FBI LAW ENFORCEMENT BULLETIN

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Acoustic Gunshot Analysis

The Kennedy Assassination and Beyond

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William H. Webster, Director

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"Forensic analysis of tape recorded gunshots and other transient or impulsive sounds . . . has been an important factor in the disposition of a number of widely publicized . . . investigative matters in the past 20 years . . . ."

By

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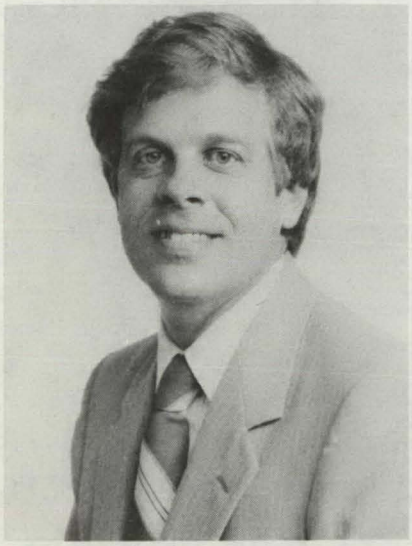
Acoustic Gunshot Analysis

The Kennedy Assassination and Beyond

(Part I)



Special Agent Koenig

Forensic analysis of tape recorded gunshots and other transient or impulsive sounds (i.e. doors slamming, explosion of fireworks, etc.) has been an important factor in the disposition of a number of widely publicized criminal, civil, and investigative matters in the past 20 years, including the Kent State University deaths in 1970, the attempted assassination of President Ronald Reagan in 1981, and the deadly confrontation in Greensboro, N.C., between members of the Ku Klux Klan, the Nazi Party, and the Communist Workers Party in 1979. However, in the last few years, such analysis has also been used to dramatically show and then refute the possible involvement of a second gunman in the assassination of President Kennedy in Dallas, Tex., on November 22, 1963.

To allow a better understanding of the scientific principles involved in acoustic gunshot analyses, the techniques presently used by the FBI to analyze recordings of gunshots and other transient sounds will be set forth, followed by a rather detailed description of the forensic acoustic studies conducted in the Kennedy assassination. This will include the reports of the House Select Committee on Assassinations (HSCA), which found a 95-percent or better chance of a second gunman being involved in the shooting of President Kennedy; a review by the Federal Bureau of Investigation refuting that claim; and the analysis conducted by the National Research Council, which conclusively invalidated the HSCA's result. The details of these reports will clearly show many of the complex problems and thinking involved in examinations of recorded gunshots.

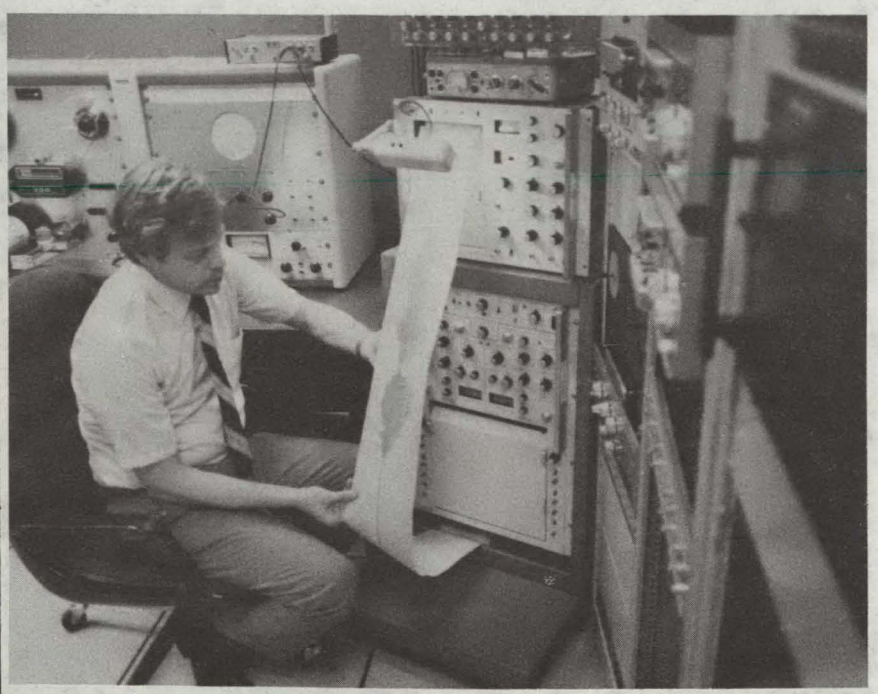
The FBI's Forensic Capability

The FBI's Signal Analysis Unit in the Engineering Section of the Technical Services Division has been involved in forensic acoustics, waveform analysis, ballistics, and electronic engineering examinations of tape recordings since the 1950's. Forensic processes include voice intelligibility enhancement, authenticity determination, spectrographic voice comparisons, video enhancement, and copyright comparisons, with analyses of tape recorded gunshots and other impulsive sounds handled as a signal analysis matter.

Under the best recording conditions, this signal analysis examination can provide an accurate determination of which sounds represent gunshots and not some other impulsive sound (i.e. a door slamming), the number and time sequencing of the gunshots, the spatial location of where each gunshot occurred, and whether the fired projectiles were subsonic or supersonic. Subsonic projectiles travel at less than and supersonic at greater than the speed of sound (1130 feet per second at sea level and 71°F). However, matching a particular recorded gunshot sound to a specific weapon is normally not possible.

For example, in the violent confrontation in Greensboro, N.C., the FBI acoustically examined over 100 impulsive-type sounds that had been recorded during the incident by high quality professional equipment. The analysis determined that 39 gunshots had been fired, the exact timing sequence of the gunshots over 88 seconds, which projectiles were sub- and supersonic, and the physical location of each gunshot (usually within ± 3 feet) fired by members of the Ku Klux Klan, the Nazi Party, and the Communist Workers Party. Unfortunately

"A good quality recording and microphone system has to have been used during an incident in order to differentiate between recorded gunshots and other impulsive sounds."

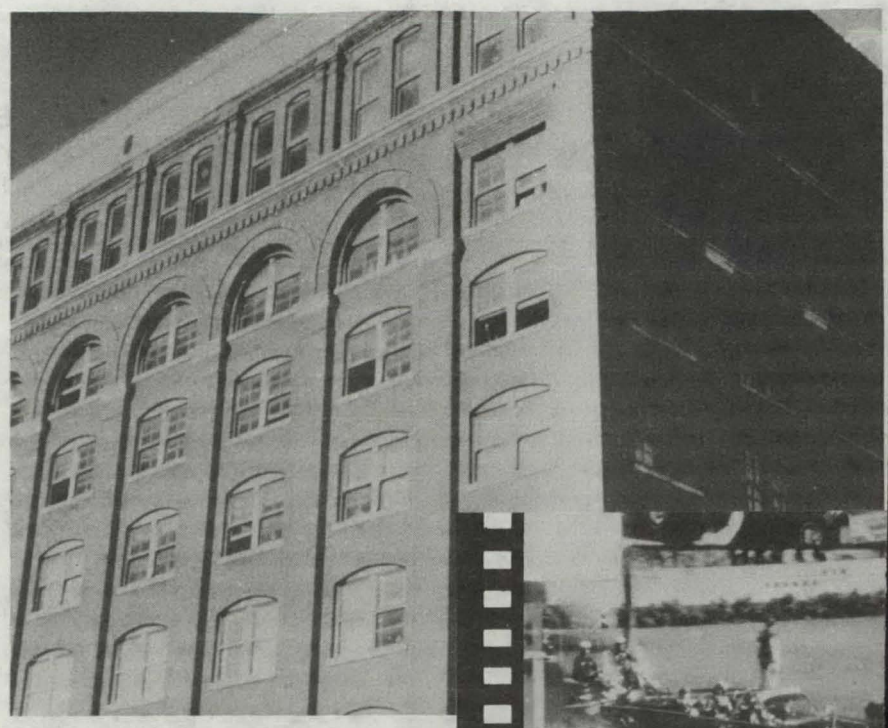


most forensic recordings of impulsive-type sounds are not recorded under the near perfect conditions encountered in Greensboro, N.C.

A good quality recording and microphone system has to have been used during an incident in order to differentiate between recorded gunshots and other impulsive sounds. Recordings over telephones and through radio transmitting systems (body, portable, and vehicular), or when the gunshot occurs close to the microphone, normally alter the signal sufficiently to prevent a meaningful determination. The actual examination to specify that a sound is a gunshot requires special aural examinations, very high resolution waveform analysis, and the presence or absence of precursor supersonic N-waves.

The actual number of impulsive sounds and their time sequence can be determined with lower quality recordings, even those over telephone lines and transmitting systems, as long as the microphones are not driven beyond their ability to reproduce very loud sounds. For example, a recent shooting incident was tape recorded using a police body transmitter system. When played by investigators, the recording revealed only six gunshot-like sounds, whereas physical evidence showed that one individual had fired one shot and the second person fired six shots from his revolver, for a total of seven gunshots. The original tape recording was submitted to the FBI to determine the actual number of gunshot-like sounds, and if possible, who fired the first shot. The examination revealed seven gunshot-like sounds using high resolution waveform analysis and that shots five and six were only 0.087 second apart. This information, therefore, reflected that the individual firing the one shot was responsible for either the fifth or sixth gunshot in the sequence, since tests showed that two consecutive shots could not be fired from that particular weapon in that short a time-span.

Determining the exact location of the source of an impulsive-type sound requires a very high quality tape recording made on site, knowledge of



Texas School Book Depository

the approximate location of the microphone, and a scaled map of the area. Again, the use of recordings through telephone or transmitter systems is usually not possible. The examination uses the principle that impulsive sounds reflect and diffract off hard, relatively flat surfaces, like the sides of buildings, in a very predictable manner. This is analogous to a flashlight beam reflecting off a mirror in the dark or a bank shot in the game of billiards. These reflections and diffractions result in a waveform that contains the original impulsive sound followed by the echoes off flat surfaces in the locale. Thus, by carefully measuring the time delays of the set of echoes, a unique position can normally be determined for the original source of the impulsive sound. This examination is normally ineffective indoors (due to the very large number of echoes) and outdoors where few horizontal flat surfaces exist (such as the middle of a cornfield).

Ammunition is designed to be either sub- or supersonic when fired from a particular weapon due to the amount and type of gunpowder, the shape and weight of the projectile, and other factors. When a supersonic projectile is fired, the bullet will travel faster than the speed of sound, and thus, arrive at the target ahead of the sound of the muzzle blast. The supersonic speed of the bullet produces a characteristic shock wave, called an N-wave, that appears in the waveform as a precursor to the original muzzle blast, which itself is then followed by the echoes. The presence or absence of this N-wave on a high resolution waveform shows whether it is super- or subsonic, respectively.

Evidence submitted to the Technical Services Division for examination must be original recordings and have the appropriate supportive material enclosed.

Assassination of President Kennedy

On November 22, 1963, President John Fitzgerald Kennedy was assassinated while riding in a motorcade through Dealey Plaza in Dallas, Tex. The alleged assassin, Lee Harvey Oswald, supposedly fired three gunshots using a rifle while in the Texas School Book Depository (TSBD) Building at the intersection of Elm and Houston Streets in Dealey Plaza, which resulted in the death of our 35th President. However, Oswald was himself shot and killed soon after the assassination and could not be brought to trial.

Photographs from film showing the assassination of President Kennedy.

"During the past 20 years, [the] murder [of President John F. Kennedy] has probably generated more controversy than any other single criminal event in this country."

President and Mrs. Kennedy moments before the fatal shot was fired.

During the past 20 years, this murder has probably generated more controversy than any other single criminal event in this country. Hundreds of articles, books, and scientific reports have been written concerning the assassination, covering a wide range of topics from the significance of bullet fragments found during the autopsy to who is buried in Oswald's grave. However, in recent years, the possible existence of another assassin in Dealey Plaza, besides Oswald, has become a major focus of interest in this ongoing controversy.

In September 1976, the HSCA of the U.S. House of Representatives, 95th Congress, was authorized a 12-member[1] committee to conduct a complete investigation into the circumstances surrounding the deaths of President Kennedy and Dr. Martin Luther King, Jr., including the possibility of additional assassins.

Acoustical Report of Bolt Beranek and Newman

In an attempt to cover all possible scientific leads concerning the assassination of President Kennedy, the HSCA asked personnel of Bolt Beranek and Newman, Inc. (BBN), in May 1978, to conduct an examination of two recordings made by the Dallas Police Department (DPD) of police radio traffic during the assassination. BBN, a Cambridge, Mass., acoustical firm, was asked to analyze the recordings to determine if they contained the sounds of gunfire involved in the shooting of the President, and if so, how many gunshots were recorded and from what locations did the gunshots originate.

BBN's report[2] of January 1979, to the HSCA reflects that the first recording is of DPD radio channel 1, which is a continuous recording on a Dictabelt of routine police radio traffic. The second recording is of auxiliary radio channel 2, which was intermittently recorded on a Gray Audograph disc and used by the DPD police officers assigned to the Presidential motorcade.[3] However, after a preliminary examination, BBN decided to focus their attention on the channel 1 recording, instead of channel 2, for their analysis.

According to BBN, the police radio on a DPD motorcycle, which could have been in the Presidential motorcade, had its transmitting switch stuck open on channel 1 for approximately 5 minutes during the assassination. Therefore, the radio microphone would allegedly detect and transmit all sounds in the vicinity of the motorcycle, including the noises produced by the motorcycle itself. BBN used filters to process the DPD channel 1 recording during the specified 5 minutes and displayed this signal in the form of a time-continuous waveform. An example of another type of time-continuous waveform is the pattern obtained when an electrocardiogram (EKG) displays a person's heartbeat.

The waveform display of channel 1 had five unique impulsive noise patterns thought to be different from motorcycle sounds, according to BBN. Their report reflects that four of these patterns appeared to be similar to the characteristics of a gunshot blast with a precursor supersonic N-wave. The other pattern was eliminated as a possible gunshot since it was different in amplitude and duration. The BBN report states that a rifle firing a supersonic bullet creates two sources of loud impulsive sounds—the muzzle blast and the shock wave of the projectile as it travels faster than the speed of sound.[4] The shock wave is analogous to a jet fighter producing a sonic boom when it flies faster than the speed of sound. These two impulsive sounds, plus the echoes of these sounds reflecting and diffracting off such surfaces as the sides of buildings, the street, and automobiles, result in a particular pattern of sound impulse peaks.

