

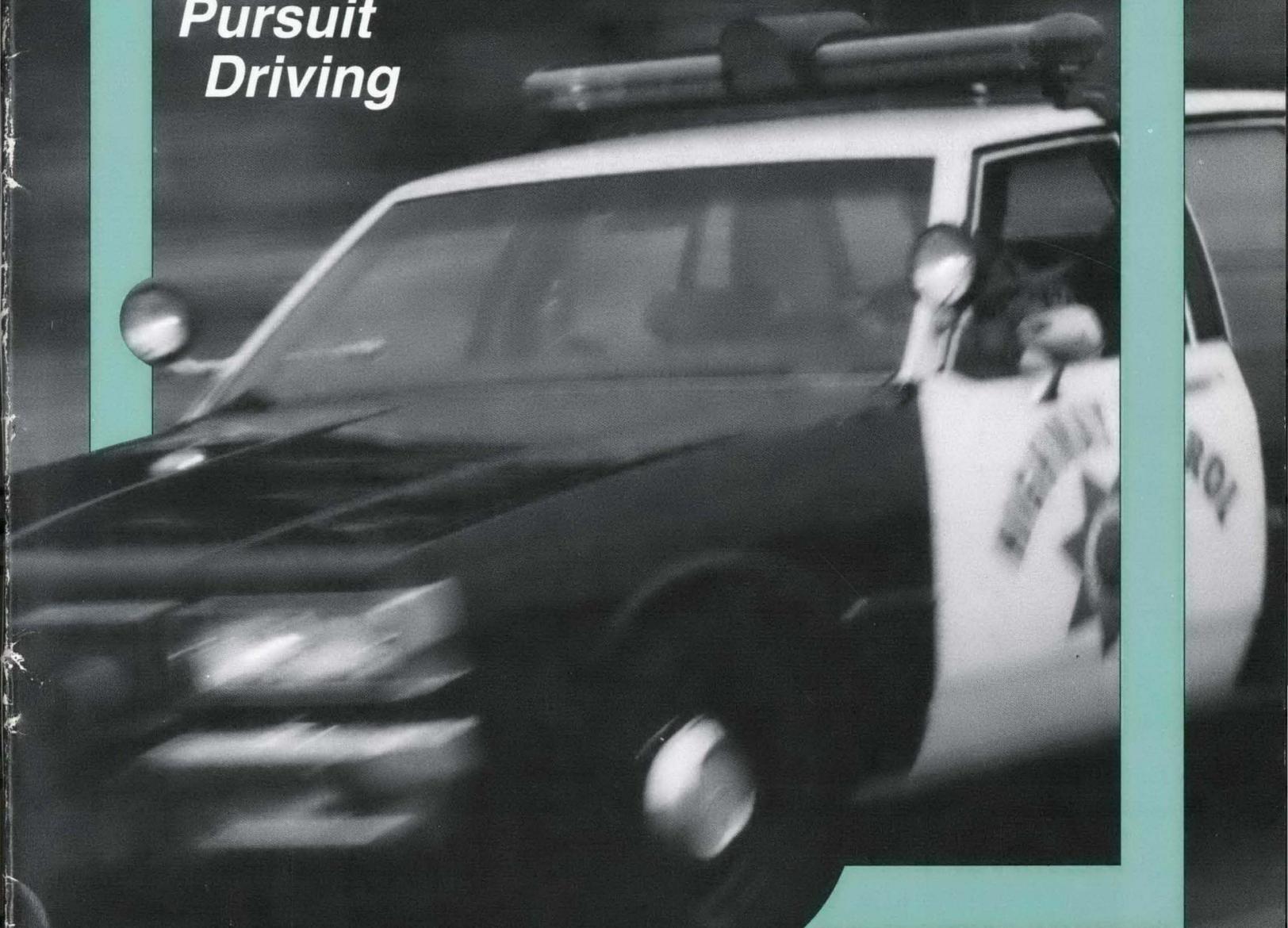


FBI

November 1988

Law Enforcement Bulletin

***Pursuit
Driving***



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FBI

Law Enforcement Bulletin

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Vehicle pursuits often thrust law enforcement officers into some of the most potentially dangerous situations they will ever face. See article p. 7.

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Inservice Training in Economically Distressed Times

“The challenge to training directors today . . . is to salvage as many of the training programs as possible in light of declining or fixed budgets.”

By
SGT. GERALD W. KONKLER
*Police Department
Tulsa, OK*

In recent years, many municipalities have found themselves facing budget deficits and declining revenues. In response, some local governments have instituted hiring freezes;¹ others leave vacancies unfilled² or lay off or threaten to lay off police officers,³ while some positions are simply eliminated through attrition. Law enforcement administrators are having to make do with “status quo” budgets, even though public safety and officer safety demand manpower increases.

The results of these actions directly impact the ability to provide training to police officers. It is obvious that when manpower is below authorized strength, priorities will have to be set so that the primary mission of the police department can be accomplished. That mission, order maintenance, arguably requires police presence on the streets, causing other functions to “take a back seat.”

The shortage of manpower created by economic conditions may be exacerbated by other factors, specifically summer vacations and mandatory firearms training. These can preclude the possibility of any academic classroom training.⁴ In the worst case, the end result can mean the reassignment of training manpower to field duties, either permanently or temporarily. Whatever the case, the agency’s training program is severely disrupted, which could have dire consequences.

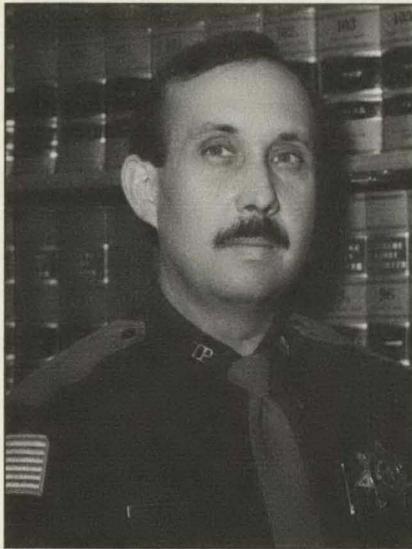
The status of training was recognized by Dr. M. Brent Halverson and John C. LeDoux, when they noted:

“While the importance of well-developed inservice training programs might seem obvious, it must be admitted that training is often a low priority activity. Because there is insufficient time to meet the heavy demands of the public, many

police departments do not have the time to conduct the training which should be provided.”⁵

The partial answer to this problem is to be more efficient—to make the hours spent in training more productive.⁶ The challenge to training directors today, much as it has been in the past, is to salvage as many of the training programs as possible in light of declining or fixed budgets.⁷ To do this, law enforcement must learn to do more with less in the training process.

One of the initial questions to be answered relates to the necessity of continuing training. Perhaps for too long, law enforcement was content to provide basic training to recruits and not be concerned with continuing education. Certainly, court decisions to the rights of defendants and the enhanced possibilities of civil judgments made police administrators realize that this was not a wise course to take.



Sergeant Konkler



Drew Diamond
Chief of Police

The last 25 years have seen an increase in the quantity and quality of law enforcement instruction, and the police profession has been well-served by the change.⁸ If indeed the purpose of police training is to develop "operational knowledge, physical and communication skills, and habits which relate to the performance of the job,"⁹ then the changes that occur regularly in police work point toward the necessity, and indeed the duty, of police administrators to provide opportunities for learning.

Another reason for providing inservice training is to satisfy requirements of State law. California, for example, mandates that certain subjects shall be taught on a periodic basis.¹⁰

But there is a compelling reason for periodic training even in those jurisdictions without a statutory mandate. And that is the potential for civil liability against the municipality and/or the officer.¹¹ An administrator has a duty to the employing jurisdiction to take all reasonable precautions to prevent these suits. But doesn't the administrator also owe a duty to the officer to provide him or her with the information to do the job better and easier, as well as decreasing the potential for liability?

Endeavoring to attain professional status for law enforcement is another justification for continuing inservice training. An agency has the duty to provide the citizens with the best possible law enforcement. To do this, it is imperative to have the most qualified officers and to provide for their continued professional development.¹² Although it is argued that professionalism will not be attained until States mandate training standards,¹³ law enforcement can ill afford to wait until the State decides to

legislate this area. Professionalism is in the hands of law enforcement, not legislators. Goals should be set by the agency, not by the State. The training process should not be allowed to falter just because the legislature has not seen fit to require specified courses of inservice training. After all, who is more familiar with training needs—the elected officials or those who are active in law enforcement?

Somewhat related to professionalization are the standards established by the Commission on Accreditation for Law Enforcement Agencies, Inc.¹⁴ Without engaging in the debate over the values of accreditation, if an agency is even considering entering the process in the future, it is important to be familiar with the standards as they relate to retraining and advanced training. Assuming for purposes of discussion that accreditation is valuable in defending civil actions, an argument could be made that the standards should be met.

The standards require that the agency have written directives concerning annual retraining, including firearms qualification, and further require that a number of issues be addressed. There are also standards dealing with roll call and advanced training, as well as specialized training. If an agency is considering initiating or changing policy in these areas, these standards should be consulted for direction. In addition, if the governing body is remotely interested in accreditation, these facts could be used to illustrate the necessity of funding for continued training.

There has been a tremendous change in the social, political, and economic arenas in America.¹⁵ Likewise, in the area of law enforcement, there have

“The last 25 years have seen an increase in the quantity and quality of law enforcement instruction, and the police profession has been well-served by the change.”

been vast changes over the past 10 years. In 1977, if a suspected DUI (Driving Under the Influence) driver could walk a straight line, he might have been let go without a glance at the condition of his pupils. There were no passive alcohol testing devices on the scene. The search and seizure issues involving motor vehicles were less clear than they are now. What about the advances with recordkeeping by computer? Has there not been an explosion of computer use in this area? And, numerous other technological changes have occurred. This may very well explain why some officers believe that technology is passing them by.

It is the duty of the agency to educate employees in these areas to prevent the occurrence of Toffler's "future shock."¹⁶ Training is necessary to allow officers to assimilate these changes. As will be noted later, law enforcement must become more people oriented in order to serve its mission. This is vitally important in the area of technology, in order that officers may fulfill the task assigned to them in the most effective and efficient way possible.

The foregoing reasons can be advanced to support the general concept of continuing training. They might even be used to attempt to convince the governing body that funding for training is essential. However, as noted earlier, it may be necessary to show more results for less dollars, which may very well entail temporarily discontinuing formal training.

Law enforcement has shown the value of training, but the days of indiscriminate training are long gone. The person responsible for training in an agency must continually question whether the perceived problem can be

solved by training. Training will not resolve all shortcomings within an agency.

Pinpointing the areas where training can have a positive impact on the performance of an officer is most important. In the past, training and development programs used a "shotgun approach." However, if programs are not cost-effective and job-related, they are not worthwhile. Police agencies cannot afford to dedicate resources to useless or repetitious training.

Another reason for assessing training needs is to prepare personnel to accept change. The different levels within an organization will have varying views as to the type of training needed to resolve organizational problems. What can be extremely detrimental to the training program is to have someone with no concept of current field procedures be responsible for determining the training courses to be taken by personnel. However, if all organizational levels are included in the process of identifying training needs, the training will be accepted more readily.

One method of determining necessary training is set forth by James H. Auten.¹⁷ He suggests a cooperative effort among the operational level, supervisors, management, and the training staff, based on an analysis and examination of the problems and conditions of the organization. This process also encompasses the performance, potential, and problems of each employee. Members of the entire agency are asked, either orally or by questionnaire, about the operations of the department. The questions posed to the various levels — operational, supervisory, and staff — will necessarily be different, but generally, they will center on opinions of weaknesses, ways to im-

prove the agency, performance, etc. Questions directed toward the operational level should not include type of training needed, since responses will most likely reveal the type of training personnel would like to have, rather than what is essential.

The second phase is a critical analysis of the day-to-day operations of the agency. The person conducting this analysis should examine the morale of the agency, job knowledge of the employees, communication failures, supervisor performance, and application of job skills.¹⁸

Finally, this method calls for a review of the organizational elements and their operation. For example, organizational plans should note any projected changes in mission, structure, personnel, etc. Employee records should be examined to determine excessive turnover or absenteeism and frequency of accidents or grievances. Inspection records should be reviewed, as should the supervisory selection policy and records of activity generated by the agency.¹⁹

One final note on the identification of training needs relates to the Blockage Questionnaire developed by Francis and Woodcock.²⁰ This instrument is a relatively simple device that may prove helpful in determining what subjects should be taught. A blockage is defined as that which prevents people in organizational settings from putting their intelligence, energy, and effort to productive use.²¹ This instrument requires respondents to complete a form consisting of 110 statements by either agreeing or disagreeing with the statement. It is suggested that this instrument could identify those areas in which there might be resistance to

“Law enforcement has shown the value of training, but the days of indiscriminate training are long gone.”

change. Armed with this knowledge, the training program might be altered to minimize this resistance and make the learning process more effective.

Whatever the results of the assessment, economic conditions and manpower shortages may very well mandate that traditional classroom training be curtailed or even eliminated for the duration of the fiscal crisis. But, even in these events, the training program *should not* be completely abandoned, especially in the area of firearms training. It is also imperative that employees of the agency be kept apprised of recent court decisions and changes in case law. In the 1985-86

term, the U.S. Supreme Court issued 50 criminal opinions and 12 relating to civil rights suits.²² Add to this the number of other relevant Federal, State, and local decisions and enacted legislation of which police officers should be aware and it becomes apparent that a proactive posture must be taken with regard to inservice legal training.

How, then, can these topics be covered in a time of “crisis” training? Answer: “Every crisis brings opportunity.”²³ Agencies must impress on their members, particularly the first-line supervisor, the importance that must be placed on training.

One method of training in these difficult times is not new but rather sorely underemployed, i.e., roll call or squad room training. In practice, it appears that only a portion of roll call is used for constructive, job-related purposes. Assuming a 15-minute meeting, the typical officer may spend over 60 hours per year in roll call. Experience reveals that not all of this time is spent exchanging information necessary to shift change. Only 10 minutes dedicated per week for training will amount to over 8 hours for the year — the equivalent of 1 day’s training during roll call. The training officer or unit provides the relevant information to supervisors who, in turn,

BLOCKAGES

A. Inadequate Recruitment and Selection. The people being hired lack the knowledge, personality, or skills appropriate to the organization's needs.

B. Confused Organizational Structure. The way in which people are organized is wasteful or inefficient.

C. Inadequate Control. Poor decisions are made because of faulty information in the hands of inappropriate people.

D. Poor Training. People are not learning efficiently to do things that would materially improve their performance.

E. Low Motivation. People do not feel greatly concerned about the organization and are not willing to expend much effort to further common goals.

F. Low Creativity. Good ideas for improvement are not being properly put to use, so stagnation occurs.

G. Poor Teamwork. People who should be contributing to common tasks either do not wish to work together or find that there are too many obstacles to do so.

H. Inappropriate Management Philosophy. Principles and unconscious management create the atmosphere are unrealistic or inhumane.

I. Lack of Succession Planning and Management Development. Sufficient preparation for important future job vacancies is not being undertaken.

J. Unclear Aims. The reasons for doing things are either obscure or badly explained.

K. Unfair Rewards. People are not rewarded in ways that satisfy them, or the reward system works against the health of the organization.

BLOCKAGE QUESTIONNAIRE ANSWER SHEET

■ Follow the instructions given at the beginning of the questionnaire.

■ In the grid below there are 110 squares, each one numbered to correspond to a question. Mark an "X" through the square if you think a statement is broadly true. If you think a statement is not broadly true, leave the square blank. Fill in the top line first, working from left to right, then fill in the second line, etc. Be careful not to miss a question.

