efficient use of personnel. When there is down time, patrol officers can address target areas identified by crime analysis."
- "The immediacy of information provided by crime analysis has increased the effectiveness of our suspect interrogations."
- "Crime analysis has significantly promoted regional information sharing among the many departments within our county jurisdiction."⁷

Dispelling Myths

While crime analysis can be defined simply, its effects on a law enforcement agency are wide-ranging. However, the implementation of crime analysis often raises concerns that other undesirable effects may appear. Experience has disproven myths about possible negative effects of crime analysis, including:

- MYTH: Crime analysis is just another "exercise"—a program for the sake of having a program.
- REALITY: Crime analysis is not a program in and of itself—it is a system of information support to the operations and administration of law enforcement.
- MYTH: Crime analysis results in more people telling officers how to do their jobs.
- REALITY: Crime analysis provides the information that allows the officer to better determine what he can do.

"Law enforcement agencies conducting crime analysis across the country have turned to the older community as a resource."

MYTH: The crime analysis process MYTH: will never gain internal acceptance and thus will never be used.

REALITY: Internal acceptance and credibility come about primarily as a result of useful information.

- MYTH: Crime analysis could produce too much information, placing additional responsibility on personnel.
- REALITY: Crime analysis identifies problem areas. It cannot distort a problem beyond its actual magnitude.
- MYTH: Crime information can create external political pressure on the department.
- REALITY: Information is analyzed for users within the department. These persons determine any external uses. The majority of crime analysis information should not go outside of the department because of tactical and legal requirements.
- MYTH: Crime analysis will become a game of administrative number counting of no operational use.
- REALITY: Adequate safeguards must be built into the system to protect its operational value. The primary objective of crime analysis is to provide operational support.

Civilian crime analysts cannot understand the needs of the officers on the street.

- REALITY: Crime analysts may be either civilian or sworn personnel. A sworn officer generally supervises the overall operation and provides guidance to civilian personnel when needed.
- MYTH: Crime analysis will change all the districts and beats.
- REALITY: Crime analysis does not necessarily require any change in patrol areas. It may indicate desirable changes, but the decision remains with the responsible command staff.

There is nothing mysterious or self-serving about crime analysis. It is an information tool that serves the department's needs.

Police Administrator's Considerations

Escalating crime and shrinking police budgets have made crime analysis a priority for effective law enforcement, but the responsible police administrator must implement crime analysis in the most cost-effective manner. Two important considerations—time and cost—accompany this implementation.

Crime analysis, in its simplest form, requires staff time to accomplish a variety of tasks. The more comprehensive it becomes, the more manhours it requires. Whether the system is computerized or manual, considerable effort goes into the preparation of information used for analysis. A sworn police officer represents a substantial department investment. Training, equipment, salary, and benefits make the officer a much-valued resource, especially when his abilities are enhanced by law enforcement experience. The most effective use of these abilities is essential.

With the proper training, a law enforcement professional possesses the expertise needed to perform indepth, comprehensive analyses of crime patterns, trends, and strategic/tactical responses. Many support functions, however, do not require professional expertise. Volunteers today are performing these support functions, including:

- Extraction and collection of needed information from various sources;
- Organization and filing of collected information into usable categories for analysis (collation);
- Rudimentary file searches for data base construction;
- Information plotting for visual analysis;
- 5) Developing information dissemination instruments;
- Administrative recordkeeping, including quality control checks; and
- 7) Related clerical duties.8

What the Older Community Offers

Law enforcement agencies conducting crime analysis across the country have turned to the older community as a resource. Retired citizens contribute their time on a volunteer or minimum wage basis and are supervised by professional crime analysts who devote more of their time to the technical analysis function itself and to expanding the realm of information developed by their units. Older persons are a valuable asset to the crime analysis operation. They possess abilities and characteristics that match many of the department's needs, including:

- Availability—approximately one in every nine Americans is 65 or older. Retirees generally do not have the time-consuming responsibilities of full-time employment or raising families.
- Skills—older persons offer a wide range of experience, knowledge, insight, know-how, and personal contacts to the departments.
- Motivation—millions of older persons want to continue their contributions to society and their involvement in meaningful work.
- Conscientiousness—strong work ethic and attention to detail, essential to crime analysis, generally prevail among the older population.
- Dependability—older volunteers and workers have impressive attendance records, low turnover rates, and demonstrate steady performance in their work.
- Influence—many older persons are actively involved in the community, have valuable contacts, and know how to get things done.
- Support—older persons often have a strong desire to assist the efforts of law enforcement officials.⁹

The concept of older persons in law enforcement support roles is not new. It is, however, an area in which NRTA-AARP have been active for many years and have seen tremendous accomplishments. Beyond costeffectiveness, departments drawing upon the older community have directly affected crime problems while simultaneously nurturing a community-wide responsibility for and involvement in crime reduction.¹⁰ The public's understanding and support of law enforcement function increases with its involvement, and the overall quality of life is enhanced.

What the NRTA-AARP Can Do

The criminal justice services section of the NRTA-AARP has been active over the past several years in working to increase the role of crime analysis in law enforcement agencies. With many agencies, this means identifying the resources and processes that help existing crime analysis systems grow. With other agencies, it is a matter of stimulating the initial development of any system at all.

By virtue of funding from the Law Enforcement Assistance Administration (LEAA), the NRTA-AARP have aided law enforcement agencies around the country in involving the older community in crime analysis. This has taken place primarily within existing integrated criminal apprehension program processes, which is another national project funded by the Department of Justice.11 and has allowed departments to better use their crime analysts' professional training. Older workers are trained to perform the precursory support activities leading up to analysis, freeing the analysts to pursue the more technical functions that lead to crime pattern and trend identification, better officer deployment, and a host of other benefits.

The criminal justice services section has available the following materials related to crime analysis and its enhancement:

 Simplified Crime Analysis Techniques—a manual on the technical development of crime analysis for the practitioner new to the processes;

- Older Persons In Crime Analysis: A Program Implementation Guide—a step-by-step guide for bringing older workers into crime analysis support roles; and
- The Criminal Justice System: A Guide for Citizens—an explanation of the criminal justice system in layman's terms for the older worker.

With these materials, NRTA-AARP can assist a department in developing basic analysis techniques and procedures, using outside resources, to operate cost-effectively. Such an approach is designed to encourage every department's involvement in crime analysis, yielding on a much larger scale the many benefits seen in today's working models. **FBI**

Footnotes

¹ For greater detail of this, see U.S. Department of Justice, National Crime Justice Reference Service, *Crime Analysis: A Selected Bibliography*, (Washington, D.C.: U.S. Government Printing Office, 1980).

²U.S. Department of Justice, National Institute of Justice, *Crime Analysis* (Washington, D.C.: U.S. Government Printing Office, 1980), p. 1.

³ Ibid., p. 10.

⁴U.S. Department of Justice, Law Enforcement Assistance Administration, *Crime Analysis System Support Manual* (Washington, D.C.: U.S. Government Printing Office, 1979), p. XV.

⁵International City Management Association, *Target*, vol. 8, No. 3, 1979.

⁶ Ibid.

⁷A telephone survey conducted by NRTA-AARP, March 1981.

*National Retired Teachers Association and American Association of Retired Persons, *Older Persons* In *Crime Analysis Support Roles* (An unpublished paper, NRTA-AARP, Washington, D.C., 1980). *Ibid

¹⁰ National Retired Teachers Association and American Association of Retired Persons, *Law Enforcement And Older Persons: Revised Edition* (Washington, D.C.: NRTA-AARP, 1980), section V.

¹¹For more information on the integrated criminal apprehension program, see U.S. Department of Justice, Law Enforcement Assistance Administration, *IACP Reference Handbook* (Washington, D.C.: U.S. Government Printing Office, 1978).

Crime in the United States Stabilizes

Final 1981 Crime Index figures compiled by the FBI's Uniform Crime Reporting Program revealed that the estimated total of more than 13 million serious crimes reported in the United States remained virtually unchanged from the 1980 total. However, these figures represent a 22-percent increase from 1977 and a 61-percent increase from 1972. Over 15,000 city, county, and State law enforcement agencies, covering approximately 97 percent of the Nation's population, were involved in the collection of data.

+ 30	- CRIME INC	E INDEX TO DEX OFFENSES U 100,000 INHAB	P 22%	
+ 20 + 10				
-10				
1977	1978	1979	1980	1981

Crime Distribution

Geographically, the Southern States, the Nation's most populous region, recorded 32 percent of all Crime Index offenses. The Western States followed with 24 percent; the North Central States, 23 percent; and the Northeastern States, 21 percent. If regional figures for 1980 and 1981 are compared, the Southern States recorded a 1-percent increase, while the Western States showed no change and the Northeastern and North Central States each recorded a 1-percent decline.



