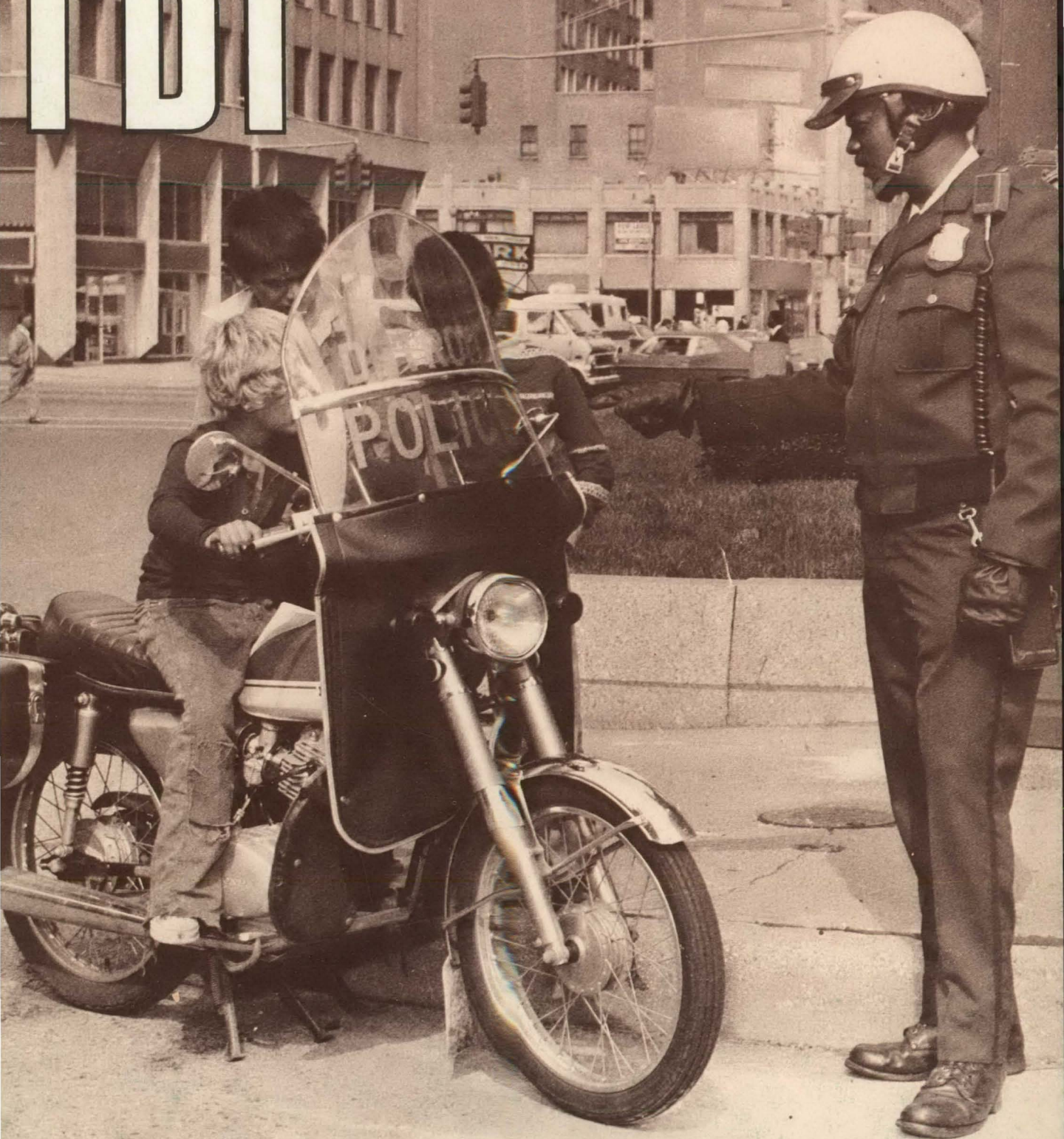


Document Copy

FBI

Law Enforcement Bulletin

OCTOBER 1977



FBI

Law Enforcement Bulletin

OCTOBER 1977
VOL. 46, NO. 10



Published by the
FEDERAL BUREAU of INVESTIGATION
UNITED STATES DEPARTMENT of JUSTICE
Washington, D.C. 20535

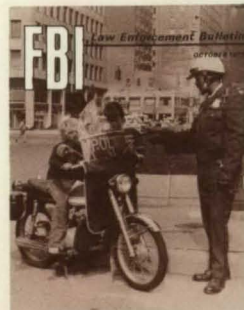
ISSN 0014-5688

CONTENTS

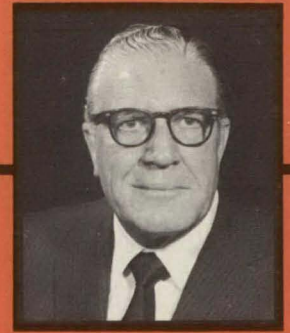
MESSAGE FROM THE DIRECTOR	1
POLICE-SPONSORED MOTORCYCLE SAFETY EDUCATION, by Adam G. Johnson, Director, Motorcycle Safety Foundation, Linthicum, Md.	2
CRIME IN OUR PRISONS, by Det. Lt. Insp. William A. Miller (retired), Massachusetts State Police, Boston, Mass.	5
POLICE OFFICER SURVIVAL TRAINING PROGRAM, by Col. Myron J. Leistler, Chief of Police, Cincinnati, Ohio	10
PROFESSIONALISM—THE GOAL OF THE UTAH CHIEFS OF POLICE ASSOCIATION, by Michael E. Sanders, Director, Police Evaluation and Professionalization Project, Salt Lake City, Utah	14
THE "WHEELBARROW"—A VERSATILE VEHICLE, by Lt. William T. Poe, Louisiana State Police, Baton Rouge, La.	16
CIVIL RIGHTS STATUTES AND THE LAW ENFORCEMENT OFFICER, by Joseph G. Kelly, Special Agent, Federal Bureau of Investigation, Washington, D.C.	20
THE NEW MEXICO STATE POLICE CRIME LABORATORY, by Donald W. Hannah, Director, State Police Crime Laboratory, Santa Fe, N. Mex.	23
USE OF DEADLY FORCE TO ARREST A FLEEING FELON—A CONSTITUTIONAL CHALLENGE (PART II), by J. Paul Boutwell, Special Agent, Federal Bureau of Investigation, Washington, D.C.	27
WANTED BY THE FBI	32

THE COVER

This month's cover features a group of curious young citizens as they admire a police motorcycle and receive instructions from its rider, a patrolman of the Detroit, Mich., Police Department.



Message from the Director . . .



THIS MONTH MARKS THE 84TH ANNUAL convention of the International Association of Chiefs of Police (IACP), an event I have always enjoyed attending as a chief and lately as Director of the FBI. This meeting and the growth of the IACP from 51 to more than 11,000 police executives typify the spirit of cooperation that has developed among all levels of the law enforcement community.

Today, more than ever before, police agencies are working together in the common endeavor of resisting crime. During my tenure as Director, I have tried to encourage total cooperation between law enforcement agencies. As IACP Executive Director Glen D. King wrote, "We are all in this together."

"Sting" operations, the undercover buying of stolen goods to identify career thieves, are a prime example of the effectiveness of Federal and local law enforcement working together. With the Law Enforcement Assistance Administration's vision in providing financial aid, with the ingenuity and prowess of local detectives and Federal agents, and with the professional cooperation of local, State, and Federal prosecutors, these common endeavors have resulted in the arrest of nearly 1,000 persons and the recovery of over \$26 million worth of stolen goods.


Cooperation grows out of need. In the early 1970's, the New York City Police Department

organized a Major Case Squad to deal with a series of police killings. The terrorists responsible for these brutal murders were also involved in bank robberies already under investigation by the FBI. Working together, the two organizations solved the cases.

"Spring 3100," the New York City police magazine, noted that the present Major Case Squad resulted from a decision "to retain this highly talented group of detectives and take advantage of their excellent working rapport with the FBI."

Many of the cooperative efforts of the FBI, such as fingerprint collection, and more recently, the Bomb Data Program, have resulted from ideas of police chiefs working together in the IACP. Even this journal, the FBI Law Enforcement Bulletin, is a cooperative venture. It is a forum for your ideas on the profession of law enforcement. The FBI Laboratory, the National Crime Information Center, the National Academy, and other training services are among the ways in which we work together.

We are learning, too, that cooperation among police agencies must be accompanied by the cooperation of the citizens we serve; all must join together in resisting crime. The survival of our society depends on it. "Spring 3100" put it best: "When lives depend on cooperation, teamwork develops quickly and minor rivalries soon fade."


CLARENCE M. KELLEY
Director

Police-Sponsored Motorcycle Safety Education

Eleven law enforcement officers, with an aggregate 110 years of motorcycling experience, recently spent a week pushing, walking, and riding a variety of small displacement motorcycles on a special motorcycle riding range and on the streets in the vicinity of Linthicum, Md. Participating in this unique motorcycle safety instructor program were officers from five police departments.

The instructor training session is part of a police motorcycle safety education project set up by the Motorcycle Safety Foundation, a national, private, nonprofit organization pledged to the reduction of motorcycle accidents and injuries through the development and implementation of motorcycle rider education, licensing improvement programs, and research and public information programs focused on the motorcyclist and motorist operations. It is sponsored by five leading motorcycle manufacturers.

The purpose of the special police instructor program is to prepare the student/instructor to teach a 23-hour civilian Motorcycle Rider Course developed by the foundation. Each participant completes the program as would a novice rider and then teaches

the course to a group of new cycle riders.

"In order to make learning to ride both enjoyable and safe, the [Motorcycle Rider Course] combines classroom and 'on-cycle' activities."

In order to make learning to ride both enjoyable and safe, the course combines classroom and "on-cycle" activities. Students go through extensive on-cycle sessions—first on an off-street practice area and then in traffic, under supervision. The 23 hours of instruction include 9 hours of classroom study and 14 hours of on-cycle training, both offstreet and in traffic.

The classroom portion of the course is augmented by four 16mm color films and three 35mm filmstrips with taped narration. The classroom content deals with the identification of motorcycle controls, protective clothing, starting and stopping procedures, communicating, hazard detection, emergency situations, advanced street-riding techniques, insurance, and cycle selection and maintenance. An off-

By

ADAM G. JOHNSON

Director

Licensing and Law Enforcement
Motorcycle Safety Foundation
Linthicum, Md.



street skill test that must be successfully passed before the student is permitted to move to the onstreet phase, a 50-item knowledge test, and an in-traffic test given at the end of the course are components of the course's comprehensive testing package.

The foundation's Motorcycle Rider Course is being conducted in approximately 2,000 programs in 49 of the 50 States. More than 3,500 instructors have been certified to teach the course

"The objective of the foundation's police motorcycle safety education project is to determine the feasibility of police department's sponsoring and conducting quality community rider instruction programs."



through foundation workshops or college and university level instructor preparation programs. Most of the instructor course graduates are secondary school teachers with driver education responsibilities in their school system.

Although the number of inschool programs is growing, the facts indicate most do not reach a significant portion of adult first-time motorcyclists, so inschool instruction exclusively cannot provide the most effective results.

A significant number of people enrolled in community programs do not fit the stereotype of the first-time cyclist—a young male, between the ages of 16 and 20. In fact, a successful west coast program operated by police officers reported that approximately half of their students are female, and the average age is 26 years. Clearly, this group normally would not have access to a high school program.

The objective of the foundation's police motorcycle safety education project is to determine the feasibility

Law enforcement officers enrolled in the instructor preparation program practice offstreet exercises on a special motorcycle riding range.

of police department's sponsoring and conducting quality community rider instruction programs. To identify interested departments for the project, the foundation requested the assistance of the International Association of Chiefs of Police (IACP), which offered the names of five police departments, diversely ranging from the State police to the medium-sized, municipal police department. The foundation subsequently made contact and entered into agreements with the Minnesota Highway Patrol and police departments in Kansas City, Mo.; Arlington County, Va.; Dover Township, N.J.; and Wilmington, N.C.

Each department agreed to send two officers to the instructor preparation program and offer at least three Motorcycle Rider Courses during 1977. The foundation conducts the instructor training and provides each department with a complete Motorcycle Rider Course instructional pack-



age, traffic cones, and assistance in securing free loan/training cycles and insurance coverage for the courses. The foundation also assists in promoting the police-sponsored programs at the local level. As a result of this project, the police departments will be able to fulfill a legitimate and vital traffic

safety function by providing quality, novice-rider safety instruction.

"As a result of [the motorcycle safety instructor program], the police departments will be able to fulfill a legitimate and vital traffic safety function by providing quality, novice-rider safety instruction."

Undercover Fencing Operations Are Successful

An innovative and valuable investigative technique—the undercover fencing operation—has recently proven its effectiveness. The Law Enforcement Assistance Administration (LEAA) has funded 12 such operations in 9 cities over the last 2 years, with an expenditure of \$12.2 million. The bulk of the funds was allotted for video tape equipment, building rental, and other "setup" costs. Only \$875,000 was disbursed as "buy money."