	A	B	C	D	E	F	G	H	I	J	K
1	2	3	4	5	6	7	8	9	10	11	
12	13	14	15	16	17	18	19	20	21	22	
23	24	25	26	27	28	29	30	31	32	33	
34	35	36	37	38	39	40	41	42	43	44	
45	46	47	48	49	50	51	52	53	54	55	
56	57	58	59	60	61	62	63	64	65	66	
67	68	69	70	71	72	73	74	75	76	77	
78	79	80	81	82	83	84	85	86	87	88	
89	90	91	92	93	94	95	96	97	98	99	
100	101	102	103	104	105	106	107	108	109	110	
Totals											

■ When you have considered all 110 statements, total the number of "X's" in each vertical column and go on to the next page.

SOURCE: *People At Work: A Practical Guide to Organizational Change* by Dave Francis and Mike Woodcock, by permission of University Associates, Inc., La Jolla, California © 1975.

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disseminate it to line personnel. A second session should be conducted for those who were absent due to days off or vacation. It is vital that this method of instruction be documented by the supervisor.

Training bulletins are another method of disseminating information. In times of limited manpower, the responsible trainer should prepare and distribute these on a regular basis. Ideally, for purposes of documentation, each officer should receive a copy and sign an acknowledgement. An alternative is to distribute one copy per shift or squad, with documentation prepared by the supervisor and returned to the training unit or officer after dissemination. One of the advantages of this type of training is the ability to reach the entire department in a short period of time. A disadvantage, particularly if the first-line supervisor doesn't recognize the value and necessity of training, is the possibility that the information will not be passed along or that it will be negated by the poor attitude of the supervisor.

Many agencies have acquired or have access to video cameras for taping statements and confessions of criminal suspects. But, this technology can also be an effective training tool, particularly for those topics taught through demonstration. The legal adviser or city attorney can be taped discussing new laws and case decisions or legal updates. In addition, this method can provide an excellent vehicle for the head of the agency to make a brief address to the rank and file on important issues.

Many training units have resources in their possession that are not made available to the people who need them the most — the street officer. Articles of interest and other materials can be cir-

culated and posted on bulletin boards. However, this method of training should be adopted only if someone in the training function has the responsibility of maintaining the bulletin boards in a manner that promotes readership. In other words, the materials should be kept up-to-date and posted in such a manner as to make for easy reading.

The police administrator and staff members should survey their offices for current, professional law enforcement journals or books relating to criminal procedure. Rather than gathering dust in an executive's office, such literature should be kept in a place that is accessible to all members of the organization. The modern-day officer, in most cases, wants to know how he or she could better perform the job and would take advantage of the opportunity to look over these magazines or books — either on or off duty. The obvious answer is to establish a small library and encourage officers to use it. The appealing aspect is that it does not cost the agency anything. Furthermore, it emphasizes the value the agency places on keeping personnel informed of current practices in the profession.

One theme in the training function that cannot be stressed too heavily is that of documentation. Frequently, in determining training needs or in defending lawsuits, it becomes necessary to ascertain the training afforded a particular officer. Unfortunately, all too often, agency training records have not been kept. This lack of documentation should not be allowed to continue. Whether used to provide rebuttal to civil suits or to justify additional training, documentation allows management to keep abreast of officer development.²⁴

It is tempting, in times of limited budgets, to limit training to field officers and to forego the training of supervi-

sors, a temptation which should be resisted. As a practical matter, it would seem difficult for a supervisor to perform the function properly if he or she has not been instructed as were the field officers. How can a supervisor determine if subordinates are functioning in a proper manner if the different levels have not received the same training?

The last few topics discussed can be performed in conjunction with, or in lieu of, traditional classroom inservice training. But the training function in an organization cannot afford to focus only on the short term. The training function must begin searching for ways to enhance police officer training for tomorrow.

There has been considerable emphasis in the private sector placed on the importance of employees, which has resulted in substantial gains for the companies. There is no reason to believe that law enforcement would not likewise benefit. Administrators of police agencies have had a paternalistic attitude toward police officers for too long. There is ample evidence that people will respond well to having trust placed in them and being treated as adults.²⁶ This is manifested in the training function by expecting them to learn the latest information about the occupation, and thereby, demanding that they keep current. The corresponding duty of management is to provide these learning opportunities and promote an atmosphere of professionalism.

Another concept that has received much attention is the concept of the "customer."²⁷ This idea suggests that in the private sector, all business success rates on the sale, which momentarily welds the company and the customer. Peters and Waterman suggest that the excellent companies are close to their

“... the administrator and agency can ill afford to surrender to the economic issues and completely forego training.”

customers and illustrate a “seemingly unjustifiable overcommitment to some form of quality, reliability, or service.”²⁸ Can this concept be related to police work? And more specifically, can this concept be related to police training?

Perhaps it can. The “customer” in law enforcement would hopefully be interpreted to be the citizenry. Ultimately, the citizen is also the customer of police training, since the goal is to provide better police service. However, in order to ensure that the service is improved, officer conduct must conform to the prescribed norm. The point is that there must be a strong belief within the agency for providing the customer/officer with the highest quality training, which must be subscribed to by everyone. In designing a training system for implementation after a financial crisis, administrators must use the concepts of the “excellent companies” and recognize the trainee as the “customer.”²⁹

The implementation of such a training system may require that traditional methods be reevaluated. Innovation is another mark of the excellent companies.³⁰ If the officer is the customer, then why is he trained only on the terms and turf of the trainer? If an officer is working the graveyard shift, is it not appropriate that he be trained on that shift rather than be forced to adjust to days? And in distressed economic times, why should the training function only occur on weekdays? Certainly, if the choice is to pay overtime to 1 instructor or to 25 officers, the decision is easy — open the academy or unit on weekends so that more training can occur in less time. What’s wrong with training officers at the precinct level during slack times? If the volume of

calls increase, then the class can be dismissed until the next slack period.

Law enforcement could take a lesson in innovation from the Richmond, IN, Police Department. They ran an 80-member police department for 1 week with the only supervisors being the chief and two majors. Where were the others? They were at inservice training learning about tactical operations!³¹

In summary, police agencies face a challenge in economic downturns. That challenge is to do more with less. This will require determining whether perceived problems can be solved by training or other methods. This will also require an assessment of training needs to prevent the waste of resources. At the same time, it is possible to inspire the agency with a new dedication to the importance of training. The use of techniques other than traditional classroom training can assist in providing information to the employee and can actually improve the function. The point is that the administrator and agency can ill afford to surrender to the economic issues and completely forego training. This should be looked upon as an opportunity to illustrate to the governing body the dedication of law enforcement to the training process. It should result in a new emphasis within the agency to create a training system that is responsive not only to the officer but to the citizens of the jurisdiction as well.

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Footnotes

¹Frank Douglas and Tom Campbell, “Police Manpower Problem Bigger Than a Single Vote,” *Richmond Times-Dispatch*, February 9, 1986.

²N. Scott Vance and Bruce Alpert, “City Reduces Police Hiring,” *Detroit News*, February 11, 1987.

³James Strong and Ann Marie Lipinski, “City Lays It on the Line-7600 Police Officers, Firefighters Face Ax,” *Chicago Tribune*, September 20, 1986.

⁴For example, the Tulsa, OK, Police Department, in policy and procedure 31-101F, mandates that yearly

firearms training will take place no later than September of each year. Since this training requires 25 officers per day to be effective, it would dangerously deplete the field strength to schedule academic inservice during this period. Likewise, during the traditional vacation months, manpower is low and inservice is all but impossible. This leaves, realistically, a “window of opportunity” to train approximately 650 officers from January (after firearms training and the holidays) to the end of May. As can easily be calculated, if only 25 officers per week are given 40 hours of instruction, this would not allow all of the officers to receive training.

⁵Dr. M. Brent Halverson and John C. LeDoux, “Designing Inservice Training: A Better Approach,” *FBI Law Enforcement Bulletin*, May 1979, p. 18.

⁶*Ibid.*

⁷Edward J. Tully, “The Training Director,” *FBI Law Enforcement Bulletin*, July 1979, p. 1.

⁸*Ibid.*

⁹Charles P. Smith, et al., *Role Performance and Criminal Justice System*, vol. 1, summary (Cincinnati OH: Anderson Publishing Co., 1976), p. 137.

¹⁰Cal. Penal Code, sec. 13500, et seq.

¹¹Michael L. Ciminelli, “A Positive, Procedural Approach to Legal Training for Police Officers,” *Police Chief*, November 1986, p. 28.

¹²Neal E. Trautman, *Law Enforcement Training: A Comprehensive Guide for the Development of Effective Law Enforcement Training Programs* (Springfield IL: Thomas Publishing Co., 1986), p. 6.

¹³*Ibid.*

¹⁴Commission on Accreditation for Law Enforcement, Inc., *Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program*, 1983.

¹⁵Supra note 7.

¹⁶Alvin Toffler, *Future Shock* (New York: Random House, 1970), p. 3.

¹⁷James H. Auten, “Determining Training Needs,” in *Criminal Justice Group Training*, eds. Michael E. O’Neill and Kai R. Martensen (LaJolla CA: University Associates, 1975), pp. 96-99.

¹⁸*Ibid.*, pp. 99-100.

¹⁹*Ibid.*, p. 100.

²⁰Dave Francis and Mike Woodcock, *People at Work: A Practical Guide to Organizational Change* (LaJolla, CA: University Associates, 1975).

²¹*Ibid.*, p. 3.

²²39 C.R.L. 4117.

²³Gene Stephens and William L. Tafoya, “Crime and Justice: Taking a Futuristic Approach,” *The Futurist*, February 1985, p. 18.

²⁴Supra note 12, p. 167.

²⁵Thomas J. Peters and Robert H. Waterman, Jr., *In Search of Excellence* (New York: Harper and Row, 1982), p. 235.

²⁶*Ibid.*, pp. 236-237.

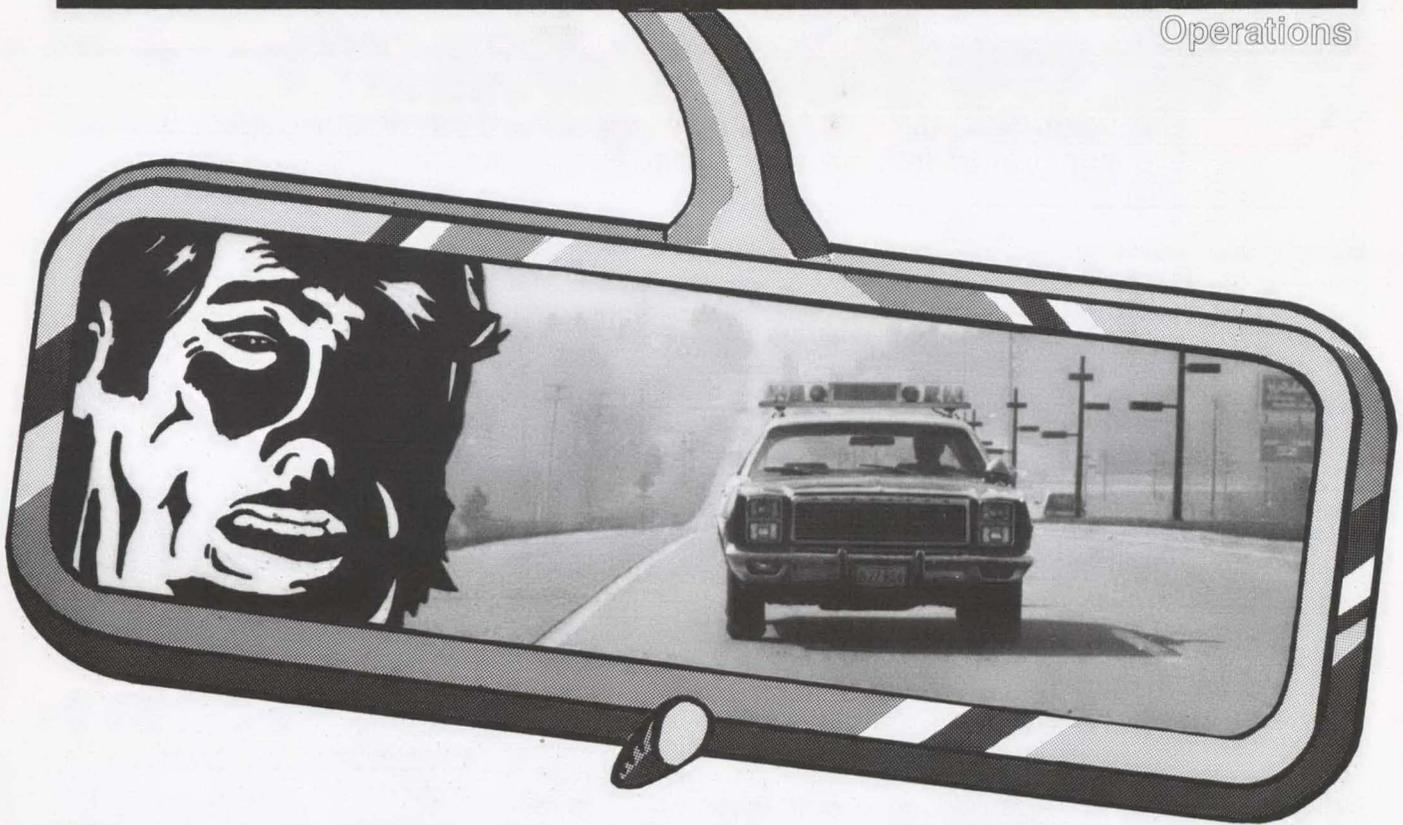
²⁷*Ibid.*, p. 157.

²⁸Tom Peters and Nancy Austin, *A Passion for Excellence* (New York: Random House, 1985), pp. 156-157.

²⁹Dilip K. Das, “What Can the Police Learn from the Excellent Companies?” *Journal of Criminal Justice*, April 13, 1985, p. 84.

³⁰Supra note 25, pp. 115-192.

³¹John W. Bowman, “Tactical Training for Supervisors,” *Law and Order*, March 1987, p. 37.



Pursuit Driving

“Conditioning, attitude, and training each play an important role in bringing a pursuit to a conclusion without injury to the officer, the suspect, or the public.”

By
SGT. LES ABBOTT

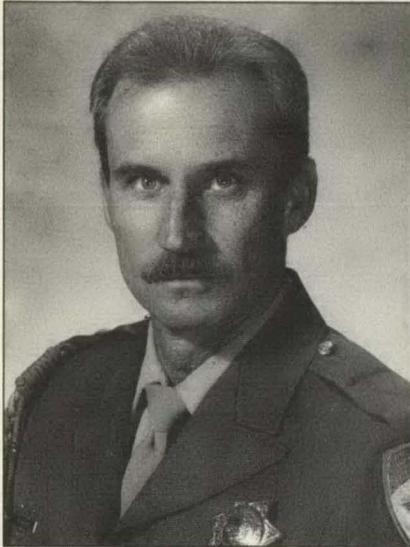
*Instructor
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Each year, the California Highway Patrol (CHP) makes over 4 million vehicle enforcement stops. This figure includes 139,000 arrests for driving while under the influence of alcohol and/or drugs and over 13,000 arrests for felonies ranging from possession of stolen property to homicide. A significant number of these vehicle stops escalate into a pursuit situation. How an officer responds during a pursuit can mean the difference between life or death.

Vehicle pursuits are one of the many tasks performed by police officers nationwide. Unfortunately, the chase scenes depicted on television and in movie theaters are always exciting, spectacular, and entertaining. Although

actual police pursuits may also be exciting, all too often they end tragically, resulting in property damage, serious injury, or even death.

