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Supreme Court Cases

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Features

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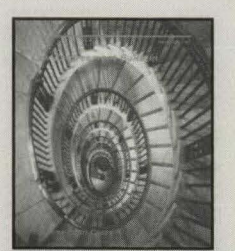
Departments



The Cover: *This month's Legal Digest addresses recent Supreme Court decisions of particular importance to law enforcement officers. Featured on the cover is the spiral staircase located in the Supreme Court Building in Washington, DC.*

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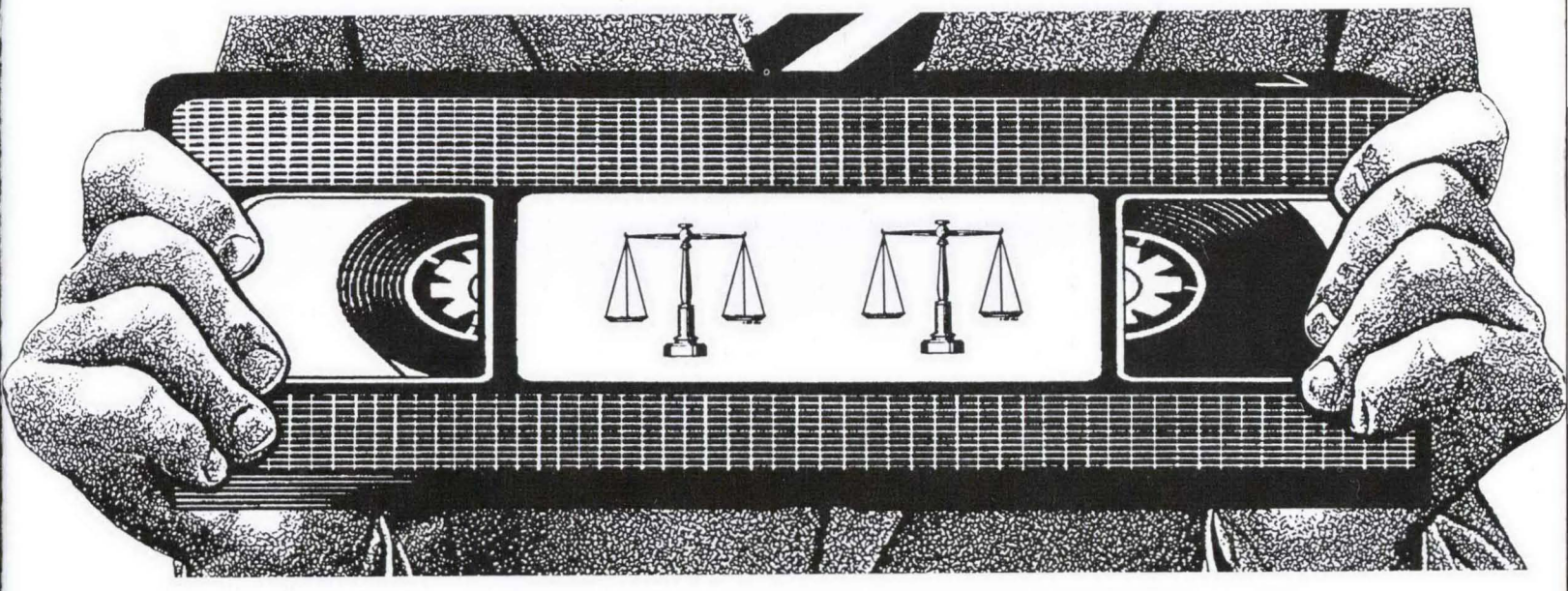
The Expanding Role of Videotape in Court

By
MICHAEL GIACOPPO

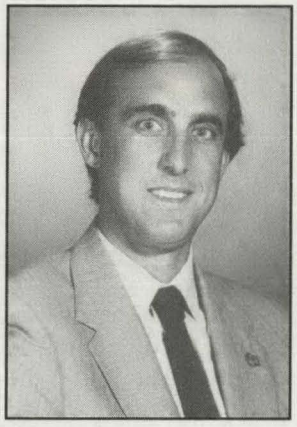


A young child has been molested by an adult whom she trusted. The offender has been arrested, and a substantial case has been built that should ensure that justice is served. Is the nightmare over for the abused child? Hardly. Indeed, it has just entered a new phase in which this young victim will be forced to recount, over and over, the circumstances surrounding her violation.

For years, prosecutors have faced similar scenarios, not only with victims of child abuse but also with adult victims of rape and other crimes. Many cases have been lost because the victim, whose testimony is often critical to the prosecution's case, becomes worn down by the court process and chooses to discontinue involvement.

However, prosecutors and district attorneys around the Nation are combating this problem with expanded use of videotaped testimony. In many cases, prosecution teams have been successful in submitting video testimony at grand jury hearings, as well as to augment the victim's appearance during the trial. In some instances, videotaped interviews are even allowed in lieu of the victim actually appearing before the grand jury. This flexibility has formed a "marriage" between the grand jury and the television set, as prosecutors have increasingly relied upon video testimony in this critical stage of the court process.

No law enforcement officer has to be reminded that most victims suffer extraordinary stress leading up to a hearing or trial. When their day in court arrives, they often find that the judge has granted a continuance, which prolongs their wait and



Detective Sergeant Giacoppo serves with the Cambridge, Massachusetts, Police Department.

> ***"By videotaping an interview, it is possible to show...precisely what was said and what state the victim was in at the time."***

adds to their anxiety. Once victims begin to feel that they are "dangling," the potential for losing them is very high. Some defense lawyers even make this part of their defense plan.

VIDEOTAPED TESTIMONY

Child Victims

Children, in particular, face a unique burden in court. A successful case requires that they show courage and good recall, while often testifying against someone they love, such as a parent. In addition, the psychological implications that the system can place on a child are considerable.

A key element in a child molestation case is the investigative interview. What the victim says and how emotions are expressed are the basic ingredients that investigators use to make a case. Displays of anger, crying, or hyperventilating are very important when the officer is asked in court to describe the victim's demeanor during the interview. Since interviews with children are often traumatic, it makes good sense to limit the number of times they must occur. By videotaping an interview, it is possible to show the grand jury, and even the trial court, in a very compelling way, precisely what was said and what state the victim was in at the time.

Child sex case interviews are routinely taped in the Middlesex County, Massachusetts, jurisdiction for several reasons. In situations where the emotional condition of witnesses is fragile, the videotape can serve as a substitute for the grand jury appearance. The investigator need only appear with tape in hand and play it for members of the jury. This procedure has the added benefit of speeding up the court process. In getting victims past the grand jury stage, the prosecution can reasonably offer them the "one shot deal" of appearing in court only on the day they must testify at the actual trial.

Another potential benefit of videotaping interviews may occur when the defense attorney "discovers" the prosecution's evidence. On more than one occasion, a defense attorney has viewed a child's video interview and decided to make a deal so that the court would not see the tape.

In addition, these tapes can provide the useful corroboration that may be necessary at a later date. Children who must wait 1 or 2 years before testifying in court may try to forget the facts of the case in an attempt to put the pain behind them. The videotape can serve to refocus victims who may be reluctant to testify when the trial day arrives. Seeing the tape may remind child victims of the seriousness of the situation and deter them from ambivalent feelings resulting from the lengthy wait for trial.

Expert Witnesses

In addition to the victim, other witness' testimony can also be videotaped for presentation in court. In Massachusetts, some witnesses may actually be excused from appearing in court after they have provided video testimony.[1] This would include expert witnesses who, because of prior commitments, are often the cause of court delays.

Now, these witnesses can submit to videotaped depositions that can be presented at both the grand jury and the trial. In order to overcome defense objections, courts usually allow both the prosecutor and the defense attorney to participate in a joint deposition with the expert witness.

The use of video for expert witness testimony has proven far superior to the old stenographic method because it eliminates transcription error and allows jurors to

view witness demeanor. And, since expert witnesses often use props and charts, court time is better served by having these presentations on videotape, which can be edited for brevity.

In addition, jurors often request access to this expert testimony while in deliberation. Videotape is a convenient and effective way to provide jurors with unlimited access to this important information.

Witnesses Who Cannot Appear in Court

In Massachusetts, prosecutors can also employ videotape to interview witnesses who are injured and are unable to appear in court. [2] Little effort is required to set up a video camera in a hospital room or the home of an incapacitated witness. This is particularly imperative if the victim's medical condition is critical. If the victim dies, the videotape may be the only testimony available.

Suspects

For many years, the police have been recording suspects' confessions on audiotape. The techniques police use to obtain these admissions, however, often become an important issue during trial. Motions to suppress "tainted" confessions can often contribute significantly to court delays and backlogs. If the defense can taint the method employed and cast doubt on the circumstances surrounding the admission, then the value of the confession can be severely undermined. Therefore, making a videotape of the police interview with the suspect is not only a good idea, it can literally save a case.

Again, court time can be better served because a videotaped interrogation can be viewed by the judge before the trial to ensure that the interview was conducted properly and that the confession was not coerced. For this reason, criminal rights advocates should actually

Video in DUI Stops

In Franklin County, Ohio, video cameras are used to supplement a law enforcement officer's testimony during trials of impaired drivers. In a unique pilot program sponsored by an insurance company and MADD (Mothers Against Drunk Driving), several video cameras were donated to both the Franklin County Sheriff's Office and the Columbus, Ohio, Police Department.

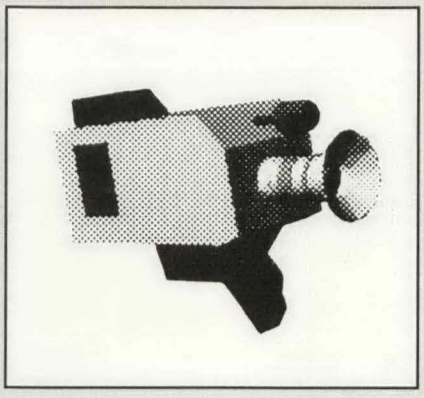
The cameras were mounted to the dashboard of the police cruisers, midway between the driver and passenger seats. When a vehicle that appears to be operated by an impaired person is observed, the officer begins to record the suspect's driving. The officer notes the location and announces, on tape, what circumstances raised suspicions regarding the vehicle. The officer also notes verbally any actions that could indicate an impaired driver was operating the vehicle. This will later enable the prosecution to document any poor or reckless driving.

Once the vehicle is stopped, the officer approaches the suspect while wearing an activated wireless microphone, which is able to record conversation up to 500 feet from the video camera. Again, this will assist the prosecution by documenting any slurred speech or other characteristics that would be exhibited by an individual under the influence of drugs or alcohol. In addition, the officer videotapes the field sobriety test to further document the actions of the suspect.

The principal benefit of obtaining a video account of impaired drivers is that it provides concrete evidence to support an officer's charges. Without the video "witness," defense counsels are often successful in contending that the officer's testimony is simply a matter of perception. The videotape, however, provides convincing corroboration to the officer's testimony.

This information was provided by Sean Devillers of the Columbus, Ohio, City Prosecutor's Office and Dep. William McCoy of the Franklin County, Ohio, Sheriff's Office.

Video Used in Citizen Complaint Cases



In 1986, the Georgia State Police began equipping its patrol vehicles with video recorders. The system was originally intended to aid in drug interdiction efforts, prosecution of impaired drivers, and accident investigations. Additionally, tapes of routine traffic stops were later used in classroom instruction.

However, patrol supervisors soon discovered that the video recorders offered valuable assistance in another area that was not anticipated. The videotapes provide reliable, unbiased evidence in citizen complaint cases.

The camera system automatically records everything said or done within its range. For example, when a trooper was accused of being rude and using profanity during a traffic stop, the videotape provided the evidence that cleared him of the unfounded charges. When another trooper was accused of shooting an unarmed motorist, the video revealed the truth: The trooper issued at least 26 warnings for the individual to drop his gun prior to the trooper firing.

In these and many similar cases, the video record provides the concrete evidence that is usually lacking in citizen complaint cases. With videotapes, there is additional evidence, apart from the testimony provided by the citizen and trooper. This evidence has proven invaluable to investigators and patrol supervisors as they consider their response to these complaints. Often, as in the cases above, the videotape provides enough evidence to discredit the accusation. This saves the department valuable time and resources in countering groundless claims.

At the same time, the video system has proven equally adept at confirming instances of wrong doing. In a highly publicized case, videotape (which had been recorded automatically) was admitted as evidence against a trooper charged with raping a motorist he had stopped for a traffic violation. Even in this instance, however, the video proved valuable to the department. Because they had gained advanced knowledge of the severity of the infraction, supervisors were able to initiate appropriate action and limit the extent of adverse publicity.

The video recording system installed in patrol cars is the quintessential eyewitness. It can be used to document that proper police procedures were employed, to refute unfounded accusations, or to confirm wrong doings. In essence, these video recording systems provide the department with an unbiased perspective that works to the benefit of all involved in citizen complaints.

This information was provided by Trooper Ray Clark of the Georgia State Patrol.

support videotaping these interrogations since the possibility of police misconduct in securing a confession is significantly reduced if the interview is being videotaped.

CRIME SCENE VIDEOS

In addition to interviews, prosecutors are finding other uses for videotape. Probably, the most effective use of video is surveillance cameras that capture suspects actually committing the crimes for which they are charged. When the prosecution is armed with such evidence, the result is often a plea from the defendant or a very short trial.

In many cases, it is also beneficial to videotape crime scenes after the crime has been committed. This video record will prove helpful in reconstructing the scene and the events surrounding the crime for the jury. Photographs, while important, have a limited impact on juries due to their inherent restrictions. Videotape, however, provides the jury with an enhanced perception of the crime scene and an expanded understanding of the crime itself. A taped record can also eliminate the need for the jury to visit the crime scene physically, thus saving valuable trial time.