The crime clock should be viewed with care. Being the most aggregate representation of UCR data, it is designed to convey the annual reported crime experience by showing the relative frequency of occurrence of the Index Offenses. This mode of display should not be taken to imply a regularity in the commission of the Part I Offenses: rather, it represents the annual ratio of crime to fixed time intervals.

Serious crime in the Nation's cities showed virtually no change in 1981 from 1980. However, crime in suburban areas declined by 1 percent, and the rural counties registered a 2-percent decrease.

The total number of 1981 Index offenses averaged 5,800 per 100,000 inhabitants. While this rate, which relates crime to population was down 2 percent from 1980, it signified a 15-percent increase over 1977 and a 46-percent increase over 1972.

Violent Crimes

The violent crimes of murder, forcible rape, robbery, and aggravated assault, which rose 1 percent from 1980 to 1981, accounted for 10 percent of all Crime Index offenses reported. The violent crime rate was 577 per 100,000 inhabitants, 1 percent lower than in 1980. MURDER—During 1981, 22,500 murders were reported nationwide, a decrease of 2 percent from the 1980 level. Of the murder victims, 77 percent were males and 54 percent were white. In 55 percent of the cases, victims were slain by a relative or acquaintance. Forty-two percent of the murders occurred as a result of an argument, while 17 percent took place in conjunction with felonious activities such as robbery, rape, etc. As was the case in 1980, firearms were the dominant weapons used to commit this crime.



Handguns were used in 50 percent of the murders, shotguns in 8 percent, and rifles in 5 percent.

FORCIBLE RAPE—The volume of forcible rapes reported to law enforcement agencies fell 1 percent in 1981 from 1980. Of the more than 81,500 offenses reported, 76 percent were rapes by force; the remainder were attempts or assaults to rape. An estimated 69 of every 100,000 women were victims of this crime nationwide. More than half of those arrested for rape (52 percent) were males under 25 years of age.



ROBBERY-Over 574,000 robberies occurred in 1981, representing a 5-percent increase from the previous year. Losses to victims were estimated at \$382 million or \$665 per incident. Seven of every 10 robberies took place in cities with populations over 100,000. and 52 percent were committed on the streets and highways. The perpetrators used firearms in 40 percent of the robberies, strong-arm tactics in 38 percent, knives or cutting instruments in 13 percent, and other dangerous weapons in the remainder. Nearly 3 of every 4 persons arrested for this offense were under the age of 25.





AGGRAVATED ASSAULT—A total of 643,720 aggravated assaults occurred in 1981, a 2-percent drop from 1980. Of all the offenses reported, 28 percent were committed with blunt objects or other dangerous weapons, 24 percent with firearms, and 22 percent with knives or cutting instruments. Personal weapons such as hands, fists, and feet were used in the remainder of the cases.



Property Crimes

In 1981, the property crimes of burglary, larceny-theft, and motor vehicle theft showed virtually no change from the previous year. The property crime rate, 5,223 per 100,000 people, fell 2 percent during the 2-year period.

BURGLARY—The number of burglaries totaled over 3.7 million in 1981 and resulted in losses estimated at \$3.5 billion. Yet, burglaries declined 1 percent in volume from 1980 to 1981, with suburban areas and rural counties each recording 2-percent declines. Burglars targeted residential property in 67 percent of the total offenses reported, and it was during the nighttime hours that 40 percent of all burglaries occurred. In 73 percent of the occurrences, forcible entry was used; 19 percent were unlawful entries (without force). The remainder were forcible entry attempts. Four of every 5 persons arrested for burglary in 1981 were under the age of 25.



LARCENY-THEFT -Larcenvtheft, the highest volume Index crime, rose to more than 7.1 million offenses in 1981, 1 percent higher than in 1980. The total national loss reached \$2.4 billion for an average loss of \$340 per incident. This offense comprised the largest portion of total Crime Index offenses reported and accounted for over one-half of the total arrests for Index crimes. Thefts of motor vehicle parts, accessories, and contents accounted for 37 percent of all types of larceny. Thefts from buildings followed with 17 percent, shoplifting with 11 percent, and thefts of bicycles with 9 percent. More than half of the persons arrested (52 percent) were under 21 years of age. Females were arrested for this offense more often than for any other, comprising 29 percent of the total.



MOTOR VEHICLE THEFT-Motor vehicle thefts totaled more than 1 million in 1981, an average of 1 of every 150 registered motor vehicles in the Nation. The value of stolen vehicles averaged \$3,173 for an estimated national loss of \$3.4 billion. The number of vehicle thefts declined 4 percent from 1980 to 1981 and was down in all regions of the country for the same 2-year period. Of the stolen vehicles, 75 percent were automobiles and 14 percent were trucks and buses. Law enforcement agencies arrested an estimated 129,200 persons for this offense, of which 61 percent were under 21 years of age.



ARSON-Over 11,000 law enforcement agencies reported a total of 122,610 arson offenses during 1981. However, detailed reports showing monetary loss and types of property targeted were received on 97,202 arsons. The value of property damaged by these arsons was \$914 million, an average loss of \$9,399 per incident. Structures and mobile property were the most frequent targets, accounting for 79 percent of all arsons. Of all persons arrested, 42 percent were under the age of 18. Arrests for arson increased by 4 percent over 1980 and 13 percent over 1977.

Clearances and Arrests

Of all Crime Index offenses reported in 1981, law enforcement agencies cleared 19 percent. Persons under the age in 18 were involved in 21 percent of all clearances which occurred.

The clearance rate for violent crimes was 43 percent—murder, 72 percent (the highest clearance rate among Index offenses); forcible rape, 48 percent; robbery, 24 percent; and aggravated assault, 58 percent.

Within the property crimes category, a 17-percent clearance rate was recorded—burglary, 14 percent; larceny-theft, 19 percent; motor vehicle theft, 14 percent, and arson, 15 percent. An estimated 10.8 million arrests took place in 1981 for all offenses except traffic violations. Adult arrests rose 6 percent over 1980 and 17 percent over 1977, while arrests of those under 18 increased less than 1 percent over 1980 but fell 9 percent from the 1977 total. A further breakdown of persons arrested for all crimes shows that 20 percent were under the age of 18, 37 percent were under 21, and 55 percent were under 25. Arrests of males outnumbered those of females by a 5 to 1 ratio; 73 percent of all arrestees were white.





Law Enforcement Officers Killed

During 1981, 91 local, county, and State law enforcement officers were feloniously killed in the line of duty, representing a 13-percent decline from the previous year when 104 officers were slain. The activity claiming most officers' lives (19) was responding to disturbance calls. In 95 percent of the slayings, firearms were the weapons used. Law enforcement agencies were successful in clearing 81 of the 91 murders. **FBI**

The 1981 arrests for Crime Index offenses increased 4 percent over the previous year. There was a 7-percent increase in adult arrests, but a recorded decrease of 3 percent for those under the age of 18.

Assaults on Police

For every 100 law enforcement officers in the United States, an average of 17 were assaulted during 1981; 6 per 100 suffered personal injury as a result of the assault. In 83 percent of the assaults, personal weapons, such as hands, fists, feet, etc., were used on the officers. Firearms (6 percent), knives or cutting instruments (3 percent), and other dangerous weapons were used in the remainder of the incidents. Responding to all types of disturbance calls (family quarrel, man with a gun, bar fight, etc.) resulted in the largest portion of assaults on officers (32 percent). Four of every 5 officers assaulted were assigned to vehicle patrol.

Outlaw Motorcyclists A Problem for Police

(Conclusion)

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Outlaw Motorcyclists: A Sociopsychological Profile

Motorcycle gangs constitute a bizarre subculture, but for some reason, have been "beneath the dignity of serious social scientists" to study.³⁷ In dealing with emergent problem groups, such as motorcycle gangs, group behavior is important to understand. Any group of people—an occupational group, cultural group, or adult gang develops special characteristics that

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"Motorcycle gangs constitute a bizarre subculture. . . ."

set it apart from all others. A subculture may be based upon regional characteristics, common traits, occupations or interests, and may carry with it certain styles of dress and behavior.

