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Clarence M. Kelley, Director

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THE COVER

Pictured are New York City police officers assisting hostages from a rooftop to which they had escaped from armed felons during "The Siege of Williamsburg." See article beginning page 10 and related comments in Mr. Kelley's Message, beginning on facing page, and in article beginning page 19.



Message from the Director . . .



TERRORISTS CULTIVATE FEAR with a cunning intent. Through fear they hope to intimidate lawful authorities and cow people of goodwill to accept their frequently irrational demands. Terrorism has no place in a free society. To defend it or to shield it is simply to glorify violence.

One contemporary writer has noted: "There was a time when violence was a means of last resort. Now it is a method of communication." This statement, it seems to me, is particularly apt in describing the situation in our country, which during the past decade has experienced a disturbing accumulation of terrorist acts.

Certainly, despite its faults and shortcomings, this Nation offers more peaceable remedies for grievances, real or imagined, than any on earth. With rare exceptions, our country's history is filled with the records of satisfactory and peaceful solutions to seemingly irreconcilable differences. This is the great strength of democracy—its capacity to accommodate a wide range of sharply divided opinions. Communication among divergent views needs only rational discussion. Reasonable men advancing reasonable arguments need never resort to violence.

Yet, in recent years, there has been in the United States a proliferation of groups with sinister and militant-sounding names that have adopted foreign-bred terrorist tactics as their creed. Thus far this year, for example, individuals affiliated with these groups have been linked with the killing and wounding of police officers,

kidnapings, racist murders, bombings, jail-break attempts, prison riots, bank robberies, urban guerrilla warfare, and even the posting of public notices threatening death to any who oppose them. Surely, there are no rational philosophies, programs, or grievances that need communication by such methods.

While all citizens must be concerned with the indiscriminate threat of terrorism, law enforcement officers should pay particular heed to its dangers. Lawful authority, as symbolized by the police, is a primary target of the terrorist. In seeking to destroy precious constitutional processes, the terrorist has no hesitation to use the personal guarantees they provide to evade detection, apprehension, and prosecution for his crimes.

There is another grave danger in terrorism to which all law enforcement officers must be ever alert. That is the tendency for persistent acts of violence to be met with counterviolence. The inability of authorized law enforcement agencies to cope with terrorist acts spawns, as we have seen elsewhere in the world, counterterrorist movements, which only fan the flames of violence and further erode personal freedoms.

The law enforcement profession should take a hard look at its capability to stop the growth of terrorism. The FBI Academy has held several symposiums on various aspects of this threat. More will be held. Several hundred training con-

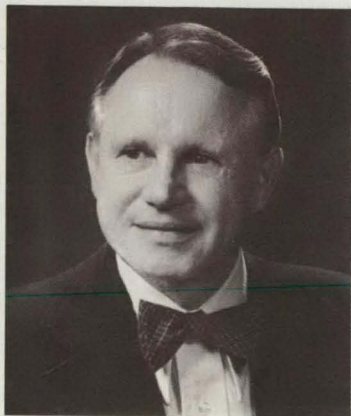
MESSAGE

ferences have been conducted throughout the Nation this year by FBI personnel with local, State, and other Federal law enforcement agencies on the frequent and ugly terrorist crime of taking hostages.

All levels of our profession must unite in confronting the many-faceted threat of terrorism. It is a foe against which solid public support and all the skill and determination at our command are required.

OCTOBER 1, 1974


CLARENCE M. KELLEY
Director



By

WAYNE L. SMALLEY*

Assistant for Emergency
Preparedness

U.S. Atomic Energy Commission
Oak Ridge, Tenn.

The AEC Radiological Assistance Program

When incidents involve the spillage or release of radioactive material in transit, emergency action guidelines have been established for handling these situations.

A freight cart piled high with packages is being moved in a busy airport. A package tumbles from the cart and bounces under the wheel of the cart. One side of the package is crushed. A label on the package states, "RADIOACTIVE—HANDLE CAREFULLY." Could the package now be hazardous? What should be done about it?

On the State highway near a small town, a heavy truck veers to avoid an oncoming car. The truck wheel catches in the soft shoulder and the truck overturns. When the State patrolman arrives at the scene a few minutes later, he finds that the driver is seriously injured and the truck is placarded with "RADIOACTIVE" signs. What is to be done? Is the driver possibly contaminated with radioactive

material? Should he have special care in the ambulance or at the hospital? Should highway traffic be allowed to proceed past the scene before "clean-up" of the wreckage?

These incidents are typical of ones which have been referred to the Atomic Energy Commission (AEC) for assistance under the AEC Radiological Assistance Program. It is the policy of the AEC to make available from its resources radiological advice and assistance, as appropriate, to the regularly constituted authorities at the scene of an incident. The objec-

*Mr. Smalley has a degree in physics from Washington State University and, for the past 13 years, has held a number of responsible positions in the AEC-ORO administration of the reactor safety, nuclear safety, nuclear materials transportation safety, emergency preparedness, and radiological assistance programs.

tives are to minimize injury to people, to minimize loss of property, to cope with radiological hazards, and to protect the public health whenever the AEC believes that such action is necessary or upon request from other agencies or individuals.

Radiological Emergencies

We will be talking here about handling radiological emergencies. Therefore, let's consider briefly what constitutes a radiological emergency. In this nuclear age, most of us are familiar with the term "nuclear radiation," which refers to the tiny particles and rays of energy which are given off by spontaneous changes in some unstable atoms of materials. The materials which generate nuclear radiation are called "radioactive" materials. A specific radioactive material is called a "radioisotope."

Some forms of nuclear radiation have great penetrating power and can pass through thick layers of dense materials such as lead. Other forms can be stopped by a sheet of paper.

Nuclear radiation can cause injury to the human body by reacting with and damaging some of the body cells. The body is used to small amounts of this radiation as there is some nuclear radiation associated with our everyday surroundings, including our bodies themselves. Small amounts of cell damage can be tolerated because the body undergoes a continuing cell repair and replacement process. However, as larger amounts of this radiation damage to the body cells can cause injuries or death, the exposure of humans to nuclear radiation should be held to the lowest levels practicable.

The hazards to people from radioactive materials can result from two

"When there is loss of control over some radioactive material such that a possible radiological hazard exists, the condition is described as a 'radiological emergency.'"

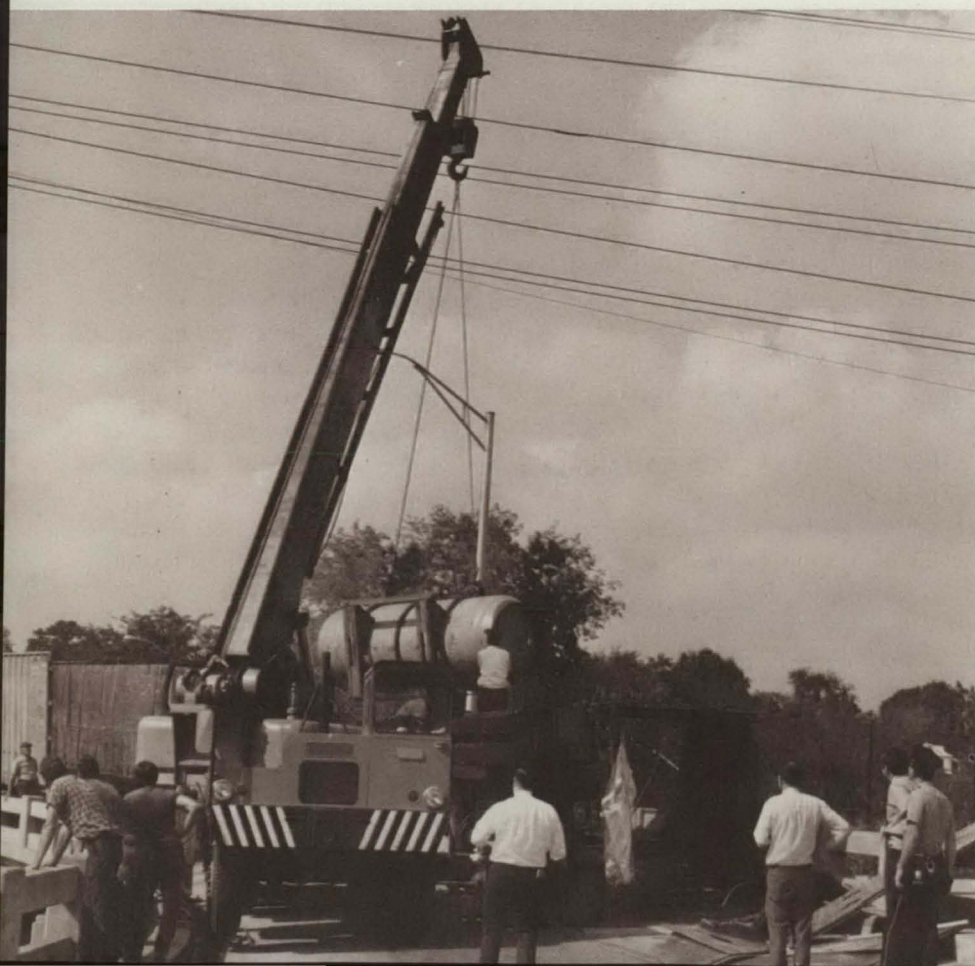
conditions. Penetrating radiation from radioactive objects can enter the body or some radioactive materials can be deposited on or in the body where they will continue to bombard areas of the body with radioactivity until the materials are removed. When there is loss of control over some radioactive material such that a possible radiological hazard exists, the condition is described as a "radiological emergency."

Organization for Emergency Response

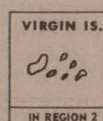
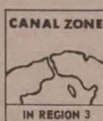
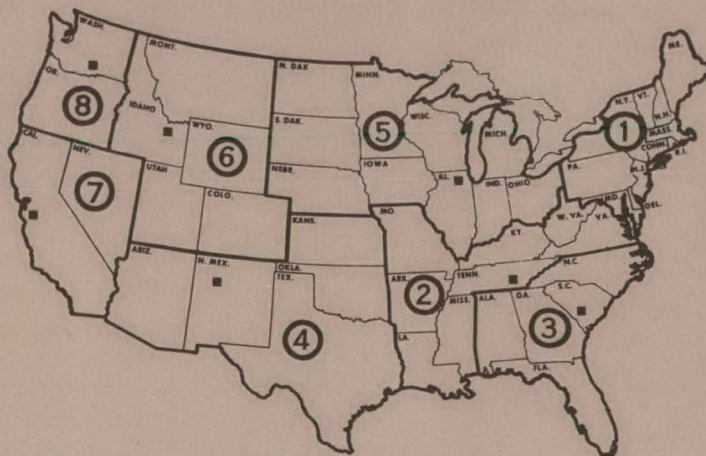
From the beginning, the AEC has recognized that it has responsibility for protection of the health and safety of the public from radiological hazards. (The AEC does not have surveillance responsibilities over the medical uses of radium or the uses of medical X-ray equipment.) AEC assistance has always been available upon request for handling radiological incidents. In the early days, there was no established system for making such assistance available. However, at that time most of the radioactive materials were held and used by the AEC or the Department of Defense so there was not much need for assistance to others outside those agencies.

Later (1957) when there began to be expanded peaceful uses of reactors and nuclear materials, the AEC established the Radiological Assistance Program. This program was discussed with other Federal agencies. The result was that soon thereafter a dozen Federal agencies joined together to

After being checked by radiation-monitoring personnel, a 32,000-pound cylinder of uranium hexafluoride, is removed from the wreckage of the truck which was carrying it.



U.S. ATOMIC ENERGY COMMISSION
REGIONAL COORDINATING OFFICES
 FOR
RADIOLOGICAL ASSISTANCE
 AND
GEOGRAPHICAL AREAS
OF RESPONSIBILITY



REGIONAL COORDINATING OFFICE	POST OFFICE ADDRESS	TELEPHONE for ASSISTANCE	DDD AREA CODE
① BROOKHAVEN AREA OFFICE	UPTON, L. I. NEW YORK 11973	345-2200	516
② OAK RIDGE OPERATIONS OFFICE	P. O. BOX E OAK RIDGE, TENNESSEE 37830	483-8611, Ext. 3-4510	615
③ SAVANNAH RIVER OPERATIONS OFFICE	P. O. BOX A AIKEN, S. C. 29801	N. AUGUSTA, S.C. 824-6331, Ext. 3333	803
④ ALBUQUERQUE OPERATIONS OFFICE	P. O. BOX 5400 ALBUQUERQUE, NEW MEXICO 87115	264-4667	505
⑤ CHICAGO OPERATIONS OFFICE	9800 S. CASS AVE. ARGONNE, ILLINOIS 60439	739-7711 Ext. 2111 duty hrs. Ext. 4451 off hrs.	312
⑥ IDAHO OPERATIONS OFFICE	P. O. BOX 2108 IDAHO FALLS, IDAHO 83401	526-0111 Ext. 1515	208
⑦ SAN FRANCISCO OPERATIONS OFFICE	1333 BROADWAY OAKLAND CALIFORNIA 94612	273-4237	415
⑧ RICHLAND OPERATIONS OFFICE	P. O. BOX 550 RICHLAND, WASHINGTON 99352	942-7381	509

Revised: July 1973

formulate an Interagency Committee on Radiological Assistance and an Interagency Radiological Assistance Plan. This plan provides a means for participating Federal agencies to coordinate their activities to provide rapid and effective radiological assistance in the event of a radiological incident. The AEC was given the responsibility for coordinating the interagency plan. The Federal agencies which are now signatory to the plan are: Atomic Energy Commission; Department of Agriculture; Department of Commerce; Department of Defense; Department of Health, Education, and Welfare; Department of Labor; Department of Transportation; Environmental Protection Agency; Interstate Commerce Commis-

sion; National Aeronautics and Space Administration; and Postal Service.

For implementation of the AEC Radiological Assistance Program, including coordination of the interagency plan, the United States is divided into eight geographical regions. An AEC office in each region is designated as the Regional Coordinating Office (RCO) and is responsible for maintaining a radiological assistance plan for that region. Each RCO maintains a continuously manned emergency telephone.