Why people attempt to evade arrest is a question not easily answered. However, in a pursuit study conducted by the CHP and published in 1983, it was determined that the most common event preceding a pursuit was an officer witnessing a vehicle code violation. To be more specific, of the 683 pursuits studied, 130, or 19 percent of the violators, attempted to flee to avoid being arrested for driving while under the influence. Other common reasons included avoiding a citation, fleeing in a stolen vehicle, and avoiding an arrest



Sergeant Abbott



J. E. Smith
Police Commissioner

for a penal code violation. Regardless of the reason for fleeing, once a driver commits a vehicle code violation or is involved in some other activity that justifies police intervention, an officer must decide whether to stop the violator. This is the first stage in a pursuit. The second stage is when the violator becomes aware of the officer's intention to pull the car over and he or she decides to evade arrest. The third and final stage is when the officer decides to pursue the violator. How an officer performs at each stage is critical to the success of the pursuit. Conditioning, attitude, and training each play an important role in bringing a pursuit to a conclusion without injury to the officer, the suspect, or the public.

Policy

Before discussing conditioning, attitude, and training, I would like to stress briefly the importance of a comprehensive written pursuit policy. Such a policy will enhance the officer's ability to make key judgment decisions during a pursuit. For example, an officer must make decisions about the performance capabilities of the vehicle, the type of roadway(s) involved, weather conditions, other traffic, the seriousness of the offense, and the risk involved in initiating or continuing a pursuit. As if this is not enough to consider, the officer must then refocus his or her attention to the termination point of the pursuit and make judgment decisions in taking the violator into custody. Any mistakes during the pursuit or ensuing stop can ultimately result in tragedy. What, then, should a pursuit policy contain?

First and foremost, a pursuit policy should be designed to assist the officer in his/her decisionmaking process, both before and during a pursuit. There are

several areas that should be addressed in a policy statement:

- Safety of the officer and the public,
- Who determines whether to continue or terminate the pursuit,
- The supervisor's role and responsibility,
- Forcible stops (ramming, roadblocks, etc.), and
- The use of firearms.

Once a pursuit policy has been developed and implemented, it should be reinforced through training and supervision. Pursuits should also be analyzed and recorded for data collection and identification of applicable training needs.

Conditioning

There are three factors to be analyzed after a pursuit: The driver, the vehicle, and the environment or roadway. In pursuit situations resulting in a collision, a deficiency in one or more of these three factors will always be found as the cause. The vehicle and roadway are normally known quantities and are not amenable to change by any immediate human control. The only truly flexible component is the driver. The driver alone can adjust to the vehicle's limitations and allow for the variables encountered on the roadway. The driver is also responsible for the successful integration of the operator-vehicle-roadway relationship and is the person who will suffer most of the consequences of failure. Therefore, in order to have the greatest impact on safety during pursuits, the driver must be conditioned to respond correctly. It is important to remember that proper conditioning is the result of attitude and training.

“Poor driver attitude contributes to more accidents than does lack of skill.”

Attitude

A driver can be taught to develop skills and coordination of mind and body. The eyes see, the brain transmits, and the body reacts; but good judgment comes from experience and a good attitude. Although experience comes with time on the job, proper and acceptable attitudes can be introduced during initial academy courses and reinforced through periodic training. This sets a catalyst for forming good judgment. Let's now examine driver attitude.

Poor driver attitude contributes to more accidents than does lack of skill. Attitude, for our purposes, is defined as the posture of a person showing his or her mental state or mood or a person's manner of acting, feeling, or thinking that shows his or her disposition. Taken one step further, the characteristics enumerated as being symptoms of poor driver attitude comprise that vague quality we call judgment. Judgment, as it pertains to driving, is the individual's ability to perceive hazards or dangers. The person who perceives and recognizes driving hazards far enough in advance to avoid an accident or loss of control is said to have good judgment.

In pursuit driving, attitude and judgment are inseparable. The following are some examples of poor driving attitude and how they can relate to pursuit driving:

- Overconfidence—People who take too much for granted. They are serenely confident they can control the vehicle under any circumstances. They fail to allow for mistakes or unpredictable actions on the part of other drivers.
- Pride—This characteristic overlaps with confidence. “I've

never had an accident.” There are people in cemeteries as a result of their first collision. Or, “I've never lost a pursuit.” Many pursuits are terminated as a result of a police car becoming involved in an accident.

- Experience—These are the officers who have been in police work for several years. There is very little they have not learned (or so they think.) Their time on the job is supposed to divinely see them through. There might not be an officer on the shift who wants to work with them because they are terrible drivers. Yet, their peers are afraid to tell them so, and the supervisor's comments are passed off as being over-critical. It is important to remember that experience develops bad habits as easily as good ones.
- Impatience—This is characterized by taking chances, getting into tight situations, taking shortcuts, and last-minute hard braking.
- Abuses the vehicle—This individual overworks the brakes, downshifts at high speeds, over revs the engine when starting or accelerating, bounces over curbs or railroad crossings without slowing down; then when a breakdown occurs, the officer complains vociferously that the car the department is buying is junk. Enforcement drivers never know when they may need to stretch the patrol car's performance to its maximum limits. Because the car is an

essential part of the officer's equipment, abusing it is unforgivable.

There are many more characteristics of poor driver attitude, but those listed above are some to which most enforcement drivers can relate. They are even more easily recognized during pursuit situations when the officer's full attention is devoted to apprehending the suspect. Fortunately, attitudes are not inborn or inherited, rather they are created, then they evolve and become reinforced through repetition.

The very nature of police work frequently subjects an officer to highly stressful situations and may be preceded by a period of relative inactivity. Although not a characteristic of driver attitude, stress can adversely affect the outcome of a pursuit.

While a small amount of stress can cause individuals to operate more efficiently, excess tension, such as that encountered during a pursuit, can hamper the ability to function normally. Stress causes an increase in blood pressure, the injection of adrenalin into the blood stream, and impaired breathing. These physiological changes can so alter the function of the nervous system that an individual may be incapable of intelligent action.

Frequently, a driver questioned after a pursuit accident is unable to recall any of the circumstances immediately preceding the collision. This is an indication the driver has reached his or her “stress threshold.” There are different stress thresholds for each individual, which can be described as the point where physiological reactions so impair the functioning of the senses that the driver becomes unaware of the surroundings.

“An effective driver training program must begin with basic skill development and build to the more complex techniques required during pursuit situations.”

Training

Police officers working in today's highly mobile society spend the majority of their work shift behind the wheel of a motor vehicle. With liability the way it is today, no longer can an officer be content on just "driving." The multitude of situations and conditions under which an officer operates a vehicle demands a well-trained individual. A driver training program stressing basic concepts is essential in order to meet these demands.

An effective driver training program must begin with basic skill development and build to the more complex techniques required during pursuit situations. There are five phases of training that should be considered essential when developing training for the police officer. In order of complexity, they are vehicle placement, defensive driving, skid control, performance driving, and pursuit/emergency response.

Vehicle Placement

A large percentage of accidents involving law enforcement officers occur while the vehicle is being operated at low speeds, such as in parking lots or while the car is being driven in reverse. Many of these accidents involve fixed or stationary objects. Some consideration as to the basic technique used to steer a vehicle can help minimize the potential of these low speed or vehicle placement accidents.

An awareness of terminology and concepts, such as rear wheel "cheat," front end swing, and braking and how they affect the operation of a vehicle, is extremely important. For example, rear wheel cheat is present anytime a vehicle is turned from a straight path. While driving forward and turning to the left, the rear tires will follow a path to

the left of the path traveled by the front tires. When turning right, the rear tires will track to the right of the front tires. In today's standard-size patrol car, the path of the rear tires may be as much as 36 inches closer to the inside of the curve than the front tires. The severity of the rear wheel cheat is in direct proportion to the degree of turn attempted and the vehicle's wheelbase. Most drivers have observed a long truck or bus swing wide around a corner to avoid jumping the curb, but how many drivers are aware that this same phenomenon affects their own vehicle?

Defensive Driving

This means the continual exercise of good judgment and good driving habits, together with the adoption of an attitude that *you* are the only careful driver and all others are reckless and cannot be depended upon to drive properly and safely. A good defensive driver will always be alert to an unexpected action on the part of another motorist and will be prepared to take preventive action.

Skid Control

The goal of this phase of training is to control a skid should the operating parameters of the vehicle be exceeded. In order to teach the driver to control a skid, it is necessary to place the driver in a potential loss of control situation. Emphasis should be placed upon anticipation and recognition of a potential loss of control.

Performance Driving Techniques

A good definition of performance driving might be a driver's ability to use fully the performance potential of the vehicle. Limited skill is needed to floor the throttle and drive in a straight line. A discussion of performance driving

techniques is a discussion of proper cornering techniques. The two basic considerations when cornering a vehicle are entry speed and roadway position, with speed being the most critical factor.

A turn should always be entered at a speed that is less than maximum. For most drivers, this is a difficult point to learn. The fact that a driver manages to keep the car on the pavement through a turn does not mean the speed was less than maximum. Less than maximum means the driver can position the vehicle wherever desired on the roadway while negotiating the curve. At maximum speed, the vehicle will understeer and push wide as it goes through the turn. A driver will be unable to choose a route to use the full pavement surface effectively. Proper position will be impossible to attain at maximum speed, except for the most proficient and experienced driver; furthermore, it definitely is not the quickest or safest way through a turn.

Code 3 (Emergency Lights and Siren) Driving Techniques

Code 3 driving frequently demands split-second timing and instant reactions. Moves must be planned ahead so valuable moments won't be wasted in panic and indecision. Code 3 and pursuit runs are situations where the enforcement officer can apply the techniques of performance driving. Make time where it can be made safely. For example, on long, open straightways and clear, unobstructed intersections, use the performance potential of the vehicle. When confronted with hazardous areas or traffic congestion, slow down and even *stop if in doubt* as to what other drivers may do.

How fast should a car be driven on

a code 3 run? This will depend on a lot of variables and will ultimately be the decision of the individual officer. The best answer to this question is: You can't help anyone if you don't get there! Remember: The red light and siren only request the right-of-way. They don't grant it. When traveling code 3, keep in mind that the high-pitched sound of a siren is very directional. It travels in a straight line and will bounce off solid objects, such as a car trunk.

Finally, remember that it is easy to become personally caught up in the

heat of the chase when the adrenalin starts flowing. Catching the violator becomes a matter of pride. An officer's vision tunnels in on the violator to the exclusion of existing hazards. It takes a great deal of maturity to discontinue a pursuit when the hazards posed to innocent bystanders can't be justified. An officer should not be reprimanded for terminating a pursuit; however, disciplinary action is justifiable for officers exercising poor judgment in *continuing* a pursuit. Granted, when the violator runs, there is reasonable cause to pur-

sue, as it might be a stolen car or a fleeing felon. However, it frequently turns out to be only a frightened juvenile without a driver's license. The final question must be asked. Are the risks to the public and the officer associated with a pursuit worth the possible consequences? That question is one each officer must answer before initiating a pursuit or deciding if a pursuit should be terminated. These are critical decisions, because ultimately, the officer will be held accountable for the outcome.

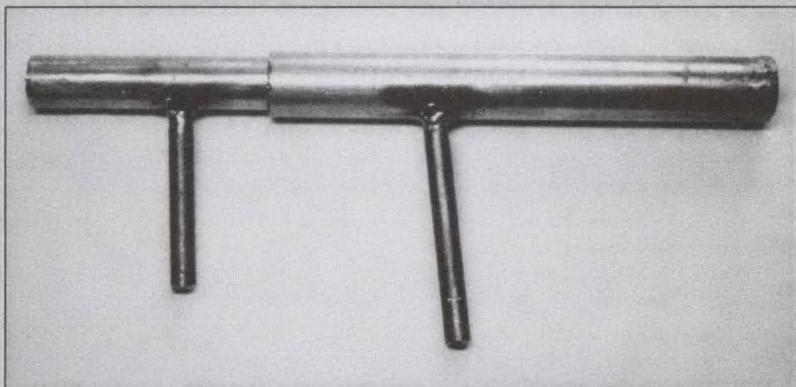
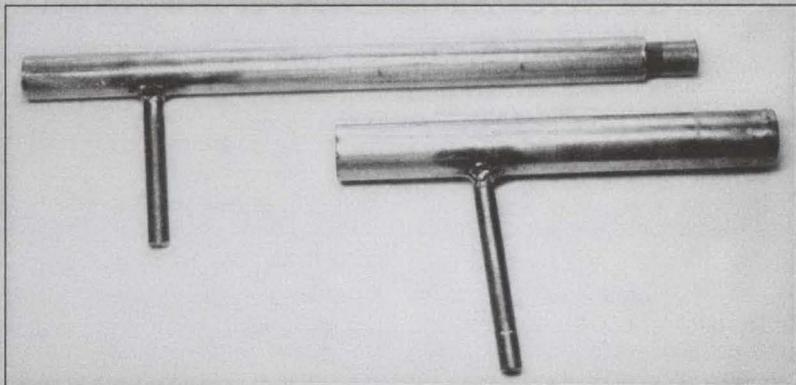
FBI

Slap-Fire Shotgun

This "slap-fire" shotgun was constructed by a local teenager, reported the Brunswick, OH, Police Department.

The weapon is constructed of two steel tubes of different diameters, allowing one tube to fit inside the other. The receiver is 10 inches long, while the thinner tube, the barrel, is 14½ inches long. Each tube is equipped with a hand-hold consisting of a metal rod welded at a 90-degree angle to the tube. The rear of the receiver tube has a welded cap. A small screw welded to the base of the cap acts as a firing pin.

The weapon fires a 12-gauge shotgun shell, held in place by the rim of the shell. The barrel tube is inserted into the receiver and forced back, bringing the firing pin into contact with the shell's primer. Only moderate force is required to fire the weapon, which is accurate up to 15 feet.



FBI National Academy

Attendance Trends From 1976-1987

“Who attends the National Academy is of interest to faculty and administrators in planning curricula and programs with the goal of appropriately enriching the National Academy experience.”

By

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and

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The FBI National Academy (FBINA) is an 11-week program designed to increase the knowledge and skills of law enforcement managers throughout the United States and selected foreign nations. Each year, approximately 800 to 1,000 officers attend one of four sessions at the National Academy. The FBINA offers a wide variety of courses in such disciplines as forensic science, law, education and communication arts, behavioral science, and management, as well as training in law enforcement arts, physical fitness, and firearms. Many of these courses are accredited by the University of Virginia, and students may earn

as many as 16 undergraduate credit hours or 9 graduate credit hours for successfully completing the program.

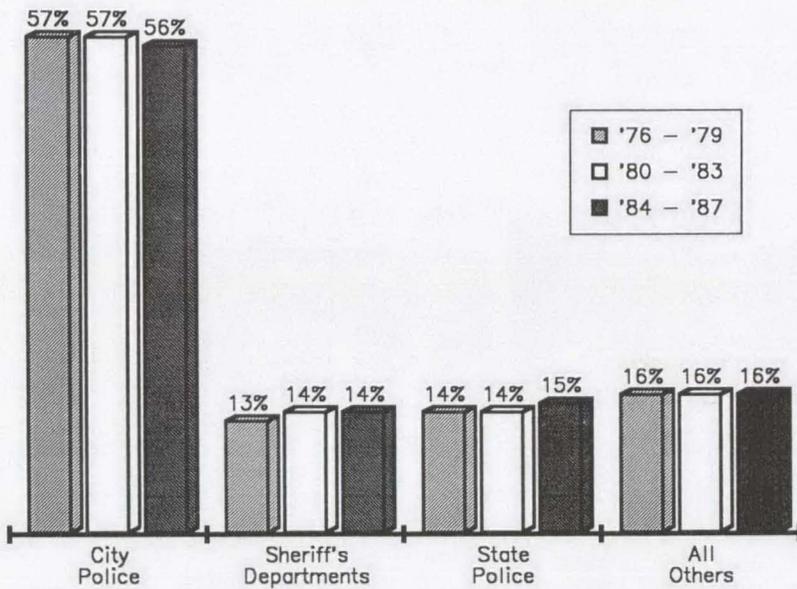
During each session of the FBINA, a survey is administered to obtain demographic information from the attendees. The survey requests information regarding agency type and size represented in the student body, as well as information concerning incentives which may be offered to officers obtaining college credits. Students also provide data regarding their age, organizational rank, years of experience, and level of education.