A motorcycle gang subculture is based upon a number of common factors, including a mutual interest in motorcycles. Other characteristics. however, also draw people to outlaw gangs. Outlaw gangs differ from many other groups in that their behavior goes beyond the dominant characteristics that set many other groups apart. Outlaw gang members challenge dominant features of American society, not only with their criminal behavior but with overt actions intended to shock. The shocking behavior we often see is, in fact, an open break with the value system of society.38

Language can be a component of subculture, and the language of an outlaw gang member sets him apart from other groups. An outlaw motorcycle gang member's language is saturated with vulgarity and with terminology that denotes a different meaning to an outsider. Terms such as "ape-hangers," meaning high-rising handlebars, or a "fash truck," a van that follows the gang's motorcycle formation, are examples.³⁹

Although these behavior patterns are subcultural characteristics, an understanding of the gang subculture is important because a look at the world as seen through the eyes of a gang member may aid the police officer in being more effective in dealing with motorcycle groups. Such an understanding is critical, since indications of future gang activities point toward a shift in behavior from the unruly freewheeling individualist of the 1950's and 1960's to the older, wealthier, and more deeply connected outlaw of the present.



Special Agent Davis

Persons from different subcultural groups behave in ways that differ from those of the mainstream of American society. As one social scientist explained, value orientations differ among varying groups of people because the views and beliefs people have are the products of learning and group relations.40 Most members of outlaw gangs are from lower or lower middle class levels of American society, and as such, bring with them their class-associated behaviors. Criminologist Walter Miller suggests that lower class people are characterized by distinctive values which not only differ from the values of the majority of American citizens but also conflict with our legal code.41 As individuals with like values become more and more involved with outlaw gang members, some of these values are accentuated, reinforced, and accepted as modes of behavior within that group.

Gang Member Initiation

The process through which a potential member is assimilated into a gang is interesting. When a person expresses a desire to become a part of the group, he is sponsored by a member, is designated a probate, and serves a period of time in that status. The actual time period varies. With some groups it is a vague period that terminates when a group consensus is reached that the probate has met the test. Membership is gained after the process of assimilation and "testing" is satisfactorily completed. During the probationary period, the probate is required to submit to the desires of gang members, wait on them, and run errands. Some outlaw gangs have levied other requirements on probates, including the commission of felony violations witnessed by a member. These requirements seem to vary with the confidence level the group has in any particular probate. Some groups may require probates to commit one or more criminal acts, while others have no such requirements.

The probationary period is a time of testing, but group influence on what behavior is desirable and what is undesirable is clearly taught. The probate learns that bizarre, shocking behavior is a way to "show class" and gain status. Criminal behavior may also be seen as desirable. During the probationary period, the probate comes to see deviant behavior as appropriate in his new role. Witnessed criminal behavior serves as a test to those probates whose reliability and loyalty to the group are questioned. It also serves to both filter out potential police informers and give the group some leverage over members. Outlaws believe that if some members have witnessed others commit a felonious act. the group's code of silence is more easily enforced.

Frequent close contact with group members, the teaching of group norms, and the membership requirements all mold the probate. He changes not only his behavior but his identity. The new identity is evident in the behavior that follows, which includes a symbolic attachment to the group represented by tattoos of the club logo appearing on members' bodies, especially on arms and backs.

Individual club names for some become the only names they are known by within the group and provide both a special personal identity and a group identity. Names such as Flapper, Spider, Greaser, Loser, Roach, Wild Man, and Zit are typical.

Outlaw gangs are ritualistic groups, and the importance of gang rituals in building probate loyalty and group cohesion should not be overlooked. Rituals, such as initiation ceremonies. funeral and wedding ceremonies, meetings, travel formations, and required motorcycle rallies, are significant events pulling the group together. Gangs exhibit their ritualistic nature in wearing certain patches for participation in events, in certain deviant acts, or for symbolically expressing the group position on issues such as drug usage (indicated by the patch "13") or motorcycle helmet laws.

When a probate has passed the test of acceptance, he will be formally initiated into the group. The initiation process is a ceremony that establishes a totally new identity with the group, and at the same time, serves to somewhat sever a new member's former identity with mainstream society. The initiation ceremony itself varies from club to club. Universally, however, it is an event where the club jacket (colors) is initiated along with the new member. The person being initiated is sometimes required to lie on the ground while members pour oil or pig urine over them or while they urinate, deficate, or vomit on them. Whatever the process, the event itself provides a formal acknowledgement that the initiate is now part of a special society.

Hopelessness

Since outlaw gang members are primarily from the lower class, they hold values that are associated with persons at that societal level. As individuals with those values drift together and form gangs, some behavior is reinforced, and some characteristics become extreme. One class-level characteristic prevalent among gang members is hopelessness. The gang's existence seems to be the result of a need to deal with bitterness toward society. Members have little hope of succeeding in society in terms of living up to societal expectations that require achievement and education. The gang offers an answer—it provides security for misfits in society. George Wethern, a Hell's Angel turned Government witness, identified the strong connection between his psychological needs and his gang associations when he said, "My self-esteem and my deepest friendships were bolted to my motorcycle." ⁴²

A poem in a magazine widely read by gang members typifies the hopelessness that pulls a member toward gang associations:

My dog has fleas and doesn't know where to scratch, my bike won't run and I have no place to crash, I just spent the day getting food from the trash, I think I'll go and score me some grass.

This o'l world ain't treating me right, it's the same old way from morning till night. I try being peaceful and end up in a fight, I'll just smoke a number and get my head right.

I go look for a job and get no place, I smile at my friends and get slugged in the face, I keep telling people I'm not running a race, I think I'll sit down and get stoned just a taste.

My chick just split with another man, I lie in the sun and can't get a tan, when I'm out in the streets there's always The Man, I'll go to a station and smoke in the can.

Well, that's my story from day to day, it never varies in any way, so if you need me—I'll be away, lying somewhere and smoking the hay.⁴³





"An outlaw gang is structured to allow the group its own standards, rules, rituals, status requirements, and tests to pass."

The outlaw code is a code of mutual support-one for all, all for one. Mutual support combats the feeling of hopelessness and provides for some individual security needs. The gangcode requires that members rally to each other's aid, and evidence is mounting to indicate that the credo of mutual support extends to an opportunity to provide for financial security, as well. According to a former Hell's Angel, ". . . cohesion (no longer) was strictly a matter of fraternal pride. 'It was an insurance policy protecting our livelihood and keeping us out of the slammer. . . .' By the late 1960's being a Hell's Angel had become a full-time job for many and at least one income supplement for most." 44

The profits some gang members make in crime offer ample opportunity for members who so desire to "get a piece of the action." The group supports this activity in tangible ways. Bond money is quickly obtainable from club coffers or through loans from members. When 11 Hell's Angels were indicted in San Francisco, they were able to raise more than \$3 million in bail money, and when freed, they drove away in a limousine.⁴⁵

The gang also fills other voids in its members' lives. Status and recognition from society, at large, have been withheld from most persons attracted to motorcycle gangs. The gang meets those needs by offering a special status with the group which comes with bizarre and sometimes criminal behavior. Where attaining meaningful roles in life has been difficult for the outlaw biker, the club offers specific group roles and the status, responsibility, and respect that follows.



Group Structure

Social scientists have studied secret societies and find a remarkable variety of formal and informal group structures dependent upon the centralization of control.46 Outlaw gangs have an organizational structure that includes a group president, vice president, secretary, treasurer, enforcer, and road captain. In some gangs, the structure of individuals involved in criminal activities may resemble the organizational hierarchy. This seems to be more the case among older groups, such as some Hell's Angels chapters. For other groups, however, the criminal network associated with the gang has included connections among gang members and persons only tangentially associated with the group. In some of these instances, the criminal structure bears little resemblance to the formal club hierarchy.

Groups with a hierarchical criminal structure are of particular concern to law enforcement because the structure is an indicator of a movement toward a more deeply rooted criminal organization. According to a member of the Hell's Angels, ". . . club structure was easily adapted to drug trafficking. All essential jobs could be filled with club members-distributors, dealers, enforcers, transporters." 47 With solidifycriminal organization, ina law enforcement efforts targeted against such groups also become more difficult. Because of this movement by some groups toward a deepening involvement in criminal activities, police officials warn of the necessity for early law enforcement intervention.

An outlaw gang is structured to allow the group its own standards, rules, rituals, status, requirements, and tests to pass. Within these outlaw subcultures, certain universal characteristics appear.

Strength or toughness appears as a universal gang requirement that seems to confer status. Members flaunt their tough image.48 They seem obsessed with height, muscles, and obesity. Tattoos are particularly prevalent. Social scientists who have studied tattoos and established a relationship between maladjustment and tattoos report that persons with large numbers of tattoos tend to be more deviant, hostile, impulsive, and sociopathic than persons without tattoos.49 Tattooing by gang members is not only indicative of possible maladjustment and a desire to identify with the gang but is sometimes an outlaw group requirement.

The motorcycle itself is an extension of this concern with masculinity and is used not only to attract attention but as an expression of power. Weapons are also an outlaw obsession and appear as a further extension of power and masculinity.