For response to accidents involving nuclear weapons, the AEC and the Department of Defense jointly maintain a special unit at Albuquerque, N. Mex. This Joint Nuclear Accident Coordinating Center (JNACC) is staffed

with specialists trained for handling nuclear weapons emergencies and it is organized for quick communications with all AEC and military units. The JNACC is also available, if needed, for assistance in handling nonweapons radiological emergencies.

It is highly unlikely that a nuclear weapon will be detonated in an accident; they are meticulously designed to prevent such an occurrence. The primary hazard from weapons accidents stems from the chemical contents of the devices which include high explosives and in some cases plutonium (an extremely toxic substance). In the history of the nuclear weapons program, there have been a few instances in which airplanes carrying nuclear weapons have crashed. In some

"The mission of the radiological assistance team is to advise the authorities at the scene of the incident concerning the radiological hazards, the means of reducing them, and the manner of decontaminating the area and decontaminating or handling persons involved."

cases, the high explosive merely burned out, and there was no release of radioactivity. In other accidents of this kind, the high explosive exploded and scattered bits of plutonium over several acres of ground requiring extensive cleanup activities.

Types of Assistance

Specifically what kinds of assistance are available? How does the program work? Assistance may be provided in various ways. For some minor incidents, only advice by telephone may be necessary. In some cases, the RCO may arrange for assistance to be provided at the scene of the incident by knowledgeable persons who are located nearby. If the circumstances warrant, a radiological assistance team will be dispatched by the RCO to the scene of the incident. For most incidents in which a team is dispatched, the response may be made by one or two individuals. However, for larger or more complex incidents, the team may consist of several specialists. Teams may include: Team leader, radiation monitors, medical officer, public information officer, and other specialists as required.

The mission of the radiological assistance team is to advise the authorities at the scene of the incident concerning the radiological hazards, the means of reducing them, and the manner of decontaminating the area and decontaminating or handling persons involved. The team will provide specialized assistance when needed to evaluate the hazard and to terminate the emergency. Medical advice can be given to local physicians regarding the treatment of injuries complicated by exposure to radioactive contami-

nation and on questions of radiation exposure effects. The authorities will also be assisted in providing information to the public as quickly as possible to minimize public alarm and assure orderly conduct of emergency activities.

Radiological assistance will be continued at the scene until the immediate hazard to public health and safety has been evaluated and the appropriate civil authority or private party responsible for the radioactive material or facility involved can assume responsibility for continuing the personnel monitoring, decontamination, material recovery, and other necessary postincident operations.

By contacting any one of the RCO's, a caller can obtain access to the combined resources and capabilities of the AEC and its contractors, as well as those of the other signatory agencies to the Interagency Radiological Assistance Plan. This system provides a huge reservoir of expertise and specialized equipment for handling radiological emergencies. Examples of available expertise and resources are listed at the end of this article.

The industrial, commercial, and medical uses of radioisotopes have increased greatly over the past few years. Further large increases are anticipated for the future. Many States have now entered into agreements with the Federal Government whereby the States accept responsibility for licensing and for maintaining surveillance over users of radioactive materials. These "agreement States" have, therefore, developed their own capabilities for assessing radiological hazards and for responding to radiological emergencies. As a matter of fact, most of the remaining States and

some of the larger cities have also developed some capabilities of this nature. Therefore, those who might need to call for assistance are now being advised to first call their appropriate local or State agency for local advice and response. The AEC will serve as a backup to the local and State emergency assistance organizations. Of course, however, anyone who wishes to do so is welcome to call an RCO at any time for emergency assistance.

Experience With the Program

What has been the experience with the Radiological Assistance Program? Statistics are available for the calendar years 1958 through 1973. During those 16 years, the AEC responded to 1,182 assistance requests. Advice only was given 484 times. The AEC sent 1 man 224 times and a team 318 times. In the remaining 156 instances, arrangements were made to send a person from outside the AEC, such as a representative from a State health department or a staff member from a university. There was actually radioactive material involved in 865 of these cases. In 317 cases, there was not. Most of the 865 incidents involv-



One type of label for radioactive shipments.

"There are many uses of radioisotopes in today's society and, therefore, many shipments of radioisotopes every day."

ing radioactive material were transportation related and only a few of the incidents actually constituted a potential hazard to the health and safety of the public. (None of these incidents resulted in known radiation injury to a member of the public.)

There are many uses of radioisotopes in today's society and, therefore, many shipments of radioisotopes every day. These shipments must be packaged and labeled in accordance with a rigid set of requirements maintained by the Department of Transportation.

A few transportation accidents have been rather large in terms of equipment damage. One case involved a truck that was carrying a cask containing an irradiated fuel element from the Peach Bottom reactor in Pennsylvania. The truck overturned, and the cask, which weighed about 50,000 pounds, was thrown upside down into a ditch. The driver was killed. In another instance, a truck overturned carrying a 32,000-pound cylinder of uranium hexafluoride. The cylinder was thrown from the truck onto the roadway. The driver was injured and was taken to a hospital. In both of the above accidents, a radiological assistance team was dispatched to the scene. In both cases, it was found that the shipping containers had retained their integrity and there was no release of radioactive material and no hazard to the public.

In another accident, a 25,000-pound cylinder of uranium hexafluoride was placed on a trailer, and the trailer was loaded piggyback on a railroad car. During the trip, the cylinder evidently came loose from its moorings and fell

so that it was wedged between a dirt bank and the train and resulted in the derailment of a section of the train. A radiological assistance team was dispatched to the scene and again they found that the cylinder, although damaged, had remained intact and there was no release of the radioactive material.

One of the most extensive radiological assistance responses involved a search for a lost radiographer's "source." A call was received from a Kansas City, Kans., trucking terminal manager. A truck from Salt Lake City, Utah, had arrived at the Kansas City terminal carrying, among other things, a container with radiation labels. However, the container had tipped over, its top plug had come out, and the container was *empty*. The container was supposed to have contained a 300-millicurie cobalt-60 radiography source (an item about the size of a box of pencil leads). Radiological assistance teams first made thorough searches to establish that the lost

source was not in the truck nor at the Kansas City terminal. Also it was determined that the source had not been inadvertently left at Salt Lake City, the point of origin. It was then concluded that the source had been lost somewhere along the 1,100-mile route between the two terminals. It was important that the source be located quickly. It represented a definite hazard to anyone who might come in contact with it or in close proximity to it over an extended period of time. Therefore, an aircraft which is operated under contract for the AEC, and which is specially equipped with sensitive radiation detection instrumentation, was called into service. The plan was for the plane to perform an aerial survey, flying at an altitude of about 500 feet, of the entire truck route. The survey was started at Salt Lake City and finally close to the end of the route near St. Joseph, Mo., the instrumentation gave the much-looked-for signal. A strong radioactive "field" had been detected. The plane



A 50,000-pound cask containing an irradiated fuel shipment is checked after the truck which was carrying it was involved in an accident.

landed and the crew retrieved the source from a ditch alongside U.S. Highway 59. It was less than 72 hours from the time the AEC was notified until the source was recovered.

To date, all radiological emergencies have been small ones (no known injuries to members of the public and no widespread radioactive contamination). The chances are remote for having a major radiological accident. However, the Radiological Assistance Program is geared to respond to such an accident should one ever occur.

Assistance in Planning

State or local organizations, such as law enforcement agencies, can obtain assistance in developing their radiological emergency plans from the RCO in their regions. As examples of the kinds of help that are available, the AEC can: (a) Recommend publications for use in training programs; (b) loan films for training purposes; (c) review and comment on emergency plans and procedures; (d) answer questions either by phone or by mail; and (e) occasionally provide speakers to discuss the AEC program. The AEC welcomes and encourages contacts with an RCO by anyone who is interested in such assistance.

Emergency Guidelines

Emergency action guidelines have been established for handling radiological incidents. When incidents involve the spillage or release of radioactive material, or there are personal injuries in incidents involving radioactive materials, the following emergency actions and precautions should be taken:

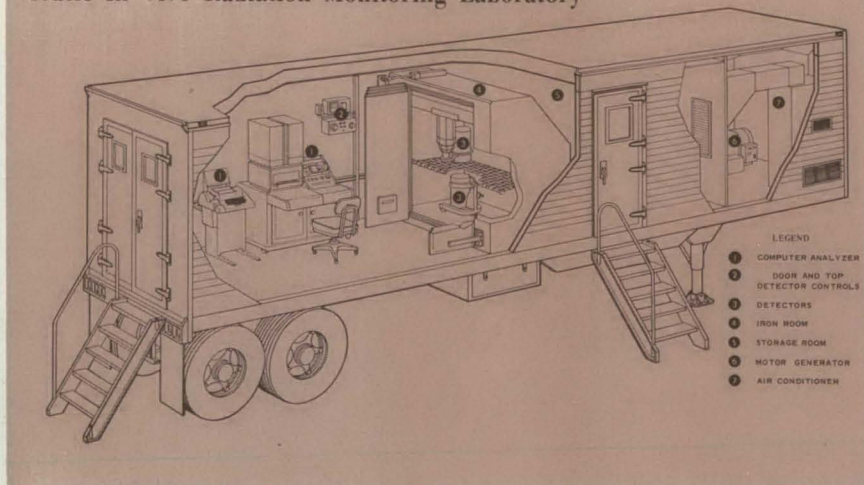


An Aerial Radiological Measuring System (ARMS) aircraft which is maintained under contract to AEC for aerial survey work.

1. Notify immediately local and State officials responsible for public health in the State within which the incident occurred. These agencies in turn will call the AEC for assistance, if needed.
2. Make every reasonable effort to rescue injured or trapped persons and remove them from the incident area.
3. Unless given by a physician, immediate first aid should be limited to those procedures necessary to save life or minimize injury.
4. When it is necessary to send an individual to a hospital or other medical facility BEFORE a radiological emergency team or physician knowledgeable in radiological health arrives, inform ambulance and other transporting vehicle personnel who will be in contact with the individual of the possibility of radioactive contamination. Also, inform the hospital or medical facility that the individual may be contaminated with radioactive material.
5. When in doubt that the radioactive material is still confined to its container, assume that the immediate incident area is radioactively contaminated and that anyone and anything in the area MAY BE contaminated, and take special care to minimize personal contact with the outer clothing of individuals, the surface of the ground, vegetation, and the surfaces of things within or removed from the incident area.
6. Individuals not removed to a hospital or other medical facility, and who are suspected of having been exposed to radioactive material, should be urged to remain in the area until they can be appropriately monitored.
7. Obtain the names and addresses of all persons involved, including those who insist on leaving the area and those removed for medical attention.
8. Restrict access to the incident area and prevent unnecessary handling of incident debris. Keep the public

"State or local organizations, such as law enforcement agencies, can obtain assistance in developing their radiological emergency plans from the RCO [Regional Coordinating Office] in their regions."

Mobile In Vivo Radiation Monitoring Laboratory



away from the incident area as much as possible.

9. Fight fire as though toxic chemicals are involved. To the extent possible, keep upwind and avoid smoke, fumes, and dust. Segregate clothing and tools used at the fire until they can be checked for radioactive contamination before being returned to normal use.
10. When a transportation incident involves radioactive material, DO NOT move vehicles, shipping containers, or wreckage except to rescue people. Detour pedestrian and vehicular traffic. If a right-of-way must be cleared before radiological emergency assistance arrives, move vehicles and debris the shortest distance required to open a pathway. Before permitting the passage of traffic, spillage on the cleared pathway should be washed, or wetted and swept, to the edge of the pathway with a minimum dispersal of wash water and spilled material.

11. DO NOT eat, drink, or smoke in the incident area, or use food or drinking water that may have been in contact with radioactive material.
12. DO NOT handle, use, or remove from the incident area any material, equipment, or other items suspected of being radioactively contaminated unless released by radiation-monitoring personnel.

Expertise and Resources

The expertise and resources of the AEC and its contractors include such things as:

1. Monitoring equipment for all types of radiation;
2. Extensive capability for analyzing the radioactivity content of air, water, or foodstuffs;
3. Shielded containers of various shapes and sizes for use in the event the original container becomes useless as a result of the incident;
4. A mobile, fully shielded, in vivo total body counter,

mounted on a tractor-trailer rig weighing 75,000 pounds, for monitoring internal radiation exposure;

5. A robot that is capable of negotiating a 25-percent grade and retrieving 200-pound objects, equipped with television and remotely operated via a 375-foot cable;
6. An emergency dosimetry trailer that is equipped for film processing, nuclear accident dosimeter analysis, and glass dosimetry;
7. A trailer equipped with shower facilities and protective clothing supplies for use as a mobile changehouse;
8. An airplane equipped for airborne contamination sampling, and for locating lost radioactive sources;
9. Experts in the field of decontamination; and
10. Medical advice from experts in the field of radiation injury treatment, and personnel decontamination.

The resources of other Federal agencies include items such as radiation-monitoring specialists; radiation medical specialists; capabilities for air, water, and food sampling; extensive radiochemical laboratory facilities; nuclear weapons specialists; aircraft; watercraft; heavy equipment; communications facilities; air mass dispersion computations and weather forecasting; and other specialized assistance.

With the increasing use and shipment of radioisotopes, any police officer may be required to handle a radiological emergency at any time. All police officers, therefore, should at least be familiar with the emergency guidelines for handling radiological incidents and the expertise and resources which are available to them if needed.

Defusing Human Bombs—

HOSTAGE NEGOTIATIONS

By

LT. JOHN A. CULLEY

Office of the Chief
of Detectives
Police Department
New York, N.Y.

"Just as we would send only trained bomb squad personnel to defuse a bomb, so too, we should send only trained negotiators to deal with these emotionally explosive hostage situations."

A detective (in business suit) begins negotiations in a simulated hostage situation.