BENEFITS OF VIDEOTAPING

Besides saving court time and relieving victims and other witnesses from continuously repeating testimony, videotape presents prosecutors with additional advantages. Perhaps most important is the

novelty factor video holds for jury members. Videotaped presentations may arouse jury interest and curiosity, and therefore, may enhance their appreciation for the information being presented. While there is, to some degree, a cultural resistance to sitting for long periods of time listening to a speaker, there is no such reluctance to watching presentations on a television set.

In an early study conducted by Michigan State University, jurors indicated on post-trial questionnaires that they retained more information that had been presented on video. Their responses indicated that their perceptions of credibility also were enhanced when video was used. The results overall were positive regarding videotaped presentations.[3]

CONCLUSION

Expanded use of videotape offers the opportunity to assist victims and witnesses, make trials more efficient, and enhance jury understanding of crimes. With courts experiencing unprecedented backlogs and delays, video provides a practical way to use today's technology to address very real problems. In the process, it offers prosecutors effective new methods to present evidence and testimony to juries. LEB

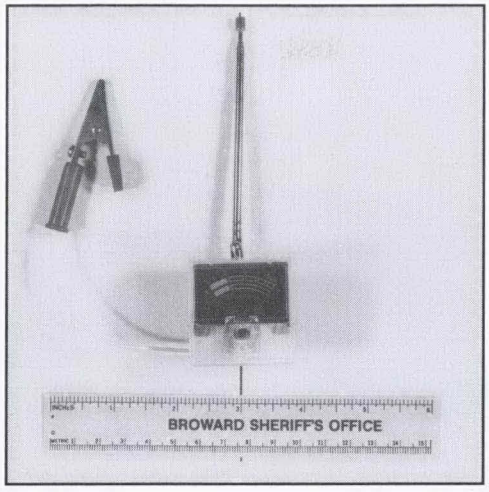
Footnotes

[1] See *Massachusetts Criminal Procedure*, Rule 35.

[2] See *Commonwealth* v. *Key*, 381 Mass. 19 (1980.) Commonly referred to as the "Dying Declaration" rule.

[3] Gerald Miller, *The Effects of Videotaped Court Materials on Juror Response*, Michigan State University, East Lansing, Michigan, (1976).

Bulletin Alert



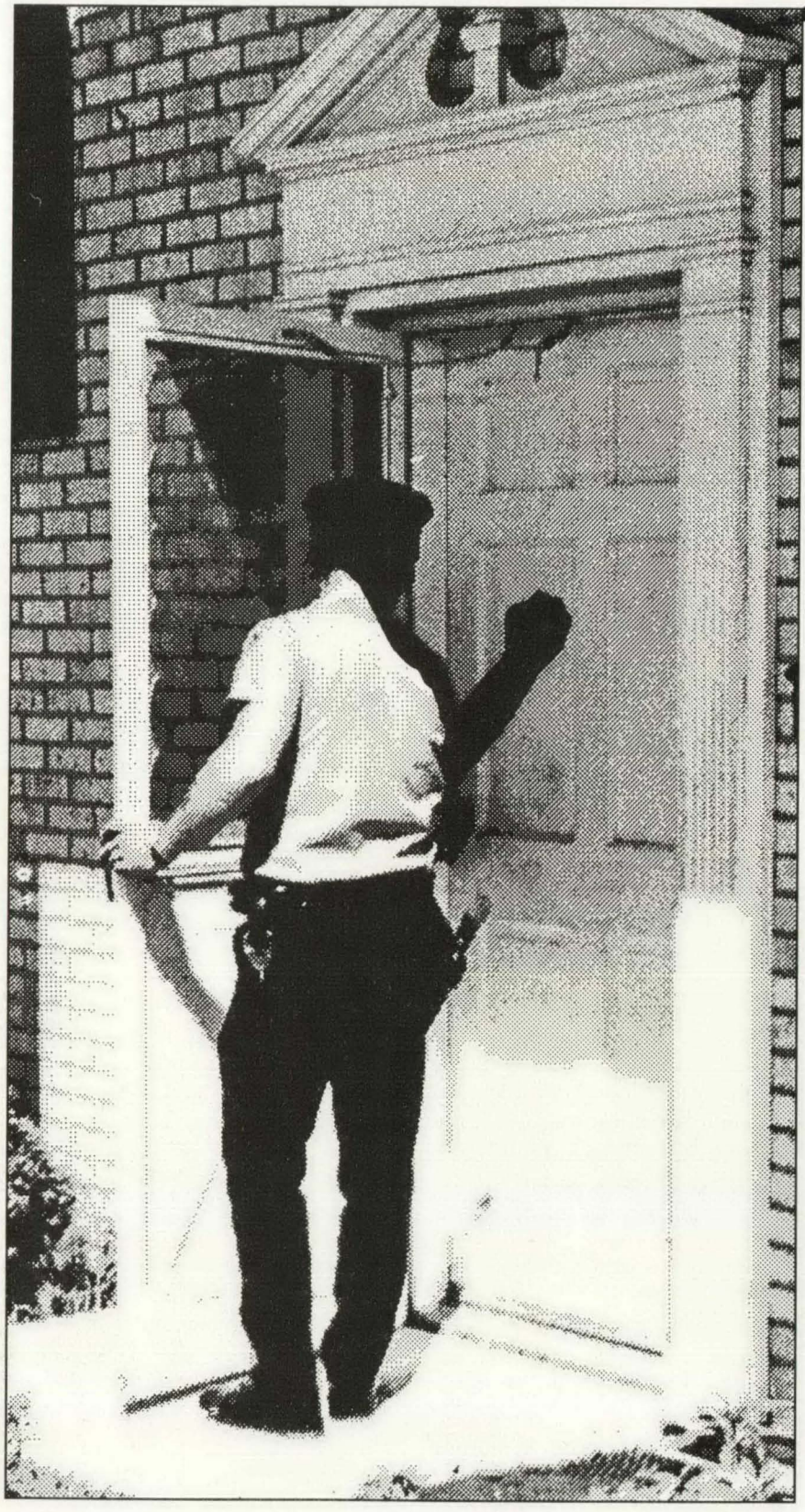
Homemade RF Detectors

Broward County, Florida, Sheriff's Office (BSO) deputies discovered a homemade radio frequency (RF) detector during a routine drug interdiction operation at a Fort Lauderdale crack house. After examining the unit, BSO electronics specialists concluded the device was manufactured by an amateur, most likely one of the drug dealers arrested during the raid. Unfortunately, the written instructions probably used to build the unit were not found.

One BSO telecommunications expert noted, "More expensive detectors have been in use by large drug trafficking operations for years. But, this is the first time we've seen them employed at this level. For as little as $15 or $20, just about anybody can make one."

The Broward County Sheriff's Office believes that these units are currently in use and are circulating. They can detect virtually all police radios and body bugs from a distance of 5 to 15 feet. Violators can wear the units and receive signals through an earphone or can have the device positioned near the doorway to intercept police sting operations. Obviously, these detectors can be dangerous to law enforcement officers when using body transmitters.

BSO's Telecommunications Unit is offering a special training tape on amateur RF detectors. To obtain a copy of this or any of the agency's instructional videos, send a blank tape and a letter of request to: The Broward County Sheriff's Office, Telecommunications Unit, 4300 NW 36 Street, Lauderdale Lakes, Florida 33119. LEB



Knock and Talk
Consent Searches and Civil Liberties

By
ROBERT MORGAN, J.D.

Recently, concerns have been raised about consent searches, especially in "knock-and-talk" drug investigations, where law enforcement officers request permission to search a residence without a search warrant.[1] In light of this, I would like to review the socio-legal context and the training priorities that can shape performance in this complex area of law enforcement.

Understandably, increased drug abuse and a rise in violent crimes frighten the American public. Over the past couple of years, new laws and court rulings have enhanced law enforcement's power to deal with these social problems. Some rulings and legislation have raised civil liberties concerns. At the same time, many law enforcement professionals note that increased police power, which might reduce personal freedoms, can still fail to reduce crime.

Strengthening the hand of the police, however, seems to offer an easy way to "get tough" on drug crime. Opinion polls even indicate a growing willingness to trade some rights derived from the fourth

amendment guarantee against unreasonable search and seizure for public order. In a nationwide telephone poll, "[when] asked to choose between taking 'any step necessary' to stop drug use, or to protect civil liberties, 71% chose taking 'any step necessary.' "[2] Respondents to this poll approved such tactics as "police sweeping through drug-infested neighborhoods, questioning passengers on buses and trains, and annually seizing hundreds of millions of dollars worth of assets allegedly linked to criminal activity, [even] before the owners are convicted."[3]

Without a doubt, law enforcement's primary responsibilities are to uphold the law *and* to protect civil liberties. However, in doing so, this Nation's drug enforcement commitment must include recognizing the concerns expressed by U.S. District Judge Stanley Sporkin: "We cannot become so obsessed with this drug scourge to permit it to dismember the Constitution....In this 'anything goes' war on drugs, random knocks on the doors of our citizens seeking 'consent' to search can't be far away."[4]

Citizen Rights in the American Legal System

The consent search is a law enforcement tool that should be used very carefully by officers who have a clear understanding of citizens' rights, who are well-trained, and who are sensitive to citizens' sense of intrusion and to the potential for abuse of police power. Carelessness in conducting consent searches both endangers civil liberties and risks the loss of a valuable investigative tool.

Therefore, it is important for law enforcement officers to understand the meaning of "rights" in the American legal system. Rights are usually thought of as allowing us to do one of two things. We can use rights to make someone or some institution do something or we can use rights to make someone or some institution stop doing something to us. We can think of the second kind of right as allowing us to draw a circle around ourselves and our property and to stop others from trespassing.

Our rights can be defeated, but only by due process of law. The greater the expectation of privacy, the harder it is for someone, i.e., the government, to enter our circle.[5] However, expectations vary by location and context.

When I am in my home, I have a much stronger expectation of privacy than when I am traveling on an airplane. Airline personnel can look into my baggage as I board an airplane as a matter of course. But, in most cases, a search warrant is required before someone can enter my home without my permission.

We have also developed a similarly strong expectation of privacy when using a telephone. In North Carolina, for example, law enforcement officers cannot even get a court order to tap a telephone. Any such intrusion can only be authorized under Federal jurisdiction. (Interestingly, the courts have observed that we can have no such expectation when using a cordless phone, a much less private form of communication.)

Individual Choice

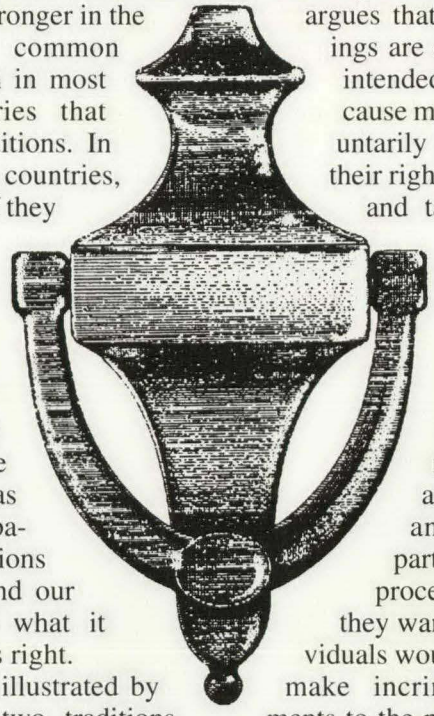
Another aspect of the American theory of rights has to do with individual choice. This Nation's theory of law and government assumes that in the end, each of us is the best judge of our own self-interest. Citizens can chose when, how, and where to exercise their rights. In

> ***"...a consent search is a useful tool when there is some reason to suspect unlawful conduct, but not enough to justify a warrant."***

Mr. Morgan, a former Attorney General of the State of North Carolina and U.S. Senator, recently retired as the Director of the North Carolina State Bureau of Investigation in Raleigh, North Carolina.

the American tradition, these rights are not self-executing. That is, my right to freedom of speech does not compel me to speak. Likewise, my right to the free exercise of religion does not compel me to pray on the Sabbath.

The assumption that each of us is the best judge of our own self-interest is much stronger in the Anglo-American common law tradition than in most European countries that have civil law traditions. In some European countries, people are fined if they do not vote. Although it is regrettable that so few Americans exercise the right to vote, suggesting that people be compelled to vote is usually seen as contradicting the basic political traditions of this country and our understanding of what it means to have this right.



This is best illustrated by looking at how two traditions understand the right to a trial. In the United States and Great Britain, a defendant has a right to a trial, and an individual can waive this right by pleading guilty. However, in most civil law systems, there is no guilty plea as we understand it in the United States. Even if someone admits guilt, there is still a trial, with the judge making sure the defendant's rights are protected. The "right to a trial" in civil law systems means that no matter how harmful you may understand it to be, your "right" means that you cannot avoid the expense, delays, exposure, and embarrassment of a public trial when you are indicted for a crime.

The question of whether individuals should be able to exercise their rights can also be seen in recent controversy over *Miranda* warnings. Charles J. Ogeltree argues that *Miranda* warnings are not serving their intended functions because most arrestees voluntarily choose to waive their right to remain silent and talk to an attorney.[6] Ogeltree suggests that we should remove the right to remain silent and the right to talk to an attorney from the arena of rights and make them part of basic arrest procedures. Whether they want to or not, individuals would not be able to make incriminating statements to the police and would have to see a lawyer soon after arrest. Ogeltree would transform the rights guaranteed by *Miranda* into criminal procedures.

Fourth Amendment Right to Refuse Entry

In October 1989, the Drug Enforcement Administration (DEA), in conjunction with local law enforcement agencies around the country, conducted Operation Green Merchant, which focused on indoor marijuana production. For some observers, this operation raised the question of whether citizens can be expected to exercise their fourth amendment right to refuse entry to law enforcement officers conducting a knock-and-talk investigation.