However, tests performed by BBN on a radio system similar to that used by the DPD showed considerable distortion of loud impulsive sounds such as gunshots, which resulted in the elimination of impulse peaks, change in the position of peaks, and even the production of new peaks where no impulse peaks previously existed.[5]

Preliminary tests by BBN determined that the four chosen impulse patterns occurred at approximately

the same time as the known gunshots in Dealey Plaza and that no other sufficiently characteristic patterns were located in the pertinent 5-minute segment. Also, the time span between the first and fourth patterns did not contradict photographic evidence made during the assassination, the distorted patterns approximated test patterns of gunshots, and the amplitudes of the impulse patterns were in the same general range as test gunshots.[6]

On August 20, 1978, BBN fired a total of 12 test gunshots with weapons located only in the TSBD and on the so-called grassy knoll area in Dealey Plaza. Using 36 microphones located 18 feet apart on Houston and Elm Streets, BBN recorded these test gunshot blasts in an effort to reconstruct acoustically the impulse patterns recorded by the DPD radio system during the assassination of President Kennedy. Even though few physical changes had been made in Dealey Plaza since 1963, producing comparable test patterns was very difficult since the impulse patterns on the DPD recording were like "badly smudged fingerprints" due to the noisy environment in the vicinity of the transmitting DPD radio microphone, the poor quality of the DPD recording system, and a number of other problems.

Using the 12 different test gunshots from the TSBD and the grassy knoll and the 36 different microphone locations used by BBN, a total of 432 gunshot patterns were recorded ($12 \times 36 = 432$). These 432 test gunshot patterns were then compared to the impulse patterns isolated on the channel 1 DPD recording using a statistical analysis technique. This comparison provided a total of 15 possible matches, which was not particularly significant since the average expected number of statistically false matches for such a comparison is 13, due to the random noise impulses present throughout the DPD tape.

BBN then stated that at least 6 of the 15 correlations were false matches, because 1 gunshot would have been fired at the wrong target, 1 would have occurred only 1.05 second after earlier correlations, which is too fast a firing rate for the tested rifle, 3 would have required a motorcycle with the open microphone to travel at 16 mph, and 1 would have required the motorcycle to travel at 55 mph. The motorcade was thought to have been traveling at approximately 11 mph. The remaining nine correlations sufficiently matched the four designated impulse patterns on the DPD recording to show a DPD microphone location varying between 120 and 160 feet behind the Presidential limousine. Further, the BBN analysis found that the four impulse patterns may have been gunshots fired as follows:

"1. time 0.0 sec[ond]—one shot from the TSBD . . .
"2. time 1.6 sec[onds]—one shot from the TSBD . . .
"3. time 7.8 sec[onds]—one shot from behind the fence on the grassy knoll . . .
"4. time 8.3 sec[onds]—one shot from the TSBD. . ."[7]

The BBN conclusions were presented in oral testimony to the HSCA on September 11, 1978, reflecting that the radio on the DPD motorcycle in the Presidential motorcade had received and transmitted the four specified impulse sounds and that each of these impulse sounds was possibly a gunshot. Due to the false matches produced by the statistical technique, the probabilities, according to BBN, that each impulse pattern is a gunshot are:

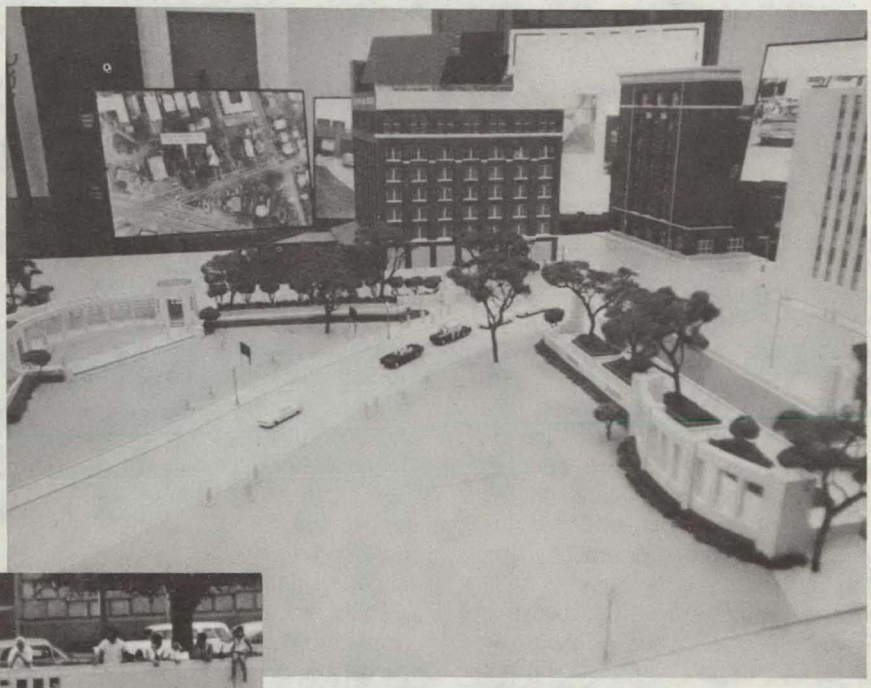
Time 0.0 second—88 percent
Time 1.6 seconds—88 percent
Time 7.8 seconds—50 percent
Time 8.3 seconds—75 percent

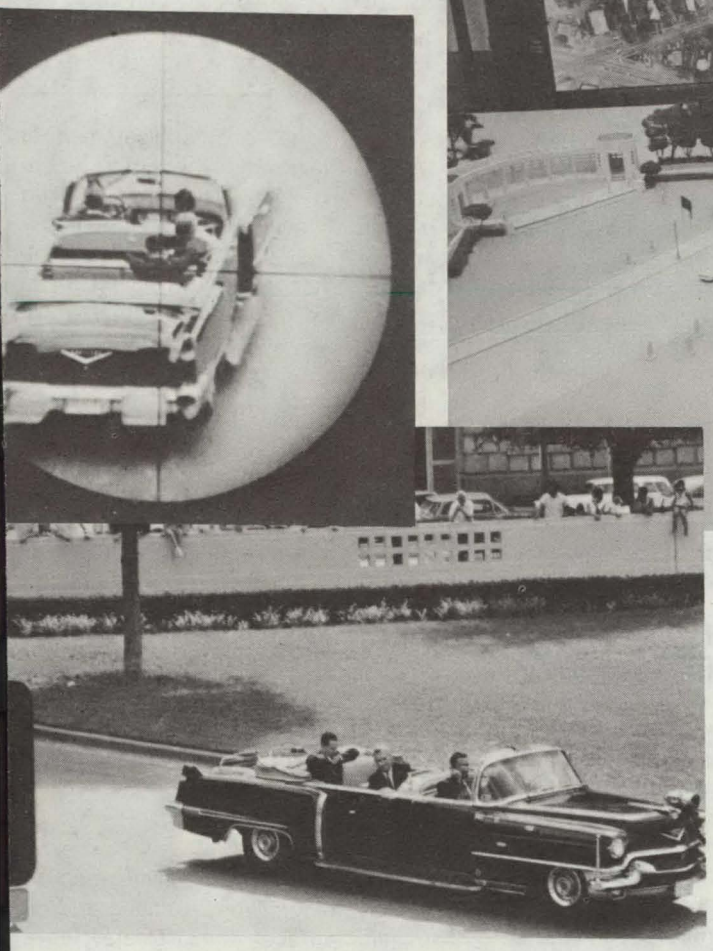
BBN stated that the probability that all four impulse patterns are gunshots is only 29 percent.[8]

Acoustical Report of Weiss and Aschkenasy

On October 24, 1978, the HSCA authorized Mark R. Weiss and Ernest Aschkenasy, Department of Computer Science, Queens College, City University of New York, to conduct an independent analysis of the alleged third gunshot recorded on channel 1 of the DPD radio system to determine with greater accuracy whether it was indicative of a gunshot from the grassy knoll.

To conduct their analysis, Weiss and Aschkenasy received from the HSCA high quality magnetic tape copies of the DPD recording, a high quality tape copy of the gunshot sounds recorded by BBN during the acoustical reconstruction tests performed in Dealey Plaza on August 20, 1978, a topographical survey map of





Above: Model of Dealey Plaza showing the route of the Presidential motorcade.

Left: Photograph of re-enactment conducted as part of the investigation into the assassination.

Above left: Photograph of the re-enactment through a rifle scope from the Texas School Book Depository.

ealey Plaza (scale: 1 inch to 10 eet), a map of Dealey Plaza (scale: 1 ch to 40 feet) with microphone loca- ons used by BBN in their gunshot re- onstruction tests, and aerial and round-level photographs of Dealey laza and the surrounding areas. The SCA also provided them with addi- onal information, such as building eights in Dealey Plaza, distances not hown on the maps, the location of hooters during the BBN reconstruc- on experiment, and the air tempera- re during the assassination and re- onstruction experiment.

Weiss and Aschkenasy's report ates:

"The DPD recording contains a wide range of sounds—speech, clicks, whistles, motor noises, sirens and even the sound of a carillon bell. Mostly the recording contains sounds generated during normal communications on channel 1 of the DPD radio dispatching system. . . . At a time that the BBN analysis estimates to have been about 12:28 p.m., a microphone on a mobile unit apparently became stuck in the 'on' position and began to transmit a continuous noise that is believed to be the sound of a motorcycle engine."[9]

The static-like sounds on the DPD recording could be distorted gunshot sounds, since the DPD radio system would have compressed the sound of the muzzle blast and its strongest echoes, making them only slightly louder than the background static. For example, if the open microphone was on a motorcycle in the motorcade, most of the weak echoes of a muzzle blast would have been obscured by the noise of a motorcycle engine (which could be the source of the continuous noise on channel 1). Thus, the sounds of a gunshot could have been recorded as a sequence of impulse sounds (the muzzle blast and its echoes), only a few having a larger amplitude than the engine noise and none of which would have sounded like gunshots after being changed by the circuitry of the DPD radio and recording equipment.

The report states that the higher impulse sounds on the DPD recording could be generated by a number of

sources, including misfiring of a motorcycle engine, noise produced by the motorcycle's ignition system, radio on-and-off clicks, scratches on the Dictabelt, and electrical or mechanical disturbances in the system. Weiss and Aschkenasy, in an effort to differentiate these sounds from a gunshot, asserted that the most effective and most reliable characteristic to determine if a sound is a gunshot is the presence or absence of echoes from the muzzle blast. These echoes are the result of firing a gun, which produces a loud impulse sound that spreads out and is heard in every direction. This sound is then reflected and diffracted off any structures in the area, producing echoes which arrive at the microphone later than the direct muzzle blast impulse. Weiss and Aschkenasy contended that the specified impulse pattern on the DPD recording had these echoes, thus reflecting that it was a gunshot. However, in public testimony before the Committee on December 29, 1978, Weiss stated that it is ". . . not so much the echo pattern as the evidence of a supersonic shock wave" that would characterize a gunshot sound and eliminate other sounds like the backfire of a motorcycle. Weiss further stated he does not know of any other sound that might resemble the pattern he determined to be a gunshot due to the presence of the supersonic shock wave and the muzzle blast impulses.[10] It is not known which characteristic Weiss and Aschkenasy actually used in their analysis.

In their report to the House Select Committee on Assassinations, Weiss and Aschkenasy stated:

> "If we now assume that the sound source [the gun] and the listener are located in a typical urban environment, with a number of randomly spaced echo-producing structures, it is possible to see that the pattern of sounds a listener will hear will be complex and unique for any given pair of gun and listener locations. For example, assuming a fixed location of a listener, the echoes that he hears and the times at which he hears them will be related uniquely to the location of the gun, since for each different location of the gun, even though the distances from the listener to the various echo-producing objects are the same, the distances from these objects to each gun location are different. Consequently, the times at which the echoes are heard will be different for each location of the gun. Similarly, assuming a fixed location of the gun, any change in the location of the listener will change the distances between him and the echo-producing structures, and thus the timing of the pattern of sounds he hears. If the listener is in motion as the muzzle blast and the various echo sounds reach him, the times at which he hears the muzzle blast and its echoes will be related uniquely to his location when he hears each sound.
>
> "The 'listener' that we have discussed, of course, could be either a human ear or a microphone. If a microphone receives the sounds and they are subsequently recorded, the recording becomes a picture of the event, not unlike a 'fingerprint,' that permanently characterizes the original gun and microphone locations." [11]

Using the topographical map of Dealey Plaza and the BBN reconstruction results (test gunshots fired only from the TSBD and the grassy knoll), Weiss and Aschkenasy attempted to predict a pairing of a shooter and a microphone that would produce a sound pattern that would match the specified impulse pattern of the DPD recording. To calculate these predicted echo patterns of a particular shooter and microphone location in Dealey Plaza, three pieces of information were needed:

> "(1) Which objects in Dealey Plaza would produce echoes in the region of interest on Elm Street for a gun fired from the vicinity of the grassy knoll; (2) how far these objects were from the locations of the gun and of the microphone; and (3) what was the speed of sound under the conditions for which the echo travel times were to be predicted." [12]

First, the topographical map revealed many of the reflecting and diffracting surfaces within Dealey Plaza. Second, direct measurement on the map determined the distances from the gun to the reflecting and diffracting surfaces and then to the microphone location. Third, the speed of sound was determined to be approximately 1,123 feet per second, principally by using the known air temperature near Dealey Plaza on November 22, 1963, of approximately 65° F (the speed of sound varies with changes in air temperature).