In the early evening of January 19, 1973, four armed men entered a sporting goods store in the Williamsburg section of Brooklyn, N.Y., and attempted a robbery. One of the proprietors activated a silent alarm, and uniformed officers from the local precinct and emergency service division responded in patrol cars. During an exchange of gunfire which ensued, one police officer was killed and two others wounded. One suspect was also wounded. The felons, thwarted in their escape, seized 12 persons who were in the store at the time and held them as hostages. The store was practically impregnable and contained a wide variety of weapons and ammunition. This marked the beginning of a tense drama which was to last 47 hours and become known as "The Siege of Williamsburg."

In overall command of police personnel engaged at the scene was Chief



Inspector Michael J. Codd, who was appointed police commissioner in January 1974. Just prior to the Williamsburg incident, Chief Codd had reviewed and approved plans for handling hostage situations, plans which he had been working on with various units of the police department since September 1972. The primary purpose of these plans was the preservation of the lives of hostages, officers, and captors.

Upon responding to the scene, Chief Codd assessed the situation and ordered immediate implementation of the hostage plan. No hypothetical case, the plan was going to receive its "baptism under fire" and be put to a true test. As it turned out, the policy of "waiting" provided time for the hostages to escape, and ultimately the four felons surrendered with no further bloodshed. Greater loss of life was prevented through careful planning, coordinated efforts, and great restraint on the part of all the police officers at the scene. The plan had worked.

Hostage incidents have been increasing since 1972; therefore, law enforcement agencies throughout the country have to concern themselves with this trend. Since human lives are

at stake, the challenges facing police officers in such situations are delicate and critical. If there is no proper planning and training, or if police actions are impulsive or uncoordinated, lives may be lost unnecessarily.

Initially utilized in the formulation of the New York City hostage plan were the standard patrol, detective, and emergency service units of the police department. Then the newly formed Psychological Services Unit was called upon to supply a new and valuable adjunct to the department's existing methods for combating hostage situations, namely a psychological understanding of the hostage-taker.

The success of any hostage plan hinges on a team approach, good communications, and coordination of tactical maneuvers under one commander. In all hostage situations occurring in New York City, the on-the-scene commander is the uniformed patrol area commander. (New York City is divided into seven patrol areas, each commanded by an assistant chief.) The rationale for this is that he is the senior officer most familiar with the locality involved and the one who, when the incident is over, will still be left to deal with community reaction to the handling of the situation. Once the initial confrontation is over and the situation is contained,

Lieutenant Culley



“... the newly formed Psychological Services Unit was called upon to supply ... a psychological understanding of the hostage-taker.”

the patrol area commander is the only person who can authorize the discharge of weapons except in emergency self-defense situations such as the felons attempting to charge a containment team.

The New York City Police Department's plan consists of three phases with patrol, emergency service, and detective units responding and carrying out predetermined, specifically delineated duties and responsibilities. Phase I, the containment phase, occurs at the initial location when the hostage is first taken. Phase II, the mobile phase, goes into effect if a demand for a vehicle or other means of escape is made by and granted to the felon. Phase III, the relocation phase, is principally a duplication of Phase I, but at a new location.

The Detective Bureau's responsibilities under this plan are to provide specially trained detectives for negotiations during Phase I, to provide escape and chase vehicle operators for Phase II, and to function as containment teams during Phase III pending arrival of the special emergency service containment teams. This article deals primarily with the role of the detective negotiator in hostage situations.

Why Negotiate?

In addition to its overriding concern for the preservation of human life, the New York City hostage plan contains a unique innovation that is a departure from the traditional police response to such situations—buying time through the use of detectives

specially trained in psychological techniques for hostage negotiations. Det. Harvey Schlossberg, a New York officer who possesses a Ph. D. in clinical psychology, researched the existing psychological writings on hostage-takers and found little on the subject. Working in conjunction with other members of the department, he developed profiles of the typical hostage-taker. They fell into three categories:

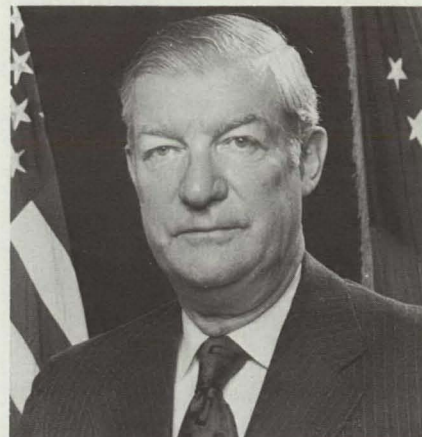
The professional criminal who has his escape blocked during the commission of a crime,
The psychotic with a depraved mind, and

The terrorist or fanatic with a cause.

A methodology of crisis intervention was developed for such situations in order to ease anxieties and tensions, and if possible, to allow the felon to assess the situation rationally. This is done by our detective hostage negotiator engaging the abductor or felon in conversation.

Time is a most important factor working for the police. As a general rule, Dr. Schlossberg notes, the more time the felon spends with the hostage, the less likely he is to take the hostage's life, because they become acquainted and develop feelings for one another.

Commissioner Michael J. Codd



"As a general rule . . . the more time the felon spends with the hostage, the less likely he is to take the hostage's life"

In addition to allowing this transference of feelings to take place, the passage of time also gives the police an opportunity to prepare for different eventualities and permits the felon to make a mistake. Mistakes by the criminal, when the police are prepared for them, are the "luck" you read about when a hostage situation is brought to a successful conclusion. As someone once observed: "Luck is the residue of careful planning and proper preparation."

Why Detective Negotiators?

It takes a singular type of individual to deal unarmed, face to face, with an armed felon holding a hostage. He must be cool, resourceful, mature, and most of all, effective in verbal communication. Successful detectives have developed these attributes through their experience in dealing with the public, interviewing witnesses, and interrogating suspects.

Selection

The following criteria were used to select the members of the Detective Bureau Hostage Negotiating Team:

- Volunteers only,
- Good physical condition,
- Mature appearance,
- Good speaking voice,
- Skilled interrogator, and
- Representatives of various ethnic and racial groups with, if possible, the ability to speak a foreign language.

The 68 members of the Detective Bureau who were finally selected and

trained as hostage negotiators consisted of 1 lieutenant, 3 sergeants, and 64 detectives, 2 of whom were women. This group included 12 blacks, 12 Hispanics, and 44 Caucasians. The languages spoken by the group included Italian, Spanish, German, Hebrew, Yiddish, Greek, Polish and Ukrainian. In addition four members of the department who are not members of the group speak Arabic and are available as translators.

Training

The group underwent an intensive 4-week training course which was conducted at various locations throughout the city as well as in the classroom. Training consisted of the following subjects:

Psychology. The greatest emphasis was placed on intensive psychological training to prepare team members to analyze various situations and develop strategies using psychological techniques rather than force to obtain the safe release of hostages. The point of the training was to provide a basis for understanding and anticipating the hostage-taker's moves as well as his possible reactions to police tactics.

Physical Training. This encompassed general upgrading of physical condition as well as weapon-disarming methods and techniques of unarmed self-defense.

Firearms. Firearms training included the .38 caliber revolver, 9 mm submachine gun, .223 caliber sniper scope rifle, shotgun (double barrel and pump), 37 mm tear gas launcher, .25 caliber automatic, and .22 caliber Derringer. Candidates wore bulletproof vests during the firing of all weapons.

Electronic Equipment. All members were familiarized with and had to qualify in the use of a miniphone wireless transmitter and recorder and in the use of electronic tracking devices which utilize range and relative bearing features that can be quite valuable in Phase II.

Emergency Rescue Ambulance. Each team member learned to operate the emergency rescue ambulance, a full-track armored personnel carrier. This training also included the use of its auxiliary equipment, that is, the public address system, intercom, radio equipment, fire-fighting system, and first aid gear. In the Williamsburg siege, this vehicle was used to rescue officers and civilians who were pinned down by gunfire from the felons. It also served as a safe base for the start of negotiations.

Vehicle Operation. Instruction was given in the operation of the specially equipped escape and chase vehicles, including auxiliary equipment. Special attention was paid to those streets and routes from various locations in the city to airports or other destinations which would offer us the best tactical advantage.

Liaison. Hostage team candidates received 2 days of training with Agents of the Federal Bureau of Investigation on jurisdictional matters and cooperation with other agencies including the Federal Aviation Administration. One day of training was held at John F. Kennedy International Airport and La Guardia Airport with the Port of New York and New Jersey Authority Police. We integrated our plan with their emergency programs.



Police helicopter and cars (foreground) follow felons with hostage in automobile.

Retraining. In addition to this initial program, debriefings are scheduled to critique every significant hostage situation that takes place anywhere. During such critiques, "Monday morning quarterbacking" and speculation are encouraged. From the situations under study, officers gain new insights and learn new techniques.

Working Detectives

Members of the Detective Bureau Hostage Negotiating Team are working detectives assigned to various squads throughout the city. Once their training as hostage negotiators is completed, they are returned to their permanent commands and resume their

normal investigative duties. They are placed in predetermined slots in the duty chart for adequate coverage, and their names are entered on a roster for primary response to a hostage situation within their borough of assignment. At the beginning of each tour of duty, the detective area command ascertains which members performing duty within the borough are trained negotiators. Should a hostage situation occur during the tour, the detective area command will notify such members to respond. Seven negotiators are dispatched to the scene of each hostage incident. If there are not seven negotiators on duty within the borough, the adjacent boroughs are notified to dispatch their negotiators.

The reason seven negotiators are utilized is that two are needed as communicators—one member is the primary communicator whose responsibility it is to establish rapport and voice identification with the felon, and the second member assists in developing patterns of questions, analyzes the entire situation, and communicates with the command post—and the other five members are assigned as follows:

As reliefs,

As secondary negotiators should the first team be unsuccessful at establishing rapport,

To operate escape and chase vehicles if necessary, and

To function as a containment

"... the negotiator should . . . not portray himself as the ultimate decisionmaker. The felon should be made to understand that there is someone over the negotiator."

team at a new location should the felon move the hostage.

Negotiating Techniques and Policies

Since no two hostage confrontations are alike, there can be no standardized format for negotiations. Each situation is treated individually. However, the following techniques have been developed as a result of our experiences.

The negotiator should have a mature appearance so that he will be perceived by the hostage-taker as a person of authority. During the negotiations, the negotiator should command the respect of everyone, but he should not portray himself as the ultimate decisionmaker. The felon should be made to understand that there is someone over the negotiator. This allows the negotiator to defer decisions and buy time. It also allows him to maintain rapport with the felon when demands are delayed or turned down because he is not the one who is denying the felon's requests.

Usually the easiest type of hostage-taker to deal with is the professional criminal. He is considered a relatively rational thinker who after assessing the situation and weighing the odds, in most cases, comes to terms with the police and refrains from unnecessary violence or useless killing.

The psychotic individual, on the other hand, presents a different and somewhat more complex problem. He tends to be irrational and, therefore, less predictable. His actions, the words he uses, and the demands he makes are often valuable clues to his mental condition. The psychotic har-

bors great inner frustration and conflict. He may even feel a degree of pleasure from his precarious predicament, as he now finds himself important and the center of attention, a position which may be unique in his life. Time works for the police in this instance because the psychotic is emotionally tense and expends a great deal of physical and psychic energy which eventually wears him down.

The fanatic or terrorist group creates an even more difficult hostage situation. In a sense, they can be viewed as a group of psychopaths with a cause, all under the leadership of one of the group. When caught in a criminal act, many of them rationalize their behavior by claiming to be revolutionaries who are merely seeking social justice. During the Williamsburg siege, just such a position was taken by the four stickup men. In these situations, the resolve to die for their cause may deteriorate with the passage of time, and time allows for mistakes to be made.

In any of these cases if the felon kills one of several hostages during negotiations, action should be taken to save the lives of the remaining hostages, because once he kills one hostage he is likely to kill more.

Practically all demands are negotiable but one—supplying weapons. If the felon is bluffing with an unloaded or bogus weapon, giving him a gun would truly create a real danger.

Conclusion

If an analogy might be made, a hostage negotiation situation can be compared to a "bomb scare." Just as we would send only trained bomb squad personnel to defuse a bomb, so

too, we should send only trained negotiators to deal with these emotionally explosive hostage situations. The training of bomb squad personnel stresses what makes a bomb tick and how to defuse it; the psychological training we give our detective hostage negotiators stresses what makes a hostage-taker tick and how to neutralize him.

To date, the services of the negotiators have been utilized in more than 15 hostage situations. Several of these incidents had resulted in the taking of human life during the initial crime; however, in every case, once negotiations had begun the situation was successfully terminated with the hostage released unharmed and the abductors apprehended.

FBI

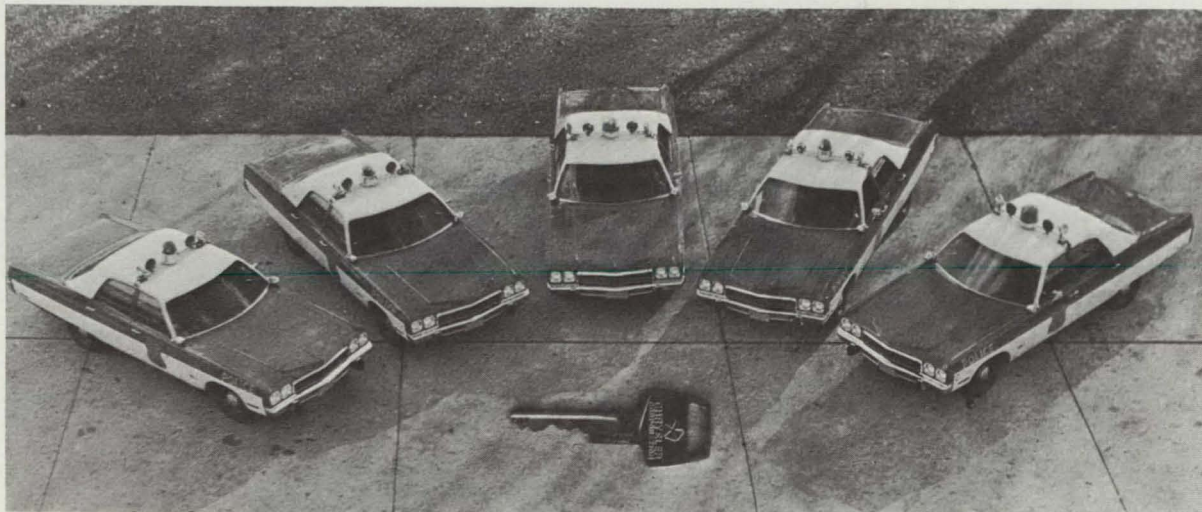
CONVICTIONS

During fiscal year 1974, there were 15,240 Federal convictions in FBI cases. This was the largest number in FBI history, exceeding the previous high in fiscal 1973 by more than 5 percent.