A sexual fertility theme is consistently present among outlaw bikers.⁵⁰ Sex rituals are occasionally included as part of the initiation ceremony, club meeting, or motorcycle run. Sexual "achievements" by members are rewarded by the group, are seen as conferring status, and are formally depicted by various colored jacket patches denoting witnessed sex acts. In effect, these status symbols are "merit badges" for deviant acts.⁵¹

Risk-taking behavior is also prevalent among gang members. Shocking behavior and hedonism bring status that comes with the group's distortions of society's values.

Members of outlaw motorcycle gangs, particularly those attracting police attention, frequently have dominant personality characteristics. The sociopathic personality is not only the most common criminal personality but also the most dangerous and difficult to identify and is characterized by a lack of guilt or remorse.⁵²

The sociopathic outlaw biker believes the world wants to be like him. He is OK-it is everyone else who is out of step. Although appearing tightly bonded to the group, the outlaw biker is a free spirit who has very little loyalty to others. His essential commitment is to himself. This characteristic makes him a potential informer, but only in those instances when there is clearly some benefit in it for him. Police officers working with this type of personality find that the gang member is seldom targetable until after he is charged with a crime and is faced with the choice of either informing or going to prison. Interestingly, the gang member exhibiting this personality needs to prove himself constantly through bizarre or criminal behavior. The group allows him an excuse to become deviant to impress his brother gang members. This type of person is self-



centered and has difficulty with interpersonal relationships. Even within the group, he has difficulty keeping close friends because of his irresponsible and cynical nature.

The sociopathic group member often has little tolerence for frustration. He externalizes life pressures by blaming others for his problems. This inclination to place blame elsewhere is combined with an impulsiveness that produces an individual who fails to think through the consequences and irrationality of his crimes. It follows, then, that a sociopathic gang member will often have a police record that appears to show no pattern of criminal specialty. Rather, because of his unpredictable nature, he is often involved in a variety of crimes and is occasionally motivated by impulse.

Police dealing with gang members know about the impulsive nature of gangs. An incident in Houston, Tex., exemplifies the dangerousness of some gang members. A member of the Conquistadors gang, reacting to the discovery that an 11-year-old boy had been fishing in a pond on the gang member's property, fired an M-2 machinegun into the boy's home, injuring the boy.⁵³

Of concern to police is that this kind of impulsiveness is often connected with violence. Not only does this type of person act out his tensions, but he has no worry or remorse about his behavior. He feels no remorse because, in fact, he feels little guilt. He reacts, often with violence rather than worry, about what is bothering him. He does not learn from bad past experiences because he gives them little thought—he is simply reactive.

A sociopathic gang member may exhibit deceitful and manipulative behavior, but be likeable on the surface. When it is to his advantage, he puts on

"The extent of criminal involvement of outlaw motorcycle gang members is extensive, and the behavioral nature of the group is complex."

a good front, becomes outwardly friendly, and feigns repentance and remorse. Officers experienced with gang members of this personality style know, however, that this friendly disposition is only a temporary first impression.

Motorcycle gangs are particularly attractive to persons exhibiting some of the tendencies discussed abovethey are mutually supportive. To the sociopathic gang member, violence is exciting and easy, since he feels no anxiety or guilt for what he has done. The group, in turn, needs his muscle to establish and maintain its reputation and to support and enforce criminal activities. The group meets his needs in turn for his daring. Since the sociopathic personality style is frequently encountered in outlaw gangs, officers who handle gang investigations have learned to use extreme caution with the members.

Gang Women

A final important aspect of gang investigations and an aid to an understanding of gang behavior is the role of women and their association with the gang. Although women are usually not gang members, they perform an important function in many gang-related crimes. Initially attracted because of the excitement gang life offers, many women are later held involuntarily or stay out of fear.54 They may be the "property" of one member only or used by several gang members. The female role is that of a servant. Women are looked upon as objects to be used for sexual, criminal, or personal purposes. The women who allow themselves to remain in this role seem to be best characterized as inadequate personality types. They have relatively poor judgment, not because they do not care but because they are inept.

Gang women feel guilty for failing to live up to the expectations of others; they are also less reactive to pressure than their male associates. They seem to internalize life's pressures rather than blaming others. Consequently, gang women are attracted to the dominant personalities of some gang members and are easily used by them. Because of fear and a relatively low level of self-esteem, and often simply because of no place to go, the gang "old lady" or "mama" feels unable to break away. Instead, she develops a strong dependency. Not unlike some battered women, she may even accept responsibility for being abused and may feel guilty for not living up to a gang member's expectations.

For many gang women, sex becomes a means to establish intimacy. The need for affection and self-esteem is strong, and exploitive sexual relations with male members and associates become confused with affection.

It is, in part, because of these behavioral dynamics that officers investigating gang activities often have difficulty developing gang women as informants. Fear and the need to depend upon gang men produces a loyalty that is difficult to overcome. Investigators often find gang women most helpful with information when their associations with gang members weaken and loyalties shift. Unfortunately, information received then is often outdated.

Conclusion

The extent of criminal involvement of outlaw motorcycle gang members is extensive, and the behavioral nature of the group is complex. There is no easy path to dealing with the criminal activities of these groups. Any law enforcement officer who has investigated crimes by outlaw motorcycle gang members knows the lengthy plodding effort these complex cases require. Techniques that are, however, essential in gang investigations include the development by a gang investigator of an understanding of the group's "culture" and the ability to apply knowledge of gang personality types and behavior characteristics for the purpose of more effective informationgathering from gang members. FBI

Footnotes

37 Randal Montgomery, "The Outlaw Motorcycle Subculture," Canadian Journal of Criminology and Corrections, vol. 18, No. 4, October 1976, p. 332.

38 Although the term "subculture" will be used throughout this article to refer to customs and beliefs of outlaw motorcycle gangs, a more specific term 'contraculture'' seems appropriate. See J. Milton Yinger, "Contraculture and Subculture," American Sociological Review, vol. 25, No. 5, October 1960, p. 628. In a contraculture, the value conflict with society is central. Outlaw gangs are contracultural groups in the sense they appear as "subsocieties" with emergent norms in conflict with society.

39 Royal Canadian Mounted Police Gazette, vol. 42, No. 10, 1980, p. 37.

40 Edwin H. Sutherland, Principles of Criminology (Philadelphia: J. B. Lippincott, 1947), p. 6.

⁴¹ Walter B. Miller, "Lower Class Culture as a Generating Milieu of Gang Delinquency," Journal of Social Issues, vol. 14, No. 3, 1958, p. 8.

42 Wethern and Colnett, supra note 20, p. 63.

43 P. Overholtz, untitled, In the Wind 6, No. 6, (Burbank, Calif.; Paisano Publications, 1981).

44 Wethern and Colnett, supra note 20, p. 108.

45 Ross, supra note 1.

46 Bonnie H. Erickson, "Secret Societies and Social Structure," Social Forces, vol. 60, No. 1, September 1981, p. 188.

47 Wethern and Colnett, supra note 20, p. 336.

48 Montgomery, supra note 37, p. 336. 49 Robert J. Howell, I Reed Payne, and Allan V. Roe, "Differences Among Behavioral Variables, Personality Characteristics and Personality Scores of Tattooed and Nontattooed Prison Inmates," *Journal of Research in*

Crime and Delinquency, vol. 8, No. 1, January 1971, p. 37. 50 Montgomery, supra note 37, p. 336.

51 RCMP Gazette, supra note 39, p. 21.

52 Thomas Strentz and Conrad Hassel, "The Sociopath-A Criminal Enigma," Journal of Police Science and

Administration, vol. 6, No. 2, January 1978, p. 135. 53 Burke Watson, "Kill All the Kids," Houston Chron-

icle, Houston, Tex., July 31, 1980. 54 RCMP Gazette, supra note 39, p. 18.

PROBABLE CAUSE: _____ INFORMANT INFORMATION (Part I)

By

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

The language of the fourth amendment is clear in requiring that warrants be issued only upon a showing of probable cause.1 And while it has been said that "in dealing with probable cause . . . we deal with . . . the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act,"² the drafting of the probable cause affidavit, especially when the information comes from informants and other secondhand sources, is one of the most technical and complex aspects of the law confronting a law enforcement officer. That perhaps the majority of appellate court decisions involving the question of probable cause deal with information from informants,3 attests to both. the extensive use of informant information in establishing probable cause and the intricacies of the law in this area. This article will address the principles of probable cause with respect to employing information from third parties and will provide a framework for drafting a warrant affidavit that will be free from successful defense attack.