To make a comparison of predicted echo patterns to the specified pat-

tern on the DPD recording, the errors in the speed of sound determination and the time accuracy of the DPD recording had to be determined. Weiss and Aschkenasy used a ±1.0-percent error for the speed of sound due to temperature variations (±10° F) and a −4.0-percent to −6.0-percent error for speed variations on the DPD Dictabelt recorder, since the average speed of the recorder over a 15-minute segment was 5.0 percent too slow. These two errors combined to give a maximum possible time error range of −3.0 percent to −7.0 percent. Weiss and Aschkenasy then stated that since any value within this maximum error range is valid, it was possible to choose a value that created the best match between the alleged gunshot impulse and predicted echo sequences. A −4.3-percent error factor was picked since it gave the best match.

Weiss and Aschkenasy, using a statistical technique and by physically measuring on the topographical map of Dealey Plaza with string, determined that the specified impulse pattern on the DPD recording of channel 1 was "a sound as loud as a gunshot from the grassy knoll" area of Dealey Plaza, with a probability of 95 percent or higher.

The complete findings of Weiss and Aschkenasy concerning the specific sounds on the DPD recordings are:

> "1. The recording very probably contains the sound of a gunshot that was fired from the grassy knoll. The probability of this event is computed to be at least 95 percent.
>
> "2. The microphone that picked up the sounds of the probable gunshot was on Elm Street and was moving at a speed of about 11 miles per hour in the same direction as the motorcade. At the time the probable gunshot was fired, the microphone was at a point about 97 feet south of the TSBD and about 27 east of the southwest corner of the building. (For both distances, the uncertainty is about ± 1 foot).
>
> "3. The probable gunshot was fired from a point along the east-west line of the wooden stockade fence on the grassy knoll, about 8 feet (± 5 feet) west of the corner of the fence." [13]

In his testimony in the public hearing before the HSCA on December 29, 1978, Weiss mentioned two additional findings that were not in his report of February 1979. Weiss stated that the specified pattern found to be a gunshot from the grassy knoll was most likely supersonic and fired by a rifle. However, in their report, Weiss and Aschenasy stated they did not know the type of gun used. Weiss also testified that the weapon fired from the grassy knoll was aimed in the general direction of President Kennedy's limousine.

Aschkenasy stated at that public hearing that he was so sure of their results that "if someone were to tell me that the motorcycle was not in Dealey Plaza, and he was, in fact, somewhere else, and he was transmitting from another location . . . I would ask to be told where that location is, and once told where it is, I would go there, and one thing I would expect to find is a replica of Dealey Plaza at that location. That's the only way that it can come out." [14] Based primarily on the acoustical analyses performed by both BBN and Weiss and Aschkenasy that there were gunshots in Dealey Plaza from both the TSBD building (where Lee Harvey Oswald allegedly fired three gunshots) and the grassy knoll area (one gunshot) during the assassination of President Kennedy, the HSCA found, in part, that "scientific acoustical evidence establishes a high probability that two gunmen fired at President John F. Kennedy." [15]

Having considered in part I the analyses of BBN and Weiss and Aschkenasy of recorded sounds relating to the assassination of President John F. Kennedy, the conclusion will report on a review and the findings of the Federal Bureau of Investigation and the analysis conducted by the National Research Council. **FBI**

(Continued next month)

Footnotes

[1] The members were Louis Stokes—Chairman (Ohio), Richardson Preyer (North Carolina), Walter E. Fauntroy (District of Columbia), Yvonne Brathwaite Burke (California), Christopher J. Dodd (Connecticut), Harold E. Ford (Tennessee), Floyd J. Fithian (Indiana), Robert W. Edgar (Pennsylvania), Samuel L. Devine (Ohio), Stewart B. McKinney (Connecticut), Charles Thone (Nebraska), and Harold S. Sawyer (Michigan).

[2] *Appendix to Hearings Before the Select Committee on Assassinations, U.S. House of Representatives,* 95th Cong., 2d Sess., Volume VIII, Washington, D.C., 1979, pp. 41–42.

[3] Dictabelts and Gray Audograph discs were used with early dictating equipment to record voice information; a stylus imprinted grooves on their plastic surfaces, much like a poor quality phonograph record, which could then be played back at a later time.

[4] *Appendix,* pp. 41–43, 52–55.

[5] *Appendix,* pp. 76–77.

[6] *Appendix,* pp. 43–45.

[7] *Appendix,* p. 46.

[8] *Appendix,* pp. 47–48.

[9] *Appendix,* p. 11.

[10] Broadcast of public hearing over radio station WETA–FM in Washington, D.C.

[11] *Appendix,* p. 7.

[12] *Appendix,* p. 19.

[13] *Appendix,* p. 10.

[14] Supra note 10.

[15] *Report of the Select Committee on Assassinations, U.S. House of Representatives, Findings and Recommendations,* 95th Cong., 2d Sess., U.S. Government Printing Office, Washington, D.C., 1979, p. 58.

Family Disturbance Intervention Program

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In 1978, a great deal of public and media criticism was being hurled at police departments across the Nation for their lack of concern in the area of domestic violence. The Metropolitan Police Department of Washington, D.C. (MPDC), initiated a study to determine whether departmental procedures for handling domestic disputes were effective in meeting the needs of the community while providing optimum protection for officers. The initial study revealed a significant proportion of homicides involved domestic relationships, and nationally, more police officers were being injured while responding to disturbance calls than in any other type of call for service.

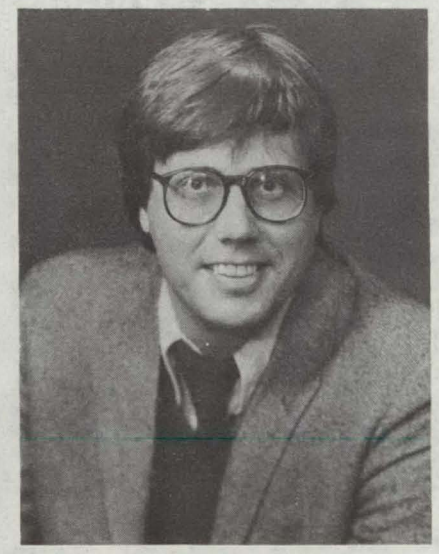
Further, there appeared to be no clear-cut departmental policy regarding the enforcement of criminal laws relating to domestic offenses, in addition to the confusion that prevailed as to the criteria necessary for prosecution of cases of this nature brought before the U.S. attorney's office. It appeared that this lack of definition, coupled with the potential for life-threatening violence, promoted indecision among even the most concerned officers. No formal training beyond the basic steps of separating the combatants and defusing the situation was provided to the officers, thus forcing the individual to rely upon his own personal experience, attitudes, and prejudices in dealing with domestic disturbances. There was no reason to believe that police officers, as a group, possessed special insight into this problem without receiving appropriate training.

As a result of this study, the MPDC initiated the family disturbance intervention program (FDIP) in January 1979. With the primary goals of reducing injury to officers, providing better service to citizens, and collecting data on this particular type of service call, the FDIP was designed to address three main areas: Training, data gathering, and referral.

Training

In lieu of training a limited group of officers to comprise a special unit to handle family violence, as had been done in other police departments, it was determined that *all* street officers would receive this training, since any one of them might be the initial officer responding to the scene. The actions of that first officer would determine the escalation or deescalation of the potentially volatile or already violent situation he would encounter. Therefore, it was believed that officers should be equipped with all the necessary skills to provide the highest level of service, while eliminating as much danger to himself as possible.

In order to develop and conduct the most effective training program, the MPDC decided to go outside the walls of the police training academy, as crisis intervention within domestic disturbances took the police officer beyond his traditional role. In the past, an officer was given specific steps to accomplish his job, whether it was writing a traffic ticket, taking a report, or making an arrest. With crisis intervention calls, there are no specific steps since no two situations are alike. The officer is required to recognize and evaluate the emotional dynamics involved in a given situation, whether it is a disturbance or criminal call. Then, based on that information, he must determine the best method of handling the problem. Providing the officer with the necessary tools to accomplish this task would require the expertise of trainers skilled in the area of human dynamics.



Mr. Buchanan

Officer Hankins

The MPDC approached the Psychodrama Unit of Saint Elizabeth's Hospital (SEH), a federally run mental health facility located in the District of Columbia, to determine the feasibility of a joint training project. With the cooperation and guidance of SEH, together with the combined efforts of the MPDC training staff and such local community agencies as the Woman's Legal Defense Fund's Task Force on Abused Women and the Family Stress Services FACT hotline, a 40-hour crisis intervention training course was developed and provided at no cost to MPDC.

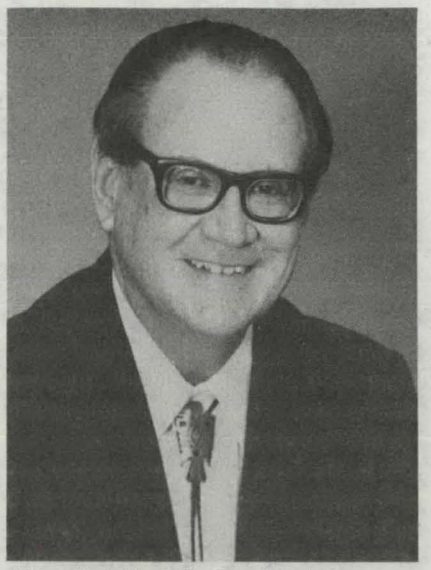
The training program is designed to meet a hierarchical training approach to crisis intervention. The skills of safety, defusion, communication, resolution, and referral are taught in ascending order during the 5-day period. The program includes lectures, films, panel discussions, small group seminars, self-defense techniques, psychodrama, and role-playing simulations.[1]

While the training resembles most others conducted in the country, there are several significant differences.[2] The foremost is that this program relies more heavily on action methods of training (role playing, psychodrama, and simulations) than any other program.[3] In addition, one of the coleaders of the training program is highly skilled in psychodramatic and action methods and is certified as a psychodramatist by a national certifying agency.

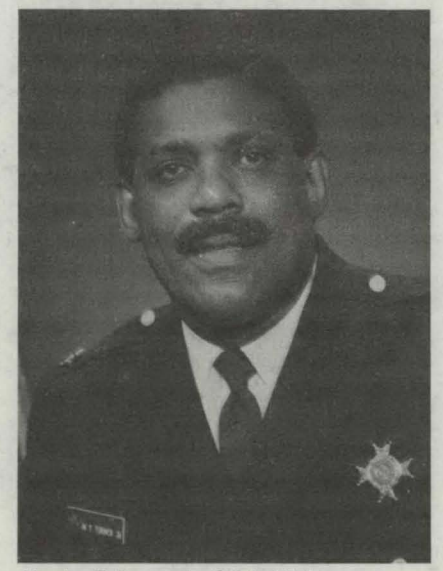
J. L. Moreno, M.D., the founder of psychodrama and a pioneer in role playing, devised a set of theoretical, philosophical, and technical concepts and constructs to use in conducting role-playing exercises.[4] For example, in most other programs, officers have interacted with trained actors, using canned scripts to create the role-playing exercises. In this program, only the second role-play situation is one where various psychodrama trainees portray the roles of families in crises and the officers interact with them. All other role plays are developed spontaneously by police officers, who play the roles of both the family members and the police. This results in increasing empathy among the police officers for families in trouble and directly addresses each officer's specific concerns in family disputes.

There is strong participation from community members who interact with the officers in explaining their programs and answering questions on topics such as drug abuse, spouse abuse, counseling agencies, and the like. The training is designed to increase both role perception (understanding) and role enactment (doing). The primary consideration is not the training of a set role, but equipping the officer with listening, observational, and empathy skills so that he will be able to diagnose a crisis situation quickly and determine how the role he assumes will alleviate the crisis situation.

While there is no such thing as a typical scenario for the psychodrama/role-playing exercises, they have focused on such domestic disturbances as arguments between spouses, parent/child problems, alleged spouse or child abuse, love triangles, visiting in-laws, and property line difficulties.



William H. Dobbs, M.D., Superintendent St. Elizabeth's Hospital



Maurice T. Turner, Jr., Chief of Police, Washington, D.C.

The subjects of these role plays have been gay, lesbian, black, Hispanic, Asian, African, Indian, old, young, middle-aged, of high-income or low-income status, high on drugs, and temperance workers. Over the past 4 years, officers have portrayed every conceivable disturbance which can and does happen involving potentially every type of citizen.

Data Gathering

From the very beginning, lack of information regarding family disturbance calls has hampered efforts to define clearly the scope of the problem. In an attempt to build a data base for future study, a report form was designed to capture sociological information. This report contained subjective opinions of the officer, and therefore, could not be used as a public document. Additionally, street officers found it to be cumbersome and compliance was low. Because these reports provided no beneficial information to the MPDC, they were eliminated. Essential information such as the date, time, and location of the incident, along with the name of the complainant and responding police unit, is recorded through our Computer Assisted Dispatching System. By using this method, the officer is not required to take a report unless an arrest is made, and all information is current and easily retrievable. The capability is there for a district commander to look at repeat calls for family disturbances in his area of concern in order to target potential assaults or even possible homicides.

Total Assaults on Police Officers for the Metropolitan Police Department of the District of Columbia (1979–82)

	Trained	Untrained	Total
1979 (April–December)			
Assaulted...	0	133	133
Not assaulted	142	1,172	1,314
Total ...	142	1,305	1,447 [1]
X^2 = Insufficient number in each cell to compute			
1980 (January–December)			
Assaulted...	29	186	215
Not assaulted	342	925	1,267
Total ...	371	1,111	1,482 [1]
$X^2 = (1)\ 17.86\ p < .005$			
1981 (January–December)			
Assaulted...	39	171	210
Not assaulted	620	602	1,222
Total ...	659	773	1,432 [1]
$X^2 = (1)\ 74.63,\ p < .005$			
1982 (January–December)			
Assaulted...	38	117	129
Not assaulted	651	638	1,289
Total ...	689	755	1,444 [1]
$X^2 = (1)\ 37.43,\ p < .005$			

[1] Average number of police officers, sergeants, detectives, and investigators in a 24-hour period who represent "on the street strength." These individuals come from the Criminal Investigation Division, Youth Division, Special Operations, and the seven police districts.

Capturing information on the service calls that were classified as "family disturbances" still did not give an accurate accounting of family-related calls, since many situations had gone beyond the dispute and were being recorded as various types of assaults. There were also crimes unrelated to assaults that originated as domestic disputes, i.e., larceny, burglary, and unauthorized use of a vehicle. In order to get a clearer picture of the total problem, the MPDC intends to alter the standard offense form to enable the reporting officer to indicate whether the crime originated as a family dispute, no matter what the classification of the defense. This additional information may provide the basis for development of related programs to address crime prevention/reduction of Part I criminal offenses.