KIDNAPING CONVICTIONS

During fiscal year 1974, there were 96 convictions under the Federal Kidnaping Statute, compared with 71 the previous year, resulting in 19 terms of life imprisonment and other sentences totaling more than 928 years.

THE MASTER KEY SYSTEM



Mr. Henry Marchand, Director, Department of Public Safety, Grosse Pointe Woods, Mich., has brought to the BULLETIN'S attention his department's solution to a problem that might be present in many law enforcement agencies.

Does this situation sound familiar? You are ready to assume patrol and you discover that the patrol car keys are at home with the man you relieved. Or a patrol car needs to be moved and its keys are missing. These two situations might prompt a grimace, or even a smile; but, there are serious problems inherent in both cases. How does an officer gain entrance, for example, into a police vehicle left unattended and locked at a scene of an emergency?

The Grosse Pointe Woods Public Safety Department has faced these situations daily since it not only operates one-man patrol cars but also provides emergency ambulance service to the public. The primary concern of the department arises from emergency calls where the officer must leave his patrol car and accompany the ambulance to the hospital, thus leaving the patrol car unattended. Consequently, it has been department policy to return the unattended police vehicle to the Public Safety Building as soon as possible. There were two alternatives for returning the vehicle. One was to have the officer

lock the car and take the keys with him, which occasionally resulted in having a vehicle unattended for as much as 45 minutes or longer. The other was to leave the vehicle unlocked and unattended with the keys hidden inside the car. Obviously, this is a dangerous practice since police emergencies draw an audience, and there often is no way to secretly hide the keys. It was therefore thought necessary to implement a new procedure for retrieving unattended police vehicles.

After studying the problem and considering several solutions, the Grosse Pointe Woods Public Safety Department decided to inaugurate a system by which a single key would unlock all police car doors, trunks, glove compartments, and ignition switches. It is referred to as the Master Key System.

The Grosse Pointe Woods department is in its 3d year with the Master Key System. Within this time period, the department has not experienced, according to Mr. Marchand, a single police vehicle theft. There is no fuming and fumbling looking for lost patrol car keys since each officer possesses his own master key. No longer are officers awakened at 3 a.m. by a telephone call and a voice saying, "Hey, buddy, where are the scout car keys?"

Determining Police Effectiveness



By
JAMES M. ROCHFORD
Superintendent
Police Department
Chicago, Ill.

The motto of the Chicago Police Department is "To Serve and Protect." How well these objectives are accomplished are matters of serious concern to command personnel and, most significantly, to its superintendent.

No police department can accomplish effectively the task of service and protection to the public without the public's support, and this support is given by the public in direct proportion to its opinion of how well the police are performing their duties.

Survey Initiated

In December 1973, the Chicago Police Department Service Survey program was initiated. Each victim and complainant who received police service that resulted in the preparation of a case report was mailed a prepaid postcard asking for his comments. The survey postcard was computer produced as a byproduct

of an existing computerized case reporting system. The return portion of the postcard bore an identifying case report number, permitting the department to identify the incident to which the respondent referred his comments.

Comments received thus far show that approximately 94 percent of those responding to the survey stated they were satisfied with the service received from the Chicago Police Department. These responses indicate that an overwhelming number of persons thought they had received proper service. Six percent of the responses, however, were from Chicago citizens who said they had not received satisfactory service. The ultimate standard in the quality of police service is, of course, 100-percent satisfaction from the people. In pursuit of this optimum goal, I directed that an investigation be made into the circumstances that prompted a person to judge the police service he received as unsatisfactory.

Findings

An intensive examination was made of 500 cases where citizens had reported receiving unacceptable police service. Some of the findings are very enlightening and may cause changes in the traditional attitudes of police administrators concerning the training and the conduct of their men.

For example, police officers who responded promptly, acted courteously, and conducted a thorough preliminary investigation often were accused of providing unsatisfactory service. Actually, some of the most efficient police officers were among those who were the objects of more than one dissatisfied complaint. A followup interview with the complaining citizen revealed that the police officer may have been too impersonal. The citizen interpreted this as indifference on the part of the policeman to the victim's plight.

It also was learned from the survey that police contacts with elderly victims must be especially tactful since a proportionately large number of the dissatisfied respondents were 60 years old or older, and the majority were women. A geographic plotting of the elderly complainants indicated their residences were located in areas with a high density of convalescent and old-people homes.

According to the survey, the type of incident being investigated will influence the citizen's perception of whether he received adequate police service. The investigation of crimes against property led to 64 percent of the complaints, as opposed to crimes against the person. Burglary and theft investigations gave rise to the most complaints of unsatisfactory service. Failure to retrieve stolen property was the basis for most complaints in this category. Interviews revealed citizens expect the police to do more to recover property. This expectation is interwoven with many of the other survey findings.

The preliminary investigator must be cautious so as not to give the citizen an unreasonable expectation for the recovery of his property by the followup investigation. This will lessen the chance of a victim becoming disappointed and resentful when recovery of his possessions is not made. Rather, the preliminary investigator should be candid with a victim when, due to a complete lack of physical evidence and a description of the offender, the possibilities for solution of the crime and recovery of any stolen property are remote.

There was some criticism regarding the response of

evidence technicians who examine the crime scenes for clues. It was found that in the majority of cases, when the technician did respond for followup investigation, the victim either was not at home or was unavailable.

Perhaps because of the influence of movies and television programs, where police investigations are brought to a swift and neat conclusion, citizens expect each and every crime to be successfully concluded. In fact, the pat solution of most crimes is not possible. Further evidence of the influence entertainment programs generate was found in the vocabulary citizens chose to rate the quality of police service. Many of the returned survey cards contained such police jargon as "No Evidence Tech responded to scene," and "Beat man okay, but Patrol Sergeant discourteous," which evidently had been adapted from cinema and television productions.

Another finding was that both black and white citizens basically had identical complaints, but that the non-English-speaking persons reported unsatisfactory service at a considerably higher rate than others.

A geographical analysis showed that on the basis of population a disproportionate number of complaints emanated from 3 of the 21 police districts surveyed. While these three districts are near or in the lower half of all districts by population, they ranked first, third, and fifth in the number of complaints.

Census Bureau data confirms that high concentrations of Spanish-speaking citizens live in these three districts. Followup interviews with Spanish-speaking complainants disclosed that in most cases the police response was satisfactory, but language barriers prevented complete communication and understanding. This is not a new finding, but the survey did contribute further documentation of the seriousness of the problem.

Analysis

Analysis of followup interviews and case-report examinations performed in the survey led to the finding that only 1.5 percent of the respondents did in fact receive unsatisfactory service. This figure could be very misleading. Assuming that the 1.5 percent is representative of the rate of dissatisfaction of all Chicago residents affected by police service, it would appear that the police department has come very close to the optimum standard of 100-percent satisfaction. This, of course, is perfection and a level not likely to

ever be achieved by any organization having the complex and difficult responsibilities found in law enforcement. On the other hand, projecting this percentage to all calls (2,452,806) received in 1973 for police service suggests that annually an estimated 36,792 calls might not have been handled adequately. This number (approximately 100 per day) is not an acceptable level of police performance, and steps are being taken to insure a higher rate of satisfactory service.

The survey covered a 6-month period and was concluded on June 12, 1974. A total of 176,361 cards were mailed; 46,879 were returned with:

- 44,083 (94 percent) reporting satisfactory service;
- 2,534 (5.4 percent) reporting unsatisfactory service;
- 262 (0.6 percent) other.

The "other" category represents cards returned to the department with comments irrelevant to police service or which were returned by the post office as undeliverable.

There is still one area to be explored. Although the number of respondents is sufficient to make certain projections and draw certain conclusions, an attempt should be made to determine the type of service the survey's nonrespondents received and why they failed to respond. This action is deemed necessary for two reasons. First, the police department is a service agency, and a service, as opposed to many tangible products, tends to have more degrees of relative satisfaction to a recipient than, for example, a brand of beverage, the taste of which a consumer may either like or dislike. Requiring respondents, therefore, to make a selection from among "poor, fair, satisfactory, or excellent" ratings of police service may have discouraged their participation and response. Second, the Chicago Police Department lacks information on existing police department surveys of this type which could serve as a basis for comparison.

The department's Human Relations Section, in an attempt to determine why only 26.6 percent of potential respondents replied, conducted a followup of 84 persons who had been mailed a survey questionnaire. Excluding 28 unlocated persons, plus 1 who was found to have returned his card, results showed:

- 78.2 percent nonrespondents were satisfied with police service rendered;
- 1.8 percent nonrespondents were not satisfied;
- 20 percent refused to comment.

However, the sampling method used for nonrespondents does not meet accepted survey standards and would not provide an accurate base for projections.

With this exception, the survey methodology is valid according to consultation with professional marketing and statistical analysts. Currently, interviews are being planned with nonrespondents from as wide a sample as can be designed.

Insights

The cost incurred for the survey (total mailing, printing, and salary costs were an estimated \$75,000) was relatively expensive, but the insight gained into how the public judges police service was well worth the price. Definite steps now can be taken by the Chicago Police Department to:

1. Inform officers that, while efficiency is at all times necessary, its dispassionate appearance can be misinterpreted by overwrought victims as disinterest in the loss or injury;
2. Provide officers with preservice and in-service training in dealing with the elderly;
3. Instruct preliminary investigators not to give victims false hopes of recovering their property;
4. Accelerate the recruitment of Spanish-speaking officers and the Spanish-language training of present officers;
5. Review present methods of response and investigation of theft and burglary calls to insure timely and meaningful followup investigations;
6. Design public education programs to deal with some of the realities of police investigative processes as opposed to the entertainment media's romanticized versions; and
7. Provide evidence technicians with a notice of appearance form, similar to those used by public utility employers to advise customers, to notify persons not at home of their visit.

Based on the mail-back survey, this preliminary analysis and report has highlighted some helpful insights into public opinion regarding the quality of police service rendered in Chicago. These observations will facilitate modification of training programs and operational procedures to make them more responsive to citizen concepts of superior police service. While it may be a completely unobtainable goal, we must never strive for anything less than 100-percent satisfactory police service.

FBI

THE LEGACY OF CARLOS MARIGHELLA

"Terrorism almost always involves violence. . . . But the urban guerrilla can use almost any activity . . . that is designed to disrupt the functioning of government or the 'establishment.'"

By
THOMAS J. DEAKIN
Special Agent
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The influence of urban guerrilla theories developed in other countries during the past several decades on would-be terrorists in the United States is considerable. To understand the development of urban guerrilla activity in this country, it is necessary to examine its historical and geographic antecedents. This examination helps focus on the peculiar nature

of this genre of revolutionary activity as it is practiced here and illuminates some of the dilemmas encountered by the urban guerrilla in the United States.

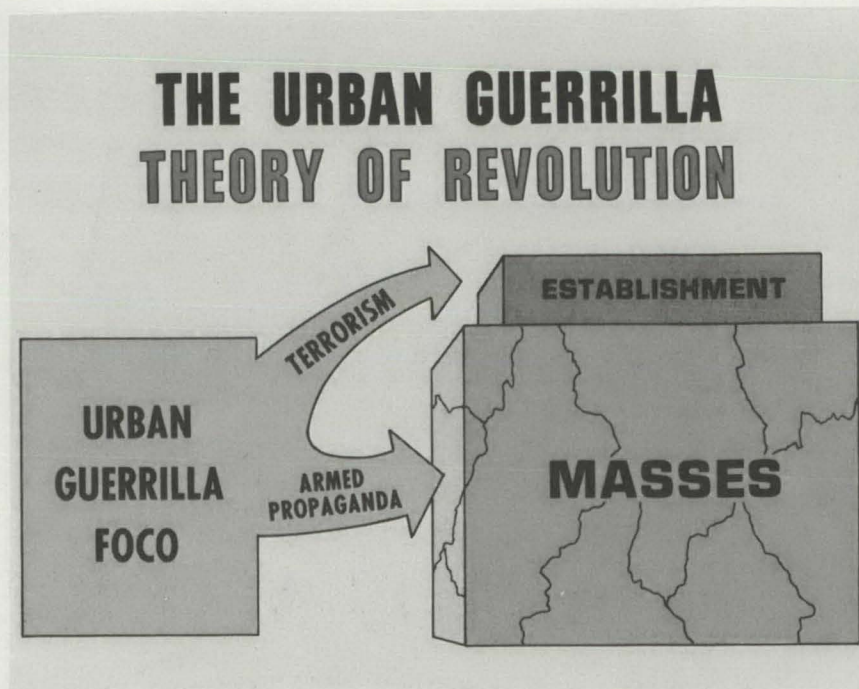
Such an examination requires, first, a definition of terms, although the media uses "terrorist," "urban guerrilla," and "revolutionary" almost interchangeably. In the context of to-

day's political world, urban guerrilla warfare can be defined as criminal conduct for revolutionary purposes. Terrorism, on the other hand, is usually violent criminal activity designed to intimidate for political purposes. The distinction is in goals sought, and only sometimes in methods used. The guerrilla is working toward revolution. The terrorist acts to focus attention on a particular grievance.