The purpose of this study is to examine changes in the various charac-

teristics of FBINA attendees and their agencies. These data may provide insight for police officers who are considering attending the FBINA or for police managers who are encouraging their officers to seek an appointment to the FBINA program.

Data are available for approximately 12 years, from April 1976 to December 1987, representing 46 sessions and almost 11,000 individuals. The 46 sessions were divided into three 4-year periods and aggregated within each period. Dividing the data in this manner enabled comparison of percentage differences from one time period to another.

Figure 1. Percent of Attendees by Agency Type.



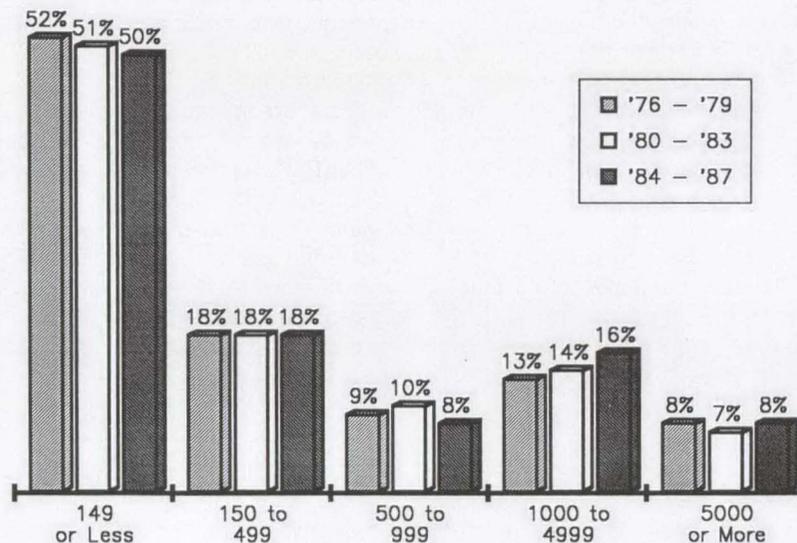
Agency Type

The types of agencies represented by the FBINA student body were categorized as city police departments/authorities, sheriffs' departments, State police/authorities, and others. (See fig. 1.) Representation of these four agency types remained fairly constant over time. In all three time periods, city police were the most highly represented by those attending the FBINA, with well over one-half of the students representing this type of agency. Sheriff's departments and State police agencies were represented in about equal numbers in each time period. These three agency types provided some 85 percent of the students who attended the FBINA between 1976 and 1987.

Agency Size

Agencies were grouped by size as under 150, 150-499, 500-999, 1000-4999, and 5000 or more staff members. (See fig. 2.) These five agency-size groups showed very little fluctuation in representation over time. The largest increase in representation was for agencies employing a staff of 1000-4999; this group increased from 13 percent of the student body in the first time period to 16 percent in the third time period. For all three periods, the highest percent of attendees were from those agencies employing less than 150 personnel; they represented about one-half of the FBINA student body.

Figure 2. Percent of Attendees by Agency Size.



Career Incentives

Students were asked if their agencies provide incentives for the successful completion of college credit courses. The response choices provided were no incentives, complete reimbursement for college credits earned, partial reimbursement for college credits earned,

“The majority of students who attended the National Academy were from city police departments or authorities and from agencies with under 150 staff.”

promotional opportunities, or salary increases for courses completed. Students were also asked if their agencies provide released time from duties to attend college classes.

Increasing numbers of students participating in the FBINA program reported that their agencies were offering repayment incentives for courses taken, but fewer students reported that incentives such as released time to attend classes during duty hours, salary increases, or promotional opportunities were being offered. (See fig. 3.) The largest increase was for partial reimbursement; 29 percent of the students reported that their agencies provide this incentive in the first time period compared to 37 percent in the most recent time period. Students reporting that total reimbursement was offered showed a slight increase from 18 percent to 20 percent. All the remaining incentives, time off to attend classes, salary increases, and promotion opportunities for college credits earned, showed a decrease ranging from 2 percent to 5 percent over the three time periods.

A large number of students reported that their agencies offer no incentives for formal education. The percent of students reporting no incentives ranged from 43 percent to 47 percent and showed no consistent change over time.

Organizational Rank

Information was collected for 16 positions or ranks of law enforcement officers attending the FBINA; these were reduced to the following categories: Senior executive officers (including chief of police, assistant chief, deputy chief, sheriff, and undersheriff), captains, lieutenants, sergeants, and others. (See fig. 4.) The number of

Figure 3. Percent of Attendees by Career Incentive.

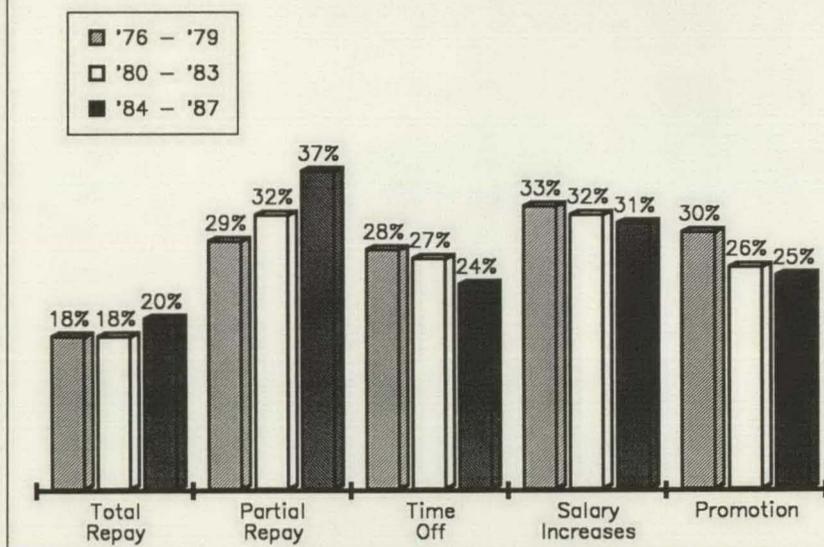


Figure 4. Percent of Attendees by Organizational Rank.

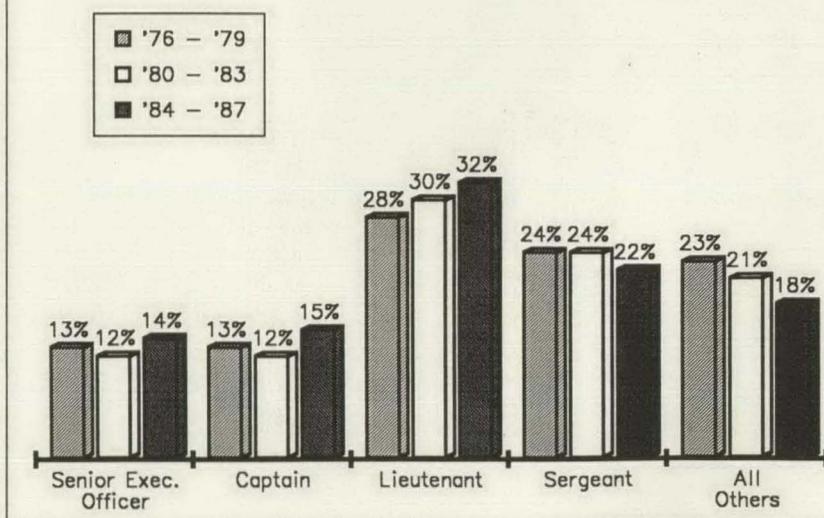


Figure 5. Percent of Attendees by Student Age.

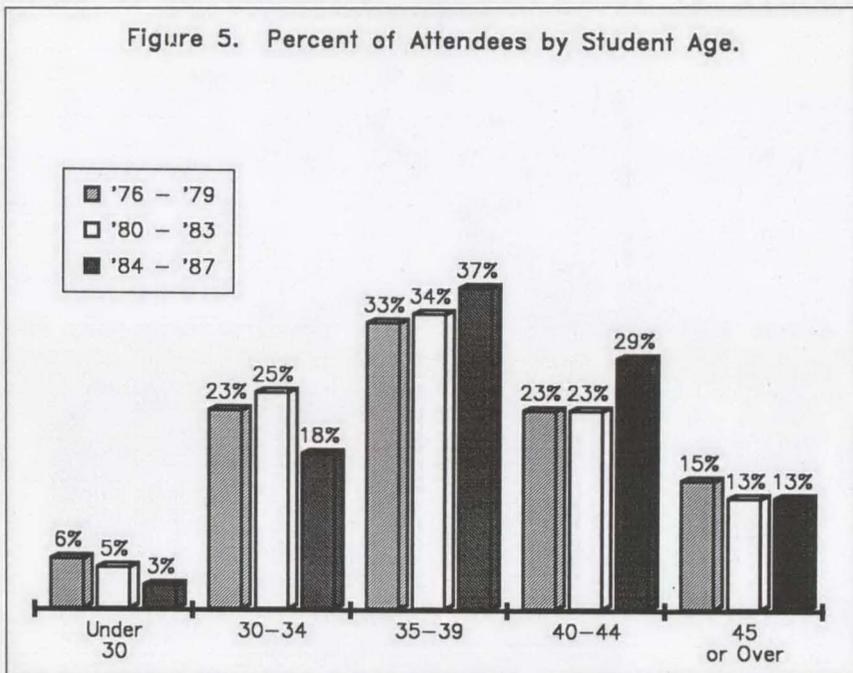
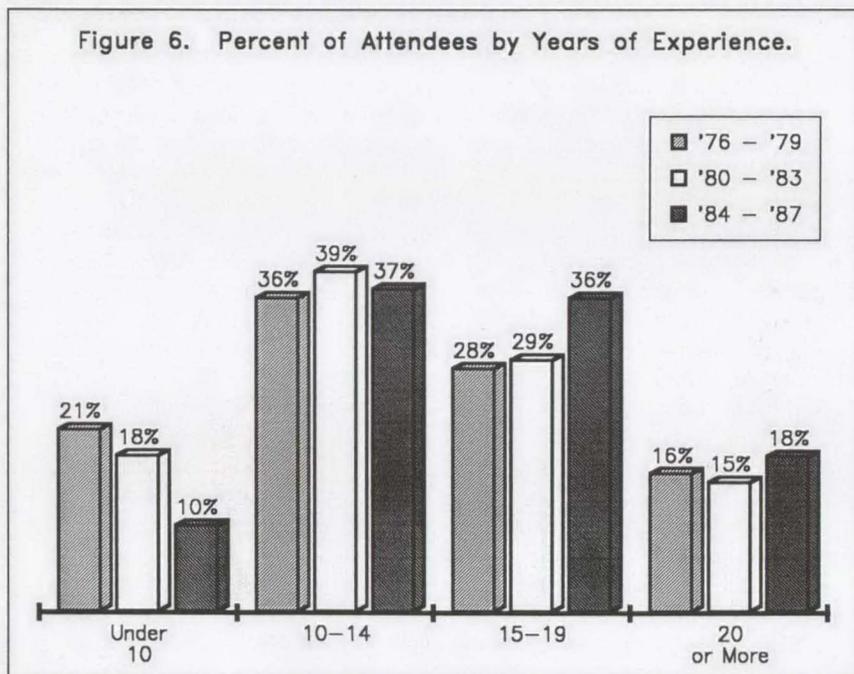


Figure 6. Percent of Attendees by Years of Experience.



higher-ranking officers, i.e., senior executive officers, captains, and lieutenants, generally increased in representation from the first to the third time period, with increases ranging from 1 percent to 4 percent. Representation in the remaining categories, i.e., sergeants and others, declined, with the decrease ranging from 2 percent to 5 percent.

Student Age

The average (mean) age of students, 38 years, has remained stable across the three time periods; however, when different age groups were examined, changes over time were apparent. (See fig. 5.) For the three time periods, representation in the student body decreased for both younger and older officers, i.e., officers under 35 and over 44. The largest decrease was for officers 30-34 years old; this group declined by 5 percent, from 23 percent of the student body for the first time period to 18 percent for the third time period. On the other hand, the two middle groups, ages 35-39 and 40-44, increased in representation by 10 percent.

Years of Experience

The average (mean) number of years of experience for officers attending the FBINA increased slightly over the three time periods (mean years = 14, 14, 15). A different pattern emerged when years of experience were grouped into categories—under 10 years, 10-14 years, 15-19 years, and 20 or more years. (See fig. 6.) For those officers with fewer than 10 years of experience, there was an 11-percent decrease in representation, from 21 percent in the first time period to 10 percent in the last time period. The largest

“... students are arriving at the Academy better prepared academically for their studies than they were 12 years ago.”

increase was for those officers with 15-19 years of experience; this group increased 9 percent, from 28 percent in the first time period to 36 percent in the third time period.

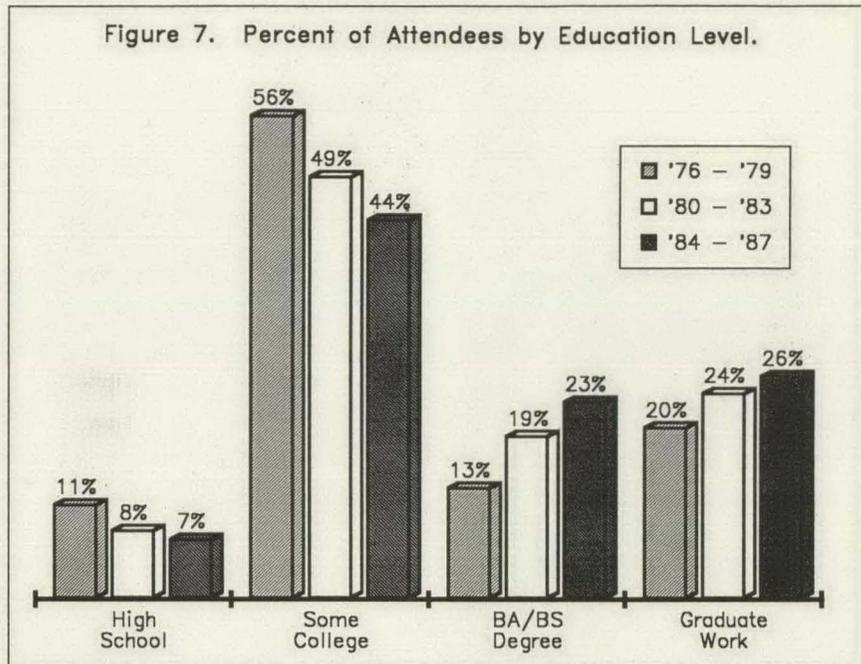
Education Level

The education levels of FBINA students were grouped as high school, some college (including working toward an associate or bachelor's degree, or holding an associate degree), B.A./B.S. degree, and graduate work (including work toward master's, doctorate, or law degrees, or holding these degrees.) The percent of students with a 4-year college degree or beyond has increased substantially over the three time periods. (See fig. 7.) There was a 10-percent increase for students with a B.A./B.S. degree and a 6-percent increase for those students working toward or completing advanced degrees. Conversely, those students who had undergraduate course credits but had not attained a B.A./B.S. degree decreased by 12 percent from the first to the third time period. Those students who had no formal studies beyond high school decreased by 4 percent over the three time periods and represented a small percentage of the student body.