The Road to Aguilar

18:

The major Supreme Court case concerning the use of secondhand (hearsay) information in establishing probable cause is a 1964 decision, *Aguilar* v. *Texas.*⁴ Four prior cases, *Nathanson* v. *United States*,⁵ *Giordenello* v. *United States*,⁶ *Draper* v. *United States*,⁷ and *Jones* v. *United States*,⁸ set the stage for *Aguilar*.

The 1933 case of Nathanson v. United States⁹ established the principle that merely stating that one has "cause to suspect and does believe that certain merchandise" is at a particular location is not enough to establish probable cause; the facts upon which that belief are based must be set forth. Twenty-five years later, in Giordenello v. United States, 10 the Supreme Court ruled that simply leaving out the "suspect" and "believe" language of Nathanson and substituting a declarative proposition therefor does not constitutionally fare any better. Thus, a complaint filed for an arrest warrant which merely stated that "Veto Giordenello did receive, conceal, . . . narcotics drugs" was found to be conclusory and constitutionally deficient; personal knowledge on the part of the officer-affiant is not to be presumed.

Explicitly left open by the Court in Giordenello was the question of whether probable cause could ever be based solely on hearsay information. A partial answer to this question was furnished in the next two cases. In Draper v. United States, 11 decided in 1959, a year after Giordenello, the Supreme Court held that probable cause could be based upon information received through an informant if it were substantially verified by an officer's personal observations. In 1960, another step was taken. In Jones v. United States. 12 the Court held that an informant's information could establish probable cause if there existed a "substantial basis for crediting it." The substantial basis in Jones consisted of the following facts:

 The informant had "given information on previous occasion
. . . which was correct";



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- The same information, regarding the subjects' illicit trafficking in narcotics had been given to affiant "by other sources of information"; and
- Both subjects had previously admitted to the use of narcotic drugs and displayed needle marks as evidence of same.

In 1964, the Court took the final step in *Aguilar* v. *Texas*.¹³ Two Houston police officers, seeking a search warrant to search defendant's house for narcotics, filed an affidavit which read as follows:

"Affiants have received *reliable information from a credible person* and do believe that heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of the law." ¹⁴ (emphasis added)

While the Supreme Court found this affidavit to be constitutionally defective, since it again merely set forth the conclusions of the officer, the Court held that a warrant could be issued on the basis of hearsay information alone if the magistrate were informed of:

- "[S]ome of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were," and
- "[S]ome of the underlying circumstances from which the officer concluded that the informant . . . was 'credible' or his information 'reliable.' "¹⁵

This has come to be known as the *Aguilar* two-pronged test.¹⁶ It applies to all cases involving the use of hearsay information in establishing probable cause, whether it be probable cause to search, as in *Aguilar*, or probable cause to arrest.¹⁷

The First Prong: "Basis of Knowledge"

The first prong of the test, the informant's "basis of knowledge,"¹⁸ calls for the officer explaining *how* the informant knows the information reported. Without this, it will not be known whether the source merely suspected the information tendered, per-

Chart 1

Language to Show Basis of Knowledge of Informant

On January 1, 1960, affiant was advised by a confidential source that on December 31, 1959 [or within the past 3 days], source *saw* heroin packaged for sale at 509 Pinckney Street, Houston, Tex.

Source further advised that the circumstances under which source saw this heroin were that Nick Aguilar, who source knows from previous contact to reside at such address, offered source the heroin for purchase. Aguilar told source that what was offered was in fact heroin.

haps gathering it from a rumor circulating in the area, or whether the information is based upon his personal knowledge or the personal knowledge of others.¹⁹ Satisfying this part of the test usually takes the form of a statement that "informant saw . . ." or "was told . . ." the information furnished. Chart 1 shows how the statement from the informant in *Aguilar* could have been drafted to satisfy the "... when a confidential informer is shown to be unusually reliable, the magistrate may place added credibility in such information in the affidavit as reveals the precise source of the informer's knowledge."

first part of the test. The first paragraph of this statement in chart 1 standing alone is generally found to be sufficient. The bracketed material can be substituted for an exact date. This may help to protect the identity of an informant. As long as the period selected keeps the information from being attacked on grounds of staleness.²⁰ such statements are not invalid and have been present in affidavits that were favorably reviewed by the Supreme Court.²¹ It appears to be a good idea for the officer to place the date he received the information in the affidavit. since some courts are less inclined to find information stale where the officer has endeavored to act upon the information as soon as received.22

The second paragraph of the statement in chart 1 further details the circumstances under which the informant saw the evidence and how the informant concluded that it was in fact narcotics. This paragraph also indicates that the person who offered the narcotics lives there, thus eliminating any question that the offeror may have been a casual visitor to the premises, taking the narcotics with him when he left. Indicating that Aquilar told the informant that the substance was narcotics eliminates a defense attack that the statement "saw narcotics" is conclusorv.23 Besides a statement from the seller establishing that the substance is narcotics, this fact may be shown by: 1) Evidence that the informant has a familiarity with narcotics; 24 2) observations by the informant consistent with the use or preparation of narcotics; 25 and 3) actual purchase and testing of the substance.26

Merely stating that an informant has "personal knowledge" of an event, without detailing the fact that he saw or observed certain events, should be avoided. Courts have held that such assertions are conclusory and legally insufficient.²⁷

In the absence of a showing as to how the informant gathered his information, the first prong of the test may be satisfied if the information is otherwise highly detailed, the idea being that detailed information implies personal knowledge. This principle was established in *Spinelli* v. *United States.*²⁸ Regarding this, the Court in *Spinelli* stated:

"In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's generally reputation."²⁹

The *Spinelli* Court made reference to the earlier case of *Draper* v. *United States* ³⁰ as an example of a detailed tip that meets the basis of knowledge prong:

"While Hereford, the Government's informer in that case, did not state the way in which he had obtained his information, he reported that Draper had gone to Chicago the day before by train and that he would return to Denver by train with three ounces of heroin on one of two specified mornings. Moreover, Hereford went on to describe, with minute particularity, the clothes that Draper would be wearing upon his arrival at the Denver station. A magistrate, when confronted with such detail, could reasonably infer that the informant had gained his information in a reliable way."³¹ (emphasis added)

Thus, it is not necessary that the words informant "saw," "was told," etc., be in the affidavit. If the tip is otherwise very detailed, a magistrate may reasonably infer that there exists personal knowledge of the events in question.

Besides employing a very detailed tip as a substitute for stating that the informant "saw," "was told," etc., another exception has been recognized. although there is not much authority on the point. In United States v. Sellers, 32 a Federal appellate court was confronted with an affidavit which stated that an informant had given "reliable information in more than one hundred instances in matters of investigation." In this instance, however, the affidavit did not recite how he obtained his information. The court found that this was not indispensible to a probable cause finding:

"(C)ommon sense impells (sic) the conclusion that when a confidential informer is shown to be unusually reliable, the magistrate may place added credibility in such information in the affidavit as reveals the precise source of the informer's knowlege. "... an affidavit need not set forth facts of a named person's prior history as a reliable informant when the informant is a citizen/neighbor eyewitness with no apparent ulterior motive for providing false information.""

The affidavit before us here recites that the informant had furnished reliable information on more than one hundred occasions. In cases where the affidavit presents such cogent assertions of reliability the quantum of underlying circumstances which reveal the source of the informer's knowledge necessary to sustain the affidavit is clearly less than in cases where the indicia of former reliability is less dramatic. In sum, either of the two objective standards from which the magistrate is to judge the worth of the hearsay may support, although it may not displace, the other." 33

The Second Prong: "Veracity"

The second part of the Aguilar test, which has sometimes been termed the "veracity" prong,³⁴ is what distinguishes an officer-affiant's own observations from those of a person not appearing before the magistrate. With respect to the latter, the officer must establish that there is a basis for believing that the information is true.

It should be noted that this second prong is not limited solely to the "criminal informant," *i.e.*, those bartering and bargaining on the information with law enforcement authorities, but to any hearsay information. In this regard, four distinct classes of persons furnishing hearsay evidence have been recognized by the courts, with each being treated a little differently in terms of the veracity requirement.

The "Trustworthy Source"

The first category might be termed the "trustworthy source." This category consists of law enforcement officers, victims, or witnesses to a crime. A year after Aquilar, the Supreme Court decided two cases in which warrants were applied for by law enforcement officers whose probable cause was based in part upon information from other sources. The first case, United States v. Ventresca.35 involved a search warrant sought by an officer based upon his own observations and those of fellow officers. No information was set forth in the affidavit to demonstrate the veracity of the other officers. The Court did not find this to be of consequence: "Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number." Therefore, law enforcement officers are presumed to be truthful and no further showing of veracity need be made, beyond the fact that the individual is a law enforcement officer.