A word on the distinction between urban and rural guerrillas: While the difference would appear to be simply geographic, there exists an argument between proponents of the two types of guerrilla warfare. Part of this dispute lies rooted in interpretations of Marxist theory and it has not affected advocates of guerrilla warfare in this country nearly so much as have the practical considerations that (1) power of all types—governmental, political, economic—lies primarily in America's urban centers, and (2) most of those who have become guerrillas in the United States are individuals with urban backgrounds. They would be "fish out of the sea" operating in a rural area. Rural communes have been used as guerrilla hideouts in this country, particularly by New Left-type revolutionaries, but these rural commune dwellers have not mounted their guerrilla operations in rural areas.

While the primary difference between the terrorist and the guerrilla is in the accomplishment sought—overthrow of the government in the case of the guerrilla or a more limited political goal, such as discouraging support for Israel by attacking targets believed supportive of Israel on the part of the Arab terrorist—the distinction is sometimes confused when urban guerrillas use indiscriminate terror as a tactic. Bombings are historically the most common instrument of the terrorist, as the unsuspected bomb, especially when used against civilians, is well calculated to instill fear. Witness the worldwide letter bomb campaign against Israeli officials and sympathizers that followed the XX Olympiad, and then the letter bomb campaign directed against British establishments, part of the Northern Ireland situation.

Robert Moss, who has written extensively on the topic of urban guerrilla warfare, put it succinctly: "The terrorist has a political tool; the urban



guerrilla has a strategy for revolution. . . ."¹ The matter of violence is sometimes of assistance in delineating terrorism and urban guerrilla warfare. Terrorism almost always involves violence; bombings, assassinations, kidnappings, and airplane hijackings all involve force or the threat of force. But the urban guerrilla can use almost any activity, violent or not, that is designed to disrupt the functioning of government or the "establishment." The tactic of supporting revolutionary activity through expropriation has been used as justification by some Weatherman types in this country for various frauds involving traveler's checks and stolen credit cards. Without violence, the "establishment" is still disrupted—through "ripoffs."

The expropriation tactic itself may serve to indicate whether terrorism or urban guerrilla activity is involved. The urban guerrilla must be indigentous to create a revolution. But his tactics are not those of the orthodox Marxist revolutionary, thus he does not receive financial support from Marxist countries and must rely on expropriation, or other usually indig-

enous assistance, for funds. The political terrorist is often involved in third country operations, is not physically present in his ultimate target country, and often receives support from still other countries or individuals sympathetic to his aims.

Dr. Stefan T. Possony, however, would include urban guerrilla warfare as defined here within an overall concept of "strategic terrorism" on the part of revolutionaries aiming to defeat a hostile state. Private terrorism is then differentiated as criminality.² Dr. Possony later notes that there are distinct forms of strategic terrorism—described in this article as urban guerrilla warfare and political terrorism—and that the planner needs a typology of the distinct forms in order to counter them.

Urban Guerrilla Activity in the United States

While this country has not seen sustained or unified urban guerrilla activity on the scale of the Tupamaros of Uruguay, nonetheless there have been a significant number of attacks

on police, bombings, and expropriations by revolutionaries of this type in the past 3 years. Two primary movements have been involved in these activities—the Weatherman-type revolutionary of the New Left and the Panther-type black extremist.

The Weatherman group grew out of the Students for a Democratic Society (SDS), itself reorganized in 1962 at the height of student civil rights activity in the South. Involved in the early stages of the antiwar movement, the organization began moving toward a violent revolutionary posture in 1967. An SDS member was convicted of attempting to bomb ROTC facilities and another was charged with sabotage in dynamiting power transmission lines. An SDS faction, calling itself the Weatherman (“You don’t need a weatherman to know which way the wind blows” was a line in a then-popular song), split from the parent group in 1969 over the advocacy of revolutionary violence.

In February 1970, the Weatherman group closed its national office in Chicago, discontinued its newspaper, and went underground into collectives and communes. The group’s strategy was proclaimed in a letter to the press, received on May 21, 1970:

“Now we are adapting the classic guerrilla strategy of the Vietcong and the urban guerrilla strategy of the Tupamaros to our own situation. . . .”³

A series of bombings followed, claimed by the Weatherman group in letters or calls to the news media, including the March 1, 1971, bombing of the U.S. Capitol Building and the May 19, 1972, bombing of the Pentagon. Other groups with revolutionary goals, and outlandish labels such as the Purple Sunshine Clan, the Proud Eagle Tribe, the New Year’s Gang, The Perfect Park Home Grown Garden Society, the Quarter Moon Tribe, and the Smiling Fox Tribe, also

claimed bombings directed against the “establishment.” In 1974, the Weatherman group claimed bombings in San Francisco and Los Angeles.

But this half of the guerrilla movement in this country remained:

“structurally fragmented, decentralized, loosely organized, with little direct leadership. Among its components (were) the original Weatherman elements, bolstered by occasional recruits. Then there (were) Weatherman-type individuals and groups not organically linked with the Weatherman but allied in mood and motivation.”⁴

New Left-type guerrilla warfare in the United States is seen as part of a “clearly discernible trend” in the world. Edmund Demaitre described the phenomenon of:

“highly educated, occasionally highly gifted, middle class and upper-middle-class intellectuals slowly succumbing to a revolutionary mystique that incites them not only to condone violence as a means of political struggle but also to participate personally in terrorist actions. . . .”⁵

Indeed, the first Tupamaro manifesto, issued in 1965, justified a Montevideo bombing as a protest against U.S. involvement in Vietnam.

The other half of the urban guerrilla movement in this country is the Panther-type black revolutionary—also a fragmented and loosely organized movement. In February 1971, the Black Panther Party split into two factions, one headed by Minister of Defense Huey P. Newton and the other by Minister of Information Eldridge Cleaver, a fugitive then residing in Algiers. The Cleaver faction quickly took the lead in advocating violence, especially violence against police officers. The Newton faction, to distin-

guish itself from the Cleaver followers, emphasized political activity rather than revolution now, while, in the Panther publication *Babylon* (November 1–14, 1971), Eldridge Cleaver asserted:

“the absolute right of the Afro-American people to take up arms and wage war against their oppressor . . . by taking the initiative and actually attacking the pigs (police) with guns, and killing them.”

The primary vehicle for Panther urban guerrilla activity has been the Afro-American Liberation Army, better known as the Black Liberation Army. The public activities of this group began on May 19, 1971, when two New York City police officers, pursuing an apparent traffic violator, were wounded in a hail of machine-gun bullets. Two days later, another two New York policemen were shot and killed by black assailants. Letters to the news media, signed “Black Liberation Army,” claimed credit for these attacks.

Since then, the Black Liberation Army has been linked to a continuing series of attacks on police—2 officers were killed and 17 were wounded in 1973 shoot-outs alone—in addition to other urban guerrilla actions, particularly armed expropriations. Scores of weapons, including machineguns and hand grenades, have been seized from Black Liberation Army arsenals. The organization was described in the February 29, 1972, issue of the newspaper *Right On!*:

“The purpose of the Black Liberation Army is the same as that of the Tupamaros in Uruguay, Frelimo in Mozambique, and all the other liberation forces. The Black Liberation Army is simply brothers and sisters who have gone underground to put all the revolutionary rhetoric and theory into

practice. The difference between the Black Liberation Army and the aboveground politico-apparatus, the Black Panther Party is that the Black Panther Party (is) organizing and politicizing in the open by whatever means necessary and advantageous and the Black Liberation Army moves in a military manner to carry the politicizing to its logical extension—action.”

One of the newest urban guerrilla groups, the Symbionese Liberation Army (SLA), has claimed credit for the November 6, 1973, murder of Oakland, Calif., school superintendent Dr. Marcus Foster and for the February 4, 1974, kidnaping of Patricia Hearst. The group demanded ransom in the form of a multimillion dollar food giveaway program in California. Leaders of the Symbionese Liberation Army were identified in an April 15, 1974, California bank robbery; some of these leaders died in the subsequent shoot-out with authorities in Los Angeles.

The apparent catalyst in forming this “army” was visits to black prison inmates in California by revolutionary white youths. The group’s strategy is set out in its “Declaration of Revolutionary War” which calls on “all revolutionary black and other oppressed people within the Fascist United States to . . . fight in the forces of The Symbionese United Liberation Army.” Specific goals of the group, taken from this declaration, include: Destruction of the capitalist state; control of industry by the “people”; formation of communes; children to be the “responsibility of the community”; destruction of the prison system; seizure of state and capitalist-owned land, to be given to the “people”; total destruction of the rent system; and “destruction of racism, sexism, ageism, capitalism, fascism, individualism, possessiveness, competitiveness.”

Marighella's Influence

Carlos Marighella’s “Minimanual of the Urban Guerrilla,” called the “Holy Writ” of modern guerrillas by one writer, has had as much influence on the theories and tactics of urban guerrillas in this country as any writing in the field. An early indication of this is seen by comparing Marighella’s statement that “[t]he principal object of the ambush tactic is to capture enemy arms and punish him with death”⁶ with Stokely Carmichael’s writing. Carmichael, who lectured to American college audiences on urban guerrilla warfare in 1970 before he traveled to Africa as the late Kwame Nkrumah’s protege, cited Marighella’s tactic on capturing weapons in his talks and included it in his book in this form:

“ . . . when the guerrilla kills a member of the occupying army, he not only takes the gun that’s around his waist, he opens up the door and he takes a 12-gauge shotgun.”⁷

This tactic was adopted by the Cleaver faction of the Panthers. Right On! (February 15, 1972, p. 10) called for urban guerrilla units to act as “Revolutionary Executioners of the gestapo pigs (police) mainly to capture weapons from the enemy. . . .”

But there are no immutable laws in urban guerrilla warfare tactical manuals. When Panthers in the Black Liberation Army took weapons from officers they killed, they found these weapons a deadly link in a chain of evidence tying them to the slayings. Soon, guerrilla notes were found that advised:

“We do not need to take weapons from iced (killed) pigs, specially those that have been righteously baconized. There are better places to rip-off weapons—not where they can be linked to butchered hogs.”

Marighella was a longtime Marxist. He held office in Brazil as a member of the Communist Party after World War II. By the 1960’s, Marighella was a top leader of the orthodox Communist Party of Brazil, but his theories of urban guerrilla warfare finally led to a break with the Party. His view of the class struggle holds to the necessity of armed struggle by the urban guerrilla, with two primary objectives:

- “a) the physical liquidation of the chiefs and assistants of the armed forces and of the police;
- b) the expropriation of government resources and those belonging to the big capitalists . . . with small expropriations used for the maintenance of individual urban guerrillas and large ones for the sustenance of the revolution itself.”⁸

And these primary objectives—a “disposition” to kill police as Marighella calls it, and financing guerrilla activities (especially for the maintenance of individual guerrillas) through expropriation—have been adopted in toto by the Panthers and their Black Liberation Army. On February 15, 1972, the Panther newspaper Right On! (page 10) called for “. . . armed revolutionary violence. . . . [r]ipping off money from banks. . . .” and executing police. Members of the Black Liberation Army have ambushed and killed police officers and have robbed banks—and messages from these guerrillas have boasted of these activities. “Communique No. 1,” published in Right On!, April 5, 1971, page 17, signed by the Attica Brigade of the Afro-American Liberation Army, claimed those who threw a hand grenade under a New York City police car on December 20, 1971, were on a mission to “rip off funds for the Afro-American liberation struggle.” Marighella’s primary objectives were most succinctly expressed in a “Message from the Black Liberation Army,” pub-

lished by Right On!, April 5, 1972, page C: "The police have the guns and the banks have the money."

The act of expropriation is, of course, not a new technique. The Bolsheviks used robberies of Czarist banks to finance their activities; Joseph Stalin gained an early reputation in Russia as a bank robber for the communists. But Marighella's overall theory of revolution differed from that of orthodox Marxists. Instead of an uprising by politically indoctrinated masses led by an indigenous communist party, the urban guerrilla's theory of revolution is to demonstrate that the government is incapable of fulfilling its primary purpose, that of providing a stable and ordered society. If this basic function of government is eroded in practice, then the masses will reject the government in power. Rejection will come about through revolution, which will come to fruition when the most visible symbol of government, law enforcement, is shown to be impotent in battling the guerrilla. Hence, the primary objective of attacking police officers: If the police cannot protect themselves, how can they protect the citizenry—their basic function?

The "Minimanual of the Urban Guerrilla" has been extensively circulated in this country, by the Panthers and by other guerrilla groups. It has been included in most of the collections of revolutionary literature found in the possession of Black Liberation Army members and other revolutionaries. It has served as a textbook for formal "political education" classes. Excerpts have been serialized in the Panther newspaper Right On! and portions of the "Minimanual" have appeared in the so-called underground press. Field Marshal Donald Cox, a Panther fugitive who joined Eldridge Cleaver in Algerian exile, dedicated his pamphlet "On Organizing Urban Guerrilla Units" to Marighella. Cox freely quotes Mari-

ghella in his "little red book" on guerrilla tactics and weapons.

The Symbionese Liberation Army may have followed three of the "action models" set out in the "Minimanual of the Urban Guerrilla": Execution, kidnaping, and expropriation—tactics common to Latin American and other guerrilla groups. Marighella defined execution as the "killing . . . of a fascist personality in the government involved in crimes and persecutions against patriots."⁹ "Communique No. 1" from the Symbionese Liberation Army, in which the group claimed the murder of Dr. Foster, was in the form of a "warrant" from the "Court of the People" which accused Dr. Foster of "taking part in crimes committed against . . . the people." (These "crimes" were the proposed introduction of guards and identification cards into Oakland schools.)

According to the "Minimanual," the kidnaping of well-known, but apolitical, persons "can be a useful form of propaganda for the revolutionary. . . ." ¹⁰ The ransom in this case included a demand for the publication of several Symbionese Liberation Army propaganda tracts, and the media was warned that "attempts to confuse the public by withholding or omitting sections of the tape or S.L.A. documents jeopardizes the prisoner." But this type of kidnaping differs from that of a political personality or a police agent, according to Marighella. It must be "handled so that the public sympathizes with it and accepts it." ¹¹ Hence, the ransom demand of food for others rather than cash for the kidnapers.