Years Since College Attendance

Students were asked when they last attended college for credit—within the last year, within the last 2 years, within the last 5 years, and over 5 years. The response rate for this question ranged from 76 percent to 78 percent compared to the other survey questions where the response rate ranged from 96 percent to 99 percent. Because the 76-78 percent response rate is minimally acceptable by survey standards, some caution should be used in generalizing the results to all National Academy students.

Figure 7. Percent of Attendees by Education Level.



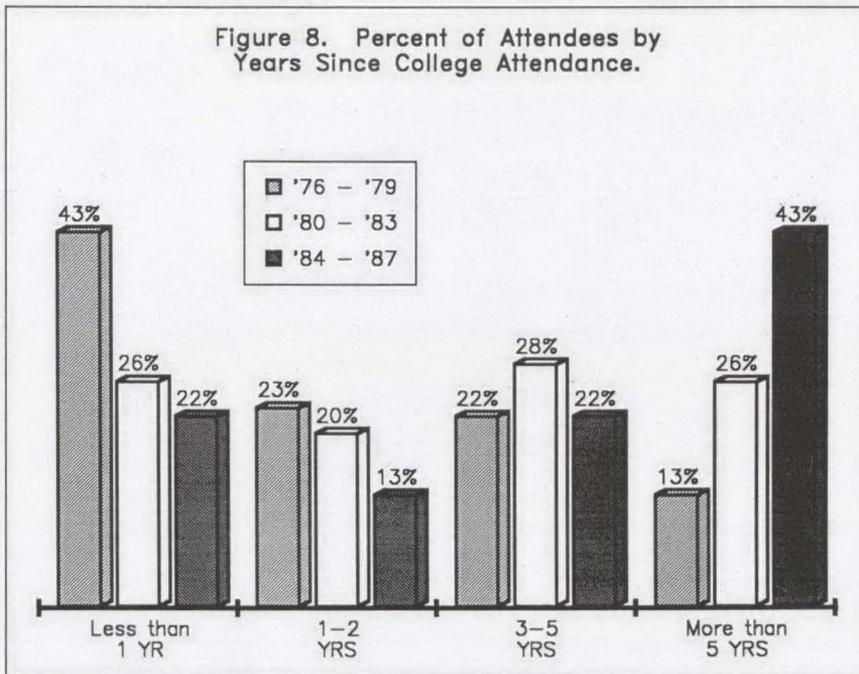
For the three periods, the length of time between FBINA students' last enrollment in accredited college courses and their attendance at the National Academy had increased substantially. (See fig. 8.) The percentage of students who reported taking courses for credit within 1 year prior to FBINA attendance decreased from 43 percent in the first time period to 22 percent in the third time period. Those in the 1- to 2-year group also decreased from 23 percent to 13 percent. Further, those students who had not taken college courses for credit in more than 5 years increased from 13 percent in the first time period to 43 percent in the third time period.

Discussion

The various characteristics of agencies and officers who participated in the FBINA program show different trends over the past 12 years. Of the

agency characteristics examined, the representation of students from the different types and sizes of agencies has remained fairly constant over the three time periods covered in this study. The majority of students who attended the National Academy were from city police departments or authorities and from agencies with under 150 staff. However, career incentives provided by the agencies to encourage their officers to continue their formal education changed over the past 12 years. Partial reimbursement for courses taken replaced salary increases as the most prevalent career incentive over the three time periods; students who reported their agency offered partial reimbursement showed an 8-percent increase from the earliest time period to the last time period. Released time, salary increases, and promotional opportunities as incentives for formal ed-

Figure 8. Percent of Attendees by Years Since College Attendance.



ucation showed a combined decrease of 11 percent, as reported by students. This may reflect increased budget restraints experienced by many law enforcement agencies.¹

Various student characteristics have also changed over the past 12 years. Agencies sent slightly more high-ranking officers and slightly fewer low-ranking officers to the most recent FBINA sessions. Substantially more officers aged 35 to 44 attended the more recent FBINA sessions. Agencies also sent officers with more experience; there was a marked decrease in the number of officers with less than 10 years of experience who attended the most recent FBINA sessions.

One of the trends in law enforcement has been for agencies to encourage, or require, advanced degrees for their officers.² This trend appears to be

reflected in the student body; students are arriving at the Academy better prepared academically for their studies than they were 12 years ago. Almost half of the National Academy students had an undergraduate degree or higher, increasing from 33 percent of the student body for the first time period to 49 percent for the third time period. The percent of students having less than a bachelor's degree has decreased from 67 percent in the first time period to 51 percent in the third time period.

Interestingly enough, however, students who attended the National Academy more recently had been away from the classroom longer than students who attended earlier sessions. Forty-three percent of the students had not taken a course in over 5 years in the last time period compared to 13 percent in the first time period. One explanation

may be that officers are obtaining higher levels of education prior to beginning their law enforcement careers. Another explanation may be that officers are entering law enforcement prior to obtaining degrees but are continuing their education and obtaining a degree at an earlier career stage.

The preceding discussion of trends in the FBINA profile data should be viewed with some caution. While the trends exist for this 12-year time period, generalizing the continuation of the trends for the future is not warranted. For example, it cannot be assumed that in the next 12 years, the number of students with undergraduate degrees will show an additional 15 percent increase from 49 percent to 65 percent of the students.

Conclusion

Who attends the National Academy is of interest to faculty and administrators in planning curricula and programs with the goal of appropriately enriching the National Academy experience. Further, this article should assure prospective students that they will find colleagues with similar backgrounds at the National Academy. At the same time, they will be challenged to broaden their perceptions through exposure to a wide diversity of law enforcement professionals.

FBI

Footnotes

¹H.J. Miran, et. al., *Managing the Pressures of Inflation in Criminal Justice*, National Institute of Justice, Washington, DC, 1979; L.D. Stellwagen and K.A. Wylie, *Strategies for Supplementing the Police Budget*, National Institute of Justice, Washington, DC, 1985.

²J.L. Chronister, et. al., *A Study of Factors Influencing the Continuing Education of Law Enforcement Officers*, Federal Bureau of Investigation, Washington, DC, 1982; International City Management Association, *Baseline Data Report*, "Police Personnel Practices," Washington, DC, January 1983; J. LeDoux, et. al., "Higher Education for Law Enforcement: Half a Century of Growth," *The Police Chief*, vol. 51, No. 4, April 1984; Stellwagen and Wylie, *supra* note 1.

Police Recruitment Through Strategic Marketing Planning

"The police executive can increase the rate of successful recruitment by applying standard marketing strategy to recruitment efforts."

By
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*Police Department
East Hartford, CT*

How do the majority of police departments recruit personnel? As a general rule, police departments advertise in newspapers, give a series of tests, and then hope that this filtering process selects the best (and eliminates the potential problem) employee. Is this adequate when choosing employees to fill one of the most stressful and demanding occupations in our culture? Does this type of overall recruitment effort reach those segments of the population who we want to encourage to enter the law enforcement profession?

Experienced police administrators know that all too often, the testing procedure alone does not eliminate all problem employees. In many instances, tests are not scheduled often enough to prevent having to select the applicants who scarcely advanced through the testing system.

Assuming that budgeting problems inherent in improved psychological testing, polygraph examinations, and other components of the typical applicant testing procedure are not going to be alleviated, how can a police administrator improve on the recruitment procedure so that he or she has available a large contingent of qualified appli-

cants? This article explains how the police executive can best take advantage of the testing process currently used by the department and apply a standard marketing methodology known as "The Strategic Marketing Planning Process" to the recruitment efforts. It will define the procedure and show how this program can be applied to police recruitment.

Successful marketing, like all competent management mainstays, cannot stand alone. Its planning must be a result of a competent overall management system. The primary components of any capable management technique, and therefore prerequisite to successful marketing in recruitment, are accurate identification of a mission and strategic planning.

The Organization's Mission

Any organization, whether motivated by profit or by public safety interests, must have a clear understanding and routine review of its mission. A mission, as defined by marketers, is "a human collectivity that is structured to perform a specific mission through the



Lieutenant Breen



George F. Dayton
Chief of Police

use of largely rational means."¹ With regard to the law enforcement profession, "Establishing, and routinely updating, goals and objectives of the agency and each component helps to ensure direction and unity of purpose and serves as a basis for measuring progress."² Whether in the private sector or law enforcement, a capable strategic marketing planning process can only be the result of overall competent management, which can only be accomplished through specific mission identification.

Peter Drucker, perhaps the most widely read authority in the management discipline, saw that the potential of an organization becoming confused about its mission is not uncommon. He suggests that an organization periodically needs to ask, "What is our business? Who is the customer? What is of value to the customer? What will our business be? and What should our business be?"³ The examination of an organization's activities relative to its overall goal or mission is forced by asking these questions. These queries are a soul-searching and time-consuming process, but are just as important to the police profession as they are to private sector, profit-motivated organizations. Likewise, in either case, determining if organizational objectives are realistic necessitates analyzing the external environment and assessing the organization's strengths and weaknesses.

Strategic Planning

For a profit-making organization attempting to reach customers, it must be adept in planning how the organization will have to change to accommodate future modifications in its mission and/or

market. Only then can it become proficient in marketing, communications, and advertising planning. Each separate procedure can only be enacted following the successful completion of the preceding stage.

Likewise, in police recruiting, the police organization must first be proficient in strategic planning. The organization must know what type of applicant it wants to recruit. When possible, this conclusion should be based on past measurements that indicate which type of recruit has traditionally been most successful in helping the organization meet its goals or other external factors, such as the recognized need for increased minority representation. Only when the police agency recognizes where to target its recruitment efforts can it develop a successful recruitment marketing strategy. The key to successful marketing, however, does not stop with the systematic identification of desirable applicants. To communicate effectively to these specific applicants, the police organization must next determine what these types of applicants want from a prospective employer.

This marketing mission seems straightforward enough for a profit-making organization. If addressed correctly, specific customer groups and their needs should be identified by virtue of objective research. The organization should then target these customer groups with promotions designed to meet their specific needs. Similarly, in a marketing mission for a law enforcement agency, the police recruiter must understand that he or she is marketing a product (the department) to potential customers (desirable job applicants).

“The primary components of any capable management technique, and therefore prerequisite to successful marketing in recruitment, are accurate identification of a mission and strategic planning.”

Research Rather Than Assumptions

In deciding what components are common in quality personnel, the recruiter should minimize assumptions, and to the greatest degree possible, base any judgments on research. The contemporary police recruiter cannot assume what type of applicant will benefit the agency, just as the private sector marketer cannot afford to assume who the best customers are. If competent productivity and evaluative measurements are in place in the organization, the police recruiter may be able to identify commonalities of successful police officers and recruit accordingly. This research is problematic. If the recruiter is from a small- or medium-sized agency, where a limited database could lead to erroneous results, he or she may be able to draw conclusions from larger organizations or by combining the information from several small agencies.

For purposes of illustration, assume that a recruiter's specific research into quality personnel indicates that college education is a advantageous component of the police recruit's resumé. This notion has been stressed in a national review of police in the late 1960's and formidably funded by the government throughout the 1970's.⁵ Also assume that research supports the common notion that applicants with prior military experience and a few years of other life experience, bringing the age of the applicant to at least 26, tend to be more successful than those without these factors.

Successful Recruitment

The recruiter must recognize that like the marketplace for products, he or she is competing with other occupations, and other police departments, to acquire these quality personnel. In the private sector, marketers manipulate

price, place, product, and promotion to position their company in the marketplace. The police recruiter must do likewise. "Price," as applied here, includes promoting the salary, work schedule, and fringe benefits acquired with the job. "Place" refers to promoting the community itself as a good place for police personnel to work. Just as a product name communicates many intangibles in a private sector marketplace, "product" in this realm refers to stressing all the intangible qualities of working in a particular organization, e.g., the pride and history of the agency.

When thinking in terms of "promotion," the police recruiter must again refer to the research that defined commonalities shared by successful patrol officers. In the given example, the recruiter desires a large portion of applicants with a college education, prior military experience, and at least 26 years of age. Therefore, the recruiter may want to specifically promote the department within college campuses and military organizations, while at the same time asking what these "customers" want. Simply assuming to know what a specifically targeted group or type of applicant finds most attractive about law enforcement, and failing to arrive at these conclusions without research, can be the same fatal flaw for police recruiting as it frequently is in the sale of products. Research identifying different desirable aspects of the department by previously identified customer groups is required.

In continuing the illustration, assume that by surveying these customer groups, the recruiter discovers that the greatest portion of prior military personnel find accessibility of overtime as the most important allurements and that the greatest portion of college students list payment for continued education and

the ability to work in a variety of assignments as most important. With these data, the recruiter can accent different characteristics of working in the agency to the desired applicant groups, just as private sector marketers emphasize different values of their product to different types of customers. According to the example, promotion brochures left at neighboring military reserve units should stress the availability of overtime, while brochures left on college campuses should underscore the continuing education program and the variety of assignments within the agency.

Thus, market positioning is simply differentiating yourself from the competition.⁶ The "competition" in the private sector is easily recognizable; it is other companies selling similar products or service. In the given example, however, the competition is other law enforcement agencies and occupations that are successfully recruiting your targeted type of applicant. Manipulation of the marketing mix (perceptions of price, product, place, and promotion), can create a favorable image of a department's position in the marketplace relative to the competition. Once a department's position in the marketplace of quality college student applicants is visualized, relative to other police departments, the police recruiter can best promote the department's assets. As an example, two employers may offer approximately the same annual salary, but only one can provide a variety of assignments. On the other hand, while one department can provide a wide variety of assignments, it may not offer an acceptable salary.

Appraise Recruitment Efforts

Like any other management technique, the job is not finished until evaluations have been completed.

Quantifiable recruitment goals, identifying specific portions of targeted applicant types, should be set and used as performance benchmarks to determine the success of specific tactics and implementation of marketing recruitment efforts. Predetermined measurements serve as a gauge to evaluate a department's efforts. These goals will also be critical in future strategic planning, modifying strategy due to unsatisfactory results, or a modification in the primary mission.

Conclusion

The police executive can increase the rate of successful recruitment by applying standard marketing strategy to recruitment efforts. The strategic marketing planning process, as applied to police recruitment, will result in an increased portion of the pool of applicants possessing common characteristics that traditionally are shared by successful police officers in the community. Undoubtedly, many departments will continue to hire from a group of applicants who simply survived the screening process. In the long term, however, the most successful police organizations will decide on the cost effectiveness of applying a marketing strategy that will result in choosing from an aggregation of applicants whose commonalities have traditionally been shared by the best personnel in their organizations.

FBI

Footnotes

¹Alan R. Andreasen and Philip Kotler, *Strategic Marketing for Nonprofit Organizations* (New York: Prentice-Hall Inc., 1987), p. 162.

²*Standards for Law Enforcement Agencies*, The Commission on Accreditation for Law Enforcement Agencies, April 1984, p. 1-1.

³Supra note 1, p. 162.

⁴Ibid.

⁵"The Challenge of Crime in a Free Society," President's Commission of Law Enforcement and Administration of Justice, February 1967, pp. 109-110.

⁶Margery S. Steinberg, The University of Hartford, lecture on marketing, December 12, 1987.

Book Review

Rape Investigation: A Multidisciplinary Approach, edited by Robert R. Hazelwood and Ann Wolbert Burgess, published by Elsevier Science Publishing Co., 52 Vanderbilt Ave., New York, NY, 10017, 1987, 367 pages, hardbound, \$34.95.