Referral

While the police are usually the first to be called to the scene of a domestic dispute, in many cases, the police department is not the proper agency to handle the citizen's underlying problem. Recognizing this fact and being aware of the many government and community services available in the District of Columbia, the MPDC developed a network of agencies that became not only involved in the crisis intervention training but also provided considerable input in regard to the direction the FDIP should take.

To provide the officer with readily accessible information about these agencies and to assist the citizen further, a referral card was developed to inform the officer of what agency might best assist the individual. The card could be left with the citizen for later reference. Due to the frequent changes that take place in community organizations and the desire to have all referral information current, it was later determined that better service could be provided if the card contained limited, but specific, information.

The FACT hotline, a 24-hour crisis and referral service which is a program of Family Stress Services of D.C. with contract support from the Department of Human Services, was selected to be the key referral for all matters other than criminal child abuse and neglect, mental health problems, and borderline criminal/civil complaints. In effect, the FACT hotline has become our "brokerage house," directing calls to any of the approximately 700 agencies, programs, and services available throughout the metropolitan area. By using this method, the citizen is less likely to become frustrated in his efforts to seek help. Not only does the FACT hotline provide referral information, but persons can also act as advocates for the needy citizen by following through until a source of help is located. For example, instead of a battered woman who is seeking emergency shelter from being informed that the shelter she has contacted has no room, the FACT hotline will call several shelters until space is located. At a time of great stress, this extra step can mean the difference in the woman continuing to seek help or giving up and becoming another statistic.

Having a referral system provides the officer with unlimited resources to assist the citizen. Instead of feeling frustrated for not being able to provide help, which might account for the lack of enthusiasm in handling domestic disputes, an officer can now walk away from the call knowing he has provided an open door.

Total Assaults on Police Officers in Disturbance Situations for the Metropolitan Police Department of the District of Columbia (1979–82)

	Trained	Untrained	Total
1979 (April–December)			
Assaulted...	0	10	10
Not assaulted	142	1,295	1,437
Total ...	142	1,305	1,447 [1]
X^2 = Insufficient number in each cell to compute			
1980 (January–December)			
Assaulted...	3	3	6
Not assaulted	368	1,108	1,476
Total ...	371	1,111	1,482 [1]
X^2 = Insufficient number in each cell to compute			
1981 (January–December)			
Assaulted...	5	27	32
Not assaulted	654	746	1,400
Total ...	659	773	1,432 [1]
$X^2 = (1)\ 12.19,\ p < .005$			
1982 (January–December)			
Assaulted...	2	13	15
Not assaulted	687	742	1,429
Total ...	689	755	1,444 [1]
X^2 = Insufficient number in each cell to compute			

[1] Average number of police officers, sergeants, detectives, and investigators in a 24-hour period who represent "on the street strength." These individuals come from the Criminal Investigation Division, Youth Division, Special Operations, and the seven police districts.

". . . today's officer is finding that a major portion of his work. . . necessitates his dealing directly with the many and varied emotional dynamics of the community."

Evaluation

Once the MPDC decided to embark upon a series of training classes in family disturbances for all police officers, it was preceded by an intensive educational and informational process. All officers were initially informed of the danger of intervening in family disturbance situations and encouraged to use safety skills when interacting with families in stress. Second, the project gained high visibility through newspaper accounts, internal police newsletters, and a program on a local television show.[5]

During the past 4 years, over 1,000 officers have been trained to handle family disturbances. The training program's effectiveness is verified by the evaluation studies that have been conducted. An empirical investigation demonstrated that trained officers receive higher ratings for handling and defusing simulated domestic disturbance calls than do untrained officers.[6] The officers' own evaluations of the training continue to remain high, with evaluation scores actually increasing after the officers have returned to street duty. Officers' attitudes toward intervening in domestic disputes also improve after training. Scores on pretests have consistently improved over the past 4 years until the scores on the pretest are now as high as the old scores on the posttest.[7]

Most significantly, trained officers are less likely to be assaulted in responding to disturbance calls than untrained officers.[8] In fact, assaults against police officers in all categories is significantly lower for trained officers than untrained officers. The strong effect which psychodramatic crisis intervention training appears to have on officers in all violent situations gives credence to the speculation that officers trained in crisis intervention will better observe those situations and use force with more control and authority than untrained officers. For example, it is hypothesized that an officer with a greater role repertoire and increased interpersonal skills will have greater options in coping with a crisis situation than an officer who must rely upon authority and force alone. Training in such areas as nonverbal communication and observation skills may also lead an officer to be more cognizant of subtle verbal and nonverbal cues which may be a prelude to violent behavior. Consequently, the trained officer may be more alert, expecting the violence, and thus better able to deal with aggression or attempted assaults by others.

The program has continued to maintain high visibility in the department through regular press releases and informational articles, as well as continued word-of-mouth from officer to officer. While 48 percent of all street officers have been trained, the actual figures of officers trained in responding to family disturbance calls may actually be twice as high. Since officers are not usually trained in their regular team, it is quite probable that in most family disturbance calls, one of the two responding officers will have been trained. During the past year, the department has focused on new recruits and upper echelon personnel for the training (230 student officers and 76 captains and above were trained). The department is committed to providing full family crisis intervention training to all its street officers and new student officers.

Conclusion

The FDIP has demonstrated to the MPDC that a new role is evolving for the police officer. The stereotype officer no longer exists. Where, in the past, the label "social worker" was clearly distasteful to police, today's officer is finding that a major portion of his work, whether it be enforcement or prevention, necessitates his dealing directly with the many and varied emotional dynamics of the community.

While police administrators are reluctant to make this change from their traditional concept of the police officer's role, police trainers must begin to address the needs of the officer by providing him with the skills to deal effectively with socially related problems.

FBI

Footnotes

[1] Harper and Row Media Program, *Officer Survival—An Approach to Conflict Management* (New York: Harper and Row Publishers, Inc.).

[2] Morton Bard, *Training Police in Family Crisis Intervention* (Washington, D.C.: U.S. Government Printing Office, 1973).

[3] Dale Richard Buchanan, "Action Methods for the Criminal Justice System," *Federal Probation,* March 1981.

[4] Jacob Levi Moreno, *Psychodrama: Volume One* (Beacon, N.Y.: Beacon House, Inc., 1948).

[5] "Bosses, Cops, G-Men Prepare for Crisis by Acting Them Out." *PM Magazine,* WDVM TV, Washington, D.C., January 10, 1980; "Dramatic Teaching Techinques Enhance Coping Ability." *Security World,* February 1982.

[6] Carole Bandy, Dale Richard Buchanan, and Cynthia Pinto, *Love and Angst in the Home: Evaluating Police Officers' Performance in Simulated Family Disturbance Calls,* unpublished manuscript, 1983.

[7] Dale Richard Buchanan, *Evaluation Overview of the Metropolitan Police Department of Washington, D.C.—Saint Elizabeth's Hospital Family Crisis Intervention Training Program,* unpublished manuscript, 1983.

[8] The only other training program to report a decrease in assaults on police officers (APO's) on trained police officers was Bard's pioneering study which consisted of 18 officers.

Under cover of darkness or behind the protective barrier of fences, guard stations, and corporate structures are occurring some of the most dangerous and far-reaching crimes that law enforcement agencies have to deal with today. Not only do these crimes affect our health and the health of future generations, but they also affect how, or even if, we can use the basic necessities of life. They play a very important part in whether we can enjoy the amenities which are so important to our mental well-being as individuals, and to our society as a whole. These crimes have resulted in untold billions of public dollars being spent to counter their effects and in trying to apprehend the violators.

The above could actually apply to several classes of crime—drug trafficking, white-collar crime, or organized crime. However, it describes briefly a violation that until recently was virtually unknown to either law enforcement or the public at large. It involves the illegal use or disposal of hazardous and toxic materials.

Enforcing Environmental Laws—A Modern Day Challenge

By
WILLIAM M. MURPHY
Environmental Enforcement Supervisor
Law Enforcement Division
Department of Natural Resources
Lansing, Mich.

For years, most citizens viewed these materials simply as wastes to be disposed of in the cheapest way possible. They didn't realize, or care, what the long term public health and environmental impact would be. Today, Federal and State laws outlaw such activities and generally provide for heavy penalties for persons or companies violating these statutes.

Without repeating once again the long list of horror stories which have been heard in the last few years, it is sufficient to say that violations of environmental and public health statutes have resulted in incalculable damages to life and property.[1] Many books, as well as newspaper, magazine, and technical journal articles, have been written in the last decade detailing the environmental, economic, social, and public health aspects of illegal toxic waste disposal. Very little, however, has been written on the enforcement of these laws except in a very general sense.

Law enforcement agencies encounter great difficulties when investigating and prosecuting environmental and toxic materials cases, which explains to a large extent the shameful lack of effective enforcement over the last 50 years. Aside from the attitudes of the public toward this activity and whether they want strong enforcement, the plain and simple truth is that effective enforcement of these laws is complex, time-consuming, and difficult.

In 1978, after criticism and pressure from various political and public interest groups, the State of Michigan began an experiment which would hopefully result in a more successful environmental enforcement program. Officials formed an Environmental Enforcement Division within the State's Department of Natural Resources to handle the most serious pollution cases.

Michigan officials realized that a truly effective enforcement program needed people who were experienced law enforcement officers. Previous Michigan "environmental enforcement" programs were handled by technicians and scientists who had little, if any, legal and investigative knowledge or skills. Therefore, they adopted a unique team concept which combined the expertise of technical, legal, and investigative personnel. The investigators are experienced field conservation officers who are fully commissioned and academy-trained peace officers.

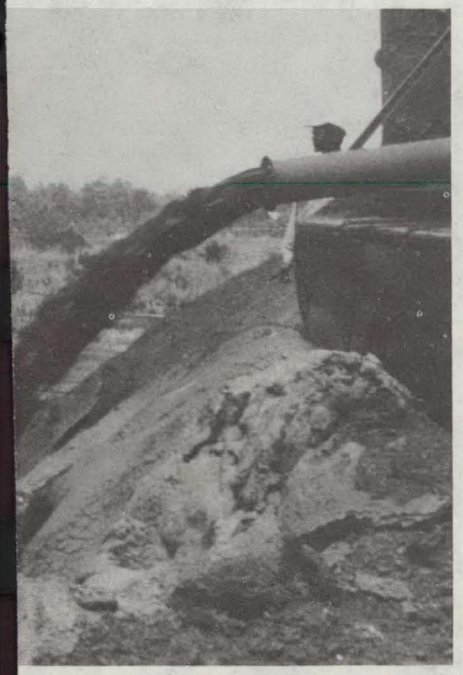
Four investigators assigned to work with experts in various technical and scientific fields formed a highly effective unit aimed at reducing the number and severity of public health and environmental violations. Once operational, the team soon produced results, which served as a signal to would-be violators that the State was serious about its enforcement program.

In 1979, the program was expanded to include five officers assigned to the department's uniform division to provide additional enforcement for those cases which are to be primarily prosecuted on the local level. In combination with the investigative and technical staff at departmental headquarters, these field officers have been quite successful.

However, success was not easy to come by. New enforcement techniques had to be developed to tackle the complexity of environmental laws. Rapport had to be established with technical experts in the department's program divisions. Doubting prosecutors and State attorneys had to be convinced that the program was worthy of their time and that the cases put together by these officers were not flawed.

It was difficult for some officials to accept the fact that strong environmental enforcement was a necessary and good objective. Many people believed strongly that environmental laws should be "enforced" on a "gentleman-to-gentleman" basis and that the police, courts, and other nonscientists had no business in the environmental arena.

"Our society has been rudely and abruptly awakened to the dangers that are inherent in the illegal generation, hauling, and disposal of toxic materials."



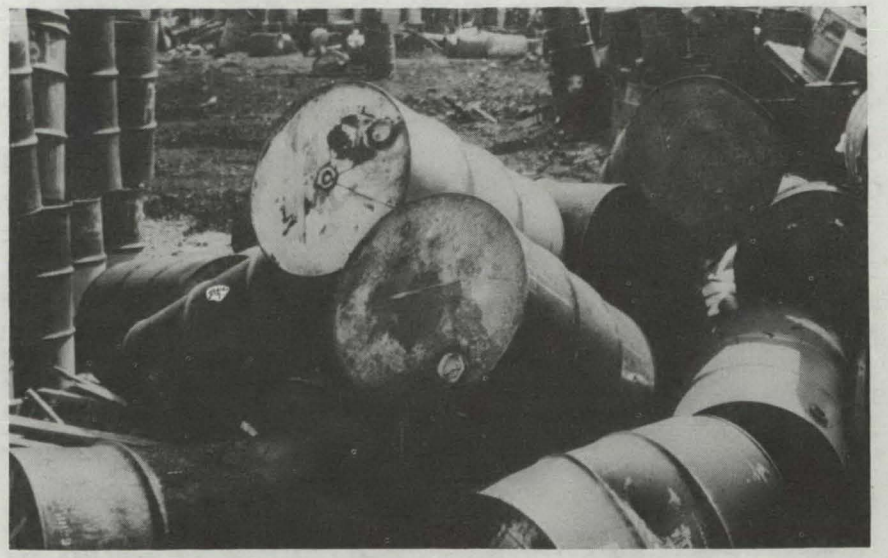
Technical problems were even more formidable. How do you prove a crime when the corpus delecti is an unknown chemical contaminant in the groundwater 50 feet below the surface, far removed from the actual source of contamination? Drilling rigs, sample bottles, hydrogeologic surveys, respirators, and safety gear have necessarily become standard tools of the trade for investigators. Interpreting laboratory analysis results, file searches and reviews, research on chemical contaminants, and working with air and water quality specialists, chemists, and geologists are part of the daily routine for investigators trying to collect evidence to build an environmental case.