Now, a consent search is a useful tool when there is some reason to suspect unlawful conduct, but not enough to justify a warrant. Certainly, in conducting any investigation, consent accompanied by probable cause provides the best possible case. Often, when investigators have established probable cause and have obtained a warrant, they may choose to conduct a less-intrusive consent search for evidence in plain view.[7] Some of the consent searches conducted during Operation Green Merchant fit this pattern, with officers choosing the least-intrusive option available to them.

It is important for law enforcement officers to understand the distinctions between consent searches and searches requiring a warrant, so that they may uphold a high standard of professionalism in conducting all searches. In instances where information concerning the possible commission of a crime is less than sufficient to meet the probable cause standards for a search warrant, however, it may still be appropriate to conduct a consent search, although several variables apply. Specifically, officers do not want to abuse standards for a warrant, they do not want to conduct an invasive search unnecessarily, and they do want to preserve law enforcement's fundamental commitment to protect civil liberties.

Consent Searches

Many knock-and-talk residential searches evolve from repeated citizen complaints. While it is important to follow up on credible citizen concerns, bad warrants make for bad law enforcement. Yet, we cannot tell "good citizens" that there is nothing the police can do to investigate their suspicions. So, a consent search provides a minimally disruptive way to check the validity of community suspicions.

The issue then turns to the practice of consent searches and how they are conducted. Speaking for my department, few agents of the State Bureau of Investigation (SBI) conduct consent searches. They are much more likely to use warrants. However, when called for, carefully trained agents do conduct consent searches, and they are required to handle themselves appropriately. That is, they establish an individual's right to give consent to a search, they show identification, and they state the purpose of their visit and ask for permission to enter the premises. At all times, they must be polite, act in a low-key, non-authoritarian manner, respond to questions honestly, and above all, accept "no" for an answer after asking a person to cooperate.

This approach maintains the department's credibility with the courts and does not degrade the effectiveness of consent searches as investigative tools. These patient step-by-step techniques keep agents constantly aware of the limitations of the process, so that errors that do occur will be on the side of protecting civil rights.

Training and Procedures

The North Carolina SBI strives to maintain high standards of professionalism in conducting consent searches, and this commitment is continually stressed in all facets of training. Agents are trained to conduct consent searches in stages. They can only take a cursory look for obvious signs of illegality "in plain view." At each step, room by room, they must ask for permission to proceed. Nothing is opened without permission, and a search in progress must be discontinued upon request, unless evidence is noted in plain view. No coercion is permitted, and agents emphasize that the individual asked to consent to a search is not under arrest. The training and established procedures are calculated to ensure SBI agents do not violate the guidelines.

> ***"Carelessness in conducting consent searches both endangers civil liberties and risks the loss of a valuable investigative tool."***

Lessons To Be Learned

It is crucial for law enforcement officers to understand the inherent intimidation they convey. Psychologically, letting any unexpected "guest" into one's home can represent a kind of intrusion. As one law professor commented, "For most people, a consent search is preferable. [However,] very few people would be able to resist a law enforcement request for a search. It's astonishing the number of times people who have contraband in their possession consent to a search."[8]

Consent searches neither technically nor actually erode the fourth amendment's protection against unreasonable search and seizure. Even so, officers should inform citizens of their right to refuse a search, although they are not required to do so.[9] There is no advantage gained by threatening to get a warrant and "come back in a bad mood." Such a threat would be disrespectful and unlawful. And, speaking practically, why use a threat that would invalidate a subsequent consent?

In determining the meaning of voluntary consent, however, law enforcement must accommodate two competing concerns—the legitimate need for consent searches and the requirement of ensuring the absence of coercion. For example, during Operation Green Merchant, consent searches were conducted to look for large objects in plain view. If sufficient evidence was noted in such a cursory search, officers would then seek a warrant to search more carefully. This action conformed to the standards of reasonableness required by the legal

system, and the consent searches allowed officers to check the validity of articulable suspicion in the least intrusive or disruptive way. With a consent search, if nothing suggesting illegality is in plain view, law enforcement's investigative interests are satisfied.

Conclusion

Drugs have taken over the American political agenda. Law enforcement must operate in a complex legal and social environment now further complicated by the national desire to resolve the drug problem easily and quickly. But, civil liberties should not be compromised to mollify those demanding increased drug arrests. As Supreme Court Justice Thurgood Marshall warns, "Precisely because the need for action against the drug scourge is manifest, the need for vigilance against unconstitutional excess is great. History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure."[10]

Law enforcement, therefore, must continue to follow the clearly established procedures that have earned it the respect and trust of the public. We are expected to safeguard everyone's rights, and we know better than to try to find shortcuts to justice.[11] We must take this responsibility seriously. We must behave as true professionals. One way to do this is to underscore the importance of conducting consent searches in a careful and sophisticated manner.

LEB

Footnotes

[1] *See* "When The Cops Knock," *The Raleigh News and Observer*, October 31, 1989.

[2] "Drug War Tactics Favored," *Charlotte Observer*, February 28, 1990.

[3] Aaron Epstein, "Worried Public Backs Court Restrictions On Personal Freedoms," *The Raleigh News and Observer*, June 3, 1990.

[4] Ibid.

[5] *See, e.g.*, John Gales Sauls, "Curtilage: The Fourth Amendment in the Garden," *FBI Law Enforcement Bulletin*, vol. 59, No. 5, May 1990, pp. 26-31.

[6] Charles J. Ogeltree, "Are Confessions Really Good For the Soul? A Proposal to Mirandize Miranda," *Harvard Law Review*, vol. 100:1826, 1987.

[7] Under such circumstances, officers are cautioned to keep the existence of the warrant to themselves so that it will not taint the consent. *See Bumper* v. *North Carolina*, 391 U.S. 543 (1968).

[8] Barry Nakell, law professor at the University of North Carolina at Chapel Hill, quoted in *The Raleigh News and Observer*, October 31, 1989.

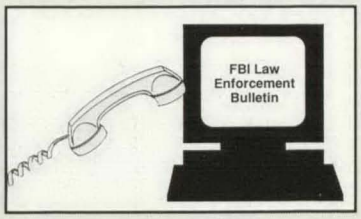
[9] *See Schneckloth* v. *Bustamonte*, 412 U.S. 218 (1973). In an opinion by Justice Stewart, expressing the views of six members of the Court, it was held that the question whether consent to a search was voluntary was to be determined from the totality of all the circumstances; that it was unnecessary for the State to establish that the person who consented to the search knew that he had a right to refuse such consent; and that the requirement of a knowing and intelligent waiver of constitutional rights, while applicable to constitutional guarantees involving the preservation of a fair trial for a criminal defendant, was not applicable to the fourth amendment guarantee against unreasonable searches and seizures.

Justice Brennan dissented on the grounds that a person cannot effectively waive his fourth amendment right to be secure against an otherwise unreasonable search, where he is unaware that in the absence of his consent, such an invasion of his privacy would be constitutionally prohibited. Justice Marshall dissented on the grounds that the prosecution may not rely on a purported consent to search if the subject of the search did not know that he could refuse to give consent and that any fair allocation of the burden of proof would require that the prosecution show that the subject knew of his rights.

[10] Seth Mydans, "The Drug War and Civil Liberties," *The Raleigh News and Observer*, October 22, 1989.

[11] *See Mapp* v. *Ohio*, 367 U.S. 643 (1961). "However much in a particular case insistence upon observance by law officers of traditional fair procedural requirements may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves the tolerance of short-cut methods in law enforcement impairs its enduring effectiveness."

Dial-the-Bulletin



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Miami's Crack Attacks

By
DAVID ROMINE

Across the country, street sales of illegal drugs have grown to such an extent in urban areas that drug dealers literally vie for territory on street corners, much as newspaper hawkers did years ago. The City of South Miami, Florida, is no exception.

To deal with the drug trade, the South Miami Police Department devised an innovative and successful program called "Crack Attack." This program, begun through trial and error, evolved into a workable system, despite a limited budget and resources. This article provides a working outline of the program's development and explains some of the problems the department encountered.

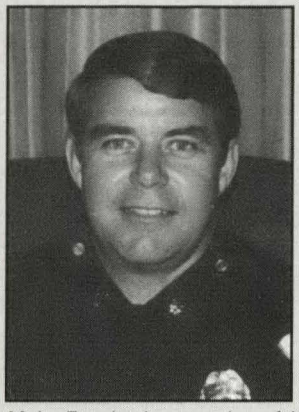
South Miami's Problem

Street sales of drugs, primarily crack cocaine, proliferated in a relatively compact area. As a result, the battle for control over the customer drive-up business resulted in an escalation of violence among drug dealers. Traditional enforcement techniques worked effectively for a limited time, but as the dealers became familiar with them, they were able to circumvent enforcement tactics. In addition, low bonds, or none at all, coupled with light sentencing, resulted in very little actual incarceration time. Understandably, officers became frustrated, and the dealers developed an "I-can-beat-the-system" attitude.

But this was only part of the problem. Officer identification by dealers hampered controlled buying efforts. Limited resources prohibited constant patrol of the area, and reverse stings proved too risky to both officers and citizens.

Intelligence Gathering

Despite the shortfalls, the department did not let up on its enforcement efforts against drug dealers; rather, it took additional steps to combat the drug problem. To begin,



Major Romine is a member of the South Miami, Florida, Police Department.

> ***"...for the South Miami, Florida, Police Department, crack attacks have become a viable weapon in the war against drugs."***

drug officers worked to develop a comprehensive intelligence portfolio. This information base would then serve as the foundation for any decisions relating to the Crack Attack Program.

Identifying the problem area accurately was crucial to the success of the program. From information collected, it was determined that most of the drug trade concentrated near a county middle school. Fortunately, a recently enacted Florida criminal statute provided for increased bonds and penalties for the sale of drugs within 1,000 feet of a school. It was now "...unlawful for any person to sell, purchase, manufacture, or deliver, or to possess with intent to sell, purchase, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school...."[1] This statute upgraded this crime to a first-degree felony and provided for increased bonds and a 3-year minimum mandatory sentence for any person found guilty of violating this law. It also slowed the revolving door in the criminal justice system for those involved in illegal drug activities.

Information stored in the data base was also used to map day and night activity patterns. This intelligence included information on street sellers, runners, and lookouts. Field interview reports were researched as the officers identified the various offenders. Then, the department started photo and information files on each of the most frequently observed offenders.

Personnel

Identification of local officers by the criminal element is a problem experienced by all police agencies. To address this problem, the department started to use undercover officers from other agencies, which was a traditional approach commonly used as a means of interagency cooperation. For the most part, however, the cost of officer overtime limited this practice. Other problems also needed to be considered, such as officer injury liability and jurisdictional authority. Obviously, the planned long-term direction of this program required a clear solution to these issues. The solution came in the form of a mutual aid agreement regarding police operations drafted by the city attorney's office.

Mutual Aid Agreement

The provisions of this mutual aid agreement allow for short- and long-term use of undercover officers, services, facilities, and equipment of other local departments. The agreement outlines the circumstances and conditions under which the mutual aid agreement can be requested and rendered. It also provides for a system among the agencies involved for receiving, collecting, and disseminating information, data, and intelligence pertaining to law enforcement activities.

The agreement prescribes a procedure to inventory all law enforcement personnel, facilities, and equipment and calls for the preplanned distribution and allocation of law enforcement resources in support of this overall law enforcement mission. But, while this agreement solved the major legal, personnel, and equipment problems, there were still technical and strategic aspects to consider.

Strategy

The strategy adopted for crack attacks is basically twofold. New concepts born from drug officers who work the streets, coupled with evaluations of traditional programs, resulted in a workable crack attack plan.

The first part of the strategy deals with tactics to make cases that would result in a conviction. To start, undercover officers from other agencies, i.e., mutual aid pact participants, drive to identified drug trafficking locations and attempt to make controlled drug buys from street sellers. As experienced drug operatives, these officers know the limits of legally permissible conversation when completing these transactions. Particular attention is given to officer appearance and vehicles. In addition, the department strategically places back-up units for officer safety.

From this point on, however, the South Miami crack attacks diverge from traditional enforcement. A collective decision was reached not to make an arrest at the time of a successful controlled buy. Instead, officers document the transaction and preserve the evidence and the chain of custody. After numerous controlled buys from several drug dealers, warrants could then be obtained for a collective, multiagency roundup.

However, a pressing and important legal issue was building cases for conviction. Because the officers making the controlled buys were not local officers, they could not easily identify the drug dealers. And, the placement of the surveillance units made observation by other officers difficult. Topography and location also hampered photographing the transactions.

The ideal solution to this problem appeared to be videotaping the transactions, using digital date and time readouts. To this end, the department experimented with several mounting designs, such as handheld, battery-packed VCRs mounted in large, homemade car stereo speakers. The possible locations for mounting the camera are limited only by the imagination, because of the size of the camera lens and its ability to be camouflaged.

The department finally decided on a VCR system mounted in a carrying case that could be placed in the trunk of any car. An external cable could then be run from the trunk to the front passenger compartment where a 2" by .75" diameter lens was mounted and concealed to record the transactions by sight and sound. The maximum distance from the perpetrator to lens was approximately 4 feet. Since the department could now record transactions by sight, sound, date, and time for use as evidence in court, the controlled buy phase of the operation could be put into effect.

> ***"After numerous controlled buys from several drug dealers, warrants could then be obtained for a collective, multiagency roundup."***

After completing a predetermined number of controlled buys, officers familiar with the local clientele viewed the video tapes of the transactions for the purpose of identifying the street sellers. With the identifications completed, arrest warrants could be compiled and issued.

Once this was done, copies of the video tapes were made for the prosecuting attorney's office and for later use by the public defender or defense attorneys. All reports were typed, and all warrants were completed and signed at one time.

Warrant packets were also prepared. Each subject's warrant packet had a recent photo of the individual, a copy of the arrest warrant, and a brief synopsis of the subject's history and potential for violence. The department then categorized all subjects according to their potential for violence. Arrest affidavits were also prepared and were on hand for signing when the warrant was served.