Following the example set by Algerian rebels, the Weatherman group, the Black Liberation Army, and the Symbionese Liberation Army in this country, have used the now classic guerrilla term "communique" for their message. The Symbionese

group has posted its message ("Communique No. 1" in a different format) on telephone poles and has sent it to a variety of community organizations, both techniques recommended in the "Minimanual." A copy of Marighella's book was among the urban guerrilla documents found in a Symbionese Liberation Army pad.

As an organizational outline and a tactical handbook, Marighella's book has gained him a measure of immortality in guerrilla circles. He was killed in a gun battle with police in November 1969, just a few months after the appearance of the "Minimanual." The biographic note in the 1970 New World Liberation Front edition (copied from the Tricontinental translation, January–February, 1970), notes that the "Minimanual" will become "one of the principal books of every man who . . . takes the road of armed rebellion." It has.

Differences in New Left Strategy

The Weatherman type of New Left urban guerrillas has not opted for Marighella's theories to the degree that black extremists have. Expropriations, yes, even bank robberies, but these primarily white revolutionaries eschew the "macho" masculinity syndrome evident in Panther gunfights with police. The anarchist's bomb is their weapon, and the "establishment" in general (and law enforcement only as a part of the establishment) their target. While Weatherman members (later called Weatherpeople, or collectively, the Weather Underground, in response to male chauvinism charges from the ranks) advocate revolution through urban guerrilla warfare, in common with other such revolutionaries around the world they have not presented specific ideologies to replace the structures of government they would topple.

Robert Moss highlighted this lack of a "single coherent statement of

ideology" on the part of any urban guerrilla group:

"along with an indifference to the normal forms of political agitation and a virtual silence about social conditions, that makes most urban guerrillas 'Blanquists' in the sense that Lenin defined the term: military conspirators with a tactic rather than a political philosophy."¹²

Mr. Moss notes that Marighella's "Minimanual" comes closest to formulating a strategy, yet it "offers more instruction about simple weaponry than about the kind of society he wanted to create."¹³

Kwame Nkrumah does present a strategy and specific objectives—"Nationalism, Pan Africanism, and Socialism"¹⁴—along with basic techniques of guerrilla warfare. But, although Stokely Carmichael has recently propagated Nkrumah's objectives in lectures at various U.S. colleges, Nkrumah was not an urban guerrilla, nor have Panther-type urban guerrillas in this country yet adopted his philosophy. In this respect, one could say none of the urban guerrillas in this country have any strategy much beyond revolution for its own sake. Still, there are theoretical antecedents for New Left-type urban guerrillas. These are primarily the military writings of Che Guevara, Regis Debray, Stalin, and Lenin.

Guevara, for a time a folk hero to many members of America's commune society, was a rural guerrilla. He wrote that the countryside is the battleground in underdeveloped (Latin and South) America and that a "suburban guerrilla band," if one developed, would be subordinate to direction from rural guerrilla chiefs. Glossing over this element of Guevara's philosophy, the New Left seized upon his thesis that "[i]t is not necessary to wait until all conditions for making revolution exist; the insur-

rection can create them."¹⁵ Despairing of recruiting masses of U.S. "workers," or even a significantly large number of U.S. students, as required by Marxist doctrine then extant, this "foco" theory was the denouement sought by the elitists of the New Left. Instead of organizing the masses as a whole, per Marxist dictates, they decided that "a small group of armed insurgents . . . can act as a focus for the various discontented elements. . .," in the words of Brigadier Kitson, the British Army counter guerrilla expert.¹⁶

"Foco" is used in a second sense as the first, and leadership, unit of the "liberation army." In the "classic" guerrilla mode, as explained by Regis Debray, the military pyramid of the liberation forces in Latin America "tends to be built from the apex down—the permanent forces first (the *foco*), then the semiregular forces in the vicinity of the *foco* . . ."¹⁷ This dualistic use of "foco," both as a theory of revolution and as the name of an initial guerrilla group, has not facilitated the grasp of the concept and in this country "foco" has become a glib catch phrase for the intellectual fringe rather than a working guerrilla concept.

This Cuban, or Guevara, influence also extends from the theoretical down to the tactical level. A diagram showing how to launch a Molotov cocktail from a rifle or shotgun, on page 55 of the Vintage Books edition of "Guerrilla Warfare," was copied on page 99 of "The Anarchist Cookbook," by William Powell (New York, 1971). "The Anarchist Cookbook" (the title stems from the chapter on recipes incorporating marihuana or hashish) covers guerrilla organization and technique, and has become quite popular among student revolutionaries here. Another "how to" book for guerrillas, emanating from Cuba, is "150 Questions for a Guerrilla" by General Alberto Bayo, "The Man

Who Trained Castro." A detailed manual on sabotage and explosives, "150 Questions" was circulated by New Left groups in this country as early as 1968. General Bayo was a Marxist veteran of the Spanish Civil War, who, like Abraham Guillen, settled in South America and drew on his experience in Spain to write on guerrilla warfare. Guillen, author of "Philosophy of the Urban Guerrilla" and other works, may have had considerable influence on Carlos Marighella.

"Armed propaganda" is another concept adopted from abroad by urban guerrillas in this country. As Regis Debray explains it:

"The destruction of a troop transport truck or the public execution of a police torturer is more effective propaganda for the local population than a hundred speeches."¹⁸

Debray claimed that during at least one 2-year period of warfare, Castro did not have any political rallies in his zone of operations. This tactic, added to the "foco" theory, was ideally suited to U.S. revolutionaries whose speeches, after some initial successes on the campuses, took on some of the irrelevance of other periodic campus fads. Action, or propaganda of the deed, would replace the sterility of revolutionary oratory.

And "Propaganda of the Deed" was even the subtitle of "Underground Manual Number 3," one of the first handbooks of guerrilla military techniques to circulate in the United States. (There were no manuals numbered one and two.) This booklet was first circulated by the New Left and was then picked up by the underground press. The material on homemade explosives, booby traps, and incendiaries, such as thermit and napalm, was also irresistible to the Panthers. They circulated the pamphlet, too, but in an unusual gesture of circumspection, cloaked it in an

innocuous cover, that of a Department of Agriculture bulletin. But the Panthers, as popularizers of the slogan "pig" for police officers, picked a bulletin on processing pork for their cover.

Part of armed propaganda, according to Debray, includes the tactic of demonstrating the vincibility of law enforcement, similar to Marighella's "disposition" to shoot police:

"In order to destroy the idea of unassailability—that aged-old accumulation of fear and humility vis-a-vis the . . . policeman . . . —there is nothing better than combat."¹⁹

This element of armed propaganda was an obvious early success of the Panthers, who gained much stature in some circles with their armed invasion of the California legislature. Indeed, the initial armed Panther confrontations with police were designed to show their ability to stand up to, and face down, law enforcement officers.

Certain writings of Lenin and Stalin were used extensively, if selectively, in a thesis advocating urban guerrilla warfare on the part of the recently disbanded Venceremos group, itself a splinter of the Revolutionary Union, a national Maoist organization. This "military strategy" paper presents the dilemma of "dual errors of adventurism" (premature action) and "social pacifism" (agreeing to armed struggle, but only at some distant time in the future). A sophisticated political document, the Venceremos statement recognizes the split aborning among Marxists over the "foco" theory, revolution from the apex of a sociological pyramid, with its emphasis on the gun, or propaganda of the deed. It is interesting to note that a sociologist author of a fictional scenario of urban guerrilla revolution in America (who describes himself as a democratic radical) feels that "[a] revolution cannot be artifi-

cially induced. . . . To attempt to induce it prematurely . . . is adventurism. . . ." ²⁰

The Venceremos paper uses certain of Lenin's writings—"The Black Hundreds and the Organization of an Uprising," "From the Defensive to the Offensive," "To the Combat Committee of the St. Petersburg Committee," and "Tasks of Revolutionary Army Contingents"—written during the 1905 Revolution as evidence of the need to "begin military action as soon as possible." Even Stalin's "Political Report of the Central Committee to the 16th Congress of the CPSU" is used to support the thesis that the time is right for organized urban guerrilla warfare. Parenthetically, the primarily white Venceremos group recognizes the divergent courses taken by white and black guerrillas here, and calls the problem "white chauvinism." Venceremos notes: "Somehow, white skins are assumed to be too valuable to sacrifice to a pig's bullet, while Black and Brown minds are seen as unable to cope with the theory of Marxism-Leninism."

Conclusion

Without question, Carlos Marighella, Che Guevara, and Regis Debray are among the primary lineal progenitors of the urban guerrilla theories and tactics practiced in the United States today. Their influence on causation of this phenomenon in this country is rather more within the purview of the sociologist/historian, however. Behind Marighella and company is more than a century's development of Marxist doctrine, for these theorists of urban guerrilla warfare were first Marxists. The non-Marxist observer may delineate them as the first of a new breed, their philosophy a climactic in the development of Marxist revolutionary thought. The orthodox Marxist sees them as "adventurists," and repudiates them. The lack of true

communist uprisings in recent history, as opposed to "revolutions" with the Soviet military as surety, coupled with the Cuban experience, would seem to weigh toward the judgment that perhaps these "wars of the flea" in urban settings are, indeed, the wars of the future.

In the United States, of course, we have just the embryo of such a war, and an unorganized embryo at that, though deadly to Marighella's first target, the policeman. While recent history has shown that not all urban guerrilla campaigns succeed, it could be argued that the disruptions of even embryonic urban guerrilla warfare may be a self-generating catalyst, leading to further serious revolutionary activity. One interpretation of Marxism takes just such a view. However, the irregular pulsation of urban guerrilla activity in America during the past half decade almost defies anything better than an "if, then" prognosis, tempered by a multitude of economic and sociological factors.

FOOTNOTES

¹ *Urban Guerrilla Warfare* (The International Institute for Strategic Studies, London, 1971), p. 3.

² "Terrorism, A Global Concern," *Defense/Foreign Affairs Digest* (January 1973), p. 4.

³ "Outlaws of America, Communiques from the Weather Underground," *The Liberated Guardian* (New York, 1971), p. 3.

⁴ J. Edgar Hoover, "Extremist New Left Violence," *The University of Maryland Law Forum*, Spring 1972.

⁵ "Terrorism and the Intellectuals," *Washington Star and Daily News*, April 15, 1973.

⁶ Carlos Marighella, *Minimanual of the Urban Guerrilla* (New World Liberation Front, 1970), p. 26.

⁷ Stokely Carmichael, *Stokely Speaks* (New York, 1971), p. 213.

⁸ Marighella, *Minimanual*, p. 6.

⁹ *Ibid.*, p. 30.

¹⁰ *Ibid.*, p. 31.

¹¹ *Ibid.*

¹² Robert Moss, "Urban Guerrillas In Uruguay," *Problems of Communism*, September-October 1971, p. 15.

¹³ *Ibid.*

¹⁴ Nkrumah, *Handbook of Revolutionary Warfare* (New York, 1969), p. 24.

¹⁵ Che Guevara, *Guerrilla Warfare* (New York, 1969), p. 1.

¹⁶ Frank Kitson, *Low Intensity Operations* (London, 1971), p. 33.

¹⁷ Regis Debray, *Revolution in the Revolution?* (New York, 1967), p. 51.

¹⁸ *Ibid.*, p. 53.

¹⁹ *Ibid.*, p. 52.

²⁰ Martin Oppenheimer, *The Urban Guerrilla* (Chicago, 1968), p. 173.

Testing

Affidavit

Credibility

"One of the frequent acts performed by law enforcement officers is the preparation of an affidavit in support of the issuance of a search warrant."

By
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One of the frequent acts performed by law enforcement officers is the preparation of an affidavit in support of the issuance of a search warrant. The officer is probably most concerned at this time with stating sufficient facts to convince the issuing magistrate of the required probable cause. Since suppression hearings almost routinely generate attacks on the sufficiency of the allegations, it is understandable

that the officer's concern is primarily focused in this area. The Supreme Court has considered at length the allegations necessary to establish probable cause,¹ that is the *sufficiency* of the allegations and what tests must be met. The Court has not concerned itself so directly with the question of whether matters stated in an affidavit may be challenged by the person against whom the warrant is directed

as to the *accuracy or truthfulness* of the allegations therein.² It is the purpose of this article to consider this matter and to attempt to trace the effect of false or inaccurate statements on the affidavit, where and how such challenges are made in the absence of statute, and how such problems have occurred in some instances. The law enforcement officer should be aware of these factors and should not complacently assume that providing he states sufficient probable cause, no attack on the validity of the allegations may be made.

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

Survey

General Rule in the Absence of Statute

The early cases, both State and Federal, held by a large majority that in the absence of statute,³ the matters contained in an affidavit on which a search warrant was based may not be questioned by the person against whom the warrant is directed.⁴ Although the reported State cases largely continue to follow this line, there have been changes in several Federal circuits, and in at least some States⁵ a willingness to look behind factual statements in an affidavit after a showing of falsity.

Several subsidiary questions present themselves in relation to a consideration of whether a defendant is entitled to attack the underlying factual validity of an affidavit. Is he entitled to a separate evidentiary hearing for this purpose and, if so, under what circumstances? What other forum is available for such a challenge? What types of allegations fit into this class of challenge? What effect does an erroneous or false representation have on an affidavit and the warrant based thereon? Does an intentional false assertion completely vitiate a warrant regardless of its effect upon probable cause?

Forum—Separate Evidentiary Hearing or Suppression Hearing

Although the expressions on this subject are limited, there is some sentiment for allowing such a separate hearing. In a rather sweeping dictum, the Seventh Circuit asserted in 1960 that the propriety of such a hearing is "hardly open to question."⁶ However, in a 1973 expression of opinion involving an arrest warrant, the same court laid down certain governing rules:

"We now hold that a defendant is entitled to a hearing which delves below the surface of a facially sufficient affidavit if he has made an initial showing of either of the following: (1) any misrepresentation by the government agent of a material fact, or (2) an intentional misrepresentation by the government agent, whether or not material . . ."