As a result of the 12 operations, stolen property and negotiable checks and money

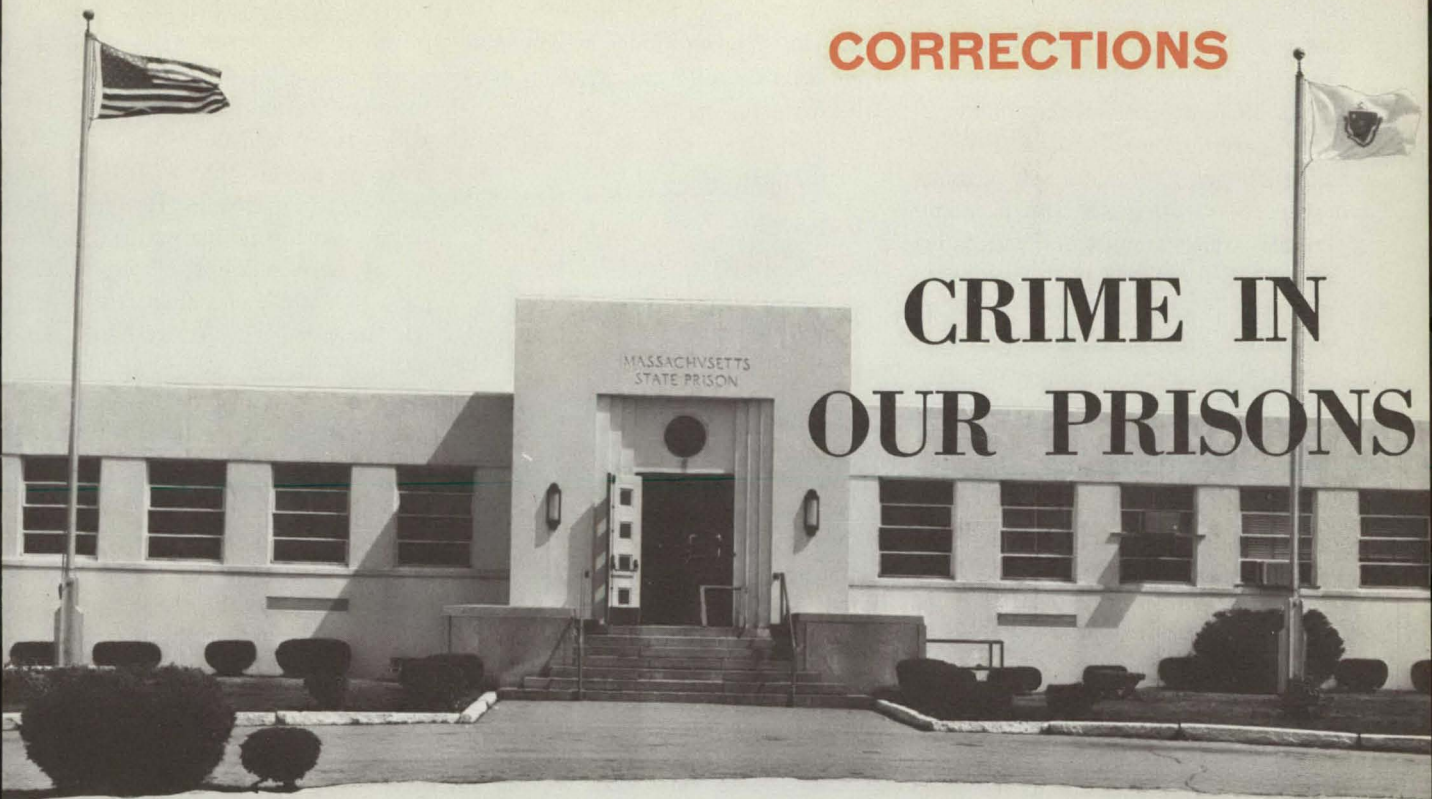
orders valued at more than \$26 million have been recovered. Nearly 1,000 persons have been arrested, and an additional 300 have been charged. According to LEAA estimates, between 60 and 80 percent have been identified as hardcore criminals, and approximately 40 percent as drug addicts.

A distinct advantage of the operations is that all transactions are video taped, resulting in a conviction rate approaching 95 percent. Also, trial costs are saved in many cases because defendants often enter guilty pleas.

The 1975 U.S. motor vehicle registration data indicate there are more than 5 million motorcycles registered for street use, and it is estimated that more than 15.5 million people ride motorcycles. Since motorcycling today enjoys unprecedented popularity, improved police-community relations could be an additional benefit of a police-sponsored Motorcycle Rider Course program.

The Motorcycle Safety Foundation will be unable to provide the police departments with the same level of assistance given the five original participating departments. However, valuable information gained through monitoring the original participants will be made available to those police agencies interested in initiating their own civilian motorcycle training program.

CRIME IN OUR PRISONS



Prisons and the crimes committed therein are the cause of considerable concern in our society. Prison crime conditions are even a greater source of

concern to the inmates confined in these institutions, and for many, unfortunately, the long hours of each day are filled with fear of criminal attack.

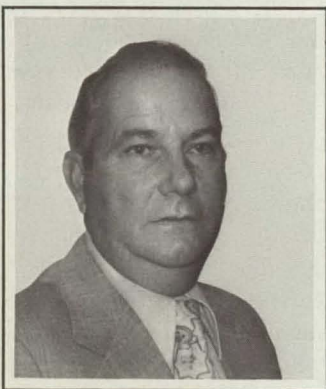
Much emphasis has been placed upon combating crime at the street level, and those populating our prisons result from this effort. It is unreasonable to expect all of these same individuals to completely conform to acceptable standards of behavior in prison when they have demonstrated an unwillingness to do so as members of a free society.

ciation which generates formidable strength.

The two largest Massachusetts Correctional Institutions (MCI), Walpole and Norfolk, are located within the county of Norfolk. Felonies committed within these prisons are investigated by the Massachusetts State Police under the command of Commissioner of Public Safety John F. Kehoe, Jr. In September 1971, the author assumed the duties as chief investigator at these prisons, and within a few months, became aware that the system and the prisons were in trouble. It seemed like the time had arrived for Massachusetts.

Prison reform groups were making heavy demands for changes within the prison. The swift adoption of permissive policies within maximum security facilities caught everyone by surprise. Correctional officers became confused, and slowly, their control was decimated. As the correctional officers' power was diffused, the inmates became more restless, recognizing they

By
**DET. LT. INSP.
WILLIAM A. MILLER
(RETIRED)***
Massachusetts State Police
Boston, Mass.



"[W]hen a hardened criminal enters prison, he is placed in the company of similarly hardened peers. . . ."

It should also be kept in mind that when a hardened criminal enters prison, he is placed in the company of similarly hardened peers, an asso-

*Lieutenant Miller prepared this manuscript prior to his retirement.

were then operating from a position of strength.

At MCI Walpole, alone, in the 2-year period from January 1972 to January 1974, a total of 3 mass escapes were attempted and over 200 felonies were committed. These latter included 11 murders and 5 other violent deaths; 29 attempted murders; 35 violent assaults (many upon correctional officers); 3 explosions caused by inmate activity (resulting in 2 inmate deaths); and 3 cases of inmates taking correctional officers hostage.

During the same time period, the institution was disrupted by four major and four minor disturbances, with a cost of well over \$2 million to the Commonwealth. Riot is a "common law" crime in Massachusetts and can only be committed in a public place. Therefore, any eruptive situation that takes place in our prisons is termed a "disturbance." As a direct result of these disturbances and their loss of control, the correctional officers conducted two unauthorized work stoppages.

In 1973, a report on MCI Walpole was compiled by the Massachusetts State Police Task Force. The report included 86 recommendations. The implementation of many of these recommendations, including changes in the law, has resulted in a drastic reduction of murder and violence within Massachusetts prisons. In 1975, there were 21 felonies committed at Walpole.

Prison Crime Investigations

It is a formidable challenge to control crime and violence in prisons. The investigation of crime within a prison is, to say the least, quite different from criminal investigations conducted by law enforcement officers outside prison walls.

Almost 4 years of investigations of crime at MCI Walpole have led to the

following observations, which may have applicability to prisons elsewhere.

"The introduction of excessively permissive policies governing inmates within the Massachusetts prison system was among factors nurturing criminal behavior on the part of convicts. . . ."

How is crime fostered? The introduction of excessively permissive policies governing inmates within the Massachusetts prison system was among factors nurturing criminal behavior on the part of convicts, as these policies threatened the prison's security standards.

Why are inmates vulnerable to being killed in prison? The answer is very easy. The victims, by the very nature of their confinement, are captives, with little or no room to escape from potential assailants. A prison policy allowing free movement of inmates throughout the prison, with few, if any, checks upon them, increases the accessibility of a victim to any would-be assailant.

Who commits murder inside a prison? Many convicts confined to prison have severe psychological disorders. They are sometimes very dangerous people who easily resort to homicide. Many have killed before, and it might even be said some have strong psychological urges to kill.

Why do they kill? Many motives are evident. These include: To settle old "beefs"; to "even the score" for a friend; to silence a "squealer"; to get even for a "rip off" (such as the sale of bad drugs); because of a convict's religious beliefs, or his failure to respect another's beliefs; or on the specific orders of an inmate faction. On occasion, a killing may be motivated simply for sadistic pleasure.

When are they killed? Most

murders are perpetrated at night, sometimes after 8 p.m. and before lockup at 10 p.m. The killer or killers pick a time and place when the guard force is spread thin and there are few or no witnesses. However, another occasion is during meal hours. At this time, cellblock officers usually have to cover more than one block. The intended victim, not being hungry or having no interest in items on the menu, may decide to remain in his cellblock, and unknowingly, assist in setting himself up. In such a situation he becomes easy prey.

"[I]n most situations, efforts are made for the victim to be killed in his own cell."

Where are they killed? Past experience indicates that, in most situations, efforts are made for the victim to be killed in his own cell. Plans are made very quietly by the killers, and the motive often dictates whether or not advance permission must be obtained from the leaders of certain inmate factions. Inmates recognize that a murder may generate subsequent problems and inconveniences throughout the prison population, due to investigative proceedings initiated and other attendant measures.

As incredible as it seems, many of the inmates most trusted by other inmates often learn of the impending violence. The chosen "hit" area is usually clear of those in this category who, having learned of the plans, take pains to avoid being in that section of the prison when the hit occurs.

If the victim is caught by surprise, he is silenced quickly. If killed in his own cell, the victim will be placed in his bed and covered with a blanket in a manner simulating his being asleep. The killer knows that the correctional officer checking the cells only has to "see skin" to complete the inmate count. If the murder goes undetected



Weapons located during a shakedown
at the Massachusetts Correctional Institution at Walpole.

until morning, the killer or killers have gained an advantage of time.

What method is used? In all but 1 of 11 homicide investigations, the homemade shank was the weapon. (A weapon made of metal or wood, ground or honed with sharp edges and a fine point.) In many of the cases, the victim had been lulled into a state of complacency. Sometimes loose surveillances were conducted of the intended victim to ascertain his habits and daily schedule.

Would-be killers, having full knowledge of a policy allowing free inmate movement throughout the prison, take full advantage of it. The time and place for the hit is decided upon, and carefully chosen friends are selected to assist—some in physically restraining the victim, others in ac-

tually performing the murder. If necessary, diversions are created, and other friends act as "peek men."

If time and conditions permit, the job is done "professionally." The victim is expertly stabbed with well-placed repeated thrusts to his heart. More often than not, when the wounds on the victim are tallied, the count is extremely high.

Inmate Code

At MCI Walpole, the new convict is quickly made aware of the unwritten inmate code: Never "squeal" to the administration by "ratting" on another inmate or inmates (an informer is considered the lowest form of life); never interfere in someone else's business; if a friend is involved

in difficulties with other inmates, interfere in his behalf only at possible grave risk; never "step on the toes" of inmate leaders—when an exception is a necessity, get their permission first or you may endanger your own life; always pay what you owe; and never associate with the correctional officers.

At many institutions, once an inmate "jumps the fence" by communicating with the administration or other members of law enforcement contrary to the "code," and it becomes known to the general prison population, he is a marked man.

From that point on, the inmate will have little or no chance to atone for his "sin." If he has little or no value to the inmate community as a whole, he is then subject to total inmate re-

jection. His possessions are either stolen or destroyed. His cell may be set on fire, and very often, he is the subject of reprisals which could culminate in death.

A so-called "wrecking crew" (a group of strong-armed inmates) may be used to enforce the code. Their task is twofold: To administer the object lesson, and to make sure there are no witnesses to the process. Often, the offender is caught in the right location, under the right conditions, and generally beaten half to death, usually being struck repeatedly about the head with a weapon, such as a pipe or hammer wrapped in cloth. In some cases, after having been severely beaten, the victim is then thrown from the second or third tier.

If the inmate survives such a brutal assault, he is understandably reluctant to give authorities any information concerning his attackers. The victim may accept his beating as part of prison life, or he may make plans for getting even. If he decides on the latter course of action, he has chosen a path which may result in his killing other inmates or eventually getting killed himself. For many inmates, revenge is a personal matter which leaves no room for legal intervention.