Arrest Phase

Evaluating the number of subjects to arrest and their potential for violence dictated the number of officers detailed for the arrest phase of the operation. After this was determined, the participating personnel were notified of the date and muster time for the arrests.

At approximately 5:00 a.m., supervisors briefed the arrest teams. SWAT teams were assigned to those drug dealers with a high risk for violence. In addition, each arrest

team had at least one officer who personally knew the individual to be arrested. Prisoner transport teams were also organized and prisoner processing units were set up for mass bookings.

At approximately 6:00 a.m., all arrest teams were deployed simultaneously. Within an hour, an average of 85 percent of all wanted individuals were in custody. Within 24 hours, virtually 100 percent were in custody.

Conclusion

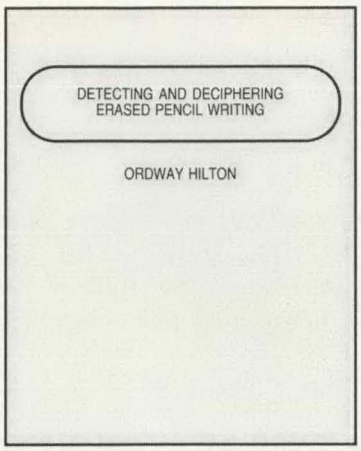
Obviously, crack attacks alone will not solve a community's drug problem. However, this tactic does help to chip away at one vital portion of the drug trade—the drug dealer. Using video technology and organizing mass arrests by warrants proved especially advantageous.

Crack attacks ensure the integrity of the operational phases and maximize undercover officer safety. The program deals a severe blow to drug dealers and to the criminal community. In addition, planning such an operation provides an excellent opportunity for positive media coverage, which will ultimately enhance community awareness and facilitate community faith in the police department.

Crack attacks have worked effectively for South Miami; however, each police department would obviously have to tailor the program according to its size and resources. But, for the South Miami, Florida, Police Department, crack attacks have become a viable weapon in the war against drugs. **LEB**

Footnote

[1] Fla. Stat. sec. 893.13 (1988).



Detecting and Deciphering Erased Pencil Writing *by Ordway Hilton, Charles C. Thomas Publishers, Springfield, Illinois, 1991, (217)789-8980.*

Detecting and Deciphering Erased Pencil Writing is a comprehensive source of information regarding the investigation of suspected pencil erasures and alterations. The book was written primarily for practitioners in the field of forensic document examination, but even those who are not experts will find the language and style inviting and easy to follow.

If the investigation of pencil markings seems anachronistic in this age of laptop computers, fax machines, and electronic pagers, consider such familiar items as notepads, appointment books, desk calendars, and ledgers—all commonly marked with pencils. Documents prepared with a pencil can become important in a wide range of criminal investigations—from violent street crime to sophisticated white-collar fraud schemes. If information is important enough to have been erased by a criminal, then a compelling need arises to examine the questioned document closely. This book provides a useful overview of effective investigative techniques.

A wide range of subjects are discussed, beginning with the basic components of pencils, their writing characteristics, and techniques for determining whether an erasure has been made. An addendum discusses related problems, such as obliterations and insertions. Separate chapters are devoted to the visual, photographic, chemical, and physical methods used to decipher original pencil entries. There are also chapters on deciphering impressed or indented writing, relative dating of erasures, handling of evidence, and effective methods for presenting erasure evidence in reports and in court.

While cases involving pencil erasures and alterations comprise a minority of the matters brought to a document examiner, the evidence may be of great importance to the resolution of an investigation. The examination of erasures, however, often produces as many questions as answers and is fraught with misconceptions concerning its capabilities and limitations. Thus, the analysis of erased and altered pencil writing easily ranks among the most vexing of tasks for the document examiner.

To compound the problem, literature available on this subject has been sparse and fragmentary. This book is a welcome source of technical information pertaining to erased and altered pencil writing.

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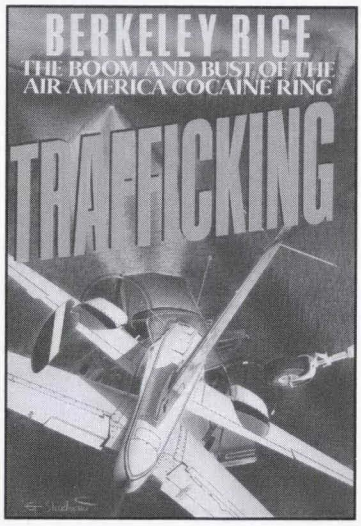
Book Reviews



Trafficking: The Boom and Bust of the Air America Cocaine Ring *by Berkeley Rice, Macmillan Publishing Company, New York, 1989, (212)702-2000.*

Trafficking is a well-written account of the rise and fall of a domestically based drug transportation organization. The ring, which operated as a private flight company named Air America, imported an estimated 10 tons of cocaine into the United States during the early 1980s.

Members of the ring flew Cessna twin-engine aircraft with modified fuel tanks that allowed direct flights from Columbia to the United States. The planes also boasted such advanced avionics equipment as computerized navigation systems, high-frequency radios, and weather radar screens. The advanced aircraft were indicative of the highly professional nature of the ring and of the importance the ring's Colombian sponsors placed on establishing secure drug routes to the lucrative U.S. market. Air America proved to be a very profitable venture for its members.

By 1986, however, the Air America ring had been dismantled by investigators and its members prosecuted. Throughout the investigation, the ring's leader attempted to play both sides of the coin—furnishing information to law enforcement agents while continuing to direct the importation of substantial amounts of cocaine. Authorities maintained that his cooperation and testimony were essential to the prosecution of his associates. However, the 10-year sentence he received as part of a plea bargain was less than that of his co-conspirators, which generated significant negative public comment.

In analyzing this case, *Trafficking* effectively points out the potential problems in recruiting sources from within a drug ring. Investigators must be continually alert to ensure that the agent-source relationship is not exploited in these situations.

In addition to discussing the investigation, *Trafficking* also describes Air America's smuggling operations in detail, making it a valuable read for drug investigators. However, the author does draw an inappropriate comparison between the smugglers and the agents pursuing them—concluding that the two groups were not very different. In fact, members of the ring either failed to recognize the dire consequences of their actions or were blinded by greed. The smugglers were vastly different from the investigators who pursued them.

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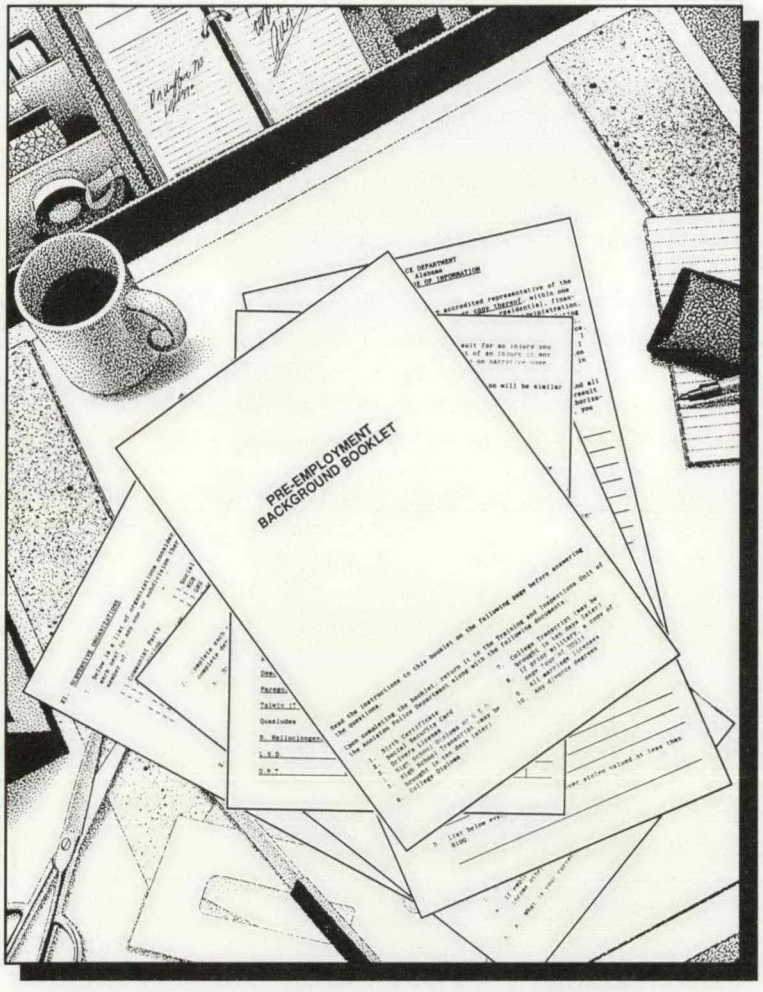
Pre-Employment Background Investigations

By
THOMAS H. WRIGHT



The pre-employment background investigation may be the most important investigation that a law enforcement agency will ever conduct. How the investigation is executed, and its results, will impact on an agency for years to come. If a proper and thorough investigation is conducted, an agency can eliminate undesirable applicants from consideration and hire qualified, dedicated employees. If, however, a thorough pre-employment investigation is not conducted, the agency exposes itself to a vast array of libelous situations, occupational problems, or at the very least, non-productive employees.

PREVIOUS EFFORTS

Throughout the history of American law enforcement, pre-employment investigations had been relatively simple, since most applicants grew up in one city, lived there most of their lives, and worked at one or two local jobs before applying for a law enforcement position. Even if they had enlisted in the military or gone away to college, the activities of the applicant could be verified with a telephone call or letter to one or two jurisdictions.

As society became more mobile in the 1960s and 1970s, conducting a complete pre-employment investigation became much more difficult and complex. Often, an applicant had attended several high schools in different jurisdictions before enrolling in college in yet another. After graduation, the individual may have worked in several different cities before seeking employment with a law enforcement agency. This all served to complicate the investigation process.

Meanwhile, as these factors made background investigations more difficult to conduct, other factors were making them an indispensable means of protecting an agency from both public embarrassment and legal action. More and more, law enforcement agencies were being held accountable for the actions of their employees. An in-

creasing number of agencies were also being sued for "negligent hiring" and "negligent retention."[1]

A negligent hiring suit is based on the legal concept of *respondeat superior*, or "let the master answer."[2] This suit alleges that the employer is negligent by placing the employee in a position for which the employer knows, or should know, the individual is not suited.

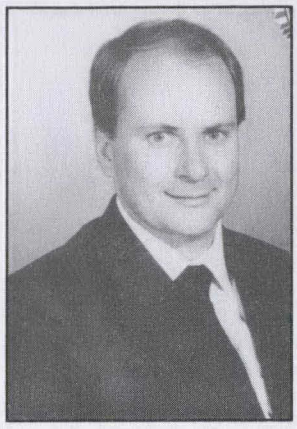
Negligent retention is the breach of an employer's duty to monitor an employee's unsatisfactory performance and take corrective action through retraining, reassignment, or discharge. For example, a department may be held liable if it knowingly allows an officer who cannot successfully qualify with a handgun to continue carrying the weapon.

However, due to the U.S. Supreme Court's 1986 decision in *Daniels* v. *Williams*, which held that negligence is not actionable as a constitutional violation, the viability of negligent hiring or retention suits are now dependent on each State's tort law. Since State tort laws vary, there are differing degrees of vulnerability to these types of suits. Therefore, each department should be familiar with the relevant statutes governing negligent hiring and retention suits in their State.[3]

REASONS

Of course, a department should have its own reasons, aside from avoiding damaging legal actions, for conducting extensive pre-employment investigations. A thorough background check could uncover falsified information submitted by an individual on the employment application. The probe will give some indication as to the competency, motivation, and personal ethics of the applicant. These are important factors that should be made known to the department, to some degree, *before* an individual is hired.

> ***"A vigorous and intensive background investigation procedure can help to ensure that only the most qualified individuals are recruited...."***



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Should derogatory information become known after hiring, it could even jeopardize criminal cases made by the officer. Recently, it was learned that a sheriff's deputy had been convicted of extortion in Federal court before he was hired as a deputy. As a result, numerous appeals were filed on criminal cases that the deputy had investigated, including several capital murder charges. Although none of the appeals were successful, the sheriff's department and the local prosecutor's office expended valuable resources and personnel hours defending the cases.[4]

Many law enforcement agencies claim that they do not have the time, money, or personnel power to conduct a thorough background check. However, as some agencies have discovered the hard way, it could easily become a "pay me now or pay me later'' situation. Either an agency can devote the money and resources now to conduct a thorough pre-employment background investigation, or it can spend much more in the future defending against a myriad of legal actions or constantly retraining an unfit employee.

THE INVESTIGATION PROCESS

Preliminary Interview

Once an individual has applied for a law enforcement position, a preliminary meeting with the applicant should be arranged. This meeting should be conducted by the agency's personnel officer or the person who will be conducting the background investigation. During this meeting, the investigating officer should advise the applicant of the following information:

- Details of the background investigation process,
- Salary,
- Benefits,
- Working conditions,

- Vacation and sick leave provisions,
- Off days and shift schedules,
- Probationary status and duration,
- Civil service or union rules,
- Overtime pay policies,
- Retirement plans, and
- Any other information that would directly affect the prospective employee.

In addition, the officer should have applicants discuss why they want a career in law enforcement, why they want to work in this particular agency, and how their spouse feels about them working in the law enforcement field. This should be an interactive interview, and applicants should also be allowed to ask questions at this time.

Background Investigation Booklet

At the conclusion of the preliminary interview, the applicant should be given a background investigation booklet to complete. The booklet should be explained thoroughly by the investigating officer. The applicant should then be given a specific date and time (preferably in about 2 weeks) to return the completed booklet to the officer. The applicant should be instructed to be completely truthful in answering all questions in the booklet, as all information will be verified.

