

# FBI LAW ENFORCEMENT BULLETIN

OCTOBER 1980





# **FBI** LAW ENFORCEMENT BULLETIN

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## **Contents**

### **Cooperation 1 Aloha Means Cooperation: The Navy's Legal Liaison Program in Hawaii**

By Lt. Comdr. Peter R. Wubbenhorst, Navy Judge Advocate General's Corps, and James Hodges, Special Agent, Naval Investigative Service, Honolulu, Hawaii

### **Law**

### **Enforcement Role 6 Law Enforcement Accreditation: Meeting Tomorrow's Challenges Today**

By Kenneth E. Joseph, Executive Assistant Director, Federal Bureau of Investigation, Washington, D.C.

### **Crime Problems 10 Boat Theft**

By George J. Lyford, Special Agent, National Crime Information Center, Federal Bureau of Investigation, Washington, D.C.

### **Youthful**

### **Criminality 13 The Michigan State Police Diversion Program**

By Sgt. Jack R. Shepherd, Michigan State Police, East Lansing, Mich.

### **Training 16 Evaluating Recruit Performances Through Roleplaying**

By Sgt. Timothy N. Oettmeier, Police Department, Houston, Tex.

### **Personnel 22 Retirement: Is It the End or the Beginning?**

By Capt. Thomas R. Ammann and Officer Paul G. Meyer, Police Division, Cincinnati, Ohio

### **The Legal Digest 25 The Announcement Requirement in Entry of Residential Premises**

By W. Philip Jones, Special Agent, Legal Counsel Division, Federal Bureau of Investigation, Washington, D.C.

### **32 Wanted by the FBI**



**THE COVER:** This month's cover "reflects" a situation which is familiar to both law enforcement and many of the Nation's motorists. Photo courtesy Officer Andrew Johnson, Fairfax County, Va., Police Department.

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**William H. Webster, Director**

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# Aloha Means Cooperation

## THE NAVY'S LEGAL LIAISON PROGRAM IN HAWAII

At 2:30 a.m., the highway outside Pearl Harbor Naval Base is nearly deserted. A bus pulls up and discharges a sailor, who somewhat nervously begins to walk down the unlighted sidewalk toward the main gate, approximately 1/2 mile ahead. Suddenly, a car pulls up and three young men get out, surround the sailor, and assault and rob him of his wallet, watch, and jewelry. Fortunately, the sailor is able to obtain the vehicle license number, which is quickly relayed to the Honolulu Police Department. The suspects' vehicle is soon spotted and arrests are made.

During the course of the investigation, Honolulu detectives, working through the Naval Investigative Service, are given access to the sailor, and the case is referred to the prosecutor's office for trial. By the trial date, the sailor has been reassigned to a ship in San Diego; however, through joint cooperation between the Navy and the Honolulu Prosecutor's Office, the sailor is flown to Hawaii at Navy expense and is paid per diem by the prosecutor's office. With direct testimony by the vic-

tim, the three suspects are convicted of assault and robbery.

The handling of this case is typical of a new bond existing between the Navy and Honolulu law enforcement agencies. With over 23,000 active duty Navy personnel stationed in Hawaii, and another 22,000 family members and 13,800 civilian employees residing in the State, the military represents a significant part of the total population of 729,000 residing on the Island of Oahu, where the municipal government is comprised of the city and county of Honolulu. This relationship is built on the foundation that people dedicated to effective law enforcement and community support can and should work together to combat crime.

By LT. COMDR.  
PETER R. WUBBENHORST

*Navy Judge Advocate General's Corps  
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**JAMES HODGES**

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*Lieutenant Commander Wubbenhorst*



*Special Agent Hodges*

There hasn't always been a good relationship between the two agencies. In the spring of 1979, tensions between the military community and local groups rose to the boiling point. Beatings of sailors and lunch money robberies of dependent military children received significant media attention and resulted in increased polarization among the military and local communities. Even a local shopping center was placed off limits to all military personnel after dark.

When it looked as if a stalemate would develop between the two communities, many people began to wonder why the problems had been allowed to continue for so long, and more importantly, why existing lines of communication were not working, particularly in the area of law enforcement. When a sailor was the victim of a violent crime, quite often he would file a report and receive no further information. Inquiries to the police or the prosecutor's office by the victim or his command would prove very frustrating. Conversely, police and prosecutors were frustrated because the operating schedules of ships and aviation units in the Pacific made communicating with military victims and witnesses difficult. Units would be deployed when an investigator or prosecutor needed to speak with a victim, but there was no effective way of ascertaining the availability of the person.

Realizing that effective law enforcement requires close cooperation with local authorities, a Navy attorney stationed in Hawaii set about the task of building a legal liaison between the Navy and Honolulu law enforcement agencies.