"For many inmates, revenge is a personal matter which leaves no room for legal intervention."

Those who are not strong enough to cope or who lack support from others have only one alternative—requesting protective custody. Protective custody, under these circumstances, is a 23-hour-per-day lock in, and 1 hour of supervised exercise. If a man is serving a lengthy sentence, it is a difficult decision to make. Once made, there is very little likelihood of ever returning to the prison population and being accepted.

Investigative Problems

Some of the more critical problems encountered by the investigator performing his duties behind prison walls—not encountered during investigations in an open society—should be pointed out. These include:

- The murder is typically well planned, usually being perpetrated by *experts* with considerable experience.
- Witnesses are usually limited only to the coconspirators, accessories, and/or actual perpetrators of the crime—individuals not likely to be cooperative or truthful.
- The correctional officer's first responsibility is to attend to the victim whose life may possibly still be saved through prompt medical attention. In view of this, often the victim is immediately removed to the hospital, and the crime scene is left unguarded. This gives other inmates an opportunity to clean up the crime scene. In some instances, they have actually mopped up the area and removed all physical evidence, including weapons left behind by the killer or killers, before police officers could conduct any crime scene search or processing.
- The killers often wear surgical gloves stolen from the hospital. The killers' blood-stained clothing is cut into small pieces, and along with the surgical gloves, covertly disposed of in one manner or other.
- The arrival of investigators, crime scene photographers, and other officials at the prison may serve to inflame an already sensitive prison climate.

One would think that the investigator's real problem would be to learn who committed the crime and why it was committed. This is not true. If the investigator has been able to develop a rapport with the inmates, he will eventually get the answers. In fact, it is relatively easy to learn the "who" and the "why" regarding perpetration of the murder. The *difficulty* in all prison investigation is getting the *necessary evidence for court*. For, contrary to investigations conducted on the street:

- There are no public-spirited citizens who call the police to report the crime and furnish needed or pertinent information.
- There are no spontaneous remarks made by neighbors, witnesses, or suspects.
- Usually, no one will report seeing the suspects fleeing the scene.
- A killer within the prison is rarely overburdened by his act or bothered by his conscience. You will never find him, head bowed, waiting to surrender to the law.
- Typical types of evidence associated with various violent crimes are usually missing.
- Inmate friends or neighbors are generally of no assistance.
- There are few articles found which could be considered foreign or unusual to the crime scene, as inmates will almost always have similar, if not identical, belongings.

However, experience has taught that two specific actions must be undertaken:

1. The investigator must be given the resources and the time to develop sources of information. The correctional officers, employees, and in-

mates must be carefully nurtured.

2. Each bit of information developed must be carefully cataloged and crossfiled. This intelligence file, thus developed, could easily save inmate lives by being a resource for assisting prison administrators in the difficult but important task of transferring or reassigning inmates to another facility in the future.

A necessary prerequisite to solving crimes within a prison is a viable program for dealing with inmate sources of information. Many problems and considerations spring up in developing inmate sources. If the source developed is an inmate, how should he be handled? Is he an eyewitness? Can he testify? Will he testify and tell the whole truth? If he will testify, will his testimony and demeanor be good enough to outweigh those who will possibly testify for the defense? (Often in the trial of prison crime cases, the defense produces a large number of inmate "alibi" witnesses.) Is the source merely an opportunist maneuvering for a transfer, parole, or other consideration? Is he personally involved? Has his life also been threatened? How will his security be assured if he cooperates?

If at all possible, a formally prepared, signed statement should be taken from a potential inmate witness, and the feasibility of administering a polygraph examination should be considered.

If adequate and cooperative inmate witnesses are located and the district attorney decides to present the case to a grand jury, security of the witnesses becomes vitally important. These questions must be satisfactorily answered: Where can the inmate be held in safe custody? How long must he be held? After the court trial, what ar-

rangements can be made to insure his continued safety?

This may require a transfer to a prison in another State (with the cooperation of an interstate agreement). It may require holding the inmate witness in a "safe house" until after the trial and necessary release procedures have been completed. This could in-



Commissioner John F. Kehoe, Jr.

clude advancing his parole date. It may also necessitate the provision of a new identity.

Organized Crime

Does organized crime exist in the Massachusetts prisons? The answer is yes! Organized crime not only exists, but thrives within our prisons. The most powerful prison leaders are usually men who once held high positions in organized crime on the outside.

Their well-developed criminal habits are brought with them into the confinement environment. They try to maintain a low profile and are usually content to have their "lieutenants" and "soldiers" spread their reign of terror, and thereby, maintain their control over the majority of the inmate population. Ironically, they often have difficulty controlling some of their best customers, the young drug-dependent inmates. These youths are seemingly unimpressed by these crime bosses, just as they frequently are of other authority, legitimate or

illegitimate, outside the walls.

It is believed that a major organized crime figure has never been killed in a Massachusetts prison. However, there have been at least two men murdered at MCI Walpole who, directly or indirectly double-crossed organized crime elements. Innumerable others have fallen victim to disciplinary or retributive acts ordered or authorized by organized crime leaders. Organized crime thrives in Massachusetts prisons through manipulation of the law, through too liberal institution rules and regulations, and in some instances, through corruption of prison employees.

Conclusion

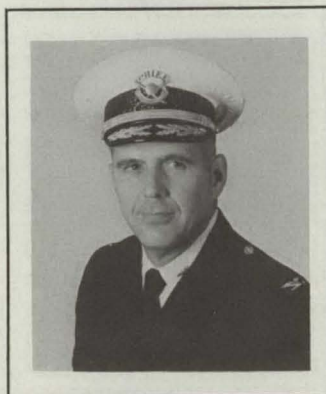
Prisons are an unfortunate necessity of our society and cannot be abolished in the foreseeable future. Therefore, prevention and detection of crime within them warrants a high priority of attention.

It was difficult to recognize the multiplicity of factors that caused the trouble in Massachusetts prisons; however, it is clear that excessively permissive policies were a key factor producing a loss of control. This loss of control provided an environment where the antisocial behavioral tendencies of the inmates went unchecked. Even though confined, the frequent occurrence of violent prison crimes proves inmates find a permissive prison environment a ready medium for implementing violent tactics.

In Massachusetts, great strides have recently been made in combating prison crime. A delicate balance must be struck by prison authorities in establishing policies for controlling inmates that are neither excessively permissive nor repressive. Through a reasonable tightening of controls and stepped-up security measures, a vastly improved aura of safety has been achieved for prisoners at Massachusetts' largest prisons.

Police Officer Survival Training Program

By
COL. MYRON J. LEISTLER
Chief of Police
Cincinnati, Ohio



July 1974— A police officer responded to a burglary-in-progress call. He stopped two suspects for questioning and was fatally wounded by gunshots from both suspects.

December 1974—A subject armed with a 9mm pistol barricaded himself in his residence. Several police officers surrounded the house and ordered the subject to drop his weapon and surrender. He responded with gunfire, fatally wounding a police sergeant.

August 1975— Two plainclothes officers approached a subject with a gun. The subject fired at the officers, striking one officer in the abdomen and killing him.

December 1975—A police officer and his sergeant were making a security check of a business in the early morning when the rear door was thrown open and a shot rang out. The sergeant was hit in the chest and fell to the ground mortally wounded.

Reviews of search and control techniques are part of this training.



Personal risks attendant to the law enforcement profession should be obvious to everyone. Unfortunately, many of us tend to think these risks only exist in the other community, never our own. Cincinnati, Ohio, was no different before four of our fellow officers were slain in the 18-month period between July 1974 and December 1975. The personal reality was no longer the other guy's—it was ours.

In response to these four slayings, the Cincinnati Police Division undertook detailed analyses of each officer's death. From these analyses came a recommendation to implement meaningful training that would focus on risk reduction.

Officer Survival Course

To meet the needs of the street officer, our department developed a survival training program that would assist the officer in identifying and evaluating potentially hazardous situations and provide him with alternative tactics for reducing the risks of police work. It was designed primarily to cover the types of situations routinely encountered by field personnel.

The initial segment consisted of 8 hours of classroom presentation in which the officers were apprised of the training objectives. They viewed the film "Officer Down—Code 3"¹ and examined the 10 deadly errors portrayed in the film. Also discussed and analyzed were the FBI's reports of police officers killed, with particular emphasis placed on recent experiences in Cincinnati.

Firing from the 10-foot line with two-hand grip—still closer than the previous 7-yard line.



"[The Officer Survival Course] was designed primarily to cover the types of situations routinely encountered by field personnel."

During this phase of training, instructors concentrated their lectures on three specific areas: Vehicle stops, person-to-person encounters (including a demonstration of weapons currently available for easy concealment by a suspect), and building entries and searches. In addition, they presented an indepth view of equipment available for police officers, and through the use of audiovisual equipment, led discussions concerning the

use of cover and concealment.

Upon completion of the classroom presentation, the officers underwent 4 hours of simulated field problems to allow them to apply the techniques discussed in class. They practiced the approach of vehicles, persons, and buildings; prisoner searches and transportation; entry and search of buildings; and hostage situations.

It is believed this hands-on approach served two purposes: First, it

demonstrated the ease with which the officer could be injured or killed; and second, it required the officer to demonstrate his ability to implement the knowledge acquired in the classroom.

In part three of their training, the officers were offered 2 hours of instruction in the methods used to identify bombs and explosives and the procedures for safely responding to bomb threat calls.

During the analysis of the Federal Bureau of Investigation's report on officers killed, it became evident that changes in our firearms qualification course were needed. The FBI figures indicate that almost half of the victim officers were within 5 feet of their



Holding the weapon with gun hand on hip for close-range firing so that the subject cannot grab or kick the gun. This self-defense reflex shooting is taught because of the close range of most shooting incidents.





Use of a car door as cover in exiting the police car and returning fire is a feature of this survival training program.



assailant when slain. Approximately 80 percent of the officers were within 20 feet of their assailant. In the Practical Pistol Course, which was previously used, the officer never came closer than 21 feet to the target. Obviously, a more realistic training course was needed.

Therefore, the final segment of our survival program entailed 2 hours of firearms training. After some deliberation, it was determined that the firearms course developed by David C. Hart² best met our needs. This course requires the officer to fire his sidearm at extremely close ranges (2-3 feet) and utilize the patrol vehicle as cover when firing at greater distances. The

entire program was video taped and is kept on file for future reference.

Evaluation

The evaluation of the training was performed in several diversified manners:


1. The officer's ability to utilize the information given in the classroom was evaluated with his performance in the practical field problems.
2. During the firearms portion of the training, a minimum qualification required 40 hits (a total of 50 shots) and a score of 200 (possible 250).

3. Upon completion of the training, the officer filled out a questionnaire and critique of the course.

Besides these formal methods, several informal evaluations have been forthcoming. The field officers have begun paying more attention to their equipment, as evidenced by the increase in purchases of protective vests, better quality flashlights, and other saving devices. Also, the field supervisors have related a number of instances where techniques learned in Officers' Survival classes have averted possible tragedies in the field.

"No training program can be devised to eliminate all risks encountered by a police officer."

No training program can be devised to eliminate all risks encountered by a police officer. However, a police agency has the responsibility to provide its members with the proper training to reduce those risks.

The officers who attended the survival training have indicated the value of the course through their individual experiences. An example is a letter written by one of the officers. This officer had made a routine traffic stop when the driver attempted to pull a revolver from his waistband. The officer was able to disarm the subject without injury to himself or the subject. "This was an exact situation that my training group had role played just one week earlier. I feel the survival training was my main thought as I approached the car and was instrumental in saving my life." 

FOOTNOTES

¹ Motorola Teleprograms, Inc., Schiller Park, Ill.

² *Guns and Ammo Annual*, Peterson Publishing, Los Angeles, Calif., 1976.

PROFESSIONALISM— ***The Goal of the Utah Chiefs of Police Association***

By

MICHAEL E. SANDERS

**Project Director
Police Evaluation and
Professionalization Project
League of Cities and Towns
Salt Lake City, Utah**

An overwhelming number of law enforcement officers across this Nation are striving for professionalism within their individual departments. Toward this objective, the Utah Chiefs of Police Association adopted the Police Evaluation and Professionalization Project as a means to encourage and aid all law enforcement agencies within the State to become professional units capable of handling any problem or situation that may arise.

Developed by Chief Wayne Dee Shepherd, president of the Chiefs Association and Director of Public Safety at the University of Utah, the evaluation project is funded through a grant from the Utah Council on Criminal Justice Administration. It is designed to conduct organizational studies of police departments in order to make recommendations for im-

“[The Police Evaluation and Professionalization Project] is designed to conduct organizational studies of police departments in order to make recommendations for improvements and to provide a number of approaches to help police departments reach their capabilities.”

provements and to provide a number of approaches to help police departments reach their capabilities.