"However, once such a hearing is granted, more must be shown to suppress the evidence. Evidence should not be suppressed unless the trial court finds that the government agent was either recklessly or intentionally untruthful. A completely innocent misrepresentation is not sufficient for two reasons. Most importantly, the

primary justification for the exclusionary rule is to deter police misconduct . . . , and good faith errors cannot be deterred. Furthermore, such errors do not negate probable cause . . ."

"Negligent misrepresentations are theoretically deterrable, but no workable test suggests itself for determining whether an officer was negligent or completely innocent in not checking his facts further. We therefore conclude that evidence should not be suppressed unless the officer was at least reckless in his misrepresentation. Even where the officer is reckless, if the misrepresentation is immaterial, it did not affect the issuance of the warrant and there is no justification for suppressing the evidence. Arguably, the same conclusion could be reached as to deliberate but immaterial misrepresentations. However, we conclude that if deliberate government perjury should ever be shown, the court need not inquire as to the materiality of the perjury. The fullest deterrent sanctions of the exclusionary rule should be applied to such serious and deliberate government wrongdoing.

"The rule we announce today is intended only to test the credibility of government agents whose affidavits or testimony are before the magistrate. The two-pronged test of *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S. Ct. 1509, 12 L.Ed. 2d 723 (supra p. 986), sufficiently tests the credibility of confidential informers. Consequently, defendant may not challenge the truth of hearsay evidence reported by an affiant. He may, after a proper showing, challenge any statements based on the affiant's personal knowledge, including his

representations concerning the informer's reliability, his representation that the hearsay statements were actually made, and his implied representation that he believes the hearsay to be true. This fills the gap not covered by the *Aguilar* tests. . . ." ⁷

In *United States v. Halsey*,⁸ the defense counsel contended that he had the right to explore each and every assertion of the affidavit because denial by the defendant was sufficient to raise a factual issue as to each assertion. The court rejected that contention which it characterized as a "bland and sweeping claim . . . for a right to try the affiant in every case, with no foundation beyond the hope

of the issuing magistrate's determination as a routine step in every case. Until or unless the defendant has at least made some initial showing of some potential infirmities he proposes to demonstrate, the magistrate's acceptance of the affidavit as truthful should be enough." ¹⁰

The holding and reasoning in *Halsey* have been cited with approval by the Second Circuit Court of Appeals.¹¹

Whatever may be the ultimate ruling as to the availability of a separate evidentiary hearing to attack the truth of assertions in an affidavit, the issue frequently arises in the Federal courts in the context of a hearing held on a defendant's motion to suppress evi-

told the affiant,¹⁹ or that the affiant did not have reasonable grounds to believe the informer.²⁰

Effect of Erroneous or False Representations

In considering the challenges made to the truthfulness of an affidavit, courts have focused their reviews on the reasonableness of the affiant's belief, the materiality of the misstatements, and the intent of the affiant. One line of cases which arose in the Fifth Circuit presents an interesting study of the effect of misrepresentation in affidavits. The first of these was *United States v. Upshaw*.²¹ From testimony of the affiant and the informant at a hearing on a motion to suppress evidence, it developed that the affidavit for a search warrant alleged as facts related to the affiant by an informant things which the informant only suspected. It also specified certain items had allegedly been seen on the premises by the informant when, in fact, the informant did not so state. Also misstated was the period of time over which the affiant had been working with the informant. The court held:

"In considering the challenges made to the truthfulness of an affidavit, courts have focused their reviews on the reasonableness of the affiant's belief, the materiality of the misstatements, and the intent of the affiant."

that some inaccuracy or falsehood may emerge." ⁹ In doing so, it considered (1) the question of appropriately dividing power and responsibility between the magistrate issuing a warrant and a judge later considering its legality, (2) the necessity that criminal charges be reached on their merits and resolved with a decent measure of expedition, and (3) an estimate of the supposed benefits in routine trials of search warrants when considered with (a) the burdens this procedure entails and (b) the risks posed by warrants issued on perjured affidavits. The court concluded that a reasonable balance between prudence and the ideal required a ruling against such a right. Its holding was stated as follows:

" . . . there is no justification for allowing such a *de novo* trial

ence ¹² under Rule 41(e), Federal Rules of Criminal Procedure,¹³ or on a motion for rehearing after a denial of a motion to suppress such evidence.¹⁴ The issue has been raised in some cases as one issue or the sole issue ¹⁵ after conviction.

Types of Challenges

As one commentator has observed, the challenge may be raised in various ways.¹⁶ Where the affiant relies on personal observation a defendant may charge that the facts alleged were not true ¹⁷ or that the affiant did not have grounds for reasonable belief in their truth.¹⁸ If the information is hearsay derived from an informer, the defendant may argue that the observations made by the informer were inaccurate, that the informer did not have reasonable grounds for believing what he

"Purged of its erroneous statements, the affidavit was wholly lacking in facts tending to show that Davis was printing checks or identification documents or that any of the documents were on the premises of the print shop. Stripped of its incorrect assertions, the affidavit became like that in *Nathanson v. United States*, 290 U.S. 41, 54 S. Ct. 11, 78 L.Ed. 159 (1933), consisting of nothing more than the bare statement of affiant's belief and cause to suspect that items were in a specified location. Mere affirmance of belief or suspicion is not enough." (Citations omitted) ²²

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"Once it came to the attention of the court, from the testimony at the motion to suppress hearing, that evidence had been seized on the basis of statements of facts erroneously made by the affiant which struck at the heart of the affidavit's showing of probable cause, the court was required to grant the motion. The judicial system cannot be a party to the use of tainted evidence on the basis that, arguably, the defendant was not entitled to bring to the attention of the court what the court has come to know anyhow. . . ." ²³

In *United States v. Jones*,²⁴ a warrant was issued for the search of a residence. The individual who was believed to be there had been developed as a suspect in a bank robbery. The affidavit erroneously stated that all of the subjects had been identified by bank employees. The error was unintentional and the subject had, in fact, been identified by one of the other subjects already under arrest. This fact, if included in the affidavit in place of the erroneous statement, would also presumably have provided probable cause. Nonetheless, without the erroneous statement, the facts stated in the affidavit did not support the issuance of a warrant and the court held this case was controlled by its decision in *Upshaw*.²⁵

In *United States v. Morris*,²⁶ arrest warrants were procured for violation of Federal firearms laws, and one of the affidavits upon which they were based erroneously stated that the affiant had checked certain records and had seen an affidavit which established that the subjects had committed the crime of criminal trespass. Testimony of the affiant at the suppression hearing showed the errors and the court held the arrest warrants invalid.²⁷ The court summarized the rationale for suppressing evidence due to erroneous affidavits as follows:

"A contrary rule would leave the warrant requirement embodied in the fourth amendment open to circumvention by overzealous officials willing to make erroneous affidavits in the hope that the resultant search or arrest will yield conclusive proof of criminal conduct. The warrant procedure operates on the assumption that statements in the affidavit presented to the issuing magistrate are at least an accurate representation of what the affiant knows though possibly inadequate to show probable cause. It would quickly deteriorate into a meaningless formality were we to approve searches or arrests based upon misrepresentation or incorrect factual statements. Thus when an affidavit contains inaccurate statements which materially affect its showing of probable cause, any warrant based upon it is rendered invalid." ²⁸

It will be noted that the approach used by the Fifth Circuit in the above trio of cases was that of excising the misrepresentative parts from the affidavit and then examining the residue for probable cause.

Effect of Intentional Misrepresentation

In *United States v. Thomas*,²⁹ the Fifth Circuit was faced with a new question. The affidavit here contained what the trial court found to be a good faith error in referring to the individual about whom informants had supplied information as James H. Finley. In fact, the informants had not used that name but the affiant ascribed the name to the person they called "Tee," based on certain deductions after additional investigation. James H. Finley was an alias used by defendant Thomas. The difference between this case and the above-described trio of cases was that after

excising the erroneous part of the affidavit, probable cause still existed in the form of other facts alleged. The court questioned whether the existence of probable cause was the only factor to be considered and decided it was not. It held that it must evaluate the intent of the affiant. It noted that the trial court had found the affidavit was made in good faith, reviewed the process by which the affiant had arrived at his belief and affirmed the finding of good faith. What if its consideration had resulted in a finding that the affiant's erroneous statement


" . . . affidavits containing misrepresentations are invalid if the error . . . was committed with an intent to deceive the magistrate, whether or not the error is material to the showing of probable cause. . . ."

was not made in good faith? The court stated the rule as follows:

"Therefore, we hold that affidavits containing misrepresentations are invalid if the error (1) was committed with an intent to deceive the magistrate, whether or not the error is material to the showing of probable cause; or (2) made non-intentionally, but the erroneous statement is material to the establishment of probable cause for the search."³⁰

Conclusion

The Federal courts have refused to allow defendants a general right to attack the truthfulness of an affidavit, absent an initial showing of potential infirmities. However, they have begun to accord defendants the right to challenge the truthfulness of an affidavit either in a hearing on a motion to suppress evidence or in a special evidentiary hearing after an initial showing of falsehood or incorrect assertions to the magistrate. They have made it

clear that they stand ready to invalidate warrants and reverse convictions if, after removing the erroneous material, probable cause does not exist. More than that, they have enunciated that a willful or intentional misrepresentation, whether material to probable cause or not, will cause them to invalidate the warrant. The State courts which still hold to the older theory that the affidavit cannot be attacked will be under increasing pressure to reverse that position. It is possible that such States will also find defendants challenging their position on fourth amendment constitutional grounds. The law enforcement officer who executes an affidavit must do more than assess whether the facts are sufficient to constitute probable cause. Hopefully, he has always tried to be accurate, but as the cases illustrate, misrepresentative statements may creep into affidavits in a number of ways short of outright falsehood. To prevent the invalidation of the warrant and possibly the loss of evidence, the affiant must assume the difficult role of becoming a detached critic of his own statements and carefully review each affidavit for accuracy. In this way he can increase the likelihood that an affidavit, sufficient as to probable cause, will be held valid if tested as to credibility. The objective should be to present an affidavit that will preserve both the rights of the individual against whom the warrant is to be issued and the professional standards of law enforcement. 

FOOTNOTES

¹ See, for example, *Spinelli v. United States*, 393 U.S. 410 (1969); *Aguilar v. Texas*, 378 U.S. 108 (1964); *Brinegar v. United States*, 338 U.S. 160 (1949).

² In *Rugendorf v. United States*, 376 U.S. 528 (1964), the Court treated this as an open question. Certiorari has been denied in recent years in two State cases raising this question. *Bak v. Illinois*, 400 U.S. 882 (1970); *Mitchell v. Illinois*, 400 U.S. 882 (1970). A Federal case in which certiorari was also denied on this question is *Stanley v. United States*, 400 U.S. 936 (1970).

³ For an example of explicit statutory language to the contrary see Cal Penal Code, Sections 1539-40 (West 1970). New York Code of Criminal Proce-

dures, Section 813-c has been interpreted to permit inquiry into the truth of allegations in an affidavit. *People v. Alfinito*, 16 N.Y. 2d 181 (1965).

⁴ For a compendium of the State cases see 5 A.L.R. 2d 394-409. Federal cases so holding are *United States v. Ramirez*, 279 F. 2d 712 (C.A. 2, 1960), cert. denied, 364 U.S. 850 (1960); *United States v. McKay*, 2 F. 2d 257 (D.C. Nev. 1924); *United States v. Evans*, 97 F. Supp. 95 (E.D. Tenn. 1951); *United States v. Doe*, 19 F.R.D. 1 (E.D. Tenn. 1956); *United States v. Brunett*, 53 F. 2d 219 (W.D. Mo. 1931); *Kenney v. United States*, 81 U.S. App. D.C. 259, 157 F. 2d 442 (1946); *United States v. Gianaris*, 25 F.R.D. 194 (D.D.C. 1960). But see *United States v. Henderson*, 17 F.R.D. 1 (D.D.C. 1954) where on appeal of denial of motion to suppress evidence, court granted motion and deleted erroneous statement upon a showing of error.

For a recent case refusing to allow an attack on the truthfulness of an affidavit, see *United States v. Wong*, 470 F. 2d 129 (9th Cir. 1972), rehearing denied (1972). However, it should be noted that the defendant's attempt to impeach the affidavit consisted of an offering of counteraffidavits by himself and his wife as to the hour at which they habitually retired every night. This would only impliedly have contradicted the hour at which an informant had stated she was present in his home on a particular night and had seen certain weapons. It would seem then that the counteraffidavits offered not only presented no direct showing as to the specific night in question but probably do not constitute evidence within the meaning of rule 41(e). Therefore, this case should not be viewed as a recent continuation of the early holdings.

⁵ *O'Bean v. State*, 184 So. 2d 635 (1966), expressing overruling *Mai v. State*, 152 Miss. 225, 119 So. 177 (1928); *McConnell v. State*, 49 Ala. App. 523 (1972), cert. denied, 289 Ala. 746 (1972); *Commonwealth v. DeAngelo*, 437 Pa. 331 (1970).

⁶ *United States v. Pearce*, 275 F. 2d 318, 321-322 (7th Cir. 1960).

⁷ *United States v. Carmichael*, 489 F. 2d 983, 988-989 (7th Cir. 1973). See also generally *United States v. Dunnings*, 425 F. 2d 836, 840 (2d Cir. 1969), cert. denied, 397 U.S. 1002; *United States v. Halsey*, 257 F. Supp. 1002 (S.D.N.Y. 1966); Kipperman, "Inaccurate Search Warrant Affidavits as a Ground for Suppressing Evidence," 84 Harv. L. Rev. 825 (1971). For a view that there is also a constitutional ground under the fourth amendment to challenge the truthfulness and credibility of an affiant, see Forkosch, "The Constitutional Right to Challenge the Content of Affidavits in Warrants Issued Under the Fourth Amendment," 34 Ohio St. L. J. 297, 314, 328, 340 (1973).