This book represents a collaborative effort of the law enforcement, medical, legal, and mental health communities to provide state-of-the-art information for those who deal with the crime of rape and its victims. The book is divided into four sections: Attitudes and Beliefs About Rape, Investigation of Rape, Medical Aspects of Rape Investigations, and Prosecution of Rape.

In the first section, myths and stereotypes surrounding rape are examined and dispensed with, as are false premises concerning police attitudes concerning the crime victims.

Section II provides in-depth discussions on the collection and preservation of evidence, criminal personality profiling, interviewing rape victims, child molestation, personality assessment, false allegations, and the stressful aspects of investigative work in these areas.

Section III orients the investigator to the conduct of the medical exami-

nation in rape and provides the rationale and intricacies of the examination.

Section IV deals with the prosecution of offenders and provides trial preparation and tactical information. Issues concerning identification, consent, and unpopular cases are discussed in detail.

Over the years, many books about rape have been published, most of which have dealt with narrowly defined aspects of the crime, the offender, or the victim. This book incorporates several aspects into one volume and does so in a manner which proves to be interesting, educational, and practical. It has a comprehensive index which easily allows the reader to access topics ranging from acid phosphates to the voyeur.

While few victims will ever see or appreciate the dedication of this book, it summarizes the thrust of the work succinctly: "This book is dedicated to the victims of rape." It furnishes practical help to the investigator in terms of today's legalities, and most important, today's sensitivities. This book is "state of the art" for this type of investigation and its information should be available to every investigator.

SA Thomas J. Deakin, J.D.

Reasonable Expectation of Privacy Cases Revive Traditional Investigative Techniques

"... for an expectation of privacy to be reasonable, it must be an expectation that society as a whole is willing to recognize and protect."

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

The fourth amendment of the U.S. Constitution guarantees the right of the people to be secure from unreasonable searches and seizures.¹ Over the years, the U.S. Supreme Court has expended considerable time and energy in an effort to interpret the fourth amendment and to define its terms.² Specifically, the Court's efforts have often focused on the task of defining the term "search" as it is used in the amendment.³ Whether an action is a search under the fourth amendment is of particular importance to the Court and law enforcement officers, because only those actions which amount to a search fall within the parameters of the fourth amendment, and consequently, only those actions need be reasonable.

Prior to 1967, the Supreme Court defined the term "search" as a governmental trespass into a constitutionally protected area.⁴ Although this interpretation, when applied to fourth amendment cases, did little to protect individual privacy,⁵ it did lead to very effective and confident use of traditional investigative techniques. Law enforcement officers could use electronic surveillance,⁶ physical surveillance,⁷ or any other investigative technique they

chose without concern for the proscriptions of the fourth amendment as long as they steadfastly avoided any trespass into constitutionally protected areas such as homes and offices.

In 1967, however, the constitutionality of these investigative techniques was questioned when, in the case of *Katz v. United States*,⁸ the Supreme Court redefined the term "search." In *Katz*, the Court recognized that the fourth amendment was designed to protect people, not places,⁹ and concluded that the then current interpretation of the amendment did not accomplish this purpose. Therefore, the Court revised its definition of the term "search" in order to make the protections of the amendment more responsive to the needs of individual privacy. No longer would the application of the fourth amendment depend upon physical trespasses into certain protected areas.¹⁰ Rather, the Court in *Katz* held that the purpose of the amendment would be better satisfied if all governmental intrusions into areas where individuals legitimately expected privacy were required to be reasonable. The Court achieved this goal by redefining



Special Agent Kingston

the term "search" to include any governmental action which intrudes into an area where there is a reasonable expectation of privacy.¹¹

The concept of "reasonable expectation of privacy" was both new and confusing to law enforcement officers and lower courts alike. The clear distinction between those areas which were protected by the fourth amendment and those which were not no longer existed. Consequently, law enforcement officers never quite knew when their use of traditional investigative techniques would intrude into an area reasonably expected to be private, and thus, be considered a search. This confusion resulted in a loss of confidence in formerly acceptable investigative practices, such as warrantless entries into open fields and the inspection of discarded trash.

During the last few years, the Supreme Court has decided a number of cases which have eliminated some of the confusion that surrounds the concept of "reasonable expectation of privacy."¹² These cases have concluded that there is no reasonable expectation of privacy in certain areas, and therefore, these areas are not protected by the fourth amendment. The remainder of this article will focus on a few of these cases and illustrate how they have renewed confidence in certain law enforcement practices. In particular, law enforcement's use of warrantless entries into open fields, fly overs, dog sniffs, field tests, and inspections of discarded trash will be discussed.

Warrantless Entries Into Open Fields

A good example of the confusion that resulted from the decision in *Katz*

is demonstrated by the lower courts' conflicting interpretations of the open fields doctrine in the case of *Oliver v. United States*.¹³ In *Oliver*, two police officers, acting on a tip that marijuana was being grown on defendant's farm, went to the farm to investigate. While there, the officers drove onto defendant's property, and ignoring a "No Trespassing" sign and a locked gate, located a marijuana field approximately 1 mile from defendant's house. The marijuana was seized and defendant was arrested and indicted for manufacturing a controlled substance.

Prior to trial, defendant moved to suppress the marijuana seized from his property on the grounds that it was discovered as a result of an unreasonable, warrantless search. Applying its interpretation of *Katz*, the district court found that the entry into defendant's field was indeed a search.¹⁴ Because the search was conducted without a warrant, it was deemed unreasonable and the evidence was suppressed. The district court's conclusion that a search of defendant's property had occurred was based on its belief that defendant "had a reasonable expectation that the field would remain private because [defendant] 'had done all that could be expected of him to assert his privacy in the area of the farm that was searched.'"¹⁵

On review, the Sixth Circuit Court of Appeals¹⁶ applied its own interpretation of *Katz*, concluded that no search of defendant's property had occurred, and reversed the district court order suppressing the evidence. In reaching this conclusion, the court of appeals reasoned that the "human relations that create the need for privacy do not ordinarily take place"¹⁷ in open fields. Because there normally was no need for privacy in an open field, the court found

“... the subjective intent of an individual is not conclusive when determining the existence of a reasonable expectation of privacy.”

that it would be unreasonable to expect such privacy, and thus, open fields do not come within the protection of the fourth amendment.

The U.S. Supreme Court resolved the apparent conflict which existed in the lower courts when it reviewed the facts of *Oliver* and, agreeing with the court of appeals, determined that no search had occurred. The Supreme Court's determination resulted from a two-part analysis. First, the Court recognized that the fourth “[a]mendment does not protect the merely subjective expectation of privacy, but only those ‘expectation[s] that society is prepared to recognize as reasonable.’”¹⁸ In other words, for an expectation of privacy to be reasonable, it must be an expectation that society as a whole is willing to recognize and protect. The purely subjective intent of the individual is not controlling.¹⁹ In the second step of its analysis, the Court, speaking for society in general, stated that it was not willing to either recognize or protect an expectation of privacy in an open field. In reaching this conclusion, the Court first looked at the traditional “overriding respect for the sanctity of the home”²⁰ and compared it with the open fields as follows:

“[O]pen fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or surveillance. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, that occur in open fields. Moreover, as a practical matter these lands usually are accessible to the public and the police in ways that a home, an office, or commercial structure would not be.”²¹

On balance, the Supreme Court found open fields unworthy of protection under the fourth amendment.

In practice, the Supreme Court's determination that there is no reasonable expectation of privacy in open fields has effectively removed all physical entries into such areas from fourth amendment scrutiny. Law enforcement officers can now, when the situation dictates, confidently resume the practice²² of making warrantless entries into open fields without fear of contravening fourth amendment proscriptions. What must be remembered, however, is that the home and the curtilage, that is the area immediately surrounding and associated with the home,²³ remain under the protection of the fourth amendment. Consequently, any governmental entry into the home or curtilage must comply with fourth amendment standards by being conducted under the authority of a valid warrant or by falling into one of the recognized exceptions to the warrant requirement.

Fly Overs

Once the Supreme Court resolved the conflict over open fields, the next issue to arise involved the use of fly overs. If a law enforcement officer could physically intrude into an open field without concern for the proscriptions of the fourth amendment, it was obvious that he could fly over the same open field with a similar lack of concern. However, because the curtilage area that immediately surrounds the home is afforded protection under the amendment, the question of whether a law enforcement officer could make observations while flying over a curtilage remained unresolved until the Su-

preme Court decided the case of *California v. Ciraolo*.²⁴

In *Ciraolo*, police officers, responding to an anonymous tip that marijuana was being grown in defendant's backyard, drove to defendant's house where their attempt to see into the backyard was thwarted by a 6-foot outer fence and a 10-foot inner fence. Undaunted, the police officers hired a private plane and flew over defendant's house. From an altitude of 1,000 feet, the officers were able to identify,²⁵ with unaided vision, a large number of marijuana plants growing in defendant's yard. The plants were photographed with a standard 35mm camera.²⁶ Later, the anonymous tip, the officers' observations, and the photographs were used to secure a search warrant for defendant's property. During the execution of the warrant, 73 marijuana plants were seized.

Defendant pleaded guilty to a charge of cultivation of marijuana after the trial court denied his motion to suppress the evidence seized pursuant to the warrant. The California Court of Appeals,²⁷ however, reversed the trial court's denial of defendant's motion on the grounds that the “warrantless aerial observation of [defendant's] yard which led to the issuance of the warrant violated the Fourth Amendment.”²⁸

After the California Supreme Court denied prosecution's petition for review, the U.S. Supreme Court granted certiorari and reversed. The Supreme Court recognized that the defendant had clearly manifested a “subjective intent and desire to maintain privacy as to his unlawful agricultural pursuits.”²⁹ However, as the Court pointed out in *Oliver*, the subjective intent of an individual is not conclusive when determining the existence of a reasonable

expectation of privacy. Rather, it is equally important to consider whether the individual's subjective expectation is one that society is willing to protect. More precisely, the Court in *Ciraolo* was faced with the question of whether the "naked-eye observation of the curtilage by the police from an aircraft lawfully operating at an altitude of 1,000 feet"³⁰ infringed upon "the personal and societal values protected by the Fourth Amendment."³¹

Although accepting defendant's initial argument that the area observed was intimately linked to the home where, traditionally, "privacy expectations are most heightened,"³² the Court noted that the simple fact that an area is within the curtilage does not itself bar all police observation. On the contrary, the Court pointed out that the fourth amendment does not "require law enforcement officers to shield their eyes when passing by a home on public thoroughfares."³³ It would be unreasonable to expect absolute privacy, even in a curtilage area, if the area is partially open to view from a public vantage point. Because the observations in question were made in a physically nonintrusive manner by officers flying in navigable airspace which is available to the general public, the Court readily concluded that defendant's "expectation that his garden was protected from such observations [was] unreasonable and [was] not an expectation of privacy that society is prepared to honor."³⁴ Accordingly, the Court held that because there was no interference with a reasonable expectation of privacy, there was no "search" under the fourth amendment, and hence, no need for a warrant.

Some questions remained unanswered in the wake of *Ciraolo*. The observations at issue in *Ciraolo* were made by the naked eyes of law enforcement officers flying a fixed-wing aircraft in navigable airspace. If any of these factors were changed, would the reasoning in *Ciraolo* still control?

The question was partially resolved by the Supreme Court in the case of *Dow Chemical Company v. United States*.³⁵ In *Dow*, the Court approved the use of a sophisticated mapping camera³⁶ to improve observations made while flying over an industrial complex. Acknowledging that the camera was available to the general public, the Court held that "the mere fact that human vision is enhanced somewhat, at least to the degree here, does not give rise to constitutional problems."³⁷

Although some issues still remain unresolved,³⁸ it is quite apparent that as a result of *Ciraolo* and *Dow Chemical*, the warrantless fly over continues to be a viable law enforcement investigative technique.

Dog Sniffs

The use of specially trained dogs to detect the odors of explosives and narcotics is another example of a law enforcement practice that has caused some concern in the courts over the years since *Katz*. This concern was at least partially alleviated by the Supreme Court when it gratuitously addressed the issue of using specially trained dogs in the case of *United States v. Place*.³⁹

In *Place*, law enforcement officers at New York's LaGuardia Airport lawfully detained defendant on a reasonable suspicion that he was carrying a controlled substance.⁴⁰ When defendant refused to consent to a search of

his luggage, he was given the opportunity to accompany his luggage to the office of a Federal judge where a search warrant would be sought. Defendant declined the offer but requested and received a telephone number where the officers could be reached. After defendant left the premises, his luggage was taken to Kennedy Airport where it was subjected to a "sniff test" by a trained narcotics detection dog.⁴¹ In response to the dog's positive reaction to one of the bags, a warrant was secured. The subsequent search of the bag revealed a substantial quantity of cocaine. The defendant was later arrested and indicted for possession of cocaine with intent to deliver.

After the district court denied defendant's motion to suppress the evidence seized from his luggage,⁴² defendant entered a plea of guilty but reserved his right to appeal the denial of his suppression motion. On review, the U.S. Court of Appeals for the Second Circuit reversed on the grounds that the lengthy detention of defendant's luggage exceeded permissible limits and consequently amounted to a seizure in violation of the fourth amendment.⁴³ The U.S. Supreme Court affirmed.

Although resolution of the dispute in *Place* did not require the Court to address the use of "dog sniffs,"⁴⁴ a majority of the Court took the opportunity to clarify the issue.⁴⁵ The analysis used by the Court in *Place* was similar to the analysis discussed in previous cases. First, the Court looked and found that defendant had a subjective expectation of privacy in his luggage. Next, the Court considered whether the use of a specially trained dog to detect the odors

“... there is no reasonable expectation of privacy in certain areas, and therefore, these areas are not protected by the fourth amendment.”

emanating from the luggage violated any expectation of privacy that society was willing to protect. Of particular significance to the Court was the fact that the “dog sniff” did not require the opening of defendant’s luggage.⁴⁶ Furthermore, the Court made the following observations:

“[The ‘dog sniff’] does not expose noncontraband items that otherwise would remain hidden from public view, as does, for example, an officer’s rummaging through the contents of the luggage. Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited. This limited disclosure also ensures that the owner of the property is not subjected to the embarrassment and inconvenience entailed in less discriminate and more intrusive investigative methods.”⁴⁷

Obviously, what impressed the Court the most about the “dog sniff” was its limited intrusiveness. The sniff can tell law enforcement officers only one thing—whether there is contraband in the item tested. According to the Court, this single fact is something society is not willing to protect. Consequently, under the circumstances present in *Place*, the use of a trained detection dog did not violate any reasonable expectation of privacy, and therefore, was not a search under the fourth amendment.

In *Place*, the Court did not go so far as to say that no dog sniff would ever be considered a search. There remains some room for doubt. For instance, some courts have held that the reasoning in *Place* is not controlling when a detection dog is used to sniff a person⁴⁸ or an individual’s home.⁴⁹ It is clear, however, that when an item of personal property, such as luggage, is brought into a public place⁵⁰ and thereafter subjected to the special talents of a detection dog, no fourth amendment concerns arise. Accordingly, the “dog sniff” continues to be a widely used, effective law enforcement investigative technique.

Field Tests

Shortly after announcing its decision in *Place*, the Supreme Court, in *United States v. Jacobsen*,⁵¹ used the same rationale⁵² to sanction the law enforcement practice of conducting warrantless field tests of suspected controlled substances. In *Jacobsen*, a package that was being shipped by Federal Express was damaged in transit. In accord with company policies, an employee opened the box to inspect for further damage. Inside the box, the employee found a 10-inch tube of duct tape containing a number of plastic bags. One of the plastic bags held a quantity of a white powder. Suspicious of the powdered substance, the employee contacted agents of the Drug Enforcement Administration (DEA) who responded quickly when advised of what had been found. However, before agents arrived at the Federal Express office, the employee replaced all the items he had taken from the box.