The second case, *Jaben* v. *United States*, ³⁶ dealt with information from private citizens. A special agent of the Internal Revenue Service (IRS) filed a complaint for an arrest warrant alleging a criminal violation of the IRS Code. Probable cause was based in part upon the agent's interviews with third persons with whom the taxpayer did business and who had knowledge of his financial condition. The defendant challenged the probable cause for the warrant on the basis that the veracity of the sources was not established.

The Court answered this contention as follows:

"[U]nlike narcotics informants, for example, whose credibility may often be suspect, the sources in this tax evasion case are much less likely to produce false or untrustworthy information. Thus, whereas some supporting information concerning the credibility of informants in narcotics cases or other common garden varieties of crime may be required, such information is not so necessary in the context of the case before us." ³⁷

Although the Supreme Court did not say that evidence of veracity is never necessary when the person furnishing the information is not the typical "criminal informant," the lower courts considering this problem have consistently found a victim-witness's information to meet the veracity test at least where the victim or witness is identified.38 Since a victim or witness to the commission of a crime must be identified if the matter proceeds to trial,39 identifying the victim-witness in the affidavit is not a grave imposition. While different bases for recognizing this have been stated. United States v. Gagnon⁴⁰ reflects the general view of the courts:

"We have long subscribed to the rule that an affidavit need not set forth facts of a named person's prior history as a reliable informant when the informant is a citizen/neighbor eyewitness with no apparent ulterior motive for providing false information."⁴¹

Further support for crediting the report of a victim or witness is found in the famous car search case of Chambers v. Maronev.42 Chambers involved the armed robbery of a gasoline service station. The probable cause for arresting the defendants and for searching the car in which they were found was based upon a description of the robbers and their car from the victim and two teen-aged eyewitnesses. The Court, without addressing the veracity question, merely stated as follows: "Having talked to the two teen-age observers and to the victim ..., the police had ample cause to stop a blue compact station wagon carrying four men and to arrest the occupants. . . ." It could be argued, of course, that seeing the car and the persons fitting the tip corroborated the hearsay report, thus making it a different case than where the tip is alone the basis for probable cause.

The "Criminal Informant"

The second class of hearsay is that from the so-called "criminal informant." A precise definition is difficult. The following definition, though, seems to hit the mark:

"He is likely to be a person in the underworld or a person on its periphery; in its confidence, or so much 'a part of the scenery'... that this person is in a particularly good position to know the story of a crime committed, the story of criminal business done, being transacted or proposed for the future...."⁴³ There is a motive in furnishing the information, whether it be money, favorable treatment on pending or future criminal charges, repayment for past favorable treatment, revenge, or other considerations. Criminal informants therefore are an inherently suspect class, and evidence of veracity must be contained in the affidavit. The usual way in which to establish an informant's veracity is on the basis of his or her past performance, *i.e.*, a prior "track record" for furnishing information which was confirmed as being true.

Illustrative of this is the case of McCray v. Illinois.44 At a hearing on the issue of probable cause to arrest, an officer testified that an informant over the course of a year supplied him with information regarding narcotics activity on some 15 or 16 occasions which proved to be correct and which resulted in numerous arrests and convictions. On cross-examination, he even named the persons who were convicted as a result of the information. The Court had no trouble in concluding that the officer met the burden of establishing "why (he) thought the information was credible."

The *McCray* case, however, raises several questions with respect to demonstrating an informant's veracity. Is it a sufficient showing of veracity if:

- The affidavit merely states that prior information from the informant has been "correct" or "accurate" without adding that it resulted in arrests and convictions?
- The information has not led to convictions but to the recovery of property, evidence, or fugitives?
- The specific names of the parties having been arrested and

convicted through the informant's information are not disclosed?

- 4) The information has resulted only in arrests and not convictions?
- There is only one past instance of reliability to the informant's credit?
- 6) The previous instances of reliability were with respect to violations different from those which the informant is now reporting on?
- 7) Instances of an informant's previous unreliability are not set forth?

The Supreme Court has never specifically addressed the above questions. However, they have been considered by lower Federal and State courts.

"Informant Has Been Reliable In Past" Language

The courts are split on whether statements such as the informant has been "reliable in the past," ⁴⁵ or that prior information has proved to be "correct," ⁴⁶ "reliable," ⁴⁷ or "true," ⁴⁸ are sufficient.⁴⁹ These statements are not unlike "reliable information from a credible person" and "reliable informant," which were found insufficient in *Aguilar* and *Spinelli*. Therefore, it is the better practice to set forth the nature and results of the informant's past performance. Otherwise the officer runs the risk that his affidavit will be judged conclusory. "... another method of establishing the veracity of the informant has been recognized, namely, where his information amounts to a statement against his penal interest."

Nature of the Informant's Past Performance

Is information leading to arrests and convictions the only type of past performance to be considered in assessing the veracity of a source, or may information resulting in the recovery of evidence or property, or the location of fugitives, be considered? The courts have had no trouble in upholding past performances relating to recoveries and fugitives.50 Indeed, such information is generally deemed more worthwhile in assessing veracity than the assertion that prior information has resulted in convictions.51 In setting forth "recovery" or "located" information, the nature of the informant's past performance is more explicitly brought to light. In fact, it may be argued that the "convictions" lanquage is conclusory. A conviction is the end product; it does not disclose what the informant did to bring this about. To relate fully an informant's participation in a case, however, may be very difficult without the description being overly long, unclear, and involved. It also may tend to reveal more about the informant's identity than the officer desires. These two considerations perhaps explain the universal acceptance of the "convictions" language.52 Moreover, unlike the officer in McCray, who detailed the names of the parties arrested and convicted, the courts have not insisted upon such detail, undoubtedly due to a concern about revealing the identity of informants.53 Nevertheless, it would be worthwhile to state in the affidavit⁵⁴ that the lack of specific details is due to this consideration. Where the particulars can be set forth readily and easily, this should be done.

In instances where information has not resulted in recoveries or convictions and the specific details of the

Chart 2

Language to "Qualify" an Informant

Informant has on [number] previous occasions since [date], the last previous occasion being [date], provided information [SEE BELOW FOR SPECIFIC LANGUAGE]. Further details as to the specific cases involved would tend to disclose the informant's identity. The identity of this informant should be kept confidential because disclosure of informant's identity would impair his future usefulness to law enforcement and endanger his life.

Specific Language to Be Inserted Above

- 1. CONVICTIONS "which has resulted in [number] convictions."
- •2. EVIDENCE OF CRIMINAL ACTIV-ITY OR LOCATION OF FUGITIVE "which has resulted in the recovery of [or location and arrest of] [describe property and/or dollar value, or name of fugitive, where applicable, or where such would identify

informant, use generic term, such as fruits, instrumentalities, contraband, evidence of a crime or fugitivel."

3. SIMPLY ACCURATE INFORMA-TION

"concerning the criminal activities of others which information was not available to the public, and which was confirmed as being true and accurate by independent investigation by this Department, and was considered as material in the investigation to which the information pertained."

4. ARRESTS

"which has resulted in [number] arrests. Probable cause in each instance was found by a magistrate or grand jury."

Where Applicable, The Following Addition is Useful

"Informant has never provided information which proved to be incorrect."

information cannot be set forth for one reason or another, it would seem the better course to at least state that the information related to the criminal activities of others and that it was of significant value.⁵⁵ Language for this purpose is contained in chart 2, item 3. However, caution must be exercised in employing statements of this nature since they are an easy target of a challenge as being conclusory.

Arrests vs. Convictions

Is it sufficient that the informant's prior performance has simply led to arrests or must there also be convictions? To begin with, the term "arrests" is ambiguous. If it means that the informant's report led to the location of a fugitive for whom probable cause already existed, it would be better to detail this information because the specific nature of the past performance is thereby described. If it means only that a person was arrested based in part on the informant's information, this report means little.56 If the fact of an "arrest" or "arrests" standing alone is sufficient, then an officer would only have to make an arrest based on a first-time informant's unverified information, and the informant's veracity would be established for future cases. Thus, while a number of appellate decisions specify that the "arrests" language is sufficient,57 it is subject to question. If convictions for one reason or another have not resulted from the arrests, language to indicate that the arrests have been upheld on probable cause grounds (as where corroboration of the informant's tip was done) should be added to the "arrests" statement (see chart 2, item 4).⁵⁸

Number of Prior Instances of Reliability

There is no reported decision holding that there must be a specific number of prior instances of reliability before the informant's veracity is established.59 Moreover, no case has been located which requires that the previous reliability of the informant relate to the same type of criminal violation on which the informant is currently reporting.60 Such a requirement would result in an informant who has given reliable information concerning narcotics matters not being considered credible concerning personal crime matters. While it might be worthwhile to add to an affidavit that the informant has supplied reliable information in the same type of violation in the past, thus bolstering the informant's veracity, it is not indispensible in establishing veracity.