A fundamental aspect of environmental law enforcement is the involvement of nonenforcement experts. Because the investigator cannot personally drill for water samples, conduct a hydrogeologic survey,

plot groundwater movement, or perform laboratory analyses, he must depend on scientific and technical experts. A crucial and arduous part of supervising the development of an environmental case is ensuring that all personnel adhere to the legalities so that their work can be used in any resulting litigation. It is sometimes burdensome for scientists and technicians to understand the complexities of the legal parameters within which enforcement officers must work.

On the other hand, environmental investigators face a constant task of working with and "educating" county prosecutors in the program of environmental enforcement. When securing a warrant, investigators, in most cases, must explain the law to the prosecutor and the environmental, health, economic, and societal reasons for its enforcement. While there are a few State attorneys who are well-versed in environmental laws, most local prosecutors are not familiar with them.

Enforcing environmental laws requires a period of readjustment for the investigator. Not only must he relearn the terms and concepts of college chemistry, he has to become accustomed to enforcing laws which were written in large part by the persons or industries they are designed to regulate. And, legal loopholes are not uncommon in environmental laws. For example, two Michigan environmental laws have "prior notification" sections which require that polluters must initially receive a warning, no matter how serious the violation, before they can be prosecuted. If the State fails to notify the company officially, they cannot be charged for subsequent similar violations.



Learning to interpret and enforce discharge permits is another demanding task. These permits allow an industry to discharge certain contaminants up to a specified level. Often, however, these concentration levels are based on a 24-hour average. Therefore, an investigator must either remain at the site for the entire 24 hours or secure automatic sampling equipment so that the sample is legal. Yet, he must still be able to show that it has not been tampered with. This, in turn, leads to another problem since a company can easily alter its discharge over a 24-hour period so that the end result shows them to be in compliance with the law.

Collecting custody samples from other sources, such as illegally dumped barrels of wastes, lagoons, or toxic wastes dumped onto the ground or into surface waters, presents other technical problems. There is an inherent danger just being near or actually handling such materials.

An investigator quickly learns that working an environmental case is not your typical officer vs. suspect arrangement. Oftentimes, in order to substantiate a case against persons or companies violating environmental laws, he must obtain information that is not readily available or accessible. Physical evidence must be drilled for or dug up; company reports, documents, or data must be obtained. Corporations, regardless of size, can make it very difficult to interview people or obtain documents, especially if the officer is trying to compile a criminal case.

Corporate structure, batteries of corporate attorneys, and mind-boggling recordkeeping systems make environmental investigations a real challenge. A recurring problem is actually proving who in the hierarchy ordered or authorized the illegal act.

Corporate legal staffs have the time, and obviously the vested interest, to fight or block the State at every turn. The State's resources are just too limited to take on large corporations in litigation that can last for years. Negotiations, compromises, and consent agreements are often resorted to instead of actual litigation.

Even customary investigative processes become anything but routine. Search warrants, for instance, seldom go unchallenged. Motions to quash are almost immediately filed by companies in attempts to block entry.

". . . the destruction of the air we breathe, the poisoning of the water we drink, and the contamination of our land and food with toxins is much too serious a crime to overlook."

If the necessary probable cause needed for a search warrant cannot be obtained, there is little chance of gaining consent access. And, if consent is granted, limitations are likely to be placed as to the areas searched and the samples collected. Photographs, unless provided for in a court order, are normally otherwise forbidden in the various manufacturing or chemical production plants and adjacent areas.

This leads to another area seldom accessible to investigators—the realm of industrial and business secrets. The need for an investigator to know certain facts conflicts with the company's obvious desire to keep their unique processes secret. In most cases, the only way to obtain such data is through a court order.

The environmental investigator also encounters serious problems in the area of jobs and public opinion vs. the environment. In today's economic climate, this is a very real obstacle to prosecuting persons or firms who violate pollution laws. Investigators are often caught in the middle between forces who demand strict enforcement and those who do not want it for their own personal reasons, which are usually economic.

County and State prosecutors are often very hesitant about taking a large local employer to court. It is not uncommon for companies who are facing court action to threaten to shut down and leave the State for friendlier climates. Local and State politicians can also apply considerable pressures when they receive complaints from their constitutents that in their opinion, the laws are being enforced too strictly.

No matter how well an investigator compiles a case, it may all be for naught if a prosecutor refuses to take it. Also, if powerful political leaders are offended by a strong enforcement posture, the agency can suffer at budget appropriations time.

Summary

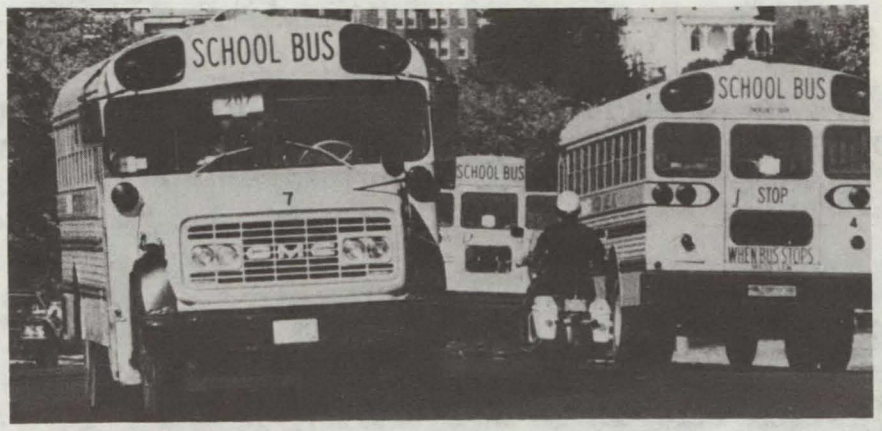
Our society has been rudely and abruptly awakened to the dangers that are inherent in the illegal generation, hauling, and disposal of toxic materials. In an effort to stop the spread, and in turn, hold down the very real dangers involved with violations of the laws regulating toxic materials, some law enforcement and environmental protection agencies are forming special units to investigate and prosecute these violators. Because of the huge scope of the activities, the tremendous complexity of the laws, and the various social, economic, and political forces involved, this task is anything but easy.

The philosophy still quite prevalent in the criminal justice system, business community, political arena, and engineering and scientific circles is that environmental laws should not be enforced in the same manner as "regular" criminal law classifications. We are discovering, however, after decades of nonenforcement that the price for this inaction is much too high. The temptation is always great to quote the all-too-true horror stories which have resulted because of this program of nonenforcement which was the policy until the 1970's. Suffice it to say that the destruction of the air we breathe, the poisoning of the water we drink, and the contamination of our land and food with toxins is much too serious a crime to overlook.

FBI

Footnote

Kevin Krajick, "When Will Police Discover The Toxic Time Bomb?" *Police Magazine,* May 1981, pp. 6–17.



Turning The Corner on Racial Violence: The Boston Experience

By
S. CHUCK WEXLER
Director
and
LT. FRANCIS M. ROACHE
Community Disorders Unit
Boston, Mass.

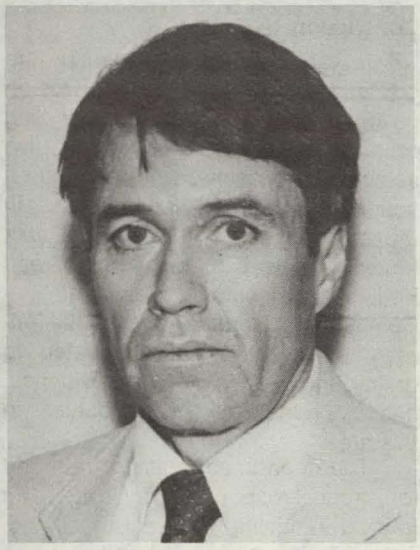
During the first 2 years of court-mandated desegregation, there were numerous outbreaks of violence in and around the schools of Boston. The police department deployed resources sufficient to contain the incidents and the court's order was successfully implemented. However, as the problems within the schools decreased, other targets of racial violence arose. By 1976, this violence had shifted into the neighborhoods.

The police commissioner asked his staff to review the racial problems within the city and make recommendations to improve the department's response to neighborhood violence. After examining incident reports and interviewing citizens for several months, it became apparent that many victims of racially motivated crime believed the police could do more to assist them. Typical cases involved minority families moving into predominantly white neighborhoods. Almost immediately, each family would experience constant harassment from youths who would stone homes and vandalize vehicles and other property. When the police responded they gathered information for a report and marked each incident as "vandalism." Minority families viewed the pattern of incidents as a concerted effort to force them out of their neighborhood, not merely wanton acts of vandals. The commissioner believed that there was a need to develop written policy guidelines to deal with racial incidents which later would be referred to as "community disorders." In 1978, this policy was written and issued to all officers. It read in part:

> "It is the policy of this department to ensure that all citizens can be free of violence, threats, or harassment, due to their race, color, or creed, or desire to live or travel in any neighborhood. When such citizen's rights are infringed upon by violence, threats, or other harassment, it is the policy to make arrests of those individuals who have committed such acts. Members of the police force responding to these incidents will be expected to take immediate and forceful action to identify the perpetrators, arrest them, and bring them before the court. It will be the policy of this department to seek the assistance of state and federal prosecutors in every case in which civil rights violators can be shown." [1]

A community disorder was defined as a "conflict which disturbs the peace, and infringes upon a citizen's right to be free from violence, threats, or harassment." The policy upgraded racial incidents to a "priority-one"

Mr. Wexler



Lieutenant Roache

status, which directed immediate dispatching of a police unit to the scene and notification of a patrol supervisor to respond. The patrol supervisor was required to "take steps to ensure that the incident does not escalate; reassign officers to prevent additional confrontation, apprehend suspects involved, and work with the community leaders to control rumors and to dispel vigilante efforts."

Another significant aspect of the policy was the creation of a Community Disorders Unit (C.D.U.). The order specified that the unit would "coordinate the department's activities in dealing with community disorders and racial incidents, evaluate field performance, design strategies for controlling disorders, and maintain liaison with other concerned governmental agencies." Since the establishment of the C.D.U. in April 1978, it has earned the reputation of being innovative and aggressive in dealing with racial incidents.

C.D.U. Operations

A typical case involved a series of incidents in a public housing project. There had been considerable unrest between blacks and whites in the development, which culminated in the firebombing of a black family's home on a warm summer evening.

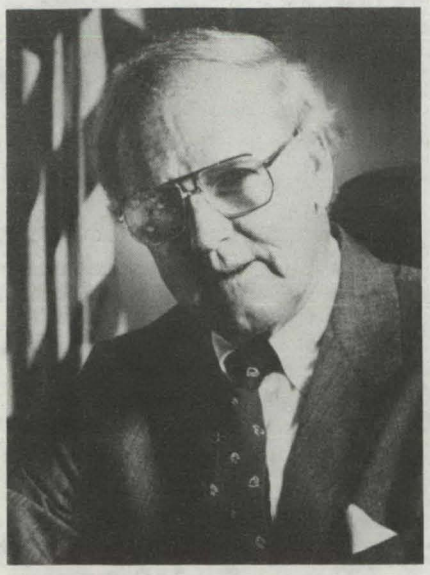
After an initial investigation by district police officers, the C.D.U. responded and debriefed the officers at the scene. All of the victims were carefully interviewed, and important physical evidence was obtained. C.D.U. officers secured emergency housing for the victims, an effort which proved to be invaluable in securing their cooperation during the prosecution stage, and an officer was ordered to stand by the burned out apartment to prevent further damage. In addition, a task force consisting of C.D.U. personnel, district officers, housing authority investigators, and a prosecutor appointed by the district attorney was established to manage the investigation.

C.D.U. officers began canvassing the project to gather information and reduce tension that was running high. While this crime had occurred at the height of the dinner hour with adequate lighting still available, no residents acknowledged witnessing the crime. Fear of retaliation was widespread in the housing development.

After 9 days of door-to-door interviews with the residents of the project, many of whom were reinterviewed, the task force pieced together the crime and an arrest was made. Witnesses had to be relocated elsewhere and the tensions in the project subsided.

New Strategies

More typical are the constant threats and harassment that new residents to a predominantly black or white neighborhood encounter in the form of racial epithets, broken windows, or obscene phone calls. C.D.U. officers have spent entire evenings in the homes of these families in communication with backup C.D.U. officers, waiting for the suspects to strike. In an undercover capacity C.D.U. officers actually moved into certain neighborhoods to gather information. While numerous arrests have been made, the majority of the suspects are juveniles. Because of the age of these offenders, courts have been constrained (by law) in the sentences handed down for these serious violent crimes.



Joseph M. Jordan
Police Commissioner

Injunctive Relief

In one area of the city, a few black families continued to be harassed after C.D.U. officers had made numerous arrests. Meeting with local and State prosecutors, C.D.U. personnel presented information that indicated certain white youths were engaged in a concerted effort to deprive black families of their constitutionally protected civil rights under Massachusetts law.

In an unprecedented action, the C.D.U. sought to enjoin the white youths from engaging in such acts, and with the attorney general's office, sought remedial action as prescribed and authorized in the civil right's law. The attorney general filed a complaint for injunctive relief in superior court and additionally sought a temporary restraining order to protect the families from further harassment. The temporary restraining order was issued by a superior court judge against 10 youths who had been identified by police as principals in these incidents. Subsequently, a consent judgment was ordered by the superior court in response to the attorney general's complaint for court-ordered injunctive relief. The judgment was the result of an agreement by the commonwealth and the defendants in which the defendants were ordered to desist from:

> ". . . assaulting, threatening, stoning, insulting on racial grounds, intimidating, harassing, or verbally abusing by phone or otherwise black residents of the Ross Field area of Hyde Park or their guests; or stoning, firebombing or otherwise causing injury or damage to the persons or property of those residents or their guests." [2]

When one of the youths challenged the order by harassing a family, he was found to be in contempt of the order and immediately sentenced to serve 60 days in jail.