Once the booklet has been completed and returned, it becomes the heart of a good pre-employment background investigation because it is the primary source of information concerning the applicant's past. To provide a good basis for an intensive investigation, the booklet must be a comprehensive and thorough document. (See table 1.)

When the booklet is returned, it should be reviewed in the presence of the applicant by the investigating officer. The officer should ask the applicant about any information that is unclear or questionable, and about any information that appears to have been omitted. The applicant should then sign a statement guaranteeing that the information is accurate and that the applicant understands that any false answers or omissions could lead to disqualification. This statement should be notarized by a notary public.

Also at this time, a "release of information" form should be signed by the applicant and notarized. This release allows persons, businesses, and agencies to release information to the investigating officer that would normally be restricted under the Privacy Act. The release should be very broad and cover personal history and employment, residential, credit, performance, attendance, disciplinary, arrest, and conviction records. A statement should be included in the release that a copy of the release of information form can serve as the original. (However, because some institutions, such as the military, require an original, the investigating officer should obtain at least three release of information forms from the applicant.) The release and/or copy should then be taken to all interviews.

> ***"The investigating officer should personally contact as many of the applicant's previous employers ...as possible."***

Finally, when an applicant returns the booklet, they should be instructed to provide the following documents:

- Birth certificate,
- Driver's license,
- Social Security card,
- High school diploma,
- High school transcript(s), and if applicable,
- Marriage license(s),
- Divorce decree(s),
- Department of Defense Form DD214 (verifying prior military service).

All original documents provided by the applicant should be inspected and photocopied by the investigating officer. Copies should not be accepted from the applicant since they can be easily altered.

Photos and Prints

Next, the applicant should be photographed and fingerprinted. The photo should be available in case a previous employer, or other person to be interviewed by the investigating officer, does not remember the applicant by name.

At least three sets of fingerprints should be taken. One set should be retained by the investigating officer. One set should be sent to

the State criminal identification agency, and the other forwarded to the FBI for criminal history checks. These prints should be taken on the cards supplied by the State agency regulating the hiring of law enforcement officers and the FBI's applicant fingerprint card. They should not be taken on an agency's arrest fingerprint card. Since it often takes 6 to 8 weeks to get the results of criminal history checks, the fingerprint cards should be mailed to the State agency and FBI as soon as possible.

Table 1

IMPORTANT INFORMATION

- Applicant's personal and family history
- Education to include all schools attended and degrees attained
- All residences for at least the last 5 to 10 years
- Employment summary for the past 5 to 10 years
- Applicant's criminal history to include arrests, locations, dates, and dispositions
- Traffic citations and accidents for at least the last 5 years
- Credit history to include present creditors
- Undetected criminal acts
- References, friend, and associates

Education

Once the pre-employment booklet has been completed and returned, and the applicant has been photographed and printed, the actual investigation begins. Information concerning the applicant's education, including high schools, trade schools, and colleges or universities, should be contained in the background booklet. It is unnecessary to include information regarding elementary schools.

In reviewing the list of schools, any discrepancies with locations or dates should be noted. Each school should be contacted, preferably in person, by the investigating officer. If this is impractical, then the schools should be contacted by mail or telephone in order to verify the applicant's attendance. Additional information concerning disciplinary actions, club and organization memberships, scholarships, awards, and extracurricular activities should also be obtained. When possible, it is very useful to talk to teachers who remember the applicant and can provide any insight.

It is also advisable to request a copy of the applicant's transcripts from the school. This should be checked against the one provided by the applicant. In checking with colleges and trade schools, the investigating officer should also check for unpaid bills, loans, or other outstanding fees. For all schools contacted, the investigating officer should make a written report documenting the contact and the name of the person interviewed.

Employment

The investigating officer should personally contact as many of the applicant's previous employers for the past 5 to 10 years as possible. In a negligent hiring suit, this is the first area that the plaintiff's attorney will examine to determine if a thorough background check was conducted.

In discussing the applicant with previous employers, the following areas should be addressed:

- Dates of employment,
- Salaries,
- Applicant's position with the firm,
- Duties and responsibilities,
- Job performance,
- Absenteeism, tardiness, use of sick leave,
- Honesty and judgment,
- Disciplinary actions,
- Reason for leaving employer,
- Temper,
- Self-initiative, and
- Attitude with the public, co-workers, and supervisors.

A good test question to pose to previous employers is whether they would consider rehiring the applicant.

If the applicant has been employed in the criminal justice field as a law enforcement officer, or in some other capacity, additional questions must be asked concerning the individual's productivity, use of force, courage, quality and quantity of cases made, involvement in inter-

nal affairs investigations, assignments, duties, and report writing abilities.

If possible, the investigating officer should request permission from previous employers to interview co-workers and supervisors. Also, if the employer permits, the employment application submitted for that position should be reviewed and checked for any discrepancies with information provided by the applicant in the pre-employment booklet.

Credit Checks

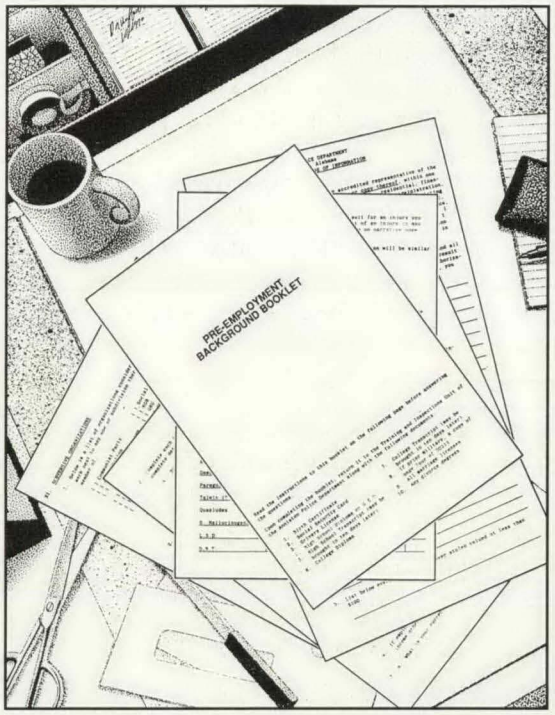
One excellent source of information concerning an applicant is a credit history check conducted through a local credit agency. Although there is a nominal fee for this service (about $10 to $25), the credit check can trace the applicant's credit history throughout the country. The following information can be revealed in a credit report:

- Previous employers,
- Previous addresses,
- Creditors (and amounts owed),
- History of credit payments, and
- Any civil actions taken against the applicant.

Any creditor can be contacted by obtaining an address and phone number from the credit bureau.

Criminal History

Surprisingly, many departments that conduct an otherwise thorough background check fail to perform an adequate investigation into an applicant's criminal history. Many agencies check the applicant only through the State criminal information system or simply mail the applicant's fingerprints to the FBI for a criminal records check. Although this is a good practice (in most States it is the law), not all arrest and conviction records are kept in these files.



The best method to verify the criminal history of an applicant is to contact, either personally or by mail, each law enforcement agency and court of record in the jurisdictions where the individual has lived. If any convictions are verified, the State agency regulating the hiring of law enforcement officers must be contacted to see if the convictions bar the applicant from being sworn in as an officer in that State.

Driving Record

Since a significant portion of a police officer's time is spent driving a patrol car, an adequate check into the applicant's driving history is very important. In fact, a large percentage of the legal actions taken against law enforcement agencies result from officers being involved in traffic accidents.

Most States have automated driver history records that can be easily accessed by the police department. Those that do not should be contacted by mail to obtain the necessary information. Again, the investigating officer should not rely solely on the computer information, but should query each jurisdiction in which the applicant has lived to verify any traffic accidents or citations.

Once any traffic accident or citation is verified, the investigating officer should contact the reporting agency for copies of the accident report or citation. Dispositions of citations should also be verified with the appropriate agency.

Spouse Interviews

The applicant's spouse should always be contacted personally by the investigating officer. The interview should be informal. The officer should ask spouses how they feel about their husband or wife becoming a law enforcement officer and whether they are aware of the shift work involved. The hazardous nature of the job should also be discussed, and the spouse should be allowed to express any fears or concerns they have regarding the job.

Military History

Applicant military records are available through the National Personnel Records Center in St. Louis, Missouri. To obtain these records, the investigating officer must submit an *original* Release of Information Form and a Department of Defense Form 180 (Request Pertaining to Military Records), which must be signed by the applicant. The investigating officer should be specific regarding the information being requested to include awards, citations, disciplinary actions, and medical records. Due to the large volume of data and the number of requests received, it may take 8 to 10 weeks to receive this information.

OTHER PRE-EMPLOYMENT CONSIDERATIONS

There are other approaches to help determine an applicant's suitability for employment. These can be used to supplement the pre-employment investigation.

Polygraph

This can be an excellent tool to aid the investigating officer in learning about the applicant. The polygraph should only be used as a tool to lead to the truth and should not be used as the determiner of fact. Examination questions should be limited to areas that would have an actual effect on the applicant's ability to perform necessary duties and should not be overly personal in nature. However, since several States have statutes that limit or preclude use of polygraph in pre-employment testing, each department should be familiar with applicable regulations before using a polygraph in the pre-employment investigation.[5]

Writing Ability

Because so much of police work involves writing, it is justified for an agency to test the ability of an applicant to write clearly and effectively. Many types of writing exercises can be used to test an applicant's ability. Two very useful tests are the "Mock Crime Scene" and the "Why I Want to be a Police Officer" paper. In the mock crime scene exercise, the applicant is given a scenario and asked to write a complete crime incident report with narrative. In the other, applicants are asked to write a brief paper stating why they have chosen the law enforcement field.

> ***"...a thorough pre-employment background investigation...can save agencies from a number of potential problems."***

FINAL INTERVIEW

After the pre-employment investigation is completed, the agency should conduct a formal interview with the applicant. The interview panel, made up of ranking officers within the agency, should ask the applicant to discuss areas such as current local, regional, and world events, general law enforcement issues, and personal and professional background. Any information uncovered during the background investigation that may have a negative impact on the applicant's ability to perform necessary duties should also be discussed. It is advisable to videotape this session so that it can be viewed at a later time to check for answers and movements that may have been missed during the actual interview.

CONCLUSION

Although a thorough pre-employment background investigation is a time-consuming and tedious process, it can save agencies from a number of potential problems. These problems range from possible legal actions to hiring applicants who are not suited to a career in law enforcement. It may also save the time and effort needed to retrain an individual or process an extensive administrative action. A vigorous and intensive background investigation procedure can help to ensure that only the most qualified individuals are recruited into law enforcement agencies. **LEB**

Footnotes

[1] J. Gregory Service,"Negligent Hiring: A Liability Trap," *Security Management Magazine*, January 1988, pp. 65-68.

[2] J. Gregory Service, "Let the Master Answer," *Security Management Magazine*, May 1987, pp. 100-102.

[3] *See Daniels* v. *Williams*, 106 S.Ct. 662 (1986).

[4] Mike Dorning, "Investigator is Convicted Extortionist," *The Anniston Star*, January 31, 1988.

[5] There are also court decisions affecting the use of the polygarph in the hiring process. *See, e.g., Woodland* v. *City of Houston*, 731 F.Supp. 1304 (S.D.Tex. 1990).

Police Practices

Survivors' Assistance

By DANIEL M. HART

The injury or death of a law enforcement officer takes a severe toll on family members. Not only must they contend with the trauma and personal hardship brought on by such tragedies, but they must also deal with a myriad of administrative issues. As a means to assist family members during such trying times, the Warner Robbins, Georgia, Police Department established the position of Family Liaison Officer within the department and developed a pamphlet to inform family members of the benefits available from local, State, Federal, and private sources.

Family Liaison Officer

The Sergeant in Charge of Crime Prevention also serves as the Family Liaison Officer. It is this officer's responsibility to support and assist family members of injured or killed officers during their time of need.

Once notified, this officer contacts the family immediately and offers to do whatever is required as a result of the tragedy. This includes making funeral arrangements, providing transportation, taking care of personal affairs, being there for moral support, or ensuring the availability of spiritual or professional help.

In essence, the Family Liaison Officer takes an active role in seeing that the family is able to cope. One way this is done is by disseminating to family members a specially designed pamphlet that lists the benefits available.

Benefits Pamphlet

Entitled "Injury and Death Benefits For Law Enforcement Officers and Their Families," the six-page pamphlet serves primarily as a reference guide. It provides a listing of organizations and available programs to which the law enforcement family can turn to for help. For example, it tells parents what organizations to contact to receive financial grants or scholarship funds for dependent children. It also informs survivors as to available organizations or programs that can help them meet their individual needs.