The first approach is through the chief of police who desires to have his department evaluated. He and the mayor must submit a written request to the project. When this letter is received, an evaluation committee is set up consisting of two or three chiefs of police, the project director, a representative from the Utah Peace Officer Standards and Training (POST), and a number of other experts. The evalua-

tion committee spends 2 to 3 days in the department reviewing everything from departmental rules and regulations to officer firearms training scores. The evaluation team concentrates on any specific area of interest that the chief or other elected officials may designate. Following the onsite portion of the evaluation, a written report is prepared. This report contains the findings of the evaluation committee and recommendations for correcting any problem that may exist in the department. The entire evalua-

"An overwhelming number of law enforcement officers across this Nation are striving for professionalism within their individual departments."

tion is performed at no cost to the department. The chiefs and other members of the committee donate their time and expertise, and the project pays the travel costs and per diem expenses for the individuals involved.

Approximately 6 months after the report is returned to the department, the project director and a member of the original evaluation team return to the department and perform a "check back review" to chart the progress of the department in correcting any problem discovered during the initial evaluation. The check back review also provides an opportunity to assist the department in solving any problem that may have arisen since the initial evaluation was performed.


The second approach in helping police departments achieve profes-

sionalism is technical assistance, provided to any department requesting it. This assistance is provided by other chiefs of police or by the project director and may range from helping to develop a rules and regulations manual to aiding a department choose a new sergeant. By using other chiefs as the experts, the assistance is better received and both parties grow. This service, like the evaluation, is provided at no cost to the requesting agency.

The third approach to solving problems is management training for police chiefs and sheriffs. The training is provided on a bimonthly basis to anyone wishing to attend. The sessions are of 1- to 2-day duration and cover a variety of subjects. During the first year of operation, training sessions were held on police budgeting, public relations, traffic manage-

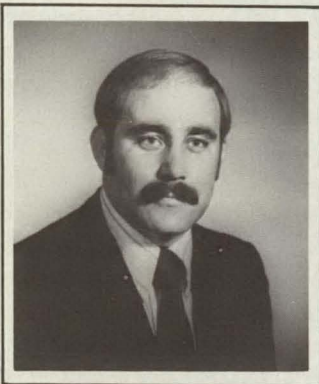
attended each of the training sessions, also provided at no cost to those in attendance.

When Chief Shepherd developed the original concept for the project, he had three goals in mind: First, to reduce professional jealousy among the various elements of the law enforcement community; second, to share the expertise that exists in the various law enforcement agencies throughout Utah; and third, to improve communications and coordination between such groups as the Chiefs Association, POST, and the Utah Council on Criminal Justice Administration. These goals are being met. During the project's first year of operation, 11 evaluations were held in departments ranging in size from three officers to the second largest in the State of Utah. Technical assistance was provided to a number of departments, and various training sessions were held.

The project is now in its second year of funding. Any success that has been realized to date can be attributed directly to the dedication of members of the Utah Chiefs of Police Association and to the law enforcement community. Through their willingness to share their time and experience, law enforcement in Utah is improving. The Police Evaluation and Professionalization Project is helping bring about this improvement. 

". . . training sessions were held on police budgeting, public relations, traffic management, employment discrimination, and inservice training."

ment, employment discrimination, and inservice training. A training committee of the Chiefs Association determines what is to be taught at these sessions. During 1976, approximately 50 chiefs of police and sheriffs



Michael E. Sanders

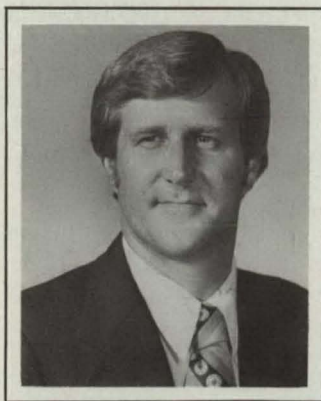
The “Wheelbarrow”— A Versatile Vehicle

By

LT. WILLIAM T. POE

Commander
Explosives Control Unit
Criminalistics Laboratory
Louisiana State Police
Baton Rouge, La.

In March 1970, the Senate Chamber in the Louisiana State Capitol in Baton Rouge suffered a half-million dollar bombing. As a direct result of this bombing and a tremendous increase in these crimes statewide, a comprehensive statute on explosives control was enacted in Louisiana. Strict implementation of the statute's provisions, together with the establishment and development of the Explosives Control and Firearms Section at the Louisiana State Police (LSP) Headquarters, moved Louisiana from a poor 16th place to a respectable 46th in the Nation with regard to bombing occurrences.



However, in a continuous effort to maintain efficiency and expertise, the staff of the Explosives Control and

Firearms Section remained alert for new equipment and technical advances in the explosive ordnance disposal (EOD) field. This led to the purchase of the Wheelbarrow MK7, a remote-controlled track vehicle of amazing versatility and adaptability.

Prior to the advent of the Wheelbarrow, which was designed by the British Army for bomb disposal use, the EOD operator relied on manual approaches to dismantle improvised explosive devices and on time-consuming techniques to neutralize bombs. But, countermeasures by the terrorists put EOD men on the defensive. It was evident that an offensive weapon was

The Wheelbarrow can be used in conjunction with an armored personnel carrier to travel through hostile areas.

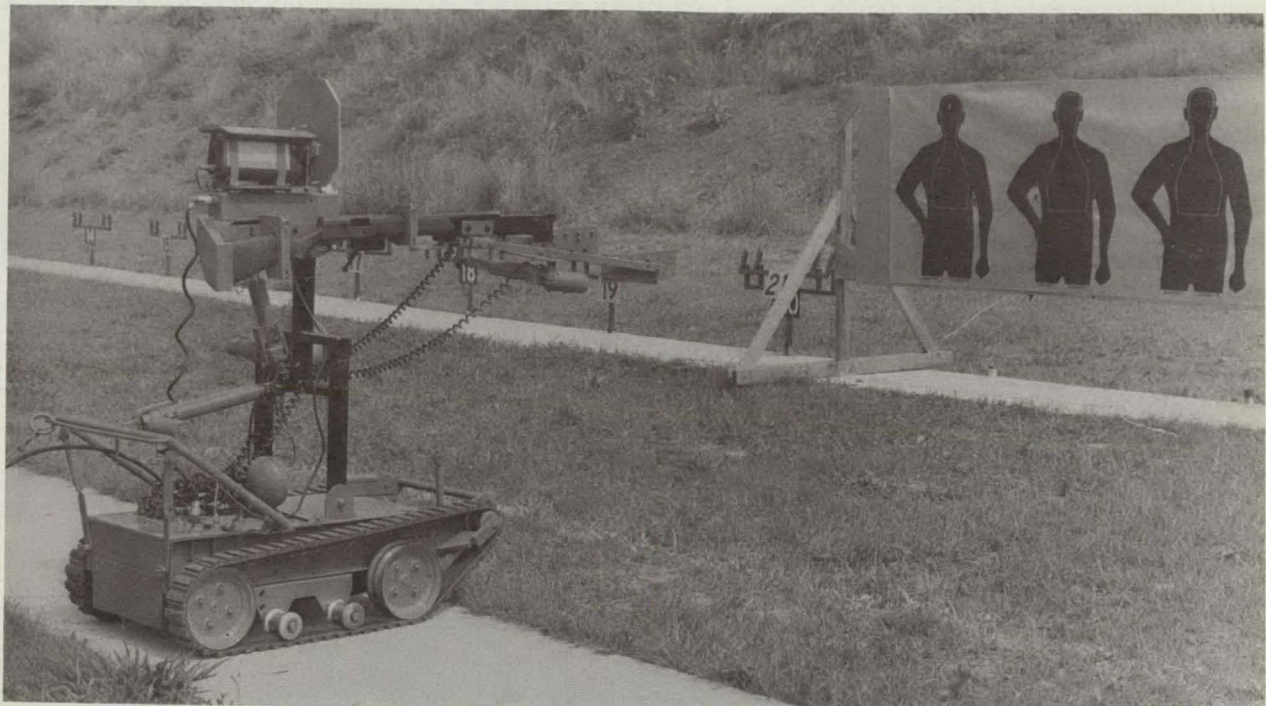


needed—a need which was eventually answered by this remote-controlled vehicle.

Evolution and experience developed the Wheelbarrow MK7 into the

sophisticated instrument it is today. Operating on two tracks similar to a military vehicle, this device is electrically driven by two heavy-duty, 12-volt automobile batteries allowing for

2 hours of continuous operation. The Wheelbarrow was originally equipped with hard-surfaced tracks, which were efficient on asphalt or concrete, but after testing, it was decided that



Firearms are operated remotely, aimed by a laser and TV camera mounted aft on the boom.

deeper, softer tracks were needed for operating the unit on soft surfaces, such as carpeting. Consequently additional varied tracks were developed, making the vehicle adaptable to numerous tactical situations.

"The machine can now negotiate rough terrain, wooded areas, and even climb stairways. It can push open a door and secure it in an open position by means of a nailgun attached to the forward end."

The machine can now negotiate rough terrain, wooded areas, and even climb stairways. It can push open a door and secure it in an open position by means of a nailgun attached to the forward end. Thus, the Wheelbarrow can perform closed-circuit TV reconnaissance from room to room. In addition to its ability to search buildings, the vehicle is capable of removing or disarming a bomb, delivering an explosive charge, or neutralizing a suspect with a lethal weapon.

A scissors-type boom attached to the front of the superstructure allows the Wheelbarrow to grasp suspected packages for removal. This boom also functions as a firing platform for several different weapons, such as a shotgun, gasgun, or machinegun. The firearms are operated remotely and are aimed by a laser beam and a 9-inch TV camera mounted aft on the boom. An electrical impulse through a solenoid fires the weapon. To prevent accidental discharge of the weapon, the "fire" switch on the control box is covered by a hood, which is not removed by the operator until a definite determination is made to shoot. Thus, vibration, or a blow to the vehicle, will not cause the attached gun to discharge.

Originally, only one function was possible at a time, and the operator had to decide whether to equip the Wheelbarrow with the scissor attachment or the weapon. Subsequent ad-

justments to the boom made it possible to move the scissor-like attachment beneath the firing platform and out of the line of fire so that a dual capability existed.

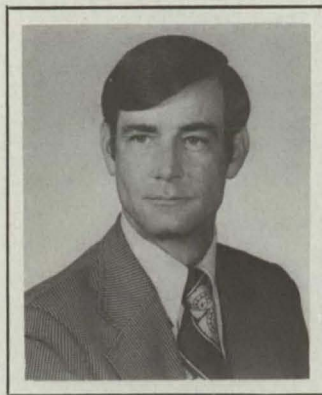
Initial use of the Wheelbarrow revealed other vulnerabilities. Hence, a bullet-proof shield was devised and attached to the unit to protect the TV camera above the boom. Likewise, an armored shield was developed to protect other vulnerable areas on the superstructure above the body proper. Because an electrical cord is required to operate the vehicle, the Wheelbar-

". . . the vehicle is capable of removing or disarming a bomb, delivering an explosive charge, or neutralizing a suspect with a lethal weapon."

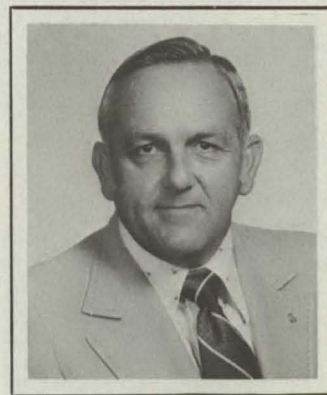
row has a maximum range of 300 feet from the operator. Thus, it becomes necessary at times to use an armored vehicle to travel through hostile environment with the Wheelbarrow. This armored personnel carrier can serve as a command post for the operator, as well as carry Special Weapons and Tactics (SWAT) teams. In the near future, a radio control module will be available, thereby eliminating the need for a 300-foot electrical cord.

The Wheelbarrow was equipped initially with an open intercom having the capacity of monitoring the environment. However, its inherent remote-control ability has been broadened with the addition of an industrial-type intercom system, and the vehicle can become an excellent listening post in hostage situations.