When agents arrived on the scene, the items were once again taken from the box. The plastic bags were opened,

and a knife was used to remove a small amount of the white powder. A field test identified the powder as cocaine. Armed with the results of the field test, agents obtained a warrant to search the place corresponding to the address on the package. The warrant was executed and defendant was arrested.

After being indicted on charges of possession with intent to distribute, defendant moved to suppress the evidence on the grounds that the warrant was the product of an illegal search of the damaged package. Defendant’s motion was denied, and he was subsequently tried and convicted. On appeal, the Eighth Circuit Court of Appeals reversed defendant’s conviction on the basis that the field test of the white powder was a search under the fourth amendment and a warrant was required.⁵³ Because “field tests play an important role in the enforcement of the narcotics laws,”⁵⁴ the Supreme Court agreed to review the case, and ultimately, reversed the decision of the court of appeals.

In reaching its conclusion, the Court noted first that the opening of the package by the Federal Express employee was not a “search” governed by the fourth amendment, inasmuch as it was not performed by a government actor.⁵⁵ Next, the Court found that the subsequent opening of the package by DEA agents was not, in and of itself, a “search” because defendant’s reasonable expectation of privacy in the package had already been frustrated to some extent by the Federal Express employee.⁵⁶ What concerned the Court was whether the DEA agents made any significant invasion of defendant’s privacy when they exceeded the scope of the Federal Express employee’s ac-

tions by field testing the controlled substance.⁵⁷ More precisely, did the field test itself intrude into an area where defendant had a reasonable expectation of privacy remaining, thereby making the warrantless test an unreasonable search under the fourth amendment?

There was no doubt that the defendant expected privacy, not only in the package itself but also in the nature of the white powdered substance contained therein. Nevertheless, the Court was quick to point out that "the mere expectation, however well justified, that certain facts will not come to the attention of the authorities"⁵⁸ is critically different than the "concept of an interest in privacy that society is prepared to recognize as reasonable."⁵⁹ The question thus became whether the field test at issue violated an expectation of privacy that society is willing to protect. Answering this question in the negative, the Court relied on its knowledge that "the field test could disclose only one fact previously unknown to the Agent—whether or not a suspicious white powder was cocaine. It could tell him nothing more, not even whether the substance was sugar or talcum powder."⁶⁰ Because the test could reveal only this one fact, the Court concluded that it did not compromise any legitimate interest in privacy.

By refusing to characterize the field test as a "search," the Supreme Court added this investigative technique to the list of law enforcement practices that have been removed from fourth amendment scrutiny.

Trash Inspections

The law enforcement investigative technique that has undergone the most recent judicial review is the warrantless

inspection of discarded trash. In *California v. Greenwood*,⁶¹ the Supreme Court upheld such inspections when the trash was left for collection outside the curtilage of the home.

In *Greenwood*, law enforcement officers received information indicating that defendant was involved in drug trafficking. Surveillance of defendant's home added to the officers' suspicions. In an effort to develop probable cause to search defendant's premises, officers arranged to have the local trash collector segregate defendant's trash bags during the regular scheduled pickup so that the bags could be inspected for evidence. The warrantless inspection resulted in discoveries which, when recited in an affidavit, supported the issuance of a search warrant. The subsequent search of defendant's home resulted in the seizure of cocaine and hashish. Defendant was thereafter arrested on felony narcotics charges.

While defendant was out on bail, law enforcement officers continued to receive reports of suspicious activities at defendant's home. Consequently, a trash pickup identical to the previous one was conducted and again evidence of narcotics trafficking was found. A second search warrant was executed and additional evidence was seized from defendant's residence. Once more, defendant was arrested on narcotics charges.

Prior to trial, the evidence seized pursuant to the warrants was suppressed on the theory that the warrantless trash searches violated the fourth amendment,⁶² and all charges against the defendant were dismissed. Both the suppression of evidence and dismissal of charges were upheld by the California Court of Appeals.⁶³ After the Cali-

fornia Supreme Court denied the prosecution's petition for review, the U.S. Supreme Court agreed to hear the case.⁶⁴

On review, the Supreme Court simply applied the two-part analysis it had used in previous cases and came to the conclusion that although defendant may have had a subjective expectation that his trash was private, that expectation was not objectively reasonable because it was not an expectation of privacy that society was willing to recognize and protect. The Court's conclusion that society would not recognize defendant's expectation of privacy as reasonable was based in large part on the belief that defendant had "exposed [his] garbage to the public sufficiently to defeat [his] claim of Fourth Amendment protection."⁶⁵ The Court found it to be "common knowledge that plastic garbage bags left on or at the side of the public street are readily accessible to animals, children, scavengers, snoops, and other members of the public."⁶⁶ Because the contents of the trash bags were so "readily accessible," the Court held, as a matter of law, defendant "could have had no reasonable expectation of privacy in the inculpatory items that [he] discarded."⁶⁷

It is important to reiterate that the Court's holding in *Greenwood* is applicable only in situations where the trash bags in question have been left for collection outside the curtilage of the home.⁶⁸ The Court did not condone law enforcement intrusions into curtilage areas for the purpose of collecting the desired trash bags. Nevertheless, despite the dissenting Justice's opinion that "scrutiny of another's trash is contrary to commonly accepted notions of civilized behavior,"⁶⁹ the majority in

“. . . the Court has approved the warrantless use of those investigative techniques which merely intrude into areas that society is not willing to protect.”

Greenwood has preserved the warrantless inspection of discarded trash as an effective, if not particularly attractive, investigative technique.

Conclusion

The recent decisions of the Supreme Court were not, in any way, intended to diminish the protections of the fourth amendment. On the contrary, the Court has repeatedly stressed both the importance of complying with fourth amendment proscriptions and the desirability of obtaining warrants whenever possible.⁷⁰ However, in those instances where reliance on a warrant is an impossibility,⁷¹ the Court has cleared the way for the use of certain less intrusive investigative techniques. Specifically, the Court has approved the warrantless use of those investigative techniques which merely intrude into areas that society is not willing to protect. As a result, law enforcement officers can return to traditional police practices such as those discussed herein with renewed confidence in the constitutionality of their actions. **FBI**

Footnotes

¹U.S. Const. amend. IV reads: "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 Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

²See, e.g., *Hale v. Henkel*, 201 U.S. 43 (1906) (defining seizure); *Brinegar v. United States*, 338 U.S. 160 (1949) (defining probable cause); *Illinois v. Gates*, 462 U.S. 213 (1983) (defining probable cause); *United States v. Jacobsen*, 466 U.S. 109 (1984) (defining search and seizure); *Maryland v. Macon*, 105 S.Ct. 2778 (1985) (defining seizure).

³See, e.g., *Hale v. Henkel*, 201 U.S. 43 (1906); *Hester v. United States*, 265 U.S. 57 (1924); *United States v. Lee*, 274 U.S. 559 (1927).

⁴*Hester v. United States*, 265 U.S. 57 (1924).

⁵See, e.g., *Olmstead v. United States*, 277 U.S. 438 (1928); *Goldman v. United States*, 316 U.S. 129 (1942).

⁶*Id.*

⁷*Supra* note 4.

⁸389 U.S. 347 (1967) [hereinafter cited as *Katz*].

⁹*Katz*, *supra* note 8, at 351.

¹⁰*Katz*, *supra* note 8, at 353.

¹¹The term "reasonable expectation of privacy" actually originated in Justice Harlan's concurring opinion in *Katz*. *Supra* note 8, at 361 (Harlan, J., concurring).

¹²See, e.g., *Oliver v. United States*, 104 S.Ct. 1735 (1984) [hereinafter cited as *Oliver*]; *Hudson v. Palmer*, 468 U.S. 517 (1984); *United States v. Dunn*, 107 S.Ct. 1134 (1987) [hereafter cited as *Dunn*].

¹³*Oliver supra* note 12.

¹⁴*Id.* at 1739.

¹⁵*Id.* at 1738-39.

¹⁶*United States v. Oliver*, 686 F.2d 356 (6th Cir. 1982). The Court of Appeals for the Sixth Circuit was sitting *en banc*. Previously, a panel for the sixth circuit had affirmed the suppression order. *United States v. Oliver*, 657 F.2d 85 (6th Cir. 1981).

¹⁷*United States v. Oliver*, 686 F.2d 356 at 360 (6th Cir. 1982).

¹⁸*Oliver*, *supra* note 12, at 1741 quoting *Katz*, *supra* note 8, at 360 (Harlan, J., concurring).

¹⁹The district court in *Oliver* focused exclusively on the defendant's subjective intent. Of particular importance to the district court were the facts that Oliver had posted "No Trespassing" signs at regular intervals and had a locked gate at the entrance of his property. Additionally, the district court noted that the field was very secluded because it was bounded on all sides by woods, fences, and embankments. *Oliver*, *supra* note 12, at 1739.

²⁰*Oliver*, *supra* note 12, at 1741.

²¹*Id.*

²²The open fields doctrine was first announced by the Supreme Court in *Hester v. United States*, *supra* note 4.

²³There is considerable confusion in the courts on the issue of what constitutes a curtilage area. In *United States v. Dunn*, 107 S.Ct. 1134 (1987), the Supreme Court suggested that the "curtilage question be resolved with particular reference to four factors: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id.* at 1139.

²⁴106 S.Ct. 1809 (1986) [hereinafter cited as *Ciraolo*].

²⁵Both officers in the airplane were trained in marijuana identification.

²⁶Because the parties to the action framed the issue as concerning only the reasonableness of aerial observations generally, without raising any distinct issue as to the photographs, the Court's analysis was similarly circumscribed. *Ciraolo*, *supra* note 24, at 1812, fn. 1.

²⁷*People v. Ciraolo*, 161 Cal. App. 3d 1081, 208 Cal. Rptr. 93 (1984).

²⁸*Ciraolo*, *supra* note 24, at 1811 (emphasis in original). Of particular importance to the court of appeals was the method of surveillance used. The court of appeals found it "significant" that the flyover was not the result of a routine patrol conducted for any other legitimate law enforcement or public safety objective, but was undertaken for the specific purpose of observing this particular enclosure within [the] curtilage." *Id.*

²⁹*Id.*

³⁰*Id.* at 1812.

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴*Id.* at 1813.

³⁵106 S.Ct. 1819 (1986) [hereinafter cited as *Dow*].

³⁶The camera in question cost in excess of \$22,000 and was capable of taking several photographs in precise

and rapid succession. Under magnification, powerlines as small as 1/2 inch in diameter could be observed. *Id.* at 1827, fn. 5 and 1829, fn. 4 (Powell, J., dissenting).

³⁷*Id.* at 1827.

³⁸In *Riley v. State*, 511 So.2d 282 (Fla. 1987), the Florida Supreme Court held that observations made from a helicopter hovering at 400 feet over a greenhouse in defendant's backyard constitute a search under the fourth amendment. The U.S. Supreme Court has agreed to review the case. *Florida v. Riley*, 108 S.Ct. 1011 (1988) (cert. granted).

³⁹103 S.Ct. 2637 (1983) [hereinafter cited as *Place*].

⁴⁰Reasonable suspicion had previously been established by law enforcement officers at Miami International Airport who had talked to Place before he boarded his plane for New York.

⁴¹The "dog sniff" occurred approximately 90 minutes after the luggage was originally seized.

⁴²Defendant's suppression motion claimed that the warrantless seizure of his luggage violated his fourth amendment rights.

⁴³*United States v. Place*, 660 F.2d 44 (2d Cir. 1981).

⁴⁴Because a majority of the Supreme Court found that the 90-minute detention of defendant's luggage was too long, and therefore, an unreasonable seizure under the fourth amendment, there was no need for the Court to address the "dog sniff" question. See Justice Brennan's concurring opinion in *Place*. 103 S.Ct. 2637 at 2646 (Brennan, J., concurring).

⁴⁵The concurring Justices chastised the majority for being "unable to resist the pull to decide the constitutional issues on a broader basis than the record before it imperatively requires." *Id.* quoting *Street v. New York*, 394 U.S. 576, 581 (1969).

⁴⁶*Place*, *supra* note 39, at 2644.

⁴⁷*Id.*

⁴⁸See, e.g., *Horton v. Goose Creek School District*, 690 F.2d 470 (5th Cir. 1982), cert. denied, 463 U.S. 1207 (1983).

⁴⁹See, e.g., *United States v. Thomas*, 757 F.2d 1399 (2d Cir. 1985).

⁵⁰Recently, the Fourth Circuit Court of Appeals upheld the practice of bringing detection dogs into the private sleeping compartment of a train to sniff defendant's luggage. However, the court's decision was not based on a finding that no search had occurred. Instead, the court found the "search" to be reasonable because it was based on a reasonable suspicion. *United States v. Whitehead*, 849 F.2d 849 (4th Cir. 1988).

⁵¹104 S.Ct. 1652 (1984) [hereinafter cited as *Jacobsen*].

⁵²In *Jacobsen*, the Court compared the field test to a dog sniff and found that the likelihood that either would "compromise any legitimate interest in privacy seems much too remote to characterize [them as searches] subject to the Fourth Amendment." *Id.*, at 1662.

⁵³*United States v. Jacobsen*, 683 F.2d 296 (8th Cir. 1982).

⁵⁴*Jacobsen*, *supra* note 51, at 1656. Certiorari was also granted because there was a split in the circuits on this issue. Compare *United States v. Jacobsen*, 683 F.2d 296 (8th Cir. 1982) with *United States v. Barry*, 673 F.2d 912 (6th Cir. 1982).

⁵⁵The Supreme Court has consistently construed the proscriptions of the fourth amendment as being applicable only to governmental action. The fourth amendment proscriptions are wholly inapplicable "to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official." *Walter v. United States*, 100 S.Ct.

2395, 2404 (1980) (Blackmun, J., dissenting).

⁵⁶Jacobsen, *supra* note 51, at 1659-60.

⁵⁷According to the Court in *Jacobsen*, "the additional invasions of [defendant's] privacy by the Government agent must be tested by the degree to which they exceeded the scope of the private search." *Id.* at 1657.

⁵⁸*Id.* at 1661.

⁵⁹*Id.*

⁶⁰*Id.*

⁶¹108 S.Ct. 1625 (1988) [hereinafter cited as *Greenwood*].

⁶²In this regard, the California Superior Court relied on the authority of *People v. Krivda*, 5 Cal. 3d 357, 486 P.2d 1262 (1971), which held that warrantless trash inspections violate the fourth amendment and the California Constitution.

⁶³*People v. Greenwood*, 182 Cal. App. 3d 729, 227 Cal. Rptr. 539 (1986).

⁶⁴*California v. Greenwood*, 107 S.Ct. 3260 (1987).

⁶⁵*Greenwood*, *supra* note 61, at 1628.

⁶⁶*Id.* at 1628-29.

⁶⁷*Id.* at 1629.

⁶⁸*Id.* at 1627.

⁶⁹*Id.* at 1632 (Brennan, J., dissenting).

⁷⁰See, e.g., *United States v. Leon*, 104 S.Ct. 3405 (1984) and *Massachusetts v. Sheppard*, 104 S.Ct. 3424 (1984).

⁷¹In each case discussed herein, law enforcement officers had strong suspicions but lacked sufficient probable cause to obtain search warrants prior to resorting to the investigative techniques at issue. This situation is not uncommon, especially in drug investigations.

FBI Law Enforcement Bulletin Article Submissions

The purpose of this journal is to promote an exchange of professional information among the various components of the criminal justice system.

Guidelines have been established to assist those interested in submitting articles to the FBI Law Enforcement Bulletin. Following these guidelines will ensure prompt consideration of all manuscripts submitted to the Bulletin.