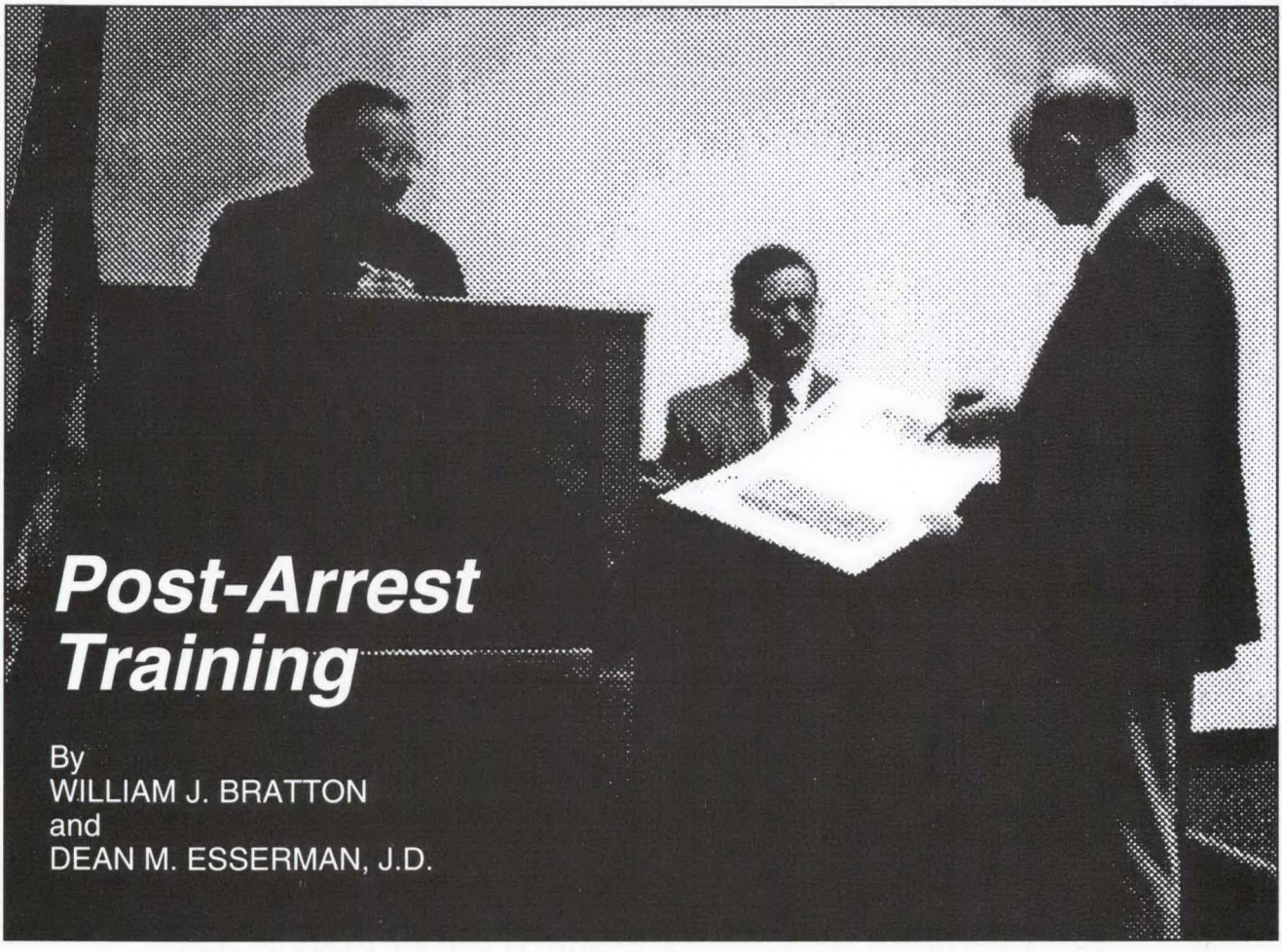
Currently, there are 17 different entries in the pamphlet. Each organization or program is listed separately, along with a brief description of what the organization or program can do for the family members, what type of support is available to them, the criteria for eligibility, and points of contact and where they can be reached.

Summary

The Family Liaison Officer, and the services this person provides to law enforcement families, fulfills a very important and worthwhile need. The support given strengthens the bond that extends throughout the entire profession and ensures that in times of tragedy, no one must face the ordeal alone. LEB

Maj. Daniel M. Hart is assigned to the Administrative Services Division, Warner Robbins, Georgia, Police Department.

Police Practices serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.



Post-Arrest Training

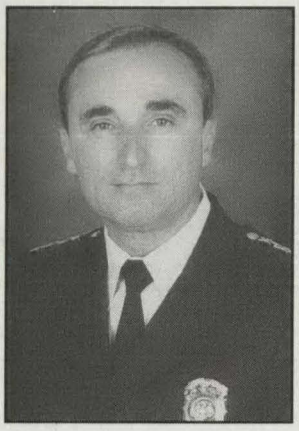
By
WILLIAM J. BRATTON
and
DEAN M. ESSERMAN, J.D.

Consider this court scene. A witness takes the stand. Square-jawed and resolute, he answers the prosecutor's questions with precision and self-assurance. Then comes the cross-examination by the defense attorney. Within minutes, the witness begins to squirm on the stand. He stammers when responding to questions, and eventually, starts to perspire. Answers such as "I don't know" and "I can't remember" replace the crisp, factual responses he gave initially. With his composure gone, his credibility diminishes.

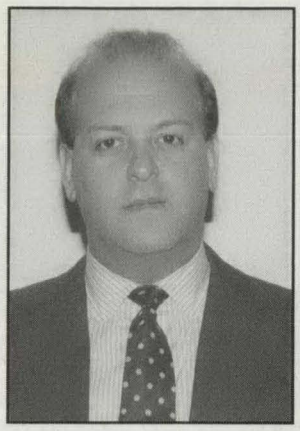
Such a reaction can be expected of a newcomer to the courtroom. But, this witness is a veteran detective who has testified at innumerable trials, grand jury proceedings, and pre-trial hearings. He is one of the police department's best major case investigators, with a long list of dramatic arrests to his credit. Yet, he has never been able to overcome a weakness common to many in his profession—discomfort and anxiety, even fear, in a courtroom situation.

Prosecutors readily admit that the final resolution of most cases that go to trial depends on the testimony of expert witnesses. In turn, witnesses who fail to project their findings professionally and convincingly can adversely impact the outcome of the case.

Detectives spend countless days and nights of tedious routine gathering evidence to prosecute criminals successfully. Oftentimes, they place themselves at great personal risk before arresting a suspected offender. They must also seek and interrogate witnesses, confirm accounts of what transpired while the crime was being committed, secure evidence, and prepare for court appearances. It is unfortunate when all the time and effort put into an investigation is undone because a detective's testimony is weak and unconvincing.



Chief Bratton commands the New York City Transit Police Department.



Mr. Esserman serves as Legal Counsel for the police department.

Because courtroom testimony by detectives is a principle area in which a case can falter after the arrest of a suspect, the New York City Transit Police Department developed a special training course in post-arrest procedures. This course operates under the principle of "thinking beyond the arrest."

FELONY ARRESTS

In 1990, the NYC Transit Police, whose primary mission is to safeguard the 3.5 million daily riders of the city's subway system, made 7,379 felony arrests, an increase of almost 15% over the previous year. But, what happened to these arrested felons? Because of the overburdened criminal justice system, many were allowed to plead to lesser charges. Soon, these offenders were back on the subways resuming their criminal activities. As a result of this revolving door, relatively few offenders commit a major portion of the felony crimes occurring on the subways of New York City. In other words, the Transit Police arrest the same people over and over again.

Determined to reverse this trend, the department decided to give prosecutors what they needed to bring the strongest possible case to court. To this end, it incorporated into the training curriculum a 1-day seminar for the department's more than 300 detectives and their supervisors. Even the department's top commanders are required to complete the course. Officially titled "Conduct as a Witness at Hearings and Trials," the seminar follows a simple theme—"How to keep them after you catch them."

THE SEMINAR

The seminar was developed by an assistant district attorney and two former assistant district attorneys, one of whom is the current Legal Counsel of the Transit Police and the other who is a New York City criminal court judge. Joining in course preparation and instruction is a Transit Police detective.

Each session of this "case-making" seminar stresses one vital point. Specifically, the witness is on trial, just as the defendant is. A case may stand or fall based on how expert witnesses handle themselves during testimony.

Course instructors continually remind the detectives that while they have the same rights as any other witness, more is required of them. Simply by the virtue of their position, they are expected to testify competently, forthrightly, and expertly. Yet, in reality, these expectations often fall short. The seminar and the accompanying instructional materials are designed to lessen the anxiety many detectives experience while on the witness stand.

INSTRUCTIONAL MATERIALS

Manual

Each participant receives a manual that outlines four cardinal rules that detectives should follow when testifying. Specifically, they are advised to:

1) Bring every police report on the case to court,

2) Read all police reports, grand jury minutes, and hearing minutes before taking the stand,

3) Listen carefully to all questions before answering, and

4) Be patient and courteous, not a wise guy.

Film

Instructors strive to make the course material as meaningful as possible to the seminar's partici-

pants. For example, during the seminar, they use a training film and case reports relating to an arrest following a mock armed robbery on a subway platform. The training film shows the wrong way for a witness to behave while testifying.

In the film, the witness, portrayed by a veteran detective who is well known for his expert courtroom testimony, bumbles his answers to questions posed during the trial. He hesitates and evades the questions continually. His eyes wander, and he mops his brow as he provides a feeble answer after a long pause. Under persistent questioning by the defense attorney, his testimony unravels.

This segment of the training provides two lessons. One deals with a witness' comportment on the stand; the other with the preparation for the trial and the testimony to be given. Throughout the seminar, the instructors emphasize the vital importance of accurate and complete notes, from the moment a suspect is taken into custody until the trial. This documentation includes complaint followup information forms, *Miranda* rights certification, field investigative worksheets, line-up forms, and arrest sheets. Every step in the process is documented by a complete report or worksheet that is accompanied by a precise narrative.

Documents

For the classroom exercise involving the mock robbery case, the instructors prepare two complete sets of documents for each participant. One packet contains 25 reports, worksheets, and forms that have been completed properly, including documentation of interviews, photo and lineup viewings, criminal history checks, etc. Photo layouts given to the participants show what constitutes good and bad lineups.

The documents in the other packet are either incomplete or have been completed incorrectly. These documents demonstrate the improper way of preparing the paperwork needed to prosecute the case successfully. The extent of the reports brings to light another important point—that detectives should document everything that transpires, especially statements by the defendant.

> ***"A case may stand or fall based on how expert witnesses handle themselves during testimony."***

PROCEEDINGS

Instructors carefully lead the class step by step through custody and the arrest process, making clear the difference between the two. They also explain when the *Miranda* warning is necessary[1] and caution them about related common pitfalls.

The instructors devote considerable time to prepare the detectives for two important proceedings—a *Huntley* hearing[2] to determine if a confession should be suppressed and a *Wade*[3] hearing, to determine if a witness' identification of the suspect should be suppressed. A *Wade* hearing on suspect identification can produce a line of questioning about procedures involved in displaying photos of possible suspects and in constructing a lineup. Another important issue addressed is the special care that must be taken with juveniles, who commit 50 percent of the robberies occurring in the subways.

CONCLUSION

Many of the police officers and detectives who can handle just about anything they face on the street often find themselves ill-prepared for their days in court. The post-arrest training offered by the New York City Transit Police helps to alleviate this problem.

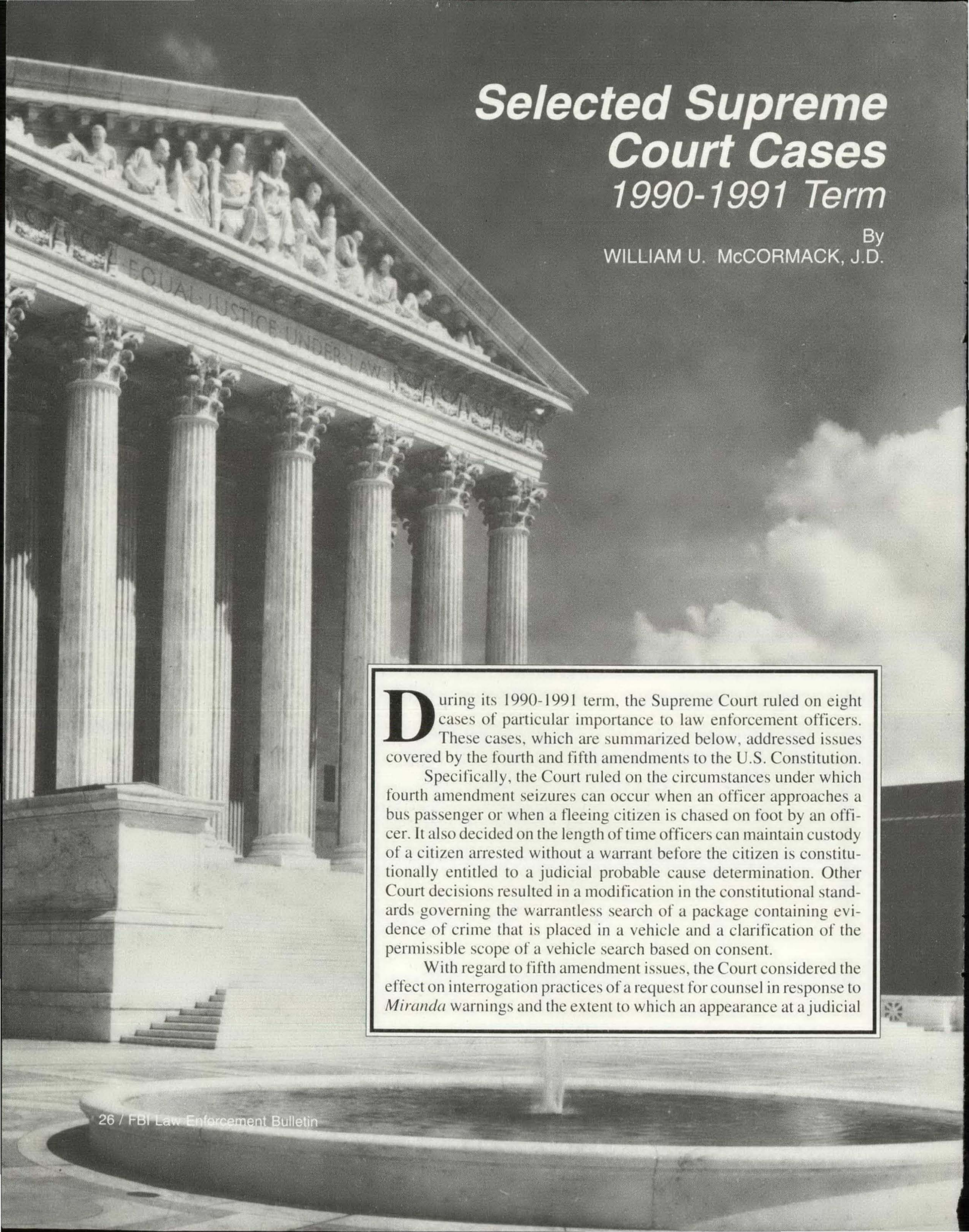
When detectives leave the classroom at the completion of this training, they take with them a new appreciation for courtroom proceedings and how they can counter the various situations that can weaken their testimony. By the end of the day, they realize that the arrest is just the beginning. **LEB**

Footnotes

[1] *Miranda* v. *Arizona*, 384 U.S. 436 (1966). This case held that certain safeguards were necessary to secure a suspect's privilege against self-incrimination.