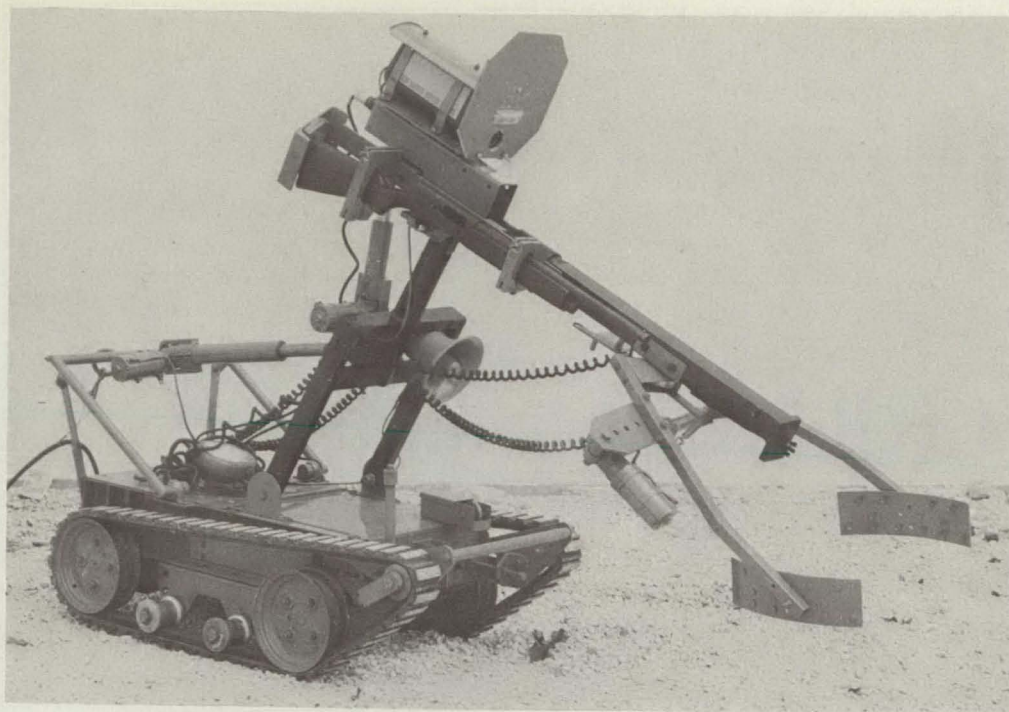
The Wheelbarrow was originally purchased for use by the explosives team, but has become an integral part of the Louisiana State Police Headquarters Tactical Unit for SWAT operations. There are 12 20-man tactical units within the State police. The units are a part of the overall command structure and are organized as the State Law Enforcement Strategic Reserve. Each tactical unit contains a SWAT team, and it is here that the Wheelbarrow is utilized as an operational instrument. It can conduct surveillances, stalk, perform reconnaissance, disperse chemicals, fire weapons, be used as a loudspeaker, or act as a listening post in hostage situations. Through training and experimentation, the potential of using the vehicle for more than defensive and tactical operations became apparent, as did the possibility of using the machine to work with radioactive and dangerous materials. Applications in time of natural disaster and tragedy were likewise evident.



Lt. Col. G. W. Garrison, Department of Public Safety, State of Louisiana



Col. Malcolm R. Millet, Department of Public Safety, State of Louisiana



Closeup view of Wheelbarrow showing scissor-type boom, mounted shotgun, and TV camera protected by armorplate.

By removing three superstructure bolts, the Wheelbarrow becomes airmobile.



Using the LSP airborne equipment (three Bell Jet Ranger helicopters) the Wheelbarrow can become airmobile by removing three superstructure bolts. It is at the disposal of local

law enforcement agencies upon their request and can be delivered by helicopter to any point in the State of Louisiana within 1 hour. In view of its many capabilities and nearly un-

bounded versatility, it is anticipated that the Wheelbarrow will become an integral part of a total security system for industry, as well as law enforcement.

Civil Rights Statutes and the Law Enforcement Officer

PART 1

The FBI's responsibilities in civil rights matters are far ranging in scope, but those criminal statutes primarily of interest and most generally applicable to law enforcement officers are the substantive Civil Rights Statute, the Civil Rights Conspiracy Statute, and the Federally Protected Activities Civil Rights Statute.

Deprivation of Civil Rights Under Color of Law

Section 242, title 18, United States Code, is aimed at the infringement of federally secured rights by the wrongful actions of State or Federal officials:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to

By
JOSEPH G. KELLY
Special Agent
Federal Bureau of Investigation
Washington, D.C.

the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life."

The statute clearly defines two sep-

arate and distinct offenses under "color of law": the willful deprivation of federally secured rights and the willful infliction of discriminatory punishments.

Without question, section 242 is best known for the fact that it is the statute used to prosecute those who commit acts of police brutality.

It is well-established under the decisions of the courts that an officer, who is making or has made a lawful arrest, is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm.¹ The reasonableness of the force used in making an arrest under all circumstances is a question of fact for the jury or other trier of fact, and the standard to be applied is that which

an ordinary, prudent, and intelligent person, with the knowledge of and in the same situation as the arresting officer, would have deemed necessary.²

"The reasonableness of the force used in making an arrest . . . is a question of fact for the jury or other trier of fact, and the standard to be applied is that which an ordinary, prudent, and intelligent person, with the knowledge of and in the same situation as the arresting officer, would have deemed necessary."

Accordingly, cases of police brutality arise only in those instances where the force used is unreasonable and unnecessary under the circumstances. The statute is aimed at the abuse of official authority, not its legitimate use.³

As to the prosecutive theory of brutality cases, there is running through the body of case law developed under section 242 the judicial concept of summary punishment on the part of law enforcement officers. An individual, if he is believed to have committed a crime, has the Federal right to be specifically charged, arrested, tried by a court, and punished only if he is found guilty. The courts reason that if a law enforcement officer intentionally strikes a person, not for the purpose of applying reasonable force to effect an arrest, but to punish the individual on the spot, the officer has deprived the person of his right to a trial, and consequently, of the constitutional right to due process of law.

While brutality is undoubtedly the aspect of the statute which attracts the most attention, particularly on the part of the general public and representatives of the media, it is not the entire scope of the section. Section 242 covers a wide range of prohibited activities which constitute denials of

either due process of law or denials of equal protection of the laws.

For example, if a police officer, not in hot pursuit, were to deliberately cross a State line without a warrant and return a protesting fugitive, the office would deprive the fugitive of his right to contest the extradition, and therefore, of due process of law. Similarly, if an officer arrested a person and required him, without trial, to do forced labor on the officer's property, he would be subject to prosecution under the statute. Or if an officer arrested and imprisoned a person solely for the purpose of extorting money from him, he would likewise be subject to such prosecution, as would an officer who willfully conducted an illegal search.

"Two aspects . . . most deserving of attention are the requirements that the acts prohibited under [section 242] be done under 'color of law' and with 'specific intent'."

Two aspects of section 242 most deserving of attention are the requirements that the acts prohibited under the statute be done under "color of law" and with "specific intent."

"Color of Law"

Actions under "color of law" are those actions performed by virtue of a public position under a State or local government or the Federal Government or made possible only because the wrongdoer is clothed with the authority of State or Federal law.⁴

It will be observed that the statute does not read a person "having color of law," but rather a person "acting under color of law."

In general, persons having color of law act "under color of law" while they are in an active-duty status carrying out the duties and responsibilities

of their office. The remainder of their activities and actions are purely private in nature. Section 242 does not cover actions taken by law enforcement officers in their private capacities. "[A]cts of officers in the ambit of their personal pursuits are plainly excluded."⁵

Consequently, the statute would not normally cover an officer who beats his wife, becomes involved in a fight with his neighbor, or even an officer who steals, while in an off-duty status, unless he in some manner asserts the authority of his office to carry out the act in question.

Up until the 1966 Supreme Court decision in the case of *United States v. Price*,⁶ private individuals, acting in their private capacity, could only violate section 242 insofar as they aided and abetted, acted in the presence of, or conspired with persons acting under color of law. In such instances, they were prosecuted under ancillary statutes, such as the General Conspiracy Statute or that declaring those who aid and abet to be principals.⁷

The reason was quite simple; namely, in prior decisions, the Supreme Court has interpreted the statute to mean that only those acting under authority of law could violate the substantive statute.

In the *Price* case, the Supreme Court expanded its definition of those who act under color of law when it held for the first time that private persons act under color of law within the meaning of the statute when they are "willful participant[s] in joint activity with the state or its agents [in a prohibited act]."

Mr. Justice Fortas in speaking for the Court stated:

"Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not re-

quire that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents Those who took advantage of participation by state officers in accomplishment of the foul purpose alleged must suffer the consequences of that participation. In effect, if the allegations are true, they were participants in official lawlessness, acting in willful concert with state officers and hence under color of law."

Specific Intent

Of equal importance is the requirement that to prove a violation of the statute, it must be shown that the perpetrator not only committed a prohibited act, but at the time he did so, he had the specific intent of depriving the victim of a specific right guaranteed under the Constitution or laws of the United States.

Due process, of course, requires that all criminal laws be reasonably specific, so that (1) the public will be put on notice as to the exact type of conduct the law prohibits or intends to prohibit, (2) proper defenses to the charges brought can be prepared, and (3) the judge and the jury can determine whether the prosecutor has proven in the courtroom that a violation of the law actually occurred.

A reading of section 242 clearly shows that the language of the statute is quite general. It refers simply to "any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States"

To determine the specific rights which the statute covers, a review is necessary of all of the various Federal statutes which grant or confer statutory Federal rights, of the Constitution and its various amendments, and of all the decisions of the Su-

preme Court interpreting the rights which are secured and protected by the Constitution and the laws of the United States.

"To determine the specific rights which [section 242] covers, a review is necessary of all of the various Federal statutes which grant or confer statutory Federal rights, of the Constitution and its various amendments, and of all the decisions of the Supreme Court interpreting the rights which are secured and protected by the Constitution and the laws of the United States."

This failure of the statute to enumerate or spell out the specific rights covered was the cause of a challenge to its constitutionality in the landmark case of *Screws v. United States*.⁸ It was alleged the statute lacked an ascertainable standard of guilt and consequently should fall because of vagueness.



The Supreme Court upheld the constitutionality of the statute in the *Screws* decision, but it did so by interpreting the word "willfully" in the statute to mean with "specific intent."

In its decision, the Court, in defining "willfully," held that to merely show the wrongdoer had committed

an act prohibited under the statute with the usual criminal intent of a "general bad purpose" or an "evil intent to do wrong" was not sufficient to prove a violation.

Rather, the Court held that in order to prove a violation of the statute, it must be shown that the perpetrator not only committed an act prohibited under the statute, but at the time he did so, had the specific intention of depriving the victim of a Federal right defined "by the express terms of the Constitution or laws of the United States or by decisions interpreting them."

In clarification of the "specific intent" requirement established in the decision, the Court did hold that it was not necessary for the violator to know the right involved had been defined as a constitutional right, so long as he had the intention of depriving the victim of that right.

The Court further held such specific intent did not have to be expressed. ". . . it may at times be reasonably inferred from all the circumstances attendant on the act . . . [such as] the malice of [the violators], the weapons used in the assault, its character and duration, the provocation, if any, and the like." Moreover, that such intent may be evinced by a reckless disregard of constitutional rights, such as is demonstrated by "[t]hose who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioner. . . ." ⁹

(Continued Next Month)

FOOTNOTES

¹ *Morgan v. Rhodes*, 456 F. 2d 608, 615 (6th Cir. 1972); *Gilligan v. Morgan*, 93 S. Ct. 2440; 413 U.S. 1; 37 L. Ed. 2d 407 (1973); *People of State of Colorado v. Hutchinson*, 9 F. 2d 275 (8th Cir. 1925).

² *Moran v. Lumbermens Mutual Casualty Co.*, 92 F. Supp. 267 (Mich. Dist. Ct. 1950).

³ *Screws v. United States*, 325 U.S. 91, 161 (1945).

⁴ *Id.*; *United States v. Classic*, 313 U.S. 299 (1941).

⁵ *Screws*, *supra* note 3, at 111.

⁶ *United States v. Price*, 383 U.S. 787 (1966).

⁷ 18 U.S.C. sec. 371; 2 U.S.C. sec. 2.

⁸ *Screws*, *supra* note 3.

⁹ *Screws*, *supra* note 3, at 106-107.

The New Mexico State Police Crime Laboratory

In 1960, it was decided that the New Mexico State Police should have a forensic crime laboratory to provide assistance for the various law enforcement agencies throughout the State. Administrative officers toured several established laboratories to observe operations and found that the most serious obstacle to implementing this decision would be the tremendous expense involved in equipping and staffing a laboratory. This funding problem was aggravated by the fact that adequate housing for the laboratory was not available. The State police headquarters building which might have provided room was already overcrowded; larger facilities were needed.

In response to these needs, a concerted fundraising effort was begun, and over the next few years, plans for a new State police headquarters complex large enough to accommodate the crime laboratory were drawn up and approved.

Construction got under way, and in January 1971, the agency moved into its newly completed facility. The top

By
DONALD W. HANNAH
Director
State Police Crime Laboratory
Santa Fe, N. Mex.

south wing of one of the buildings—approximately 10,000 square feet of space—was reserved for the crime laboratory. This area included a central hallway of approximately 1,300 square feet which would allow visitors to tour the laboratory and view the

analysts through windows without disturbing their work.

Initial Organization

A Law Enforcement Assistance Administration (LEAA) grant was obtained to begin buying equipment for the laboratory, and initial purchases were made for the chemistry section.

The laboratory was opened with a supervisor, a crime scene technician, and two inexperienced in-State chemists. It was planned that the chemists

Donald W. Hannah



Chief Martin E. Vigil



would receive their initial training within the laboratory itself, and receive additional training with an outside laboratory doing similar work.

It was felt that other sections of the laboratory required experienced or at least partially experienced personnel, and toward this end an experienced serologist and an experienced firearms examiner were hired from out of State.