Selective Discrimination

There are also more subtle forms of racial harassment. For example, a particular nightclub in Boston required black patrons to have a "VIP" card and numerous forms of identification to enter while white patrons were admitted undetained. Learning of these allegations, the C.D.U. placed the establishment under surveillance and interviewed patrons who had been turned away. When the pattern of selective discrimination became clear, the C.D.U. developed an undercover operation to test the discriminatory practice. A team of white officers entered the club; then, an equal number of black officers attempted to gain admission. Although both groups were dressed the same and were of the same age group, the black officers were unreasonably detained and prevented from entering. The C.D.U. cited the establishment for a "licensed premise violation," and a copy of the violation notice was sent to the Boston Licensing Board. The board set up a hearing attended by civilian witnesses and police officers, both of whom provided testimony. At the conclusion of the 2-day hearing, the City of Boston Licensing Board, in a strongly worded opinion, revoked the license of the nightclub for discriminatory practices. The decision is presently under appeal.

Conclusion

In addition to this work, the C.D.U. has trained over 200 Boston police officers in the proper handling of racial incidents. Officers are also selected from each district to spend a tour of duty with C.D.U. members. In the summer of 1981, a special task force composed of local, State, and Federal prosecutors designated the Community Disorders Unit as the primary investigative unit mandated to gather information, secure evidence, and coordinate police resources in this area.

The department realizes the need for proper response, sensitivity, and training in dealing with racial violence. The experience gained has helped to protect all citizens of Boston and great strides have been made in curtailing the actions of those engaged in violating the civil rights of others.

FBI

Footnotes

[1] Special Order 78-28, April 7, 1978, Boston Police Department, pp. 1-3.

[2] *Commonwealth of Massachusetts* v. *David Gilligan et al.*, Superior Court Civil Action 55930, August 19, 1982.

INVESTIGATIVE DETENTION AND THE DRUG COURIER: RECENT SUPREME COURT DECISIONS

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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.

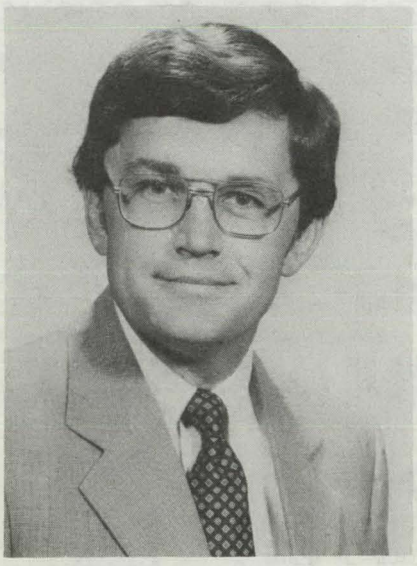
In 1974, the Drug Enforcement Administration (DEA) established a nationwide program to intercept drug couriers transporting narcotics on commercial airline flights. This program of onsite airport surveillance has been implemented at many of the major airports throughout the country and has proven to be highly successful.[1] For example, 120 arrests were made during the first 18-month period in which the Detroit airport program was operational.[2]

In order to identify possible drug traffickers, DEA agents have developed "drug courier profiles" or checklists that describe the characteristics generally associated with narcotics smugglers. The presence of a number of profile characteristics distinguishes the potential courier from thousands of innocent airline passengers and alerts the agent to focus his attention on that particular person. In addition, drug-sniffing dogs are available at many airports and are used to detect narcotics hidden within suitcases and other forms of personal luggage.[3] Many local police departments have similar programs using profiles and trained dogs to combat the drug problem in their jurisdictions.[4]

A sizeable amount of litigation has resulted from the arrest and prosecution of drug couriers. Pretrial suppression hearings usually focus on the legality of the search for and seizure of narcotic substances from either the courier's person or luggage. This litigation has also provided the U.S. Supreme Court an opportunity to apply the precepts of the fourth amendment[5] to certain investigative procedures used in drug courier interception programs. Such procedures include:

1) Police-citizen contacts;
2) Drug courier profiles;
3) Detentions of luggage; and
4) Narcotics-sniffing dogs.

This article reviews the Supreme Court's four recent drug courier profile cases in light of these activities. The Court's analysis demonstrates that airport drug courier profiles and narcotics interdiction programs are alive and well and should continue to play an important role in the war against narcotics smuggling. The answers also present a challenge to the law enforcement community to apply the principles of these decisions to other kinds of investigative detentions.



Special Agent Campane

Police-Citizen Contacts

There are three levels of police-citizen encounters: (1) The full scale arrest, supported by probable cause;[6] (2) the investigative detention, justified by reasonable suspicion;[7] and (3) the meeting between the police officer and citizen, involving no detention and therefore outside the ambit of the fourth amendment. This latter tier requires no standard of proof and is frequently referred to as a "police-citizen contact."[8]

A contact is an encounter involving face-to-face noncoercive communication between an officer and a citizen. It is a polite request by the officer for cooperation under circumstances where the person is, in theory, free to leave. Whether this police-citizen contact consists of a restraint of liberty equivalent to a fourth amendment seizure has been somewhat unsettled.[9] A few courts have held that a fourth amendment investigative detention occurs as soon as an officer initially approaches an individual, identifies himself, and asks questions.[10] Whether the person is free to leave in such a case depends on his subjective perception of the officer's words and actions. Most courts, however, have held that such actions do not rise to the level of a fourth amendment seizure.[11] These decisions are based on an objective view of what a reasonable person would think of the encounter with a police officer. The 1977 District of Columbia Court of Appeals decision of *United States* v. *Wylie*[12] is frequently cited as illustrative of the majority view.

An officer approached a suspicious bank customer and requested permission to talk to him for a moment. The officer asked for the suspect's name and proof of identification. In response, Wylie turned a bank withdrawal slip over to the officer. He then accompanied the officer back to the bank where probable cause was developed to arrest him on false pretense charges. He was convicted on a Federal charge of misusing the mails and subsequently appealed the trial judge's denial of his motion to suppress the withdrawal slip. He claimed that he was seized from the moment the officer first approached him, a time when there was no reasonable suspicion to believe he committed an offense. The appellate court affirmed the conviction and held that a police-citizen contact does not constitute a compelled investigative stop and therefore does not require reasonable, articulable grounds. The court cited language in *Terry* v. *Ohio* to justify its position:

> "Obviously, not all personal intercourse between policemen and citizens involves seizures of person. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."[13]

The court believed a seizure first occurred when the officer invited the suspect to return to the bank, as a reasonable person in Wylie's position would then no longer have felt free to leave. By that time, the officer knew enough about Wylie to justify the detention.

The question of when a police-citizen contact rises to the level of fourth amendment seizure was addressed by the Supreme Court for the

first time in the 1980 decision of *United States* v. *Mendenhall.*[14] Two DEA agents observed Mendenhall arrive at the Detroit airport from Los Angeles and determined that her conduct and mannerisms were characteristic of drug couriers. They approached her, identified themselves, and asked to see her identification and ticket. The names on two items were not the same so the agents continued to question her. They returned her ticket and driver's license and asked her to accompany them to the DEA's airport office. Mendenhall did so, and a subsequent consensual search revealed heroin on her person. She was arrested and prosecuted on drug possession charges but before trial she moved to suppress the heroin. Her motion was denied, and she was convicted. The court of appeals reversed, holding that Mendenhall was seized from the moment the agents approached her and that at such time they did not have reasonable suspicion to believe she was committing a crime, notwithstanding the similarities of her conduct to the characteristics on their drug courier profile.

The Supreme Court reversed. A majority of the Court concluded that no constitutional violation occurred, although it could not reach a consensus on the issue of *when* the investigative stop or seizure began. Only two Justices applied an objective test to the facts and determined that no seizure occurred.[15] The events took place in a public concourse. The agents wore no uniforms and displayed no weapons. They did not order Mendenhall to come to them but instead approached her and politely identified themselves. They requested, but did not demand, to see her identification and ticket.

> "Such conduct, without more, did not amount to an intrusion upon any constitutionally protected interest. The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket and identification, and posed to her a few questions . . . . [A] person has been 'seized' within the meaning of the Fourth Amendment only if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." [16]

Three other members of the Court decided not to reach the seizure question because it had not been considered in the lower courts, although they noted that whether Mendenhall could reasonably have thought she was free to walk away when questioned by two Government agents was "extremely close." [17] Four members of the Court, in dissent, believed that subjectively Mendenhall thought she was not free to leave and would have upheld the decision of the court of appeals.[18]

Since 1980, Federal courts of appeals have almost uniformly ignored this split opinion and have adopted the objective "free to leave" test of the two Justices in *Mendenhall.*[19] The lower courts view the test as a means to justify police-citizen encounters at airports pursuant to the use of drug courier profiles without first requiring the officer to articulate reasonable suspicion. In determining when a police-citizen encounter constitutes a seizure in the context of airport surveillance, courts have looked at a variety of factors, the most significant being: (1) The conduct of the officer; (2) the citizen's response; and (3) the physical surroundings of the encounter. The courts have sought to determine whether "the officer, by means of physical force or show of authority," [20] has in some way created an atmosphere of compulsion such that a reasonable citizen would not feel free to walk away.

Mendenhall and its progeny show the courts struggling in the early 1980's with the tension between society's need for effective crime control, especially in the narcotics enforcement area, and the individual's right to privacy. In 1983, the Supreme Court relieved this tension in the decision of *Florida* v. *Royer.*[21]

Two Dade County, Fla., plainclothes detectives on patrol in Miami International Airport observed one Royer purchase a one-way airline ticket to New York City and believed his appearance, mannerisms, luggage, and actions fit their drug courier profile. As he made his way to the boarding area, the two detectives approached, identified themselves as policemen, and asked for and obtained his permission to speak with them.

". . . law enforcement officers are empowered to temporarily detain a traveler's luggage for the purpose of investigation when there is a reasonable suspicion to believe the luggage contains narcotics."

Upon request, Royer produced his airline ticket and driver's license. The ticket bore the name Holt while the license carried his correct name, Royer. He became noticeably more nervous when the officers asked about this discrepancy, whereupon they informed Royer that they were narcotics investigators and suspected him of transporting narcotics. They retained Royer's identification and asked him to accompany them to a nearby interview room. He went along without comment. One officer then retrieved his luggage and brought it to the room. Royer permitted a search of his suitcases, both of which contained marihuana.

Royer was then told, approximately 15 minutes after the detectives approached, that he was under arrest. He was convicted on possession charges and appealed. A Florida appellate court reversed, believing the narcotics seized pursuant to Royer's consent should have been suppressed as a fruit of an illegal seizure. The court held the involuntary confinement in the interview room to be a full-custody arrest that was not based on probable cause.

The U.S. Supreme Court affirmed, and although it was not necessary to the holding of the case, addressed the issue of the police-citizen contact. This time, however, eight members of the Court agreed that not all police-citizen encounters amount to fourth amendment seizures. The Court believed that the following police actions, without more, do not convert the contact into a seizure requiring some level of objective justification:

1) Approaching an individual in a public place;
2) Identifying oneself as a law enforcement officer;
3) Asking a citizen if he is willing to answer a few questions;
4) Questioning the citizen, if the person is willing to listen; and
5) Asking for and examining a form of identification.

The Court carefully pointed out that the person approached need not answer. He may not be detained even momentarily without reasonable, objective grounds for doing so, and his refusal to listen or answer does not, without more facts, furnish those grounds. But if there is no detention—no seizure within the meaning of the fourth amendment—then no constitutional rights have been infringed.

The Court has now clarified somewhat the parameters of the police-citizen encounter, and it appears broader in scope than many lower courts have heretofore understood it to be.[22] Furthermore, the Court's language does not suggest that such contacts are limited to airport drug courier investigations. Law enforcement officers should consider *Royer* as authority to approach people in a variety of investigative settings, to ask some questions, to examine some form of identification, and to query the citizen concerning the identification proffered. If performed unobtrusively and kept to a short duration at the public location of first contact, the encounter need not be based on any objective standard. The citizen's answers or lack thereof may be just the reason the officer needs to justify and begin a compelled investigative detention.

Drug Courier Profiles

The purpose of the drug courier profile is to decide who, among thousands of airline passengers, should be singled out for further observation and interview. Lower courts have consistently rejected sole reliance on the drug courier profile as the basis for an investigative detention.[23] *Mendenhall* represented the first time the Supreme Court considered the profile procedure. But the Court never expressly stated that matching profile characteristics with a traveler would constitute reasonable suspicion. Only three members of the *Mendenhall* Court found the agents' activities to be a stop requiring reasonable suspicion. Although they found sufficient reason to detain, primarily because of profile characteristics, the three Justices pointed out that reliance on the drug courier profile alone did not "necessarily demonstrate" reasonable suspicion.[24]

A month after the *Mendenhall* decision, the Court again addressed the drug courier profile in *Reid* v. *Georgia.*[25] DEA agents at the Atlanta airport observed Reid and a companion disembark from a flight from Fort Lauderdale, Fla. Neither claimed any luggage, but both carried similar shoulder

bags. An agent approached them outside the terminal, identified himself, and asked to see some identification and airline tickets. He learned that Reid purchased both tickets, had stayed in Fort Lauderdale only a day, and seemed nervous. Both agreed to have their bags searched, but Reid abandoned his and tried to run away. One agent found cocaine in the bag, and Reid was arrested and prosecuted in State court on narcotics charges. The trial court granted Reid's motion to suppress, but a Georgia court of appeals reversed, concluding that because Reid appeared to the agents to fit a drug courier profile, there was reasonable suspicion to detain him. Reid's subsequent actions and flight provided probable cause to search the abandoned bag.

The Supreme Court, in a *per curiam* opinion, vacated the lower court's order and remanded the case for further proceedings. The key question presented to the Court was whether the agents had reasonable suspicion to believe Reid was in possession of narcotics at the time he was approached outside the terminal. The Court considered the profile characteristics relied on by the appellate court, but decided that they did not provide a basis for reasonable suspicion because too much of the behavior relied on by the agents was innocent.[26] The Court believed that the acceptance of such behavior as the sole basis for detentions would allow virtually random seizures of innocent travelers.

Reid and *Mendenhall* left the role of the drug courier profile still unsettled. The Court in *Reid* made clear that conformity with certain aspects of the profile may not automatically create a particularized suspicion which will justify a *Terry* stop. Yet *Mendenhall* suggests that personal characteristics identifiable with a profile checklist can be a valid part of an officer's accumulating suspicion of criminal activity. In neither opinion was the Court willing to clarify exactly which factors may or may not be relied on in creating and using a drug courier profile.