The Navy attorney would head the legal liaison program and hold a special appointment as an assistant U.S. attorney for the District of Hawaii. This would enable him to work closely with the U.S. attorney, insuring that there was a good working relationship between the Navy and Federal and local law enforcement authorities. Moreover, Navy commanders interested in the status of pending cases affecting members of their command would have a readily accessible attorney who could provide accurate information. This is often crucial, since commanding officers must make personnel decisions, evaluate security clearances, and even answer congressional letters of interest. The liaison attorney, who worked closely with both Federal and local agencies, was considered a key link in the program.

When the Navy representatives approached the Honolulu Police Department with the liaison concept, the response was immediately enthusiastic. After several conferences, a two-pronged program—education and case liaison—was devised. A sergeant assigned to the community relations division of the Honolulu Police was detailed to work with the Navy liaison officer and assist in all police-related matters. Similarly, the city prosecutor named one of his deputy prosecuting attorneys—a former military attorney—as his contact with the Navy. These two individuals work on a person-to-person basis with their Navy counterparts.

### **Education Phase**

The education phase of the legal liaison program involves three separate audiences: Active duty members of the Navy and the Marine Corps, families of active duty members, and officers of the Honolulu Police Department. Active duty and family groups are taught by the Navy attorney, Naval Investigative Service Agent, Honolulu Police Department community relations sergeant, and a sergeant from the patrol division.



Using the charts in figures 1 and 2, the criminal justice system, both Federally and locally, is explained, with a focus on the Navy-Honolulu Police liaison program. Other topics include the organization and responsibilities of the Honolulu Police, methods of crime prevention, the importance of filing an immediate crime report with the Honolulu Police, and local customs and problems. The latter is particularly important, for nowhere else in the country are there so many races and cultures living together in such a small geographic area. While popularly regarded as a "melting pot," there is some friction present in Hawaii, and the liaison presentation is an attempt to explain these problems.

One myth that Honolulu officers wish to dispel is that of the "local boy" cop looking out for the "local boy" suspect, to the disadvantage of a victimized Navy sailor. (Though the term "local boy" can refer to a caucasian born and raised in Hawaii, its popular use is confined to a person of oriental or polynesian ancestry reared in Hawaii.) Because of this, many military people believe that a person from the continental United States is given less equitable treatment than a person, including a suspect, who is a "local boy." The police emphasize to the military groups that they have fewer problems with the military than with some members of the local community. To the beat officer, these problem citizens represent a greater threat to the community, and there is certainly no preference shown to them over a victimized sailor.

Figure 1

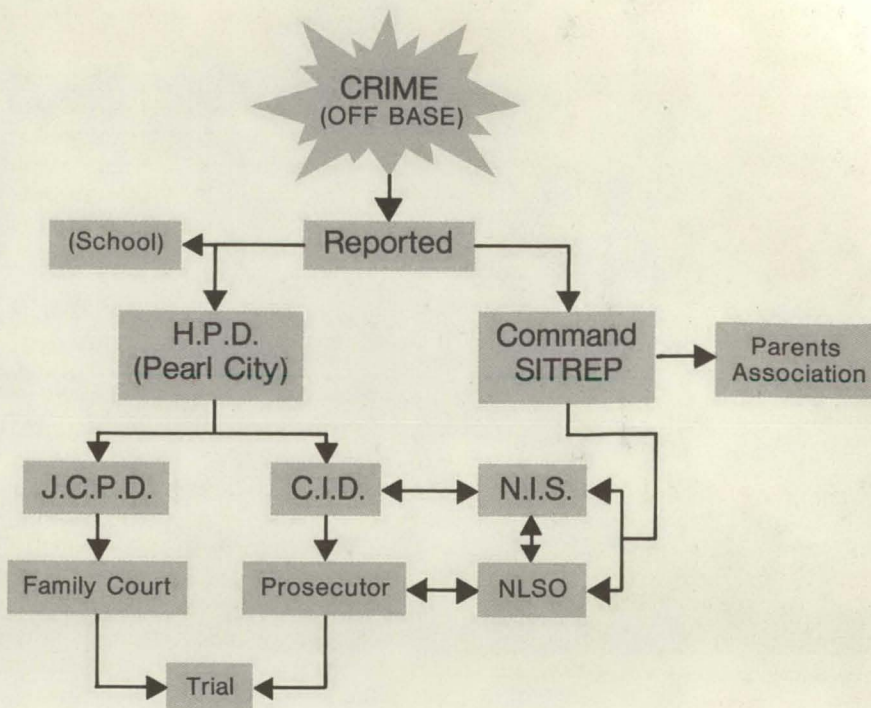