Selecting this basic complement of personnel was difficult for several reasons. The budget was somewhat limited, yet it was felt that in order for the laboratory to be effective a high-quality staff was needed. By nature, crime laboratory work requires an array of abilities and competency in several varied fields. In addition to technical proficiency, the analyst must be able to function effectively in court as an expert witness. He must have a good basic scientific background and be capable of expressing himself in terms that lay jurors can understand. He must remain unemotional and objective while testifying, particularly if attacked by opposing counsel. The analyst should stay abreast of changes and advances in his field, and be prepared to attend various meetings of organizations involved in similar work.

"For a newly operational facility . . . funding is the critical element in retaining well-trained analysts and attracting equally qualified personnel in the future."

In order to staff the laboratory with personnel of this caliber, it is necessary to compete on a nationwide basis. Salaries must be on a par with other laboratory systems, and State laboratory facilities must be attractive to talented out-of-State analysts. This is especially true now that Federal funds have become available to law enforcement. Forensic laboratories through-

out the country are expanding and have a great deal to offer in terms of salary and working environment. For a newly operational facility, therefore, funding is the critical element in retaining well-trained analysts and attracting equally qualified personnel in the future.

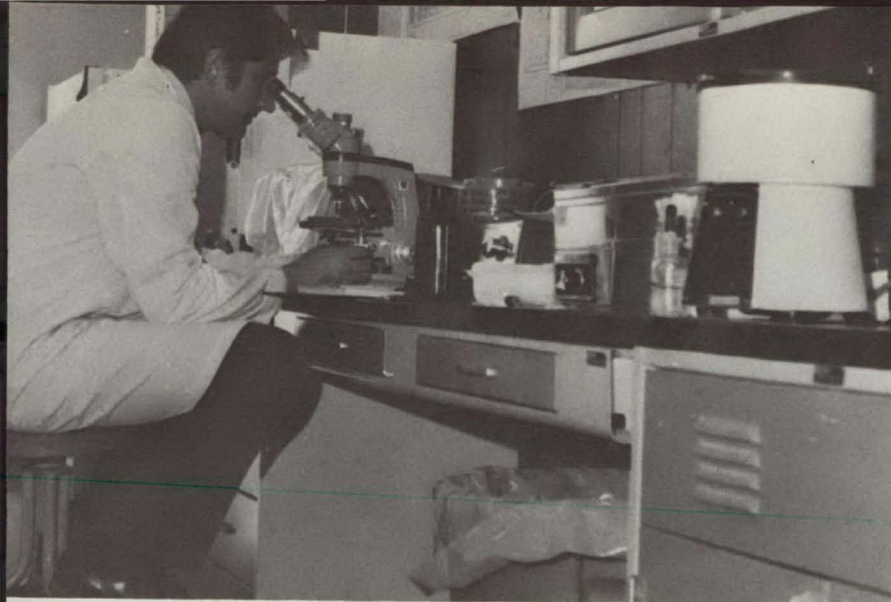
Thus far, the New Mexico State Crime Laboratory has been fortunate in acquiring both Federal and State funding. Most of the laboratory's equipment has been purchased with LEAA funds; analysts and other personnel have been hired with State funds. At present, the laboratory is operating with an approximate annual budget of \$235,000 and the following sections and staff: A direc-

tor, three analysts in the Chemistry Section, one in the Latent Print-Photography Section, two in the Firearm-Toolmark Section, two in the Serology-Trace Evidence Section, and one in the Questioned Document Section.

In the latter part of 1971, the International Association of Chiefs of Police conducted a survey of the New Mexico State Police. A portion of that study resulted in certain recommendations concerning the laboratory. Several of these suggestions were implemented, including the establishment of the laboratory as a division of the State police.

X-ray Fluorescence Instruments.





Serology Laboratory.

Problems

Although the laboratory is now fully operational, a few problems remain. Even though the space is not presently needed, it is now felt that the visitor's hallway space is somewhat wasted and would have been better used to enlarge the laboratory. It has also become apparent that each section of the laboratory requires additional space for storage of supplies and evidence. Since the laboratory was not planned to serve as the central depository in the State for all physical evidence, a policy was instituted of

returning all evidence to the contributing investigative agencies as soon as possible after examinations are completed. This arrangement has worked out rather well. It frees the laboratory staff from much record-keeping and relieves the congestion in evidence storage areas. It also places the responsibility of keeping track of individual cases with the submitting agency rather than the laboratory itself. This is helpful because it is often impossible for laboratory personnel to tell when a case has been closed,

and further, to obtain authority to destroy the evidence. As a general rule, the laboratory makes an effort to return evidence to the submitting agency within 30 days after examinations are completed.

Another problem encountered was a backlog in the Serology-Trace Evidence Section. Although the laboratory has the capability to do electrophoresis and other typing of physiological fluids, the rapid increase in the section's caseload has resulted in insufficient time to develop and refine necessary examination techniques. This is a genuine problem because, of late, defense attorneys are becoming more aware of laboratory capabilities and are asking, legitimately, why certain types of examinations are not being performed on the evidence. This is especially true of determining blood groupings, information which might be beneficial to the client. Prosecutors are also becoming more sophisticated in their requirements for physical evidence before they will allow a case to be taken to court. Unfortunately, we also have problems with a lack of understanding about the capabilities and limitations of a crime laboratory—a situation aggravated through the spread of misinformation by “experts” in the State.

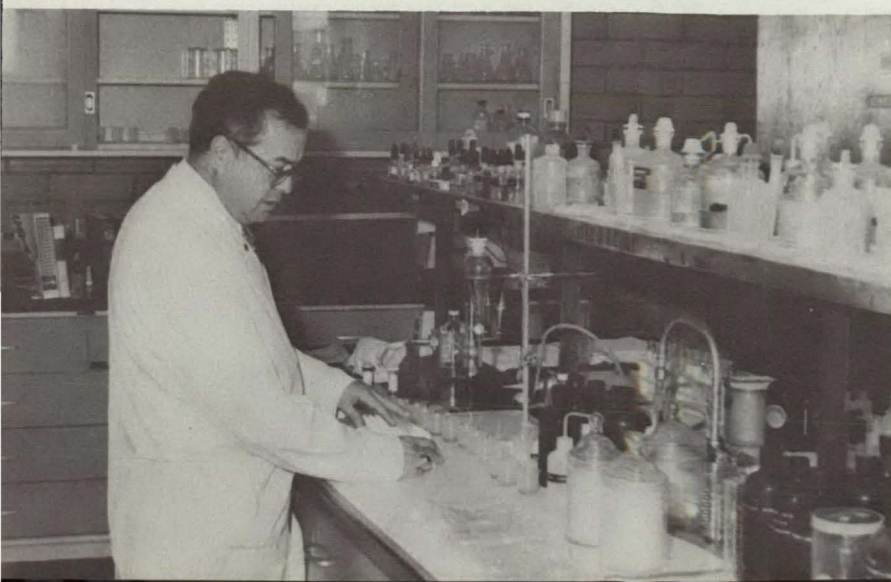
Training

Developing confidence in the laboratory's capabilities and knowledge of its limitations is, of course, the best remedy for this problem. As a result,

“[T]raining has become one of the laboratory's most important missions.”

training has become one of the laboratory's most important missions. When the laboratory first opened, a booklet with information culled from various physical evidence handbooks available at the time was printed and

Wet Chemistry Laboratory.

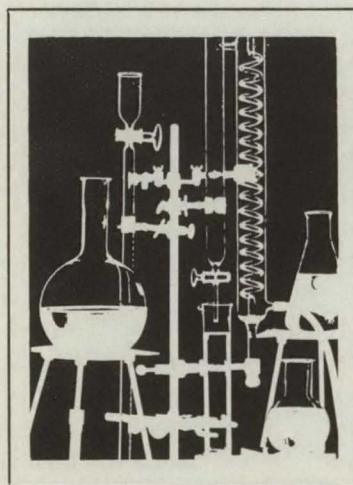


sent to all agencies throughout the State. In addition, the laboratory staff conducts basic instruction at the New Mexico Law Enforcement Academy. This instruction for police officers has been combined with a tour of the laboratory, during which each student is introduced to the analysts and receives a short explanation of the process by which the laboratory handles evidence. Academy personnel, in return, have been very generous in emphasizing the value of the laboratory and the ways in which it can best help the investigator.

In mid-1975, a criminal investigator from one of the departments requested that he spend 2 weeks in the laboratory to increase his knowledge of physical evidence and his capacity to work crime scene searches. His department's chief made the request through proper channels, and the Law Enforcement Academy was asked if he could stay in one of its unoccupied rooms. Permission was granted, and the seed of a future program was planted. During the 2 weeks he spent in the laboratory, he divided his time between the sections, observing the evidence which the laboratory received and how it was handled and examined. He was also taken to crime scenes as an observer. It was found that having an observer presented no great problems, and it seemed that a greater appreciation of physical evidence and proper handling was gained. The laboratory personnel also developed greater respect for the field officers' problems.

As time went on, academy personnel expanded this idea. Funds were allocated to establish a program, which would include criminal investigators from the various departments throughout the State. It was decided that a period of 2 weeks was excessive, and the program was reduced to 4 days. It was also decided to schedule two officers at a time rather than only one. It would be required that the of-

ficers remain observers during their visit, and that they spend about 4 hours in each of the five sections. The 12 hours that are not assigned may be spent as the officers see fit—observing operations in the various sections or browsing through the literature available in the laboratory. Or if they wish, they may return to their respective departments. This aspect of the program has purposely been left unscheduled due to the varying interests and responsibilities of the officers. Several have indicated that the time they spent in the different sections was sufficient. Others have expressed a desire to return to the laboratory for some additional study.



An announcement concerning the program was sent to the departments throughout the State, and the response has been very rewarding. Critiques written by those officers who have attended thus far indicate that the program is having a very positive impact.

Conclusion


What does the future hold? Response to our work has been complimentary and indicates that the New Mexico State criminal justice system has found a real need for the laboratory, which now services the entire State—an area of approximately 140,-

000 square miles. In 1976, laboratory personnel traveled about 54,000 man-miles attending court and about 19,000 miles aiding in 97 crime scene searches. The use of department planes greatly reduced traveltime, allowing analysts to accept court commitments in different parts of the State on consecutive days.

The laboratory caseload has grown from 1,052 cases submitted in 1973 to 2,368 cases in 1976. Indications are that the caseload will continue to increase as time goes on and the education and training of police officers throughout the State becomes more advanced.

In order to keep the backlog of cases to a minimum and the turnaround time on the cases realistic, additional personnel are needed and are, hopefully, forthcoming. It is also hoped that the laboratory will be expanded, and if need be, personnel placed in the field doing crime scene searches, latent prints, and photography in those areas where local departments need assistance. As more analysts are added to the staff, the scope of laboratory experience will increase, and it is felt that the extra personnel will help to provide greater continuity in the laboratory when analysts are in the field.

"[T]he laboratory is providing a much needed service by increasing the utilization of physical evidence by New Mexico's law enforcement agencies."

It may become advantageous, as the caseload increases, to establish small specialized satellite laboratories in the more populated areas of the State to cut down on traveltime to and from the main laboratory. In the meantime, the laboratory is providing a much needed service by increasing the utilization of physical evidence by New Mexico's law enforcement agencies. 

Use of Deadly Force to Arrest a Fleeing Felon— *A Constitutional Challenge*

By

J. PAUL BOUTWELL

Special Agent
Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

This is the second part of a three-part article. The conclusion will appear in next month's issue.

RESTRICTIONS UPON USE OF DEADLY FORCE THROUGH DEPARTMENT POLICY

A most significant effort toward reform of the common law rule has come through law enforcement administrators. Whether in response to persuasive police commentary,²⁶ national study commissions,²⁷ or because of tragic incidents in the community,²⁸ many executives of law enforcement agencies have prepared written policy detailing restrictions on the use of deadly force for purpose of making an arrest. In many in-

stances, the policy is more restrictive than the State statutory standard. This is understandable. The fact that deadly force is legally justified does not mean that it is always wisely uti-

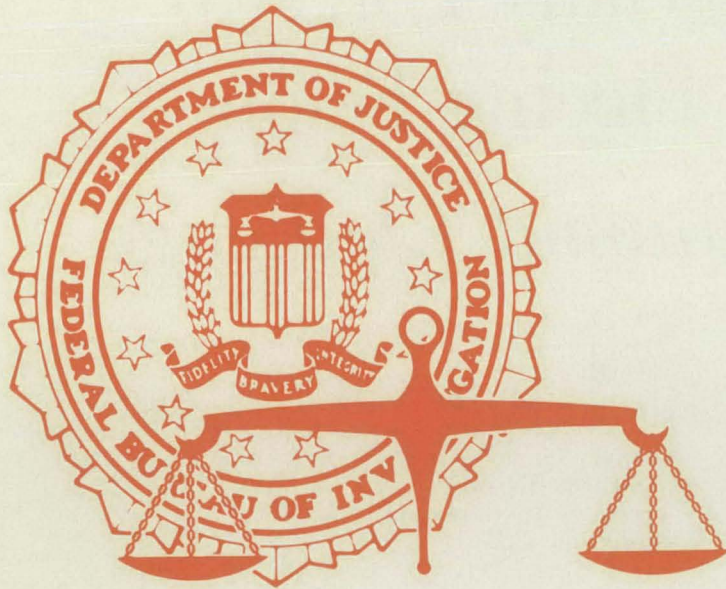
"The fact that deadly force is legally justified does not mean that it is always wisely utilized."

lized. Riots, for example, have been attributed to an officer's legal, but unwise, use of deadly force.²⁹ The legislature determines the legal use of deadly force; the administrator promotes its wise use.