[2] *People* v. *Huntley*, 15 N.Y.2d 72 (1964). The admissibility of statement evidence is litigated in a *Huntley* hearing. Issues raised at these hearings include whether the defendant was given *Miranda* warnings, whether those warnings were complete, and whether the person's decision to confess to the police was knowing and intelligent.

[3] *United States* v. *Wade*, 388 U.S. 218 (1967). The admissibility of identification evidence, i.e., an out-of-court identification during a line-up or show-up, is examined during a *Wade* hearing.



Selected Supreme Court Cases
1990-1991 Term

By
WILLIAM U. McCORMACK, J.D.

During its 1990-1991 term, the Supreme Court ruled on eight cases of particular importance to law enforcement officers. These cases, which are summarized below, addressed issues covered by the fourth and fifth amendments to the U.S. Constitution.

Specifically, the Court ruled on the circumstances under which fourth amendment seizures can occur when an officer approaches a bus passenger or when a fleeing citizen is chased on foot by an officer. It also decided on the length of time officers can maintain custody of a citizen arrested without a warrant before the citizen is constitutionally entitled to a judicial probable cause determination. Other Court decisions resulted in a modification in the constitutional standards governing the warrantless search of a package containing evidence of crime that is placed in a vehicle and a clarification of the permissible scope of a vehicle search based on consent.

With regard to fifth amendment issues, the Court considered the effect on interrogation practices of a request for counsel in response to *Miranda* warnings and the extent to which an appearance at a judicial

hearing with counsel is sufficient to invoke the *Miranda* right to counsel. It also determined whether a promise by an informant inmate to protect a fellow inmate from other prisoners renders a subsequent confession involuntary.

FOURTH AMENDMENT

Florida v. *Bostick*, 111 S.Ct. 2382 (1991)

In *Bostick*, the Court ruled that law enforcement officers who approach a seated bus passenger and request consent to search the passenger's luggage do not necessarily seize the passenger under the fourth amendment. The test applied in such situations is whether a reasonable passenger would feel free to decline the request or otherwise terminate the encounter.

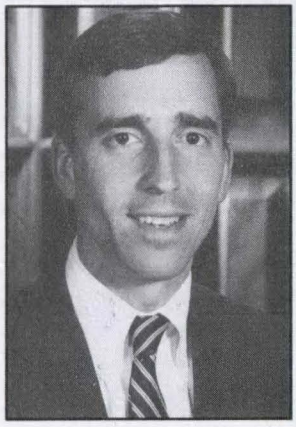
The defendant in this case was on a bus traveling from Miami, Florida, to Atlanta, Georgia. When the bus stopped in Fort Lauderdale, two police officers involved in drug interdiction efforts boarded the bus, and without reasonable suspicion, approached the defendant. After asking to inspect his ticket and identification, they then requested and were given consent to search defendant's luggage for drugs. During the search of the luggage, the officers found cocaine.

The Florida Supreme Court ruled that the cocaine had been seized in violation of the fourth amendment. In doing so, the court noted that the defendant had been illegally seized without reasonable suspicion and that an impermissible seizure necessarily results any time police board a bus, approach passengers without reasonable suspicion, and request consent to search luggage.

The U.S. Supreme Court reversed and held that this type of drug interdiction effort may be permissible so long as officers do not convey the message that compliance with their request is required. The Court noted that previous cases have permitted police, without reasonable suspicion, to approach individuals in an airport for the purpose of asking questions, verifying identification, and requesting consent to search luggage.

The Court recognized that the defendant, who was seated on a bus on an ongoing trip, may not have felt free to leave. However, the Court rejected a "free-to-leave" test for determining whether a fourth amendment seizure occurs in cases such as this in which defendants, who are in the midst of an ongoing trip, would not feel free to leave whether the police were present or not. Instead, the Court ruled that the proper question to determine whether an impermissible seizure occurs is whether a reasonable person would feel free to decline the officers' request or otherwise terminate the encounter.

The Supreme Court remanded the case back to the Florida courts to determine whether the defendant chose to permit the search of his luggage.



Special Agent McCormack is a legal instructor at the FBI Academy.

California v. *Hodari D.*, 111 S.Ct. 1547 (1991)

In *Hodari D.*, the Court ruled that a fourth amendment seizure does not occur when law enforcement officers are chasing a fleeing suspect, unless the officers apply physical force or the suspect submits to an officer's show of authority.

In this case, police encountered four or five youths, including the defendant, huddled around a red sports car in a high crime area of Oakland, California. The youths scattered when they saw the officers. One officer gave chase on foot. The defendant, who was apparently looking over his shoulder, emerged from an alley and unknowingly ran toward the pursuing officer. When he saw that the officer was 10 to 20 feet away and that he was approaching him, the defendant discarded some crack on the ground and was arrested. The California Court of Appeals concluded that the defend-

This issue's cover photo and all of the photos accompanying this article are courtesy of the Supreme Court Historical Society and Panorama .

ant was seized without reasonable suspicion and that the crack he discarded was, therefore, the fruit of an illegal seizure.

The U. S. Supreme Court reversed and ruled that a fourth amendment seizure occurs only when a fleeing person yields to a show of authority or is physically grasped by an officer. The Court noted that "a show of authority" is defined in terms of whether a reasonable person would have believed that he or she was not free to leave. Even assuming that the officer's act of running toward the defendant was a sufficient show of authority for a seizure, the Court concluded that since the defendant did not comply with or submit to that show of authority, he was not seized until he was actually tackled. Therefore, the drugs that the defendant discarded before being tackled were not seized under the fourth amendment and should not be excluded from evidence.

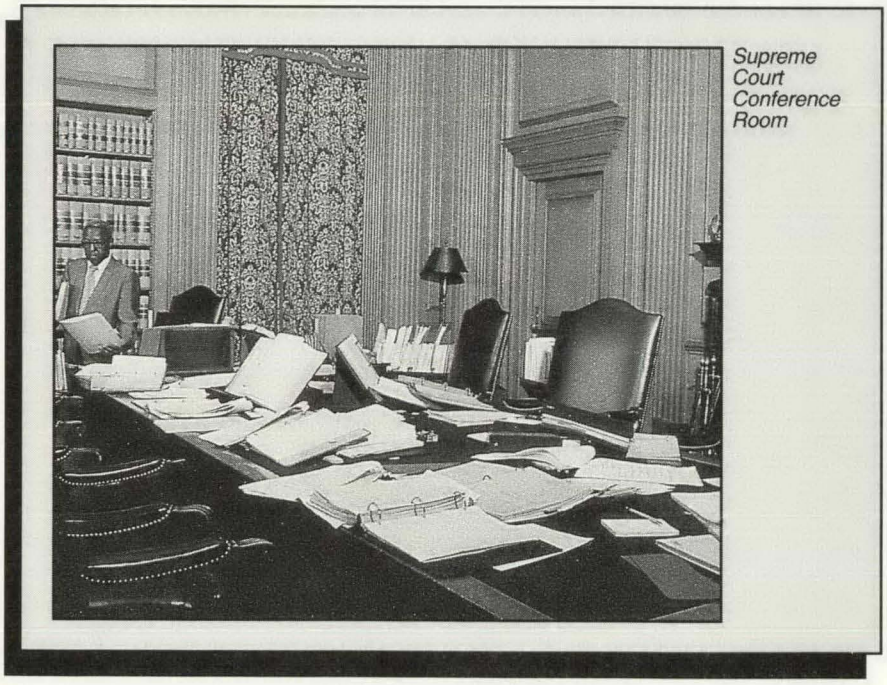
***County of Riverside* v. *McLaughlin*, 111 S.Ct. 1661 (1991)**

In *County of Riverside*, the Court ruled that a person arrested without a warrant must generally be provided with a judicial determination of probable cause within 48 hours after arrest, including intervening weekends or holidays.

In this case, an arrestee alleged he did not receive a prompt judicial probable cause determination following his warrantless arrest as required by the fourth amendment. A Federal district court issued an injunction requiring probable cause determinations within 36 hours of arrest, which was upheld on appeal by the U. S. Court of Appeals for the Ninth Circuit.

The U. S. Supreme Court vacated that judgment and held that a judicial determination of probable cause within 48 hours of arrest will, as a general matter, be constitutional, unless an arrestee can prove the probable cause determination was delayed unreasonably. It analyzed the competing interests that exist between the need for flexibility on the part of State judicial systems and the unfair burden that prolonged detention places on a person whose arrest may be based on incorrect or unfounded suspicion.

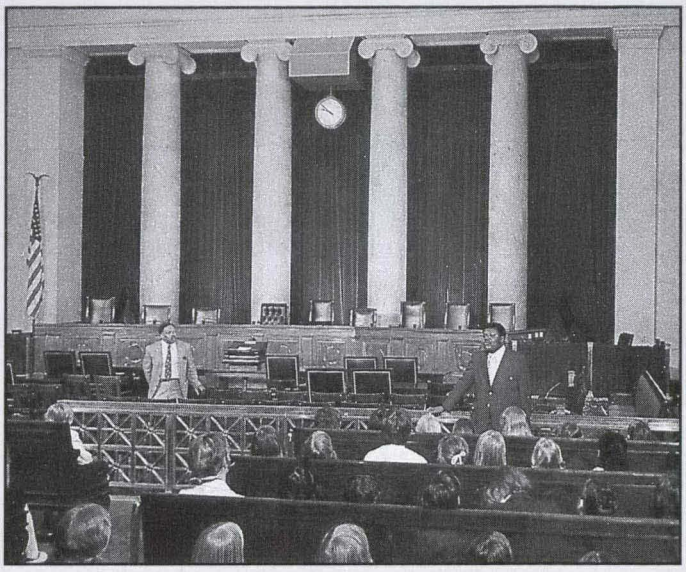
The Court concluded that States should be allowed flexibility to experiment with combining a judicial probable cause determination with other judicial proceedings, such as bail hearings or arraignments. However, in order to provide some degree of certainty in this area, the Court adopted 48 hours as a general rule of reasonableness, while making clear that this period may be less if the Government delays such determinations for the purpose of gathering additional evidence to justify the arrest or if delays are based on ill will.



Supreme Court Conference Room

***California* v. *Acevedo*, 111 S.Ct. 1982 (1991)**

In *Acevedo*, the Court overruled its prior decision in *Arkansas*



Supreme Court Chamber

v. *Sanders*, 442 U.S. 753 (1979), and upheld, under the automobile exception to the warrant requirement, the warrantless search of a container placed into a vehicle, even though the probable cause to search was focused exclusively on that container.

In this case, police observed the defendant leave an apartment carrying a brown paper bag, which they had probable cause to believe contained marijuana, and place the paper bag in the trunk of a car. As the defendant started to drive away, police officers stopped him, opened the trunk, and searched the bag which did, in fact, contain marijuana. The California Court of Appeals ruled that the marijuana should be suppressed in light of the *Sanders* rule, since the probable cause to search was directed specifically at the bag and the warrantless search of the bag exceeded the scope of the automobile exception.

The U. S. Supreme Court reversed and held that containers placed into vehicles may be searched without a warrant, even when probable cause to search focuses solely on those containers. The Court offered the following reasons in support of its decision to overturn the *Sanders* rule, which would have required a warrant to search the bag:

> 1) The *Sanders* rule afforded, at most, minimal protection to privacy interests and has confused courts and police officers;
>
> 2) The *Sanders* rule may have encouraged some law enforcement officers to articulate that probable cause existed to search for evidence in the whole vehicle, resulting in searches of an entire vehicle without a warrant; and
>
> 3) Even where the *Sanders* rule applied, officers could still seize packages found in a vehicle and wait for a search warrant, which could be obtained in the vast majority of cases.

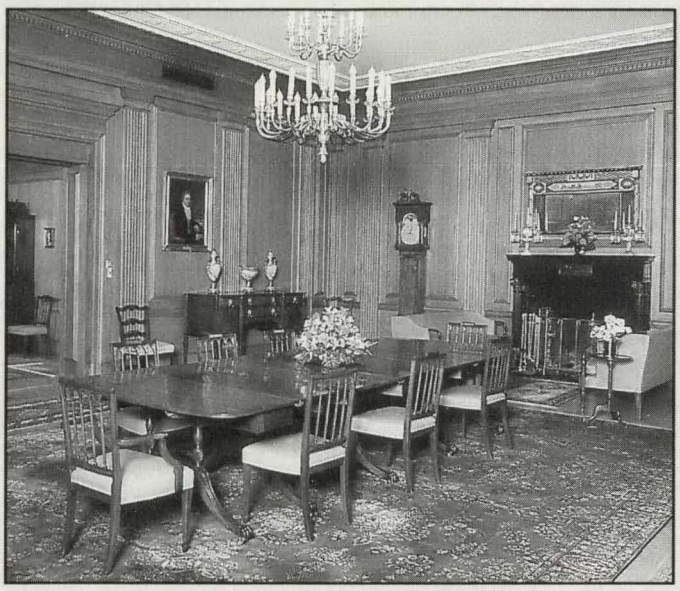
The Court emphasized that since the police did not have probable cause to believe that contraband was hidden in any other part of the car other than in the paper bag, a search of the entire car would have been without probable cause and in violation of the fourth amendment.