The Court in *Reid* assumed a seizure had occurred and was obligated to review the profile with the reasonable suspicion standard in mind. However, the Court left open the possibility that drug courier profiles would not have to be scrutinized where used to initiate police-citizen encounters not amounting to fourth amendment seizures. The facts of *Royer* presented one such encounter.

The plurality opinion in *Royer* did not address expressly the use of drug courier profiles in narcotics investigations. However, it affirmed a decision in which a Florida appellate court fashioned a rule that characteristics in conformity with drug courier profiles are insufficient to establish reasonable suspicion.[27] But after Royer, an officer does not need a reason to approach and talk to a citizen in a public place because such encounters are not fourth amendment seizures. The profile can now be used to initiate such encounters and need not be justified on fourth amendment grounds. Information obtained *after* the profile is used and the passenger confronted, such as nervous behavior and inconsistent forms of identification, together with the profile, should create the reasonable suspicion to begin an investigative detention.

Royer therefore suggests that the drug courier profile will continue to be a useful investigative technique. If it is used solely to begin a police-citizen contact not amounting to a fourth amendment seizure, lower courts are less apt to test the factors associated with the varying drug courier profiles used throughout the country. Also, such an approach would be consistent with the use of certain other criminal characteristics, such as those compiled in airline hijacker profiles,[28] auto thief profiles,[29] and composite sketches drawn from "Identi-Kits," [30] to pursue an investigation.

Detentions of Luggage

More often than not, the trafficker is in possession of a parcel or piece of luggage which is being used to transport hidden narcotic substances. The reasonableness of the seizure and subsequent search of such property requires its own fourth amendment justification, independent of the authority to detain the drug courier himself.

In 1970 in *United States* v. *Van Leeuwen,*[31] the Supreme Court upheld the detention of personal property on the basis of reasonable suspicion alone. For the first time, the Court held that law enforcement officers may "stop" a package in much the same way they may detain a person under *Terry.* Prior to *Van Leeuwen,* with the exception of border searches, a *Terry* stop of a *person* was the only type of limited search and seizure that the Supreme Court found reasonable in the absence of probable cause.

". . . the use of a well-trained narcotics dog to smell the air within the immediate vicinity of luggage is not a search within the meaning of the fourth amendment."

A postal clerk in a small town near the Canadian border received two packages for first-class air mailing. One was to be shipped to California and the other to Tennessee. The postal clerk suspected the packages contained gold coins brought into the country from Canada without payment of the appropriate duty as required by Federal law. He alerted a policeman who detained the packages briefly and determined from U.S. Customs officers that the California address was being investigated for smuggling illegal coins. Within 1½ hours, the officer established probable cause to search the parcel with the California address. Due to the time difference in Tennessee, probable cause to search the other parcel could not be established until the next morning. Both packages were opened pursuant to a warrant 29 hours after they were detained. Both were found to contain contraband gold coins. Van Leeuwen was found guilty of illegally importing gold coins in violation of Federal law. On appeal, the Federal appellate court reversed, holding that the 29-hour detention of the packages required a warrant supported by probable cause.

The Supreme Court, in a brief opinion by Justice Douglas, reversed and upheld the detention of the packages, but limited the holding to the facts of the case.

> "The only thing done here on the basis of suspicion was detention of the packages . . . The significant Fourth Amendment interest was in the privacy of this first-class mail; and that privacy was not disturbed or invaded until the approval of the magistrate was obtained." [32]

Van Leeuwen has been criticized for its lack of clarity.[33] On the one hand, the Court stated that the 29-hour detention of an unopened mailed package does not necessarily amount to a fourth amendment seizure. On the other hand, the Court suggested that the detention of mailed packages would be permissible when based on the fourth amendment standard of reasonable suspicion.

Despite the warning that the decision is limited to its facts, many lower courts have used it to justify the detention of other kinds of personal property, including luggage and suitcases seized from airline passengers. The courts generally agree that such detentions are fourth amendment seizures justifiable on reasonable suspicion,[34] but they are inconsistent in determining the length of time for which such detentions may last, especially when they are taken directly from the hands of the owner.[35]

In the 1983 decision of *United States* v. *Place,*[36] the Supreme Court made clear that law enforcement officers are empowered to temporarily detain a traveler's luggage for the purpose of investigation when there is a reasonable suspicion to believe the luggage contains narcotics.

Place's behavior aroused the suspicions of law enforcement officers as he waited in line at the Miami International Airport to purchase an airline ticket to New York City. The officers approached him and obtained consent to search his two suitcases. Because his flight was about to depart, however, they decided not to do so. Further inquiry confirmed their suspicions, and they relayed their information to colleagues at LaGuardia Airport who were waiting for Place as he deplaned. The agents approached Place, identified themselves, told him they believed he might be carrying narcotics, and requested consent to search the luggage. When Place refused, the agents took possession of the suitcases and told him they were going to take them to a Federal judge to try to obtain a search warrant.

The agents took the bags to the nearby Kennedy Airport where a "sniff test" by a trained narcotics detection dog reacted positively to one of the bags. Approximately 90 minutes had elapsed since the seizure of the two suitcases. The agents subsequently obtained a search warrant, opened the suspect bag, and discovered cocaine. Place was arrested on a Federal narcotics charge and pled guilty after the trial court denied his motion to suppress the narcotics. Applying the standards of *Terry* and *Van Leeuwen* to the detention of personal property, the court concluded that the seizure of these bags could be justified on reasonable suspicion. The Federal appellate court reversed, concluding that the prolonged seizure of

Place's baggage exceeded the permissible limits of a *Terry*-type investigative stop and consequently became a seizure without the requisite probable cause. The Supreme Court affirmed the appellate decision.

The Court first pointed out that the fourth amendment does not prohibit the brief detention of personal luggage from airline travelers for exposure to a trained narcotics dog. The Government's interest in seizing luggage substantially outweighs the traveler's right to privacy.

> "Because of the inherently transient nature of drug couriers at airports, allowing police to make brief investigative stops of persons at airports on reasonable suspicion of drug trafficking substantially enhances the likelihood that police will be able to prevent the flow of narcotics into distribution channels." [37]

The limited seizure must be based on reasonable suspicion and may be conducted by taking the property from the immediate custody and control of the owner, as here with Place, or after the owner has relinquished control of the property to a third party, as in *Van Leeuwen.*

However, the Court believed the extended length of the detention, some 90 minutes, transformed it into a full seizure requiring probable cause. The Court specifically declined to adopt an outside time limitation for a permissible *Terry* stop of luggage, but made clear that it had never approved an investigative detention that lasted 90 minutes. Moreover, in assessing the length of the detention, the Court took note that the agents could have been more diligent. They knew Place's scheduled arrival and had ample time and should have arranged to have the trained narcotics dog transported to the airport where he landed. Finally, the Court pointed out the unlawful detention was exacerbated by the failure of the agents to accurately advise Place of:

1) Their intentions and the location of the luggage;
2) The length of time he might be dispossessed of the luggage; and
3) Any arrangements for return of the luggage if the investigation dispelled their suspicion.

Although *Place* concerned the interception of narcotics, the language in the opinion is broad enough to approve the application of the principle to the temporary seizure of containers believed to contain any items of an evidentiary nature. In each case, lower courts will first use a balancing test to decide whether the lawfulness of the initial detention in search of a particular item of evidence outweighs a citizen's fourth amendment right to possession of the property in which the evidence is concealed. If so, the courts will next examine the scope of the detention to determine whether it was overly intrusive in time and manner.

The Court in *Place* offered some helpful advice on how to minimize the fourth amendment intrusion. First, the seizure of property should be brief, surely substantially less than 90 minutes. One manner of holding down the time is to plan intelligently for the detention and investigation. For example, if the procedure involves the use of a dog, the dog should be readily available at the scene of the detention. Second, the impact of the fourth amendment incursion can be minimized by the treatment accorded the possessor of the property seized. He should be informed of the place where his container will be detained, of the anticipated length of time for the detention, and of the manner by which he can reclaim his property. Finally, the *Place* decision leaves intact the ruling in *Van Leeuwen* which approved the 29-hour detention of a package deposited with postal authorities. Thus, the length of a detention of personal property may be extended where the property is temporarily seized from a *third party* to whom control has been relinquished by the possessor. For example, if unclaimed luggage remains for a prolonged period of time in an airline's lost-and-found baggage room, a continued detention by law enforcement authorities may be justifiable for many hours, as it does not interfere with the owner's immediate possessory interest in the property.

Narcotics-sniffing Dogs

As in *Place,* the purpose for which a suspected drug courier's luggage is frequently seized is to arrange its exposure to a narcotics detection dog. Obviously, if the use of the dog to sniff the luggage is itself a search, probable cause or reasonable suspicion is required before the test can begin.

". . . police-citizen contacts with suspicious airline passengers are not fourth amendment seizures and are not subject to any degree of legal justification. . . ."

The Supreme Court has held that there is a fourth amendment privacy interest in the contents of personal luggage.[38] Yet, lower courts have consistently held that the use of the drug sniff test in the airport drug courier context is not a fourth amendment search at all, and therefore, needs no legal justification.[39] In *Place,* the concurring opinion of Justice Brennan addressed this issue. He likewise believed, without objection from the majority, that the use of a well-trained narcotics dog to smell the air within the immediate vicinity of luggage is not a search within the meaning of the fourth amendment. This procedure does not require opening luggage and exposing noncontraband items otherwise hidden from public view. Information obtained by a drug sniff test is limited because it discloses only the presence or absence of narcotics and protects the owner from the embarrassment and inconvenience entailed in more intrusive investigative methods.

> "In these respects, the canine sniff is *sui generis.* We are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure. Therefore, we conclude that the particular course of investigation that the agents intended to pursue here—exposure of respondent's luggage, which was located in a public place, to a trained canine—did not constitute a 'search' within the meaning of the fourth amendment." [40]

So long as the initial seizure of the container is lawful, the canine sniff technique is not vulnerable to fourth amendment attack. This means that a "luggage line-up" [41] is not necessary before the sniffing begins unless the dog handler is trying to establish a new dog's credibility. Further, the language of the *Place* decision does not suggest that the sniff procedure is limited to airport luggage. Officers should therefore consider the use of trained narcotics dogs in other settings where private property is exposed in a public place and is suspected of concealing evidence of a crime.[42]

Conclusion

Justice Blackmun of the Supreme Court recently noted, "The special need for flexibility in uncovering illegal drug couriers is hardly debatable." [43] The Court's recent spate of airport narcotics smuggling decisions has provided that flexibility. First, police-citizen contacts with suspicious airline passengers are not fourth amendment seizures and are not subject to any degree of legal justification, including reasonable suspicion. Second, drug courier profiles may be used to decide which passengers to approach and question in such police-citizen contacts. The varying profiles and their checklist of characteristics will no longer be subject to judicial scrutiny since no fourth amendment seizure takes place. Third, it is now clear that luggage may be detained under the *Terry* investigative stop rationale, and reasonable suspicion rather than probable cause will justify the detention, so long as it is limited in scope. As with the detention of people, a detention lasting a maximum of 20 to 30 minutes seems appropriate.[44] Last, narcotics-trained dogs can be used to sniff the air surrounding the exterior portions of luggage without rising constitutional problems, as this procedure is not a fourth amendment search.

Narcotics investigators should now be able to more easily create drug courier interdiction programs and use them at local airports, bus and railroad stations, and the like. Law enforcement officers, in general, should take an expansive view of these decisions and find imaginative ways to more readily engage people in police-citizen contacts, create and implement suspect profiles, more frequently detain personal property, and expand the use of trained dogs to sniff for scented evidence of crime. **FBI**

Footnotes

[1] See Hart and LaDuc, *Airport Searches by Drug Enforcement Agents,* 8 Search and Seizure Law Reporter 103 (1981) (hereinafter cited as Hart and LaDuc). As of June 1981, DEA drug courier interdiction programs were operational in approximately 20 U.S. airports. *See also* Carter, *Fourth Amendment—Airport Searches and Seizures: Where Will the Court Land?* 71 J. Crim. L. 499, 513 n.149 (1980) (hereinafter cited as Carter).

[2] *See United States* v. *Mendenhall,* 446 U.S. 544, 562 (1980). (Powell, J., concurring). Remarkably, only 141 passengers were encountered during this period.

[3] *See* Hart and LaDuc, *supra* note 1, for a description of the major characteristics listed on DEA drug courier profiles used at the Detroit, New Orleans, and Atlanta airports; and Carter, *supra* note 1, at 513 n.149, for a description of the DEA's New York City LaGuardia Airport profile. *See also United States* v. *Elmore,* 595 F.2d 1036, 1039 n.3 (5th Cir. 1979), *cert. denied,* 447 U.S. 910 (1978), for a description of the seven primary characteristics and four secondary characteristics that make up one successful DEA agent's drug courier profile used at Hartsfield International Airport, Atlanta, Ga.

[4] *See, e.g., Florida* v. *Royer,*———U.S.———, 75 L. Ed. 2d 229 (1983) (Dade County, Fla., Department of Public Safety's drug courier profile used at the Miami International Airport); *People* v. *DeLisle,* 432 N.E.2d 954 (Ill. App. 1982) (profile used by a police officer at Chicago's O'Hare Airport).

[5] U.S. Const. Amend. IV states:

"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."

[6] *Beck* v. *Ohio,* 379 U.S. 89 (1964).

[7] *Terry* v. *Ohio,* 392 U.S. 1 (1968).

[8] *See* 3 LaFave, *Search and Seizure, A Treatise on the Fourth Amendment* § 9.2(g), at 46 (1978) (cited hereinafter as LaFave) and Hart and LaDuc, *supra* note 1, at 105.

[9] *See generally* 3 LaFave, *supra* § 9.2(g) note 8.

[10] *See, e.g., United States* v. *Buenaventura-Ariza,* 615 F.2d 29 (2d Cir. 1980); *United States* v. *Vasquez,* 612 F.2d 1338 (2d Cir. 1979), *cert. denied,* 447 U.S. 907 (1980); *United States* v. *Palmer,* 603 F.2d 1286 (8th Cir. 1979); *United States* v. *McCaleb,* 552 F.2d 717 (6th Cir. 1977); *People* v. *DeLisle, supra* note 4; *State* v. *Evans,* 517 P.2d 1225 (Ore. App. 1974); *State* v. *Frost,* 374 So.2d 593 (Fla. App. 1979).