Many law enforcement administra-

tors are concerned that if an officer is sued, the department's firearms regulation will be admitted into evidence, and where more restrictive

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



than State law, will create liability where none might otherwise exist. This is not necessarily the case. To begin with, States differ on admissibility of departmental policy. Decisions in California and Florida illustrate the different responses. For example, in a California case, a police officer shot at and killed a fleeing felon. The shooting was a justifiable use of deadly force under State law. The police tactical manual pertaining to the use of firearms, however, justified the use of deadly force only if necessary to save the officer, a citizen, a brother officer, or a prisoner from death or grave bodily harm. The Supreme Court of California held the manual was admissible on the ground that an employee's failure to follow a safety rule promulgated by his employer, regardless of its substance, serves as evidence of negligence.³⁰

On the other hand, in the State of Florida, at least two district courts of appeal have reached an opposite result. In one case, officers covering a rock concert observed from a rooftop two teenagers trying the doors of a number of vehicles in the parking lot and finally entering a van. The rooftop officers directed officers on the ground to arrest them. As an officer attempted to arrest one of the boys, a struggle ensued and the officer fell to the ground after receiving a blow to the face. The youth ran, and the officer shot the plaintiff in the leg. Florida has codified the common law rule. Over the officer's objection in a civil suit, the court admitted into evidence a departmental order on the use of firearms, which was in effect at the time of the shooting. The order authorized the officers to use firearms to apprehend a fleeing felon, but only

when the officer reasonably believes the fleeing person has committed either (1) a violent crime to the person of another, or (2) a crime against property that clearly demonstrates a wanton and reckless disregard for human life. On appeal, the officer contended that the trial court erred in admitting this order. The appeals court agreed. While the departmental regulation may be applicable for departmental discipline of its own members, the regulation would not affect the standard by which the officer's criminal or civil liability was measured. To admit the public safety order constituted reversible error.³¹

Whether departmental regulations will create liability where none might otherwise exist is more difficult. Americans for Effective Law Enforcement (AELE)³² makes the following points: (1) Police chiefs and other administrators should not be dissuaded from promulgating safety rules and policy directives due to the threat of civil liability; (2) it is inconsistent with modern management to leave unfettered discretion (as to when an officer may use his firearm) to the lowest ranks—this is not to suggest that any particular restrictive policy is meritorious, only that planning and policymaking should be centralized at the highest administrative levels; and (3) written directives which restrict a police officer's action beyond the requirements of State law should contain an explanation of their intended purpose. Suggested wording is as follows:

"This directive is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the

basis of a complaint by this department, and then only in a nonjudicial administrative setting.”³³

The wise administrator, concerned about potential liability problems with regard to the use of deadly force, will discuss this topic with a legal adviser. He certainly wants to know what effect his policy might have on his officers’ potential liability. He needs to be clear as to who will pay the civil judgment, if one is awarded, arising out of a deadly force case.³⁴

THE INTERPLAY BETWEEN A STATE’S JUSTIFIABLE HOMICIDE STATUTE AND CIVIL LIABILITY

A State legislature defines what constitutes justification for an act otherwise criminal.³⁵ A State civil court defines what constitutes privilege for conduct otherwise tortious.³⁶ Query: Can a State civil court adopt a definition of an officer’s privilege in the use of deadly force, that is more restrictive than the State’s legislative standard, expressed through its justifiable homicide statute?

“A State legislature defines what constitutes justification for an act otherwise criminal. A State civil court defines what constitutes privilege for conduct otherwise tortious.”

The question underscores the distinction between the two areas of the law—criminal and civil. The legislature of the State has the legitimate authority to define crimes and defenses, and generally the civil courts retain the common law authority to define torts and their defenses. So the simple answer to the question is yes; civil courts may adopt a definition of privileged conduct that is more re-

strictive than the State’s justifiable homicide statute. It should be emphasized, however, that most courts have refused to do so.

A recent Minnesota case illustrates the point. Early one morning, an off-duty officer, dressed in civilian clothes but who carried his .38-caliber snub-nose revolver, drove a marked police department “take-home” squad car, which he was authorized to use, to pick up the morning newspaper. On his return, he observed a station wagon traveling at an excessive rate of speed collide with a parked car. Two boys got out, yelled something into the station wagon, and then ran. As the officer stopped his squad car, another person alighted from the driver’s side of the wagon and ran. The officer jumped out of the squad car and shouted “Stop, police.” As he chased one boy, he repeatedly shouted similar warnings, finally calling out, “Stop, or I’ll shoot.” The plaintiff ignored the warnings and continued to run. The officer fired a warning shot into the ground, but the plaintiff only ran faster. The officer again yelled, “Stop, or I’ll shoot.” When this warning failed to produce results, the officer aimed and fired a shot, intending to hit the plaintiff in the lower part of his body. Instead of striking the plaintiff in the legs, the bullet struck the plaintiff in the nape of the neck, permanently crippling him.

In his complaint, the plaintiff alleged defendant’s liability on two theories—battery and negligence. The trial court submitted the case to the jury on the theory of negligence alone. The jury found for the officer. They found also that the plaintiff’s negligence was the proximate cause of his own injury. The plaintiff appealed. He argued that it was error for the trial court to leave out the issue of battery. In addition, the plaintiff sought to have the Supreme Court of Minnesota adopt a civil liability standard for privileged conduct, a standard that

would be more restrictive than the State’s justifiable homicide statute. Minnesota’s justifiable homicide statute follows the common law rule.

The Supreme Court of Minnesota held that the trial court had improperly framed the issue in the case in terms of negligence rather than battery and remanded the case for a new trial. The court wrote that while they were not technically bound to follow the statutory formulation of the justifiable homicide statutes, they would nevertheless do so and defer to the legislative policy in defining tort liability. The police officer contemplating the use of force under emergency conditions should not be held to conflicting standards of conduct by the civil and criminal law. The confusion which would be engendered by such a situation can only produce unfair and inequitable results. The Court wrote:

“It is in the legislative forum that the deterrent effect of the traditional rule may be evaluated and the law-enforcement policies of this state may be fully debated and determined. . . . The legislature, and not this court, is the proper decision maker.”³⁷

In order for a police officer to raise an affirmative defense of privileged use of his firearm in a suit alleging battery, the officer must bear the burden of proving: (1) That he had probable cause to believe that the person sought to be arrested either committed or was committing a felony, and (2) that he reasonably believed the arrest could not be effected without the use of a firearm.

CONSTITUTIONAL ANALYSIS OF THE USE OF DEADLY FORCE TO ARREST A FLEEING FELON

The most significant development in

litigation regarding the common law fleeing felon rule is the Federal constitutional challenge made upon the use of deadly force to arrest a non-

"The most significant development in litigation regarding the common law fleeing felon rule is the Federal constitutional challenge made upon the use of deadly force to arrest a nonviolent, fleeing felon."

violent, fleeing felon. Such a challenge may be made by a plaintiff seeking either declaratory or injunctive relief.³⁸ Most frequently, however, the plaintiff merely files a claim under title 42, United States Code, section 1983,³⁹ alleging the violation of a constitutional right. This legislation was enacted April 20, 1871, with the purpose of providing a remedy for the wrongs allegedly being perpetrated under color of State law. Thus, 1983, as it is often called, creates a right to sue law enforcement officers personally for depriving another of "... any right, privileges, or immunities secured by the Constitution and laws. . . ." (of the United States). Such suits may be filed in the U.S. district courts under the provisions of title 28, United States Code, section 1343.

Prior to 1961, it was thought the plaintiff had to exhaust possibilities that local or State remedies would give relief before coming to the Federal court. In a 1961 landmark decision, the U.S. Supreme Court established the principle that the right to sue police officers under 1983 was completely independent of any State remedies that might be available. The Court stated, "It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought

and refused before the federal one is invoked." An officer could no longer regard abstention or exhaustion of local remedies as useful in defending an action under 1983.⁴⁰

Thus, a plaintiff may commence a section 1983 action against an officer in Federal court, or he may file a civil suit in State court. It is sometimes asked how a State civil lawsuit brought in a State court and arising out of the same set of facts differs from a 1983 suit. Some general observations on the nature of a State law suit are useful before discussing some of the recent 1983 cases.

State Tort Action Distinguished

State civil lawsuits arising out of an officer's use of his firearm are not unusual. A suit may develop from its negligent use as well as from its intentional use. In the latter case, the distinction between justifiable force and excessive force is important.

"State civil lawsuits arising out of an officer's use of his firearm are not unusual. A suit may develop from its negligent use as well as from its intentional use."

Negligence

Probably the most widely recognized duty of a law enforcement officer is that of requiring him to avoid negligence in his work. Our society imposes a duty upon each individual to conduct his affairs in a manner which will avoid subjecting others to an unreasonable risk of harm. This, of course, also applies to law enforcement officers. If his conduct creates a danger recognizable as such by a reasonable officer in like circumstances, he will be held accountable to others injured as a proximate result of his conduct and who have not con-

tributed to their own harm. These general principles are well-known concepts in the law of negligence.

They mean that actions taken by officers in apprehending criminals must not create an unreasonable risk of injury or death to innocent persons. The creation of risk is not in and of itself negligence; however, the law does require a reasonable assessment of harm's likelihood and regards as negligent any act which creates a risk of such magnitude as to outweigh the utility of the act itself.

Under the civil court system, if the police officer owed no duty to the complainant, he will not be penalized even if the plaintiff in fact suffered some injury. An officer will be liable only where it is shown that (1) he was obliged to do or refrain from doing something, and (2) the plaintiff was injured because of the officer's failure to comply with this obligation or duty.

Assume that Officer A shoots at B, a felon fleeing in a congested downtown area, but misses B and hits C, an innocent bystander. C, in a civil suit against Officer A in State court, will allege that Officer A was negligent in the discharge of his firearm. The gist of C's suit is that Officer A has breached his duty to C.

Intentional Torts

Another category of torts is termed intentional torts. In a negligence suit, the officer will not be liable unless he foresaw, or should have anticipated, that his acts or omissions would result in injury to another. An intentional tort is the voluntary doing of an act which to a substantial certainty will injure another. It does not have to be performed negligently to be actionable. Examples of such torts are false arrest and assault and battery. Assume Officer A intentionally shoots and seriously injures B, a fleeing felon. B may bring a civil suit in State court alleg-

ing that he has been battered, an intentional tort. The gist of B's action is that Officer A used excessive force in his effort to apprehend him and the use of his firearm was not justified under the circumstances. It is not alleged that Officer A was negligent—he did what he intended to do—namely, shoot B. The essential elements of the tort of battery are intent and contact. Privilege, however, is an affirmative defense to the tort of battery. Usually the officer must bear the burden of proving the essential elements of the defense. A few jurisdictions reach a contrary result, adopting the rule that a police officer's act is presumed lawful.⁴² In final analysis, the reasonable-

"In final analysis, the reasonableness of the force used in making an arrest under all the circumstances is a question of fact for the jury or other trier of fact (such as a judge in a bench trial), and the standard usually expressed is the conduct of ordinary prudent men under existing circumstances. Not a very precise standard to be sure."

ness of the force used in making an arrest under all the circumstances is a question of fact for the jury or other trier of fact (such as a judge in a bench trial), and the standard usually expressed is the conduct of ordinary prudent men under existing circumstances. Not a very precise standard to be sure.

(Continued Next Month)

FOOTNOTES

²⁶ Chapman, "Police Policy on the Use of Firearms," *Police Chief*, July 1967, at 16, 26-27. McCreey & Hague, "Administrative and Legal Aspects of a Policy to Limit the Use of Firearms by Police Officers," 42 *Police Chief*, January 1975, at 48.

²⁷ President's Comm'n. on Law Enforcement and Administration of Justice, Report: The Challenge of Crime in a Free Society 119 (1967); Task Force

Survivors' Benefits Awarded

The Law Enforcement Assistance Administration (LEAA) recently announced the award of \$1,250,000 in benefit payments to survivors of 25 public safety officers and firefighters killed in the line of duty. These payments will be the first made under the Public Safety Officer's Benefits Act of 1976. The survivors of each officer will receive \$50,000.

The act covers men and

women serving State and local public agencies in official capacities, with or without pay, as law enforcement officers or firefighters. Included are persons working in police and corrections agencies, probation and parole, and in court positions. It also covers volunteer firefighters, if they are members of legally organized volunteer fire departments.

Report: The Police 189-90 (1967); 1 Nat'l. Comm'n. on Reform of Fed. Crim. Laws, Working Papers 269 (1970).