Setting Forth Informant's Entire Track Record

However, not unreasonable is the notion that an informant's entire track record should be described, his successes as well as his failures, in order that the magistrate may properly assess the informant's reliability.⁶¹ While this does not appear to have been a requirement in any jurisdiction in the past, a recent California Supreme Court case, *People v. Kurland*,⁶² requires this. Since there is logic to this argument and because it is reasonable to believe defense attorneys, armed with the *Kurland* decision, will henceforth take this position in other jurisdictions, it would be worthwhile for the officer-affiant to add to his affidavit that the informant has never provided information which proved to be incorrect, where such is the case.

Veracity—Another Approach

Typically, previous reliability is the only way available to establish the veracity of the informant. As Judge Moylan of the Maryland Court of Special Appeals has pointed out:

"The character of the informant as a truthspeaker could hypothetically be established in a number of ways. A lie detector test or truth serum would certainly have a bearing on the question. If the informant was once awarded a Boy Scout medal for trustworthiness or if he happened to be a prince of the church, those facts would be unquestionably relevant on the issue. Testimonials from friends, neighbors, and business associates as to his reputation for 'truth and veracity' would be highly relevant. As a practical matter, however, 'stool pigeons' are neither Boy Scouts, princes of the church, nor recipients of testimonials. With the typical confidential police informant, we have recourse only to his 'track record' of past performances." 63

However, another method of establishing the veracity of the informant has been recognized, namely, where his information amounts to a statement against his penal interest. This was established by the 1971 Supreme Court case of United States v. Harris. 64 A search warrant was issued based upon a first-time informant's report that he purchased illicit whiskey at the defendant's premises "for a period of more than two years, and most recently within the past two weeks." Some information concerning the defendant's criminal background was also included. A prosecution against the

defendant-seller resulted after the whiskey was recovered from his premises. The defendant contended that the warrant did not establish probable cause because the informant, never having supplied reliable information before, could not have met the veracity test of *Aguilar*. However, purchasing illicit whiskey was also a crime, and as the Chief Justice explained, this was a sufficient basis for crediting the purchaser-informant's tip:

"Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility-sufficient at least to support a finding of probable cause to search. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct. Concededly admissions of crime do not always lend credibility to contemporaneous or later accusations of another. But here the informant's admission that over a long period and currently he had been buying illicit liquor on certain premises, itself and without more, implicated that property and furnished probable cause to search." 65

The Court, finding the informant's accusation to be a declaration against interest, held that it provided a constitutionally sufficient basis upon which a finding of probable cause could be made when coupled with the officer's knowledge of the defendant's background.

"... there is an unwritten rule of probable cause that 'where there is opportunity for inquiry and investigation, inquiry and investigation should be made."

Four of the Justices expressed the view that the informant's statement in itself established probable cause without any information from the affiant regarding defendant's background. It appears that 7 of the 12 Federal appellate courts have likewise adopted the view that a statement against interest in itself satisfies the veracity prong of Aguilar.66 This method of satisfying the veracity requirement is particularly helpful in situations in which an accused identifies his accomplices. Where it is obvious that he is the source of the information, naming him will carry no further opprobrium and will add to the credibility of his report.

Naming the Criminal Informant

In the typical case, a criminal informant's identity is not revealed. If, rather than keeping the informant's identity anonymous, he is named in the affidavit, will this in itself be a sufficient basis for crediting his information? The cases addressing this issue have concluded that simply naming the criminal informant is not enough to establish his veracity.⁶⁷ However, to quote one court, "it is one factor which may be weighed in determining the sufficiency of an affidavit."⁶⁸

"Good-Citizen" Informant

Besides the trustworthy source and the criminal informant, a third type of source has been recognized, namely, the unidentified "good-citizen" informant. The good-citizen informant is similar to the victim-witness to a crime in that he does not have an ulterior motive in furnishing the information but, unlike the victim-witness, usually has not seen a crime take place. The informant's identity, therefore, need not be disclosed to the defense.⁶⁹ This person has usually seen evidence of the crime at some place or has learned of the commission of the crime from the suspect and wishes to report this information to law enforcement authorities. He is willing to disclose his identity to the authorities, but otherwise wishes to remain anonymous. Illustrative is the case of United States v. Unger,70 decided by the U.S. Court of Appeals for the Seventh Circuit. An individual, while working at his occupation in the basement of an apartment building, observed a cache of weapons through an opening in an enclosed locker. He furnished this information to the police, who applied for a search warrant and ultimately seized the weapons. The search warrant did not name the citizen but set out his observations and how he happened to come upon the information, namely, through working at his occupation. The defendant contended that the veracity of the source was not established, and therefore, the affidavit did not satisfy the probable cause requirement. The court noted that it was apparent from the affidavit that the individual furnishing the information was not a typical criminal informant who was part of the criminal element since he gathered his information while pursuing his employment. The court concluded that the affidavit was sufficient since the informant's veracity could "be deduced from the content of the complaint."

In order to avoid contentions that an individual furnishing information is a criminal informant, thus requiring a greater showing of veracity, it would be advantageous for an officer to disclose in as much detail as possible: (1) How the "citizen-informant" acquired the information reported (as was done in Unger); (2) a statement that the information was not received for monetary payment or for past or future favorable treatment on criminal charges; and (3) background information concerning the citizen, namely, the lack of a criminal record, the holding of a responsible job, the owning of a home, the fact that he is supporting a family, etc.71

The Anonymous Source

The last category of informants is the anonymous source. This source is not only unidentified in the affidavit but is also unknown to the law enforcement authorities. The only way to establish the veracity of his information is through corroboration. The corroboration must be extensive, almost to the point of constituting probable cause in itself.72 Corroboration, moreover, is the elixir for curing all hearsay information which fails to meet the Aquilar twopronged test. Even where the informant's report itself satisfies Aguilar, there is an unwritten rule of probable cause that "where there is opportunity for inquiry and investigation, inquiry and investigation should be made." 73 Therefore, unless time is of the essence, investigation should always be undertaken in an effort to corroborate an informant's tip. The subject of corroboration will be developed in the conclusion of this article. FBI

(Continued next month)

Footnotes

¹ U.S. Const. amend. IV reads as follows:

'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

² Brinegar v. United States, 338 U.S. 160 (1949).

3 1 W. LaFave, Search and Seizure § 3.3, at 500.

4 378 U.S. 108 (1964).

5 290 U.S. 41 (1933).

6 357 U.S. 480 (1958).

7 358 U.S. 307 (1959).

8 362 U.S. 257 (1960).

9 Supra note 5.

10 Supra note 6.

11 Supra note 7. 12 Supra note 8.

13 Supra note 4.

14 Id. at 109.

15 Id. at 114.

¹⁶ Spinelli v. United States, 393 U.S. 410, 413 (1969).

17 Id. at 417, n. 5.

18 This term "basis of knowledge" was apparently coined by Judge Charles E. Moylan, Jr., of the Maryland Court of Special Appeals in a thoughtful article on this subject. See Moylan, Hearsay and Probable Cause: An Aguilar and Spinelli Primer, 25 Mercer L. Rev. 741, 765 (1974)

19 Supra note 16, at 416.

²⁰ See, e.g., United States v. Dauphinee, 538 F.2d 1, 5 (1st Cir. 1976). On the subject of staleness see generally Mascolo, The Staleness of Probable Cause in Affidavits for Search Warrants: Resolving the Issue of Timeliness, 43 Conn. B.J. 189 (1969); Comment, A Fresh Look at Stale Probable Cause: Examining the Timeliness Requirement of the Fourth Amendment, 59 Iowa L. Rev. 1308 (1974); Annot., 100 A. L. R. 2d 525 (1950).

21 United States v. Harris, 403 U.S. 573 (1971);

Rugendorf v. United States, 376 U.S. 528 (1964) 22 See, e.g., State v. Kasold, 110 Ariz. 563, 521 P.2d 995 (1974).

23 Compare United States v. House, 604 F.2d 1135, 1142 (8th Cir. 1979), cert. denied, 445 U.S. 931 (1980) with People v. Jackson, 21 III. App. 3d 326, 315 N.E.2d 204 (1974)

24 United States v. Carter, 498 F.2d 83 (D.C. Cir. 1974) (per curiam).

25 State v. Chapman, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

26 State v. Hayward, 18 Or. App. 128, 523 P.2d 1278 (1974).

27 See, e.g., United States v. Long, 439 F.2d 628 (D.C. Cir. 1971).

28 Supra note 16

29 Supra note 16, at 416.

30 Supra note 7.

31 Supra note 16, at 416-17.

32 483 F.2d. 37 (5th Cir. 1973), cert. denied, 417 U.S. 908 (1974).