[11] *See, e.g., United States* v. *Elmore, supra* note 3; *United States* v. *Burrell,* 286 A.2d 845 (D.C. App. 1972); *State* v. *Lanter,* 391 So.2d 1152 (La. 1980); *People* v. *Jordan,* 357 N.E.2d 159 (Ill. App. 1976); *Logan* v. *State,* 394 So.2d 183 (Fla. App. 1981). *See also* 3 LaFave, *supra* § 9.2(g) note 8, at 49.

[12] 569 F.2d 62 (D.C. Cir. 1977), *cert. denied,* 435 U.S. 944 (1978).

[13] *Supra* note 7, at 19 n.16 (1968).

[14] *Supra* note 2.

[15] *Id.* (Opinion of Stewart, J., joined by Rehnquist, J.).

[16] *Id.* at 554–55.

[17] *Id.* at 560 n.1 (Opinion of Powell, J., concurring, joined by Burger, C. J., and Blackmun, J.).

[18] *Id.* at 566 (Opinion of White, J., dissenting, joined by Brennan, Marshall and Stevens, JJ.).

[19] *United States* v. *Jodoin,* 672 F.2d 232 (1st Cir. 1982); *United States* v. *West,* 651 F.2d 71 (1st Cir. 1981), *vacated,* 51 U.S.L.W. 3918 (June 27, 1983); *United States* v. *Berry,* 670 F.2d 583 (5th Cir. 1982); *United States* v. *Lara,* 638 F.2d 892 (5th Cir. 1981); *United States* v. *Robinson,* 625 F.2d 1211 (5th Cir. 1979); *United States* v. *Jefferson,* 650 F.2d 854 (6th Cir. 1981); *United States* v. *Black,* 675 F.2d 129 (7th Cir. 1982), *cert. denied,* 51 U.S.L.W. 3720 (Mar. 30, 1983); *United States* v. *Patino,* 649 F.2d 724 (9th Cir. 1981); *United States* v. *McCranie,* 703 F.2d 1213 (10th Cir. 1983); *United States* v. *Elsoffer,* 671 F.2d 1294 (11th Cir. 1982). *See also Gomez* v. *Turner,* 672 F.2d 134 (D.C. Cir. 1982) (policeman encountered a citizen on the street). *But see United States* v. *Buenaventura-Ariza, supra* note 10.

[20] *Terry* v. *Ohio, supra* note 7, at 19 n.16.

[21] *Supra* note 4.

[22] The few post-*Royer* decisions to date support this view. *See United States* v. *Berryman,* 706 F.2d 1241 (1st Cir. 1983); *United States* v. *Collis,* 699 F.2d 832 (6th Cir.), *cert. denied,* 51 U.S.L.W. 3826 (June 13, 1983); *United States* v. *Waksal,* 709 F.2d 653 (11th Cir. 1983); *United States* v. *Thompson,* 712 F.2d 1356 (11th Cir. 1983).

[23] *See, e.g., United States* v. *Rico,* 594 F.2d 320 (2d Cir. 1979); *United States* v. *Harrison,* 667 F.2d 1158 (4th Cir. 1982); *United States v. Troutman,* 590 F.2d 604 (5th Cir. 1979); *United States* v. *Smith,* 574 F.2d 882 (6th Cir. 1978); *United States* v. *Scott,* 545 F.2d 38 (8th Cir. 1976), *cert. denied,* 429 U.S. 1066 (1977). For examples of cases using the drug courier profile in addition to other factors, *see United States* v. *Oates,* 560 F.2d 45 (2d Cir. 1977); *United States* v. *VanLewis,* 556 F.2d 385 (6th Cir. 1977), *cert. denied,* 434 U.S. 1011 (1978).

[24] *United States* v. *Mendenhall, supra* note 2, at 563 n.6 (Powell, J., concurring, joined by Burger, C. J., and Blackmun, J.).

[25] 448 U.S. 438 (1980).

[26] *Id.* at 441. Reid arrived early in the morning, when law enforcement activity is diminished. He arrived from Fort Lauderdale which is a principal origin of cocaine sold elsewhere in the country. He tried to conceal that he was traveling with a companion. Reid and his companion carried similar shoulder bags but no suitcases or other luggage.

[27] *Florida* v. *Royer, supra* note 4, at 254–55 n.6 (Rehnquist, J., dissenting). The decision of the Georgia court of appeals has not been reported.

[28] *See, e.g., State* v. *Ochan,* 544 P.2d 1097 (Ariz. 1976).

[29] *See, e.g., United States* v. *Edwards* 498 F.2d 496 (2d Cir. 1974); *United States* v. *Palazzo,* 488 F.2d 942 (5th Cir. 1974).

[30] *See, e.g., State* v. *Ginardi,* 268 A.2d 534 (N.J. App. 1970).

[31] 397 U.S. 249 (1970).

[32] *Id.* at 252–53.

[33] *See* Comment, *Seizing Luggage on Less than Probable Cause,* 18 Am. Crim. L. Rev. 637, 639 (1981).

[34] *See, e.g., United States* v. *Jodoin, supra* note 19 (suitcase seized from airline passenger); *United States* v. *Corbitt,* 675 F.2d 626 (4th Cir. 1982) (shoulder bag seized from airline passenger); *United States* v. *Klein,* 626 F.2d 22 (7th Cir. 1980) (suitcase seized from airline passenger); *United States* v. *Moya,* 704 F.2d 337 (7th Cir. 1983) (travel bag seized from airline passenger); *United States* v. *Martell,* 654 F.2d 1356 (9th Cir. 1981), *cert. denied,* 51 U.S.L.W. 3920 (June 27, 1983) (suitcase seized from security area of airline company).

[35] *See, e.g., United States* v. *Viegas,* 639 F.2d 42 (1st Cir.), *cert. denied,* 451 U.S. 970 (1981) (reasonable suspicion permitted a day-long detention of airline passenger's suitcase); *United States* v. *West, supra* note 19 (reasonable suspicion permitted detention of airline passenger's suitcase, even though agents knew West was about to board a connecting flight); *United States* v. *Regan,* 687 F.2d 531 (1st Cir. 1982) (22-hour detention of airline passenger's luggage was a full seizure requiring probable cause); *United States* v. *Place,* 660 F.2d 44 (2d Cir. 1981), *reversed,* ——— U.S. ———, 77 L. Ed. 2d 110 (1983) (90-minute detention of airline passenger's suitcases, coupled with the transportation of the suitcases to a nearby airport, was a full seizure requiring probable cause); *United States* v. *Hunt,* 496 F.2d 885 (5th Cir. 1974) (overnight seizure of six boxes of obscene books, taken from the possession of the owner by FBI Agents, required probable cause); *United States* v. *O'Connor,* 658 F.2d 688 (9th Cir. 1981) (overnight seizure of briefcase required probable cause); *United States* v. *Martell, supra* note 34 (suitcase seized from security area of airport and not from suspect himself only required reasonable suspicion); *United States* v. *Belcher,* 685 F.2d 289 (9th Cir. 1982) (seizure of shoulder bag from owner's possession required probable cause).

[36] *Supra* note 35.

[37] *Id.,* at 119.

[38] *United States* v. *Chadwick,* 433 U.S. 1, 7 (1977).

[39] *See, e.g., United States* v. *Walzer,* 682 F.2d 370 (2d Cir. 1982); *United States* v. *Sullivan,* 625 F.2d 9 (4th Cir. 1980), *cert. denied,* 450 U.S. 923 (1981); *United States* v. *Goldstein,* 635 F.2d 356 (5th Cir.), *cert. denied,* 452 U.S. 962 (1981); *United States* v. *Klein, supra* note 34; *United States* v. *McCranie, supra* note 19. *But see United States* v. *Beale,* 674 F.2d 1327 (9th Cir. 1982), *vacated,* 51 U.S.L.W. 3918 (June 27, 1983) (canine sniff of luggage is a fourth amendment search, but so limited as to only require reasonable suspicion for its justification).

[40] *United States* v. *Place, supra* note 35, at 121.

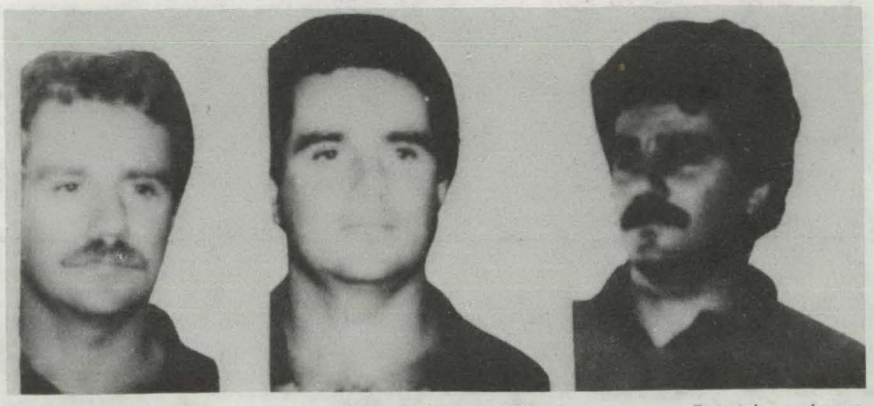
[41] *See, e.g., United States* v. *Patino, supra* note 19, at 726.

[42] *See, e.g., United States* v. *Solis,* 536 F.2d 880 (9th Cir. 1976) (narcotics detected in semitrailer); *United States* v. *Venema,* 563 F.2d 1003 (10th Cir. 1977) (narcotics detected in rental locker).

[43] *Florida* v. *Royer, supra* note 4, at 250 (Blackmun, J., dissenting).

[44] *See* ALI Model Code of Pre-Arraignment Procedures § 110.2(1) (1975) (recommends a maximum of 20 minutes for a *Terry* stop). *Cf. United States* v. *Place, supra* note 35, at 122 n.10 (the Court specifically declined to adopt a rigid time limitation in order to allow flexibility in varying fact situations).

WANTED BY THE FBI



Photograph taken 1979 *Photograph taken 1981* *Date taken unknown.*

Daniel Christopher McGuiness

Daniel Christopher McGuiness, also known as Alan Barberry, Larry Clayton Brauner, Lawrence Browner, Victor J. Collica, Daniel Eastman, Steven D. Greenberg, Daniel Christopher Holiday, Robert Allan Johnson, Richard Ashton Lee, Daniel C. McGuiness, Scott Parker, Scott Pratt, Michael Raymond Weigend, and others

Wanted for:

Interstate Flight—Felonious Escape; Conspiracy; Escaped Federal Prisoner; False Statement to Obtain U.S. Passport

The Crime

McGuiness is being sought in connection with conspiracy to import, distribute, and possess marihuana and other criminal activities.

A Federal warrant was issued on March 25, 1980, in Boston, Mass., charging McGuiness with using false statements to obtain a U.S. passport. A Federal warrant was also issued on September 9, 1981, in New Haven, Conn., charging him with conspiracy to import, distribute, and possess marihuana. McGuiness was additionally charged in Federal warrants issued on July 10, 1981, and July 14, 1981, in Panama City, Fla., for unlawful interstate flight to avoid prosecution for felonious escape and violation of the Escape and Rescue Statute.

Description

Age	38, born September 25, 1945, Bridgeport, Conn.
Height	5'9".
Weight	160 to 190 pounds.
Build	Medium.
Hair	Brown (may be dyed red or blond).
Eyes	Gray/blue.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Car salesman, real estate, roofer, waiter.
Remarks	Had bad teeth at time of escape; will dye hair and alter appearance through use of facial hair; travels by chartered planes.
Social Security Nos. Used	022-81-2013; 040-36-3374; 047-34-0361; 287-52-7482; 204-48-1348.
FBI No.	711 818 E.

Caution

McGuiness has been previously convicted of breaking and entering with criminal intent, conspiracy to utter forged checks, issuing bad checks, carrying a concealed weapon in a motor vehicle, and escape. He has a propensity for violence and should be considered armed, dangerous, and an escape risk.

Notify the FBI

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

Classification Data:

NCIC Classification:

P0091314172212131420

Fingerprint Classification:

9 0 1 U I00 17

L 17 U 000

I.O. 4917

Right thumb print

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Change of Address

Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

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

Name

Title

Address

City State Zip

Interesting Pattern

This impression is classified as a double loop-type whorl with an inner tracing. Although the pattern appears to be a loop over a whorl, examination reveals that there is an appendage attached to the right side of the whorl, thereby spoiling the recurve.

U.S. Department of Justice
Federal Bureau of Investigation

Official Business
Penalty for Private Use $300
Address Correction Requested

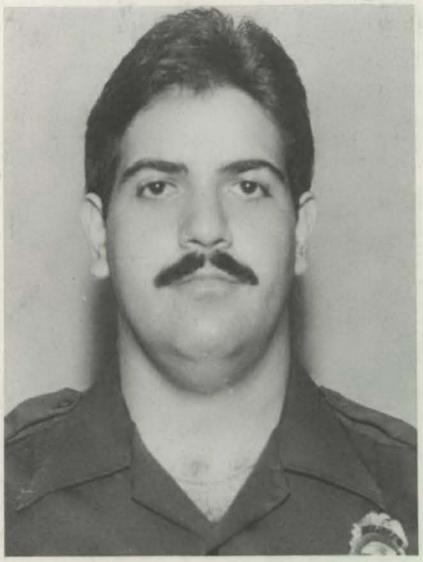
Postage and Fees Paid
Federal Bureau of Investigation
JUS–432

Second Class

Washington, D.C. 20535

The Bulletin Notes

that Officer Ramon Diaz, Hialeah, Fla., Police Department, on February 21, 1983, saved the life of a 3-year-old child. While patrolling at a high school carnival, Officer Diaz responded to a report that a small boy was choking. Officer Diaz found the child turning blue and not breathing. Using the Heimlich maneuver, the officer was able to dislodge a piece of candy from the child's windpipe and then give mouth-to-mouth resuscitation until the child started breathing. The Bulletin joins with the chief of police in Hialeah, Fla., in commending this prompt action.



Officer Diaz