⁸ 257 F. Supp. 1002 (S.D.N.Y. 1966).

⁹ *Ibid.* at 1006.

¹⁰ *Ibid.* at 1005.

¹¹ *United States v. Dunnings*, 425 F. 2d 836, 840 (2d Cir. 1969), cert. denied, 90 S.Ct. 1149 (1970). It should also be noted that other circuits have voiced principles which are in accord with the reasoning of *Halsey*. *LeDent v. Wolff*, 460 F. 2d 1001 (8th Cir. 1972); *United States v. Rael*, 467 F. 2d 333 (10th Cir. 1972), cert. denied, 410 U.S. 956; *United States v. Askins*, 351 F. Supp. 408 (D.C. Md. 1972).

¹² See, for example, *United States v. Halsey*, *supra* footnote 8.

¹³ Rule 41(e) of the Federal Rules of Criminal Procedure reads:

"A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the prop-

erty which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12."

The Federal Rules of Criminal Procedure (F.R.C.P.) became effective on March 21, 1946. The Espionage Act of June 15, 1917, 40 Stat. 217, was repealed when the F.R.C.P. were adopted. Rule 41 is a codification of the law and practice which existed prior to its promulgation. Notes of Advisory Committee on Rules pertaining to Rule 41; 4 Federal Practice and Procedure (Barron) Section 2401, p. 348. The Espionage Act of 1917 permitted the reception of evidence when the grounds upon which a warrant issued were controverted. *Steele v. United States*, 267 U.S. 498, 501 (1925). This history and the requirement of rule 41(e) that "[t]he judge shall receive evidence on any issue of fact necessary to the decision" on a motion to suppress appears to allow an attack upon the factual accuracy of an affidavit.

¹⁴ See, for example, *United States v. Henderson*, 17 F.R.D. 1 (D.D.C. 1954).

¹⁵ *United States v. Harwood*, 470 F. 2d 322 (10th Cir. 1972).

¹⁶ Kipperman, *supra* footnote 7 at 826.

¹⁷ See, for example, *United States v. Henderson*, 17 F.R.D. 1 (D.D.C. 1954).

¹⁸ See, for example, *United States v. Gillette*, 383 F. 2d 843 (2d Cir. 1967).

¹⁹ See, for example, *United States v. Ramos*, 380 F. 2d 717 (2d Cir. 1967).

²⁰ See, for example, *United States v. Bozza*, 365 F. 2d 206 (2d Cir. 1966); *United States v. Pearce*, 275 F. 2d 318 (7th Cir. 1960).

²¹ 448 F. 2d 1218 (5th Cir. 1971), rehearings denied (1971).

²² *Ibid.* at 1221.

²³ *Ibid.* at 1222.

²⁴ 475 F. 2d 723 (5th Cir. 1973).

²⁵ The conviction in *Jones* was affirmed and the evidence saved by the fact that the court upheld the search of a suitcase as a consent search, although *Jones* was under arrest at the time.

²⁶ 477 F. 2d 657 (5th Cir. 1973).

²⁷ The conviction in *Morris* was saved by the fact that the court found probable cause grounds for a warrantless arrest from other factors. The court noted, however, before passing to these, that nothing in the record indicated that the erroneous statement in the affidavit was intentionally or willfully made. Yet the circumstances, both here and in *Upshaw*, might have readily permitted such an inference.

²⁸ *Supra* footnote 26 at 662.

²⁹ 489 F. 2d 664 (5th Cir., 1973).

³⁰ *Ibid.* at 669. The court stated the standard of evaluating the intent of the affiant is supported by decisions in other circuits and cited *United States v. Carmichael*, 489 F. 2d 983 (7th Cir. 1973) in direct support. It also cited *United States v. Bowling*, 351 F. 2d 236 (6th Cir. 1965) and *United States v. Bridges*, 419 F. 2d 963 (8th Cir. 1969) as to some degree injecting the element of intent as a possible standard for evaluating the effect of misrepresentation in affidavits. It further cited *United States ex rel. Pugh v. Pate*, 401 F. 2d 6 (7th Cir. 1968) and *King v. United States*, 282 F. 2d 398 (4th Cir. 1960) as indirect authority since they have held that the willful or intentional use of a fictitious name as the affiant's signature on a search warrant per se voids the warrant.

CRIMESCOPE

"CORRESPONDENCE WITH THE FBI"

Close cooperation among law enforcement agencies at all levels is highly effective and profitable. To suggest methods of implementing cooperation through effective correspondence, the FBI has available a booklet, "Correspondence with the FBI," which contains samples and suggestions for various correspondence law enforcement agencies may have with the FBI regarding evidence, fingerprints, wanted notices, death notices, disposition sheets, cancellation notices, or any other matter within FBI operations.

Requests for copies of this booklet, which may be obtained free of charge by interested individuals, should be submitted to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

FBI LABORATORY

During fiscal year 1974, scientific examinations of evidence conducted by the FBI Laboratory for its own field offices, as well as many local, State, and Federal law enforcement agencies in all 50 States and the District of Columbia, totaled 557,454—a 4.9 percent increase over the previous fiscal year.

FUGITIVES LOCATED

A record of 37,891 fugitives were located in FBI cases, including 6 of the "Ten Most Wanted" in fiscal year 1974.

BOMB DAMAGE

The total value of property damaged due to bombings in 1973 was \$7,261,832. Explosive bombs resulted in \$5,346,742 damage.

BOMBINGS—1973

During calendar year 1973, 76 percent of all bombings occurred between 6:01 p.m. and 6 a.m. Eight hundred thirty-two incidents occurred between 6:01 p.m. and midnight, and 653 occurred between 12:01 a.m. and 6 a.m.

Tuesday had the highest frequency of bombing incidents with 339, while Saturday had the lowest with 235 during 1973.

Thirty-nine percent of all bombing matters occurred in cities over 250,000 population. California led the Nation in number of incidents with 573, or 29 percent of the total. The Western Region experienced 834 of the bombing incidents.

FIREARMS IDENTIFICATION BOOKLET



The FBI has available a booklet, "A Visual Aid for Firearms Identification," which pictorially represents those basic types of guns most frequently used by criminals. The booklet, which has been revised recently, may enable witnesses, unfamiliar with firearms, to identify as well as eliminate a certain firearm as having been utilized during the commission of a crime.

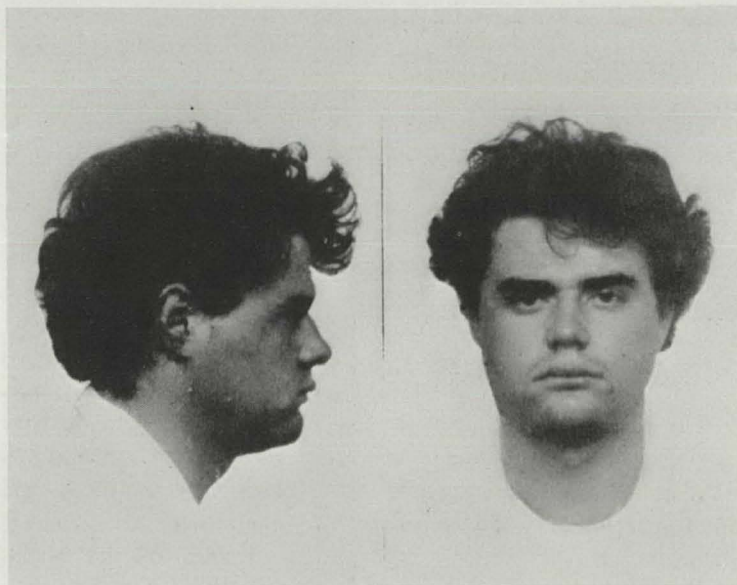
Copies of the booklet, designed for use by duly authorized law enforcement agencies, will be made available upon written request to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

FINGERPRINTS

More than 5.5 million fingerprint cards were received by the FBI Identification Division during fiscal year 1974, and over half of these were criminal fingerprints that required expedite processing. Each workday during the year, approximately 22,000 fingerprint cards were received in the division.

FBI fingerprint experts made over 1/2 million latent fingerprint comparisons in more than 37,800 cases and testified in nearly 600 Federal, State, and local court cases.

WANTED BY THE FBI



JOSEPH EDWIN SCHOCK, also known as "Corporal Schock"

Build ----- Heavy.
 Hair ----- Brown.
 Eyes ----- Hazel.
 Complexion -- Medium.
 Race ----- White.
 Nationality --- American.
 Scars and
 marks ----- Scar on right shoulder, tattoo removed from right hand.
 FBI No----- 377,608 H.
 Fingerprint
 classifica-
 tion ----- 6 O 5 Ta 2
 I 17 Ra

Left Middle Fingerprint



Destruction of Government Property

Federal Warrant Issued

Joseph Edwin Schock is being sought by the FBI for destruction of Government property. Schock, appearing in U.S. District Court, Moscow, Idaho, on June 11, 1970, entered a plea of not guilty to an indictment charging him with destruction of Government property and was released on his own recognizance. After Schock failed to comply with the requirements of the court, a Federal warrant for his arrest was issued on August 6, 1970, at Boise, Idaho.

The Crime

On May 5, 1970, 29 military vehicles in the custody of the Idaho National Guard, Lewiston, Idaho, were destroyed by fire. Schock was arrested on the same day in connection with the crime, and, on May 19, 1970, a Federal grand jury at Boise, Idaho, indicted him for destruction of Government property.

Description

Age ----- 26, born Dec. 29, 1947, Mobridge, S. Dak.
 Height ----- 6 feet 1 inch.
 Weight ----- 205 to 225 pounds.

Caution

Schock is an ex-Marine and former university student. He is being sought in connection with causing damage and destruction of military vehicles and should be considered dangerous.

Notify the FBI

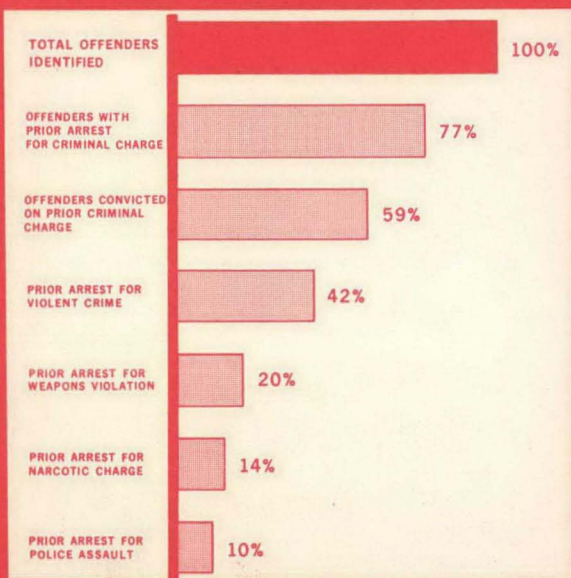
Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of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

VITAL STATISTICS

In 1973, a total of 127 local, county, and State law enforcement officers were killed due to felonious criminal action in the United States. This represents a greater number than in any year since 1961 and ends a 10-year period in which, with few exceptions, there was a steady increase in the deaths of officers at the hands of felons.

Additionally, examination of circumstances under which police officers were slain during the period 1964-1973 continues to disclose that more officers were killed attempting arrests than in any other matter. This dramatically illustrates the fact that no arrest can be considered routine. It is essential that officers be extremely alert with all individuals they contact and, particularly, have some knowledge where possible of the criminal history of the person they seek to arrest.

The following chart, reprinted from the FBI Uniform Crime Reports of 1973, shows the criminal history of 1,207 persons identified in the killing of 858 law enforcement officers during the period 1964-1973.



FOR CHANGE OF ADDRESS ONLY (Not an Order Form)

Complete this form and return to:

DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

NAME	TITLE
ADDRESS	
CITY	STATE
	ZIP CODE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

OFFICIAL BUSINESS

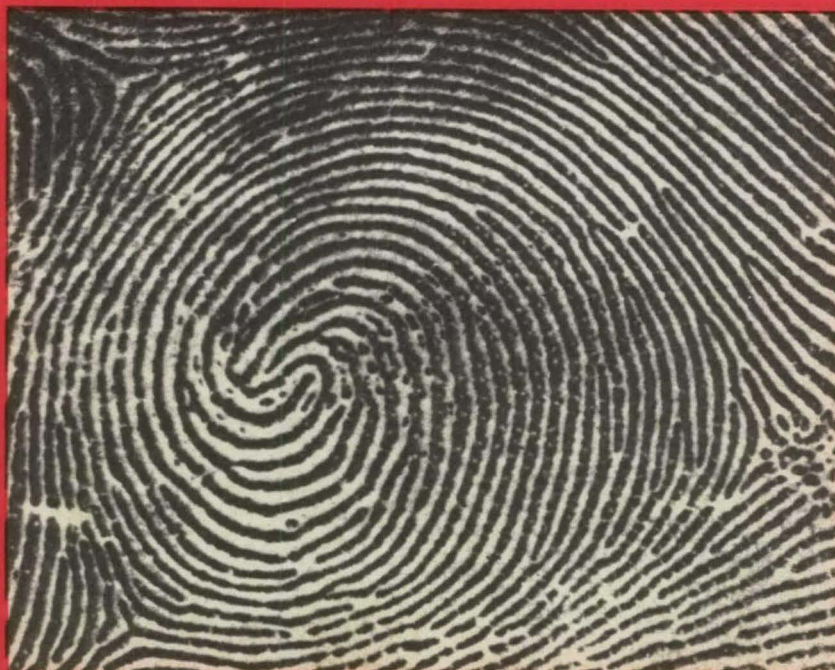
ADDRESS CORRECTION REQUESTED



POSTAGE AND FEES PAID
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JUS-432

THIRD CLASS



INTERESTING PATTERN

The pattern shown at left is classified as an accidental whorl with an inner tracing. The location of the third delta above the pattern makes it very unusual.