AUTHOR—The exact wording of the desired byline including any advanced degrees, and the current business mailing address of the author, or authors, should accompany manuscripts submitted to the Bulletin.

FORMAT AND LENGTH—Manuscripts must be typewritten and double-spaced. Three copies should be submitted. In general, articles should be approximately 3,000 words long, but adequate treatment of subject matter, not length, should be the primary consideration.

PHOTOGRAPHS AND GRAPHICS—A photograph of the author, and when applicable, his or her police chief, should accompany manuscripts. If possible, other suitable photos, illustrations, or charts supporting the text

should be furnished. Black and white glossy prints reproduce best. In addition, special effort should be made to obtain a quality, black and white glossy photograph, vertical format, for possible use as a cover.

PUBLICATION—All manuscripts submitted to the Bulletin are reviewed for relevancy, innovativeness, timeliness, and overall appeal to the readership. Favorable consideration will not be given an article which has been published previously in a journal of national circulation or is being considered for publication in another such magazine. In response to requests, the Bulletin will consider reprinting articles of national interest to the Bulletin. No promises of publication or commitments regarding publication dates can be made.

EDITING—The Bulletin reserves the right to edit all manuscripts.

SUBMISSION—Authors may contact the Special Agent coordinator for police training at the nearest field office of the FBI for help in submitting the articles or manuscripts may be forwarded to: Editor, FBI Law Enforcement Bulletin, Federal Bureau of Investigation, Headquarters, Washington, DC, 20535.

WANTED BY THE FBI

Any person having information which might assist in locating these fugitives is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, DC 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.

Because of the time factor in printing the FBI Law Enforcement Bulletin, there is the possibility that these fugitives have already been apprehended. The nearest office of the FBI will have current information on the fugitives' status.



Photographs taken 1979 and 1980

Frank Wayne Charneco,

also known as "Pope."

W; born 4-18-51; Tampa, FL; 5'9"; 170 to 195 lbs; brn hair; brn eyes; med comp; occ-railroad laborer/engineer trainee, surf shop owner.

Wanted by FBI for INTERSTATE FLIGHT-AGGRAVATED ASSAULT; BATTERY UPON A LAW ENFORCEMENT OFFICER

NCIC Classification:

2957121817DI66111717

Fingerprint Classification:

29 L 5 R IOO 17
I 1 R OOO

I.O. 4951

Social Security Number Used: 265-96-8892

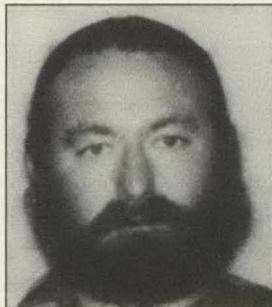
FBI No. 659 780 N9

Caution

Charneco is being sought by the FBI in connection with the aggravated assault and battery upon a law enforcement officer. In addition, he is wanted by local Florida authorities for armed robbery, armed burglary, aggravated battery, and use of a firearm in the commission of a felony. Consider armed and dangerous.



Left ring fingerprint



Photograph taken 1976

Gary Zane Partlow,

also known as Gary Zene Partlow, Gary Z. Partlow.

W; born 1-24-45; Santa Cruz, CA; 5'10"; 165 lbs; med bld; brn hair; blue eyes; ruddy comp; occ-clerk, construction laborer, hod carrier; remarks: Has worn beard and shoulder-length hair in a ponytail in the past; motorcyclist/biker.

Wanted by FBI for INTERSTATE FLIGHT-MURDER, ASSAULT WITH INTENT TO MURDER

NCIC Classification:

205108212112TT032918

Fingerprint Classification:

20 L 1 R IIO 21 Ref: TTR
M 1 T IO TUU

I.O. 4937

Social Security Number Used: 563-60-1457

FBI No. 562 874 E

Caution

Partlow, a reported drug user, is being sought in connection with a murder in which the victim was allegedly shot with a .38-caliber weapon and assault with intent to murder another. Consider Partlow armed and extremely dangerous.



Right index fingerprint



Photographs taken 1981 and 1982

Donna Borup,

W; born 8-5-52; South Amboy, NJ; 5'4" to 5'5"; 145 to 155 lbs; med-hvy bld; brn hair; blue eyes; fair comp; occ-artist; remarks: Borup may have lost weight and dyed hair in an attempt to elude detection.

Reportedly may have homosexual tendencies.

Wanted by FBI for INTERSTATE FLIGHT-ASSAULT OF POLICE OFFICER

NCIC Classification:

161211PI07141408PI08

Fingerprint Classification:

16 M 9 U OOI 7 Ref: 10
M 2 U OII 2

I.O. 4963

Social Security Number Used: 138-46-9375

FBI No. 66 446 V1

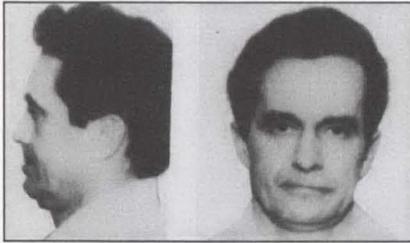
Caution

Borup is being sought by the FBI in connection with the assault of a police officer. She is known to associate with revolutionary organizations which have a great propensity for criminal activity and violence against law enforcement. She has made statements indicating a willingness to use violence to avoid capture. Consider armed and dangerous.



Left ring fingerprint

WANTED BY THE FBI



Photographs taken 1979

Donald Eugene Webb,

also known as A.D. Baker, Donald Eugene Perkins (True Name), Donald Eugene Pierce, Stanley J. Pierce, John S. Portas, Stanley John Portas, Bev Webb, Eugene Bevlin Webb, Eugene Donald Webb, Stanley Webb, and others.
 W; born 7-14-31; Oklahoma City, OK; 5'9"; 165 lbs; med bld; gray-brn hair; brn eyes; med comp; occ-butcher, car salesman, jewelry salesman, real estate salesman, restaurant manager, vending machine repairman; remarks: Webb, who is considered a career criminal and master of assumed identities, specializes in the burglary of jewelry stores. Reportedly allergic to penicillin, loves dogs, is a flashy dresser, and big tipper; scars and marks: Allegedly has small scar on right cheek and right forearm; tattoos: Allegedly "DON" on web of right hand, "ANN" on chest. Wanted by FBI for INTERSTATE FLIGHT-MURDER; ATTEMPTED BURGLARY

NCIC Classification:

080406130804TT020906

Fingerprint Classification:

8 S 1 U III 8 Ref: T T U
 S 1 T II T R R

I.O. 4873

Social Security Number Used: 462-48-0452
 FBI No. 4 513 086

Caution

Webb is being sought in connection with the murder of a police chief who was shot twice at close range after being brutally beaten about the head and face with a blunt instrument. Consider Webb armed, extremely dangerous, and an escape risk.



Left thumb print



Photographs taken 1973 and 1975

James Nelson Worthey,

also known as Willie Cunningham, Willie Lyman, William S. Scott, Willie Wadler, Carmen Wadley, Willie F. Wadley, Willie Fred Wadley, Willey F. Wadley, James Nepolean Worthey, James Nelson Worothy, "Pretty Willie," and others.
 B; 11-14-48; Akron, OH; 6'1"; 170 lbs; med bld; blk hair; brn eyes; med comp; occ-laborer, machinery operator, pimp; scars and marks: Small scars on one hand, wrist and outer palm, small scars around right eye, deformed left foot (hammer toe).

Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

231308PO161110082016

Fingerprint Classification:

23 L 9 U OIO 16 Ref: 25 9 25
 S 1 U OIO 1 2 2

I.O. 4952

Social Security Numbers Used: 473-14-8822; 296-48-1704; 396-48-7504
 FBI No. 761 426 H

Caution

Worthey is being sought in connection with the murder of a female victim who was shot in the head with a .32-caliber semiautomatic gun. Worthey reportedly possesses a number of handguns and should be considered armed and dangerous.



Right index fingerprint



Photographs taken 1975, 1980 and 1983

John Alexander Riccardi,

also known as Dean Riccardi, Dean A. Riccardi, Jackie Riccardi, John Riccardi, John A. Riccardi, Rick Riccardi, George Sammartino, Emanuel Shaparro.
 W; born 10-1-35; Yonkers, NY; 5'11" to 6'; 180 lbs; large bld; brn hair; hazel eyes; med comp; occ-bar owner, businessman, food manager, owner/hair stylist; remarks: Avid weight lifter, health food addict, may wear glasses and dye his hair black; scars and marks: Mole on right cheek. Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

25101313062210161309

Fingerprint Classification:

25 L 1 U OOI 6 Ref: 1
 L 1 U OOI 3

I.O. 4960

Social Security Numbers Used: 051-28-8672; 051-28-8072
 FBI No. 152 655 C

Caution

Riccardi is being sought in connection with the shooting murder of two female victims. He reportedly has suicidal tendencies and vows not to be taken alive. Riccardi may be armed with a .38 revolver or a .357 magnum revolver. Consider armed and dangerous.



Right index fingerprint

Interesting Pattern

A double loop whorl consists of two separate loop formations with two separate and distinct sets of shoulders. These loops do not have to conform to the requirements of the loop, inasmuch as no ridge count is necessary. It is not essential that both sides of a loop be of equal length or that the two loops be of the same size. The presented pattern possesses two loops which vary greatly in size; however, it conforms to the definition of the double loop whorl and is classified as such. The tracing is inner.



Change of Address

Not an order form

FBI

Law Enforcement Bulletin

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, DC 20535

Name

Title

Address

City

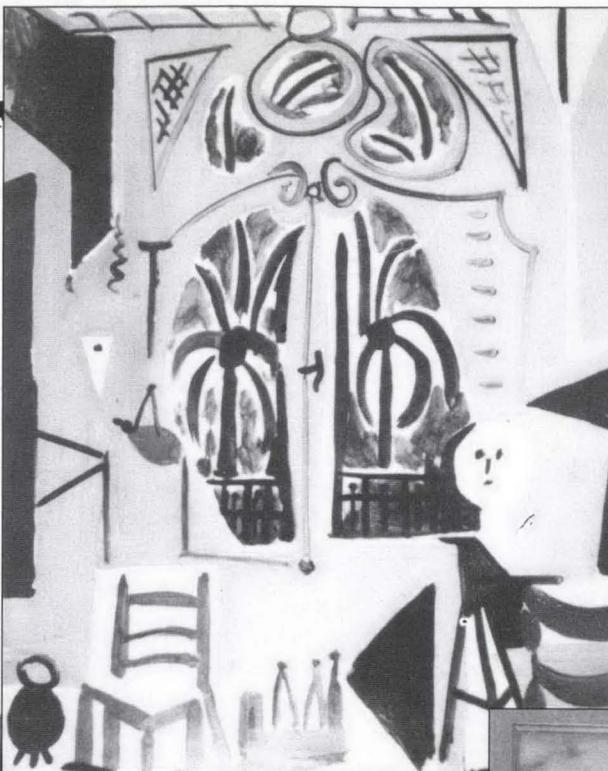
State

Zip

Major Art Theft

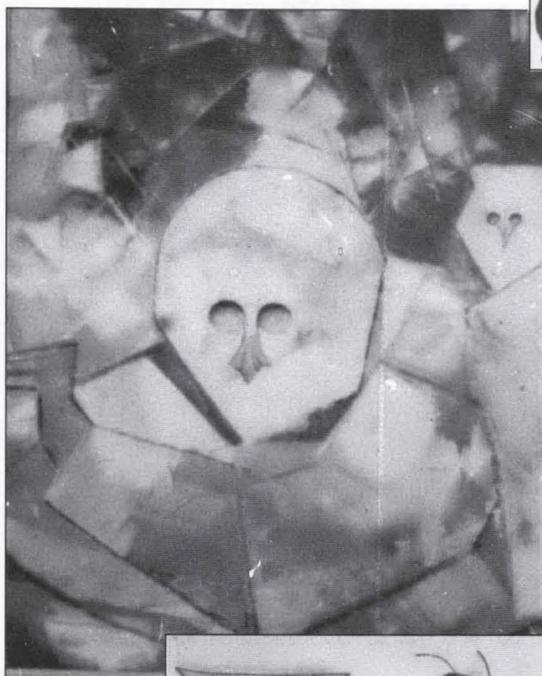
On October 5, 1985, a private residence in Hanover, PA, was burglarized. Pictured are 4 of 14 paintings which were stolen. The value of these and other items taken is set at \$2,200,000.

Any information concerning this burglary should be directed to FBI, Philadelphia, PA, telephone (215) 629-0800. Refer to their file number 87-30269. You may also contact the National Stolen Art File, FBI Laboratory, Washington, DC, telephone (202) 324-4434.



Pablo Picasso, *L'Atelier*, Circa 1953, signed oil on canvas 38 1/2" x 31 1/2", valued at \$350,000.

Marc Chagall, *The Rabbi and the Pupil*, dated 1922, Gouache, 20" x 16", valued at \$200,000.



Max Ernst, *The Law Student*, Signed and dated 1958, oil on canvas, 21 1/4" x 17 1/4", valued at \$100,000

Descriptions of other stolen paintings are as follows:

Franz Kline, *Untitled*, Signed and dated 1957, Mixed Media, 14 1/2" x 18 1/4"

Jules Pascin, *Cafe Scene*, Pencil & Watercolor, 8" x 10 1/4"

Jules Pascin, *Market Scene*, Pencil & Watercolor, 5 1/4" x 8 1/4"

Max Ernst, *The Lake, the Bird, and Insect*, Signed and dated 1958, Oil on paper, 38 1/2" x 27"

Max Ernst, *Deux Personnages*, Oil on paper, 16" x 13"

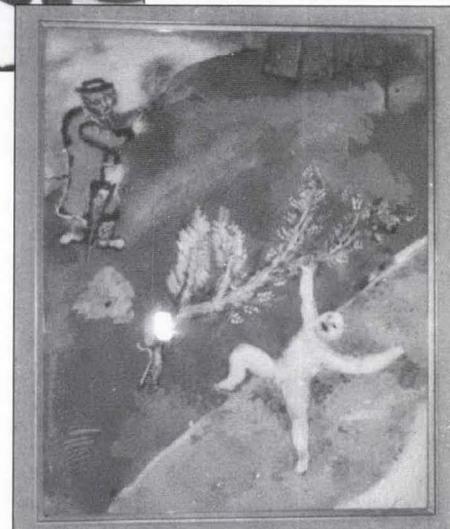
Max Ernst, *Alice in Wonderland*, Signed and dated 1957, Oil on canvas, 31 1/2" x 25 1/4"

Max Ernst, *Flowers*, Signed, Oil on paper, 9 1/4" x 13"

Franz Kline, *Untitled*, Signed and dated 1957, Gouache and collage, 14 1/4" x 19 1/4"

Raoul Dufy, *Galatea*, Signed, Gouache, 22" x 30 1/4"

Alberto Giacometti, *Self Portrait*, Signed and dated 1928, Pencil, 16" x 12"



Joan Miro, *Les Amoureux devant la Lune*, signed dated 13-12-1945, oil on burlap, 13" x 17 1/4", valued at \$250,000

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MR. ROGER L. DEPUE
FEDERAL BUREAU OF
INVESTIGATION ACADEMY
QUANTICO VA 22135

The Bulletin Notes

While on patrol in the early morning of November 15, 1987, Patrolman John Kulczycki of the North Royalton, OH, Police Department noticed smoke above a local residential area. Following the smoke to its source, he discovered a nearby home on fire. Patrolman Kulczycki notified the fire department, then entered the burning home. By shouting and pounding on the walls, he awakened the couple sleeping on the second floor, saving their lives and the lives of their infant son and the family dog. The Bulletin is pleased to recognize Patrolman Kulczycki's heroic actions.