²⁸ Bart, "Inquest Lightens Tension in Watts," *New York Times*, May 21, 1966, p. 13, col. 1.

²⁹ The San Francisco riot of 1966 was said to have started after a juvenile was shot and killed while fleeing from a stolen car. Davis, "Calm is Restored in San Francisco," *New York Times*, Sept. 30, 1966, p. 1, col. 5.

³⁰ *Grudt v. City of Los Angeles*, 468 P. 2d 825 (Cal. 1970).

³¹ *City of St. Petersburg v. Reed*, 330 So. 2d 25 (Fla. App. 1976). See also, *Chastin v. Civil Service Board of Orlando*, 327 So. 2d 230 (Fla. App. 1976).

³² Americans for Effective Law Enforcement, Inc. (AELE) is a national, not for profit organization whose purpose is to provide a voice for the law-abiding citizens through responsible support for professional law enforcement. As a citizen-supported research and action organization employing three attorneys and three legal assistants, all of whom have law enforcement backgrounds, AELE also publishes the *Legal Liability Reporter*, and the staff has sponsored workshops across the country on civil liability.

³³ AELE Legal Defense Manual, "Admissibility of Police Written Directives in Litigation," Brief No. 76-5, p. 14 (October 1976).

³⁴ A.B.A. Standards for Criminal Justice, The Urban Police Function (approved draft, 1973) § 5.5, provides: "In order to strengthen the effectiveness of the tort remedy for improper police activities, municipal tort immunity, where it still exists, should be repealed and municipalities should be fully liable for the actions of police who are acting within the scope of their employment as municipal employees."

³⁵ Justification is based on a determination that an act is legal because circumstances negate the validity of the normal rules of criminal liability. Such defenses recognize that under such circumstances the value protected by law is eclipsed by a superseding value. Note, *Statutory Reform*, 75 Colum. L. Rev. 914 (1975).

³⁶ *Privilege* in the law of torts is a defense to what might have been an actionable wrong. It excuses such conduct, hence no liability occurs. Comment, 11 *Harv. Civ. Rights—Civ. Lib. L. Rev.* 361.

³⁷ *Schumann v. McGinn*, *supra* note 1, at 537. The dissenting opinion of Justice Rogosheske is instructive.

He pointed out that the criminal statute distinguishes between the killing of felony and misdemeanor suspects, whereas sound policy dictates that tort law should distinguish between the killing of dangerous and nondangerous criminal suspects: "Surely a police officer should not be imprisoned if he mistakes a nondangerous for a dangerous felony suspect and uses his firearm against the former. However, unless he is in violation of specific instructions (emphasis added) his employer ought to bear financial responsibility for mistakes committed in the line of duty. Viewed in this way, it does not follow, as the majority declares, that under the rule urged a police officer contemplating the use of force under emergency conditions would be held to conflicting standards of conduct by the civil and criminal law. A police officer who makes a mistake and uses deadly force against a nondangerous felon would know unequivocally that he is committing a civil wrong. The legislature and the courts of this state, out of awareness of his difficult job in these emergency circumstances, will not jail him for his mistake, but in no way can that justify granting immunity for a civil wrong. . . . Rather, and hopefully, it would lead all police officers in Minnesota to do what some, if not most, well-trained and experienced police officers already practice, which is to follow the rule that the use of deadly force is not a proper arrest procedure for nondangerous, nonthreatening felons."

³⁸ Generally, the way to challenge the constitutionality of a State statute is to seek injunctive relief under 28 U.S.C. § 2281. Upon proper application, a three-judge court will be convened to hear and determine the constitutionality of the challenged status. See, *Cunningham v. Ellington*, 323 F. Supp. 1072 (W.D. Tenn. 1971).

³⁹ 42 U.S.C. § 1983 reads as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

⁴⁰ *Monroe v. Pape*, 365 U.S. 167 (1961).

⁴¹ *West v. Nantz*, 101 S.W. 2d 673 (Ky. 1937); *Wall v. Zeeb*, 153 N.W. 2d 779 (N.D. 1967); *Modesett v. Emmons*, 292 S.W. 855 (Tex. Com. App. 1927).

WANTED BY THE FBI



Photographs
taken 1974.

Date photograph
taken unknown.

MILLARD OSCAR HUBBARD, also known as Dick Bedillion, Bill Campbell, Harry Cox, Jim Lovelace, John Lovelace, Wayne Lycans, Ralph Moore, "Dillinger," "Hubb"

Bank Robbery; Accessory after the Fact; Aiding and Abetting; Unauthorized Flight to Avoid Prosecution—Operating a Motor Vehicle Without Owner's Consent, Possession of Stolen License Plate, Armed Robbery

Millard Oscar Hubbard is currently being sought by the Federal Bureau of Investigation for bank robbery and unauthorized interstate flight to avoid prosecution for armed robbery.

The Crime

On August 14, 1976, Hubbard and an accomplice, armed with a handgun and M-16 rifle, allegedly robbed the Clairborne County Bank, Tazewell, Tenn., of approximately \$105,000 in currency. Employees of the bank were handcuffed to the furniture, and an employee's vehicle was utilized by the robbers during the getaway. While fleeing, the robbers fired several shots at a pursuing police officer. Hubbard's accomplice has been arrested and sentenced.

Hubbard is also sought for unlawful flight at Lexington,

Ky., and has been indicted for the robberies of a Steubenville, Ohio, bank on January 17, 1976, and a St. Clairsville, Ohio, bank on March 20, 1976.

Federal warrants were issued on the following dates: April 3, 1975, at Lexington, Ky., charging Hubbard with unlawful flight to avoid prosecution for operating a motor vehicle without the owner's consent, possession of a stolen license plate, and armed robbery; August 17, 1976, at Knoxville, Tenn.; September 1, 1976, and September 15, 1976, at Columbus, Ohio, charging Hubbard with bank robbery.

Description

Age----- 49, born August 15,
1928, Whitley
County, Ky.
Height----- 5 feet 8 to 9 inches.
Weight----- 145 to 150 pounds.

Build----- Medium.
Hair----- Black, graying.
Eyes----- Brown.
Complexion.. Medium.
Race----- White.
Nationality.. American.
Occupations.. Carpenter, construction worker, concrete worker, truck driver.
Remarks----- Reportedly an avid fisherman and hunter, may wear wig and glasses, lower false teeth.

Social Security No. used----- 403-34-6678.

FBI No. 168,172 A.

Fingerprint classification:
4 O I A IO 17
M 17 U IOO

NCIC Classification:

POAA0415171203121516

Caution

Hubbard has used a pistol and an M-16 rifle in the bank robberies for which he is being sought. He should be considered armed, dangerous, and an escape risk.

Notify the FBI

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



Left middle fingerprint.

FBI LAW ENFORCEMENT BULLETIN

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)

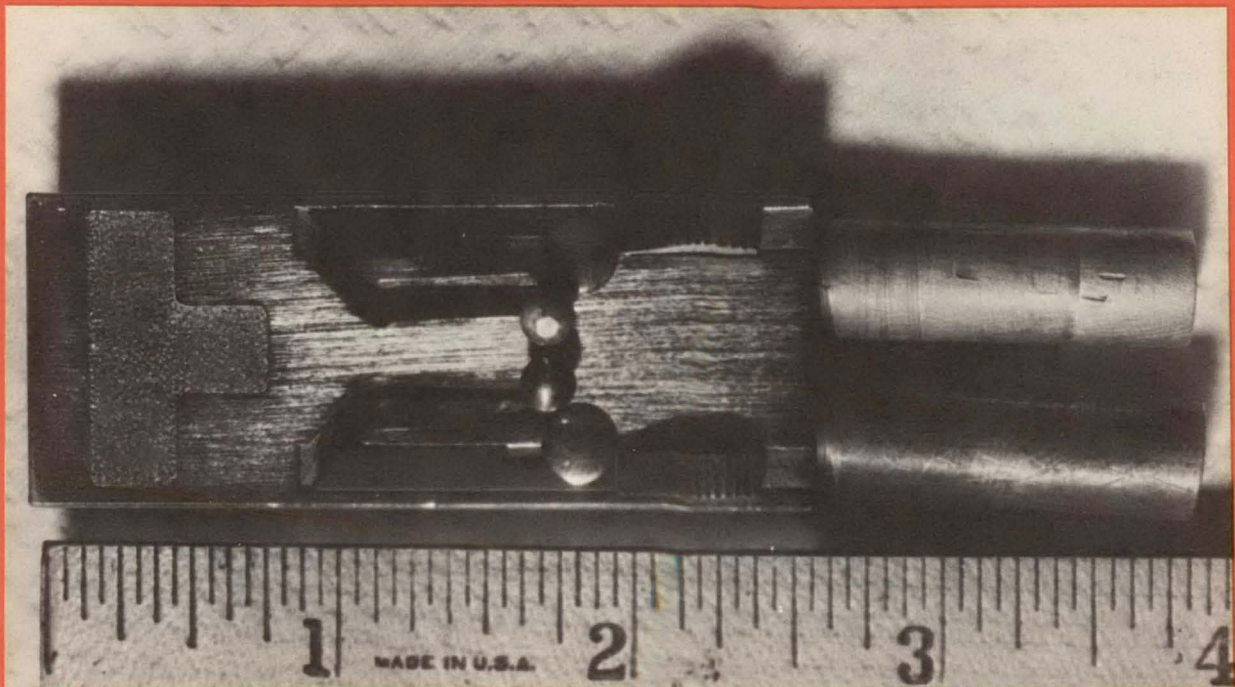
(Address)

(City)

(State)

(Zip Code)

Double-barreled Threat



Recently recovered by the Woodbridge Township, N.J., Police Department during an inventory of an impounded trailer, the weapon shown above is comprised of a 2½ inch-long chrome receiver (into which two .32-caliber shells are inserted) and two brass barrels (approximately 1½ inches in length) which are then screwed into the receiver. The weapon is discharged by the release of a simple, spring-tension mechanism.

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

OFFICIAL BUSINESS

ADDRESS CORRECTION REQUESTED

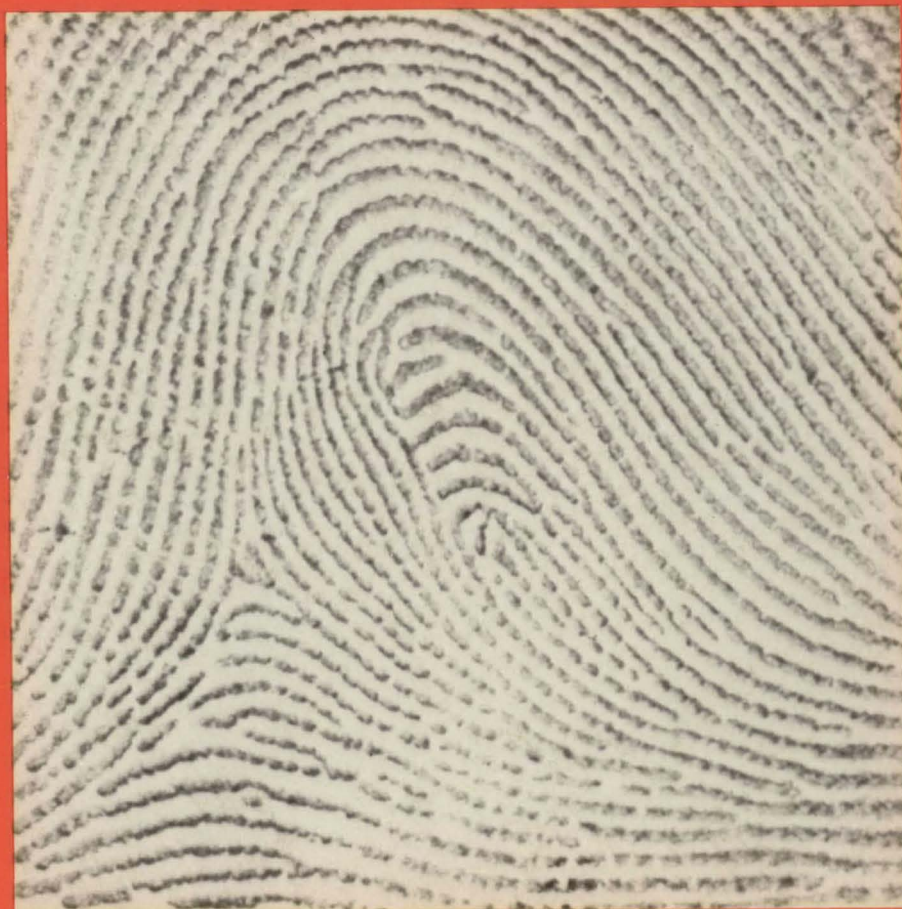


POSTAGE AND FEES PAID
FEDERAL BUREAU OF INVESTIGATION

JUS-432

CONTROLLED CIRCULATION
RATE

INTERESTING PATTERN



The above pattern presents no difficulty as to classification. It is classified as a double loop-type whorl with an outer tracing. The unusual position of the two loop formations makes it interesting.