33 Id. at 41

34 The term "veracity" was also apparently coined by Judge Moylan. Supra note 18, at 755.

35 380 U.S. 102 (1965).

36 381 U.S. 214 (1965). 37 Id at 224.

38 United States v. Burke, 517 F.2d 377, 380-81 (2d Cir. 1975); United States v. Bell, 457 F.2d 1231, 1238 (5th Cir. 1972); United States v. Swihart, 554 F.2d 264, 269 (6th Cir. 1977); McCreary v. Sigler, 406 F.2d 1264, 1269 (8th Cir.), cert. denied, 395 U.S. 984 (1969); United States v. Easter, 552 F.2d 230 (8th Cir.), cert. denied, 434 U.S. 844 (1977); United States v. Federbush, 625 F.2d 246, 252 (9th Cir. 1980); United States v. Mahler, 442 F.2d 1172, 1174-75 (9th Cir.), cert. denied, 404 U.S. 993 (1971); United States v. Gagnon, 635 F.2d 766 (10th Cir. 1980), cert. denied, 101 S.Ct. 3008; United States v. McCoy, 478 F.2d 176, 179 (10th Cir.), cert. denied, 414 U.S. 828 (1973)

39 Roviaro v. United States, 353 U.S. 53 (1957). 40 635 F.2d 766 (10th Cir. 1980), cert. denied, 101 S.Ct. 3008.

41 Id. at 768

42 399 U.S. 42 (1970).

43 M. Harney & J. Cross, The Informer in Law Enforcement 40 (2d ed. 1968).

44 386 U.S. 300 (1967).

45 Compare Jones v. Crause, 447 F.2d 1395 (10th Cir. 1971), cert. denied, 405 U.S. 1018 (1972), with Akins v. State, 572 S.W.2d 140 (Ark. 1978).

46 Compare United States v. Guinn, 454 F.2d 29 (5th Cir.), cert. denied, 407 U.S. 911 (1972), with Galgano v. State, 147 Ga. App. 284, 248 S.E. 2d 548 (1978).

47 Compare Tittle v. State, 539 P.2d 422 (Okla. Crim. App. 1975), with State v. Graddy, 55 Ohio St.2d 132, 378 N.E.2d 723 (1978)

48 Compare State v. Caldwell, 25 N.C. App. 269, 212 S.E.2d 669 (1975), with People v. Parker, 42 III.2d 42, 245 N.E.2d 487 (1969).

49 This split in the lower courts is no doubt due in part to the fact that in three pre-Aguilar cases, the previous reliability of the informants was shown in somewhat conclusory terms, without criticism by the Court. However, all these cases involved additional corroboration by the affiant. Jones v. United States, supra note 8 ("information

. on previous occasion . . . was correct"); Draper v. United States, supra note 7 (previous information was "accurate and reliable"); Rugendorf v. United States, information . . . in the past").

50 See, e.g., United States v. Anderson, 500 F.2d 1311 (5th Cir. 1974); United States v. Hood, 422 F.2d 737 (7th Cir.), cert. denied, 400 U.S. 820 (1970).

51 Supra note 3, at 511.

52 Id. at 509.

53 See State v. Joseph, 114 R.I. 596, 337 A.2d 523 (1975)

54 People v. Kurland, 168 Cal. Rptr. 667, 618 P.2d 213, 225 n. 12 (1980), cert. denied, 451 U.S. 987 (1981).

55 See People v. Montoya, 538 P.2d 1332 (Colo. 1975) (en banc).

56 See supra note 18, at 759.

57 State v. Karr. 44 Ohio St.2d 163, 339 N.E.2d 641 (1975), cert. denied, 426 U.S. 936 (1976); State v. White, 10 Wash. App. 273, 518 P.2d 245 (1974).

58 See People v. Dumas, 9 Cal.3d 871, 109 Cal. Rptr. 304, 512 P.2d 1208, 1211-12 (1973).

59 See generally supra note 3, at 509.

60 See, e.g., United States v. House, supra note 23; United Grates v. Shipstead, 433 F.2d 368 (9th Cir. 1970). Supra note 18, at 759. Supra note 54.

- 183 Supra note 18, at 758.
- 403 U.S. 573 (1971).

- " Id. at 583-84.

66 United States v. Principe, 449 F.2d 1135, 1137 (1st Cir. 1974); Armour v. Salisbury, 492 F.2d 1032, 1035-36 (6th Cir. 1974); United States v. Rosenbarger, 536 F.2d 715, 719 (6th Cir. 1976), cert. denied, 431 U.S. 965 (1977); United States v. Spach, 518 F.2d 866, 870 (7th Cir. 1975); United States v. Carmichael, 489 F.2d 983, 986 (7th Cir. 1973) (en banc); United States v. Golay, 502 F.2d 182 (8th Cir. 1974); United States v. Jabara, 618 F.2d 1319, 1323 (9th Cir.), cert. denied, 449 U.S. 856 (1980); United States v. Hampton, 633 F.2d 927, 929 (10th Cir. 1980), cert. denied, 449 U.S. 1128 (1981); United States v. Davis, 617 F.2d 677, 693 (D.C. Cir. 1979), cert. denied, 445 U.S. 967 (1980). The rule in the fifth circuit is unclear; compare United States v. Martin, 615 F.2d 318, 325 (5th Cir. 1980), with United States v. Gorel, 622 F.2d 100, 104 (5th Cir. 1979)

67 United States v. Martin, 615 F.2d 318, 325 n, 9 (5th Cir. 1980); United States v. Spach, 518 F.2d 866 (7th Cir. 1975); McCreary v. Sigler, 406 F.2d 1264, 1268 (8th Cir.), cert. denied, 395 U.S. 984 (1969).

68 United States v. Spach, 518 F.2d 866, 870 (7th Cir. 1975).

69 Supra note 39.

70 469 F.2d 1283 (7th Cir. 1972), cert. denied, 411 U.S. 920 (1973).

71 See Wetherby v. State, 482 S.W.2d 852 (Tex. Crim. App. 1972).

72 See generally supra note 3, § 3.4 at 596-97. An example of an anonymous tip ripening into probable cause is found in United States v. Horton, 488 F.2d 374 (5th Cir. 1973), cert. denied, 416 U.S. 993 (1974).

73 Filer v. Smith, 96 Mich. 347, 55 N.W. 999 (Mich. 1893).

N Bin

BY THE WANTE



Height6'1".

BuildMedium.

HairBlond.

Eyes.....Brown.

RaceWhite.

NationalityAmerican.

OccupationScuba diving in-

Remarks Wears an earring

Used246-88-2170.

ComplexionFair.

Social Security No.

ber 28, 1953, Kin-

ston, N.C. (not supported by birth

records).

structor.

the past.

in one ear; enjoys

scuba diving and

flying; reportedly

a vegetarian in

Photograph taken 1975

Description

Michael Ray Pickett

Michael Ray Pickett, also known as Michael Bigett, Richard E. Elks, Michael R. Pickett

Wanted for:

Interstate transportation of stolen property

The Crime

Michael Ray Pickett is wanted by the FBI for interstate transportation of stolen property and the sale of stolen goods. Pickett is believed to have transported stolen jewelry to San Francisco after the armed robbery of a Metairie, La., jewelry store. The stolen jewelry was then sold to a San Francisco Police Department "sting" operation. Pickett is also a primary suspect in the armed robbery of a Cove City, N.C., bank.

On August 16, 1979, a Federal warrant for Pickett's arrest was issued in San Francisco, Calif.

Caution

Pickett should be considered armed and dangerous.

Notify the FBI

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

Classification Data:

NCIC Classification: 06561314130854120714 **Fingerprint Classification:** 6 S 1 R 100 13

S1RIOI 1.0. 4898



Right ring fingerprint





TB ENFORCEMENT BULLETIN

Hide-A-Gun

This gun rig, designed for sale to law enforcement agencies, conceals a handgun under the dash of an automobile. The rig has no straps to loosen, allowing the user to have the gun in his hand in only 2 seconds.



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



Second Class

Washington, D.C. 20535

Interesting Patterns

The illustrations this month depict the effect that a scar can have on a fingerprint pattern. The fingerprint pattern at top shows a 5-count loop with a small scar. The picture at bottom shows the same pattern after it was scarred a second time, causing it to appear as a whorl.