Florida v. _Jimeno_, 111 S.Ct. 1801 (1991)

In *Jimeno*, the Court held that a person's general consent to search the interior of a car includes, unless otherwise specified by the consenter, all containers in the car that might reasonably hold the object of the search.

In this case, a police officer followed the defendant's car after overhearing what he thought might be a drug transaction. After observing the car make an illegal turn, the officer stopped the car and told the defendant that he suspected him of carrying drugs in his car and asked for permission to search the car. The defendant consented, and on the car's floorboard, the officer found and opened a brown paper bag containing a kilogram of cocaine.

The U. S. Supreme Court held that it was objectively reasonable for the officer to conclude that a general consent to search defendant's car for drugs included consent



Supreme Court Dining Room

to search a paper bag lying on the floor of the car. The Court stated that the objective reasonableness test used to determine the scope of a consent search assesses what the typical reasonable person would understand, based on the exchange between the officer and the suspect. The Court concluded that when an officer has obtained a consent to search for drugs, it is objectively reasonable to search in containers in a car that might hold drugs, since contraband is rarely strewn across the trunk or floor of a car.

It is important to note, however, that the Court distinguished this case from a case in which police are given consent to search the trunk of a car for drugs and encounter a locked briefcase in the trunk. Since it is, for the most part, unreasonable to think that a suspect who consented to the search of his trunk has agreed to the breaking open of a locked briefcase within that trunk, the Court cautioned that a consent to search the trunk of a car for drugs would not allow police to pry open a locked briefcase found in the trunk.

FIFTH AMENDMENT

Minnick v. *Mississippi*, 111 S.Ct. 486 (1990)

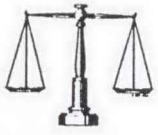
In *Minnick*, the Court ruled that once a custodial suspect requests counsel in response to *Miranda* warnings, law enforcement officers may not attempt to reinterrogate the suspect unless the suspect's counsel is present or the suspect initiates the contact with law enforcement.

In this case, the defendant escaped from jail in Mississippi and was, thereafter, involved in two murders. The defendant was eventually arrested in California on a Friday and interviewed the next day by two FBI agents. After the FBI agents gave the defendant his *Miranda* warnings, he provided the agents with some information, but then told them to come back Monday when he had a lawyer. After the FBI interview, the defendant met several times with his appointed attorney. On Monday, after the defendant talked to his attorney, a deputy sheriff from Mississippi interviewed the defendant. After again being advised of his *Miranda* rights, the defendant described in detail to the deputy sheriff his escape and participation in the murders. The trial court did not suppress defendant's statements to the deputy sheriff, and the Mississippi Supreme Court upheld the trial court's ruling.

The U. S. Supreme Court reversed the Mississippi Supreme Court, which had admitted the defendant's statements to the deputy sheriff. The Court held that after an in-custody accused invokes the right to counsel, *Miranda* bars law enforcement officers from initiating interrogation of the accused, unless the accused has counsel at the time of questioning. Since the defendant's attorney was not present when the deputy sheriff again contacted the defendant, the Court ruled that the subsequent waiver was invalid and the confession to the deputy sheriff was taken in violation of *Miranda*.

In its decision, the Court interpreted the meaning of the phrase "until counsel has been made available, which it had used in *Edwards* v. *Arizona,* 451 U.S. 477 (1981), to

describe when recontact with an in-custody suspect was permissible after a suspect requested counsel in response to *Miranda* warnings. The Court stated that in light of the purpose of the *Miranda* decision, and to provide clear and unequivocal guidelines to law enforcement, recontact with an in-custody suspect would not be permissible unless the suspect has counsel with him at the time of questioning. It also noted that a valid waiver of *Miranda* may be obtained after counsel has been requested, if the accused initiates a conversation or contact with law enforcement officers.



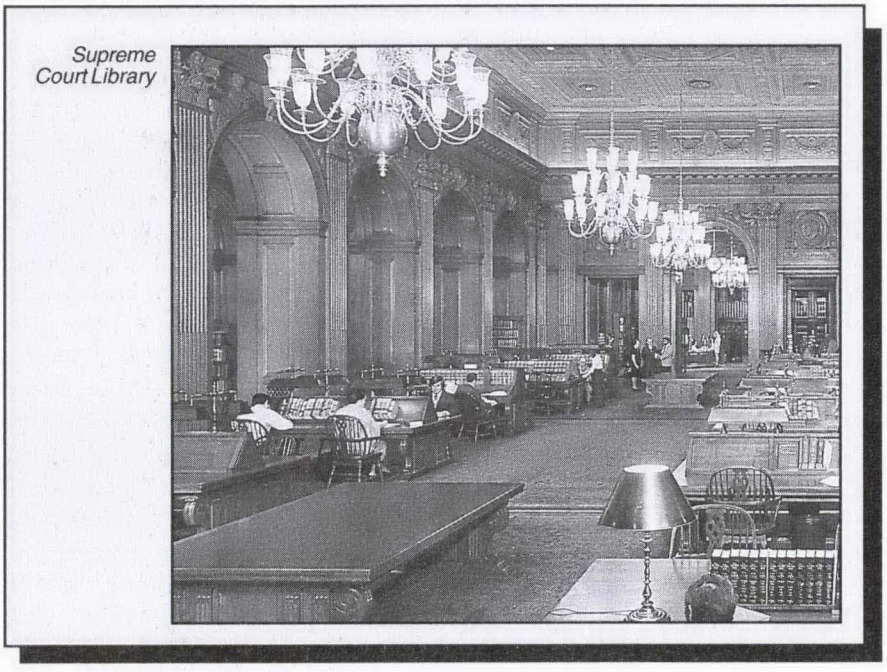
McNeil v. _Wisconsin_, 111 S.Ct. 2204 (1991)

In *McNeil*, the Court held that an in-custody suspect who requests counsel at a judicial proceeding, such as an arraignment or initial appearance, is only invoking the sixth amendment right to counsel as to the charged offense and is not invoking the *Miranda* fifth amendment-based right to have counsel present during custodial interrogations. Thus, officers are not prohibited from later approaching that in-custody suspect for interrogation about uncharged crimes.

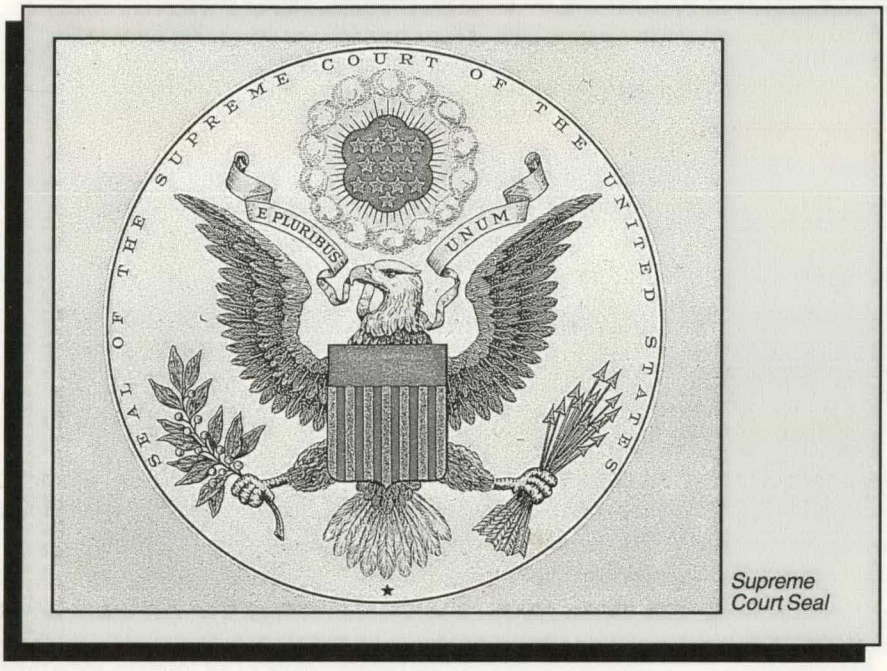
In this case, the defendant was arrested for an armed robbery committed in West Allis, Wisconsin, and was represented by counsel at his subsequent initial appearance. Later the same day, a detective visited the defendant in jail in order to question him about a separate incident involving a murder and armed burglary in Caledonia, Wisconsin. After the detective advised defendant of his *Miranda* rights, the defendant waived those rights and provided accounts of his involvement in the Caledonia murder and armed burglary.

The Wisconsin Supreme Court refused to suppress defendant's incriminating statements. The court found that his appearance with counsel at the initial appearance hearing concerning the West Allis armed robbery did not constitute an invocation of his fifth amendment *Miranda* right to counsel so as to prevent police questioning on the unrelated and uncharged offenses committed in Caledonia.

The U. S. Supreme Court agreed with the Wisconsin Supreme Court and ruled that a defendant who appears at a formal judicial proceeding with counsel, or requests counsel at such a proceeding, is invoking solely the sixth amendment right to counsel, which prohibits police-initiated interrogation without the accused's counsel present only concerning the charged offense. The Court reviewed the purpose and nature of an invocation of counsel under *Miranda* and restated that a request for counsel in response to *Miranda* by an in-custody suspect prohibits police-initiated recontact for the purpose of obtaining a confession concerning any criminal matter, unless the suspect's counsel is present. The Court concluded that if the sixth amendment right to counsel invoked by the defendant in this case was defined to be non-offense specific, effective law enforcement would be seriously impeded, since most suspects in

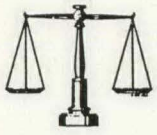


Supreme Court Library



Supreme Court Seal

pretrial custody suspected of involvement in other crimes would be unapproachable by police.



Arizona v. *Fulminante*, 111 S.Ct. 1246 (1991)

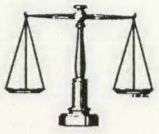
In *Fulminante*, a divided Court decided that a confession between prison inmates was involuntary and inadmissible in this case. However, the Court also noted that in certain cases, the admission into evidence of an involuntary confession may be harmless error, if the involuntary confession's admission is harmless beyond a reasonable doubt.

In this case, the defendant, who was incarcerated after being convicted for possession of a firearm by a felon, was also a suspect in the murder of his daughter. However, no charges had been filed against him concerning the murder. While in prison, the defendant befriended a fellow cellmate, who was an FBI informant masquerading as an organized crime figure. The informant cellmate questioned the defendant about rumors that he was suspected of killing a child, but the defendant denied any involvement.

Thereafter, the informant cellmate told the defendant that he had heard he was starting to get rough treatment from the other inmates because of the rumors about the child murder. The informant then offered to protect the defendant from his fellow inmates, but only if defendant told the informant about the murder. Defendant then admitted to the informant that he had choked, sexually assaulted, and shot his daughter. The Arizona Supreme Court ruled that the confession to the informant should have been suppressed because it was involuntary and that the admission of an involuntary confession can never be harmless error.

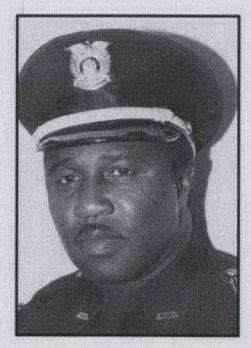
The U. S. Supreme Court upheld the Arizona Supreme Court's decision that the confession was involuntary and also that its admission was not harmless error. However, the Court overruled the Arizona Supreme Court's finding that the admission of an involuntary confession is always error and ruled that the admission into evidence of an involuntary confession may in certain circumstances be harmless error.

Using a totality of circumstances test to determine the voluntariness of the defendant's confession, the Court found that there was a credible threat of physical violence against the defendant unless he confessed and compared this case to a case in which a law enforcement officer promised to protect an accused from an angry lynch mob gathered outside the jail if the accused confessed. Additional factors supporting a finding of involuntariness included: 1) The defendant possessed low average to average intelligence and dropped out of school in the fourth grade; 2) he was short in stature and slight in build; and 3) he had previous psychological problems dealing with the stress of prison life. **LEB**



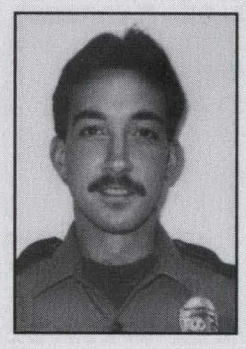
The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.



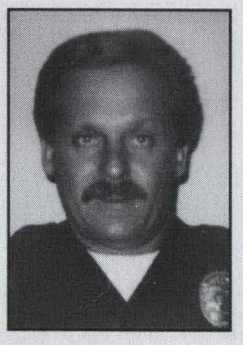
While on patrol during the early morning hours, Lt. Johnny King of the Americus, Georgia, Police Department observed smoke coming from a residence. After radioing the fire department, Lieutenant King entered the burning house to search for occupants. He located the 84-year-old resident sleeping in a rear bedroom and carried her to safety.

Lieutenant King

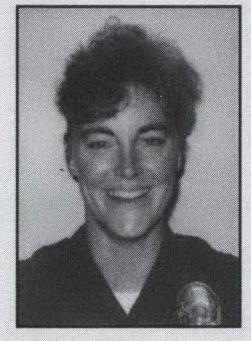


During a traffic stop, Officer James J. Curry of the Montgomery Township, New Jersey, Police Department observed that an occupant of the vehicle fit the general description of one of two juveniles seen in the vicinity of an aggravated assault, which had occurred the night before. Neighbors of the victims had observed two youths "casing" the neighborhood a few hours before the attack and provided this information to the police. The suspect and his mother, who was driving the vehicle, agreed to accompany Officer Curry to police headquarters for questioning, where the youth confessed to the crime and supplied the name of his accomplice.

Officer Curry



Officer Moore



Officer Point

Officers Ron Moore and Stephanie Point of the Bell Gardens, California, Police Department responded to the report of a baby who was having difficulty breathing. The officers performed the classic infant Heimlich maneuver, which dislodged a coin that the child had swallowed. Within moments, the child resumed shallow breathing. Both officers then continued to provide life support until medical emergency units arrived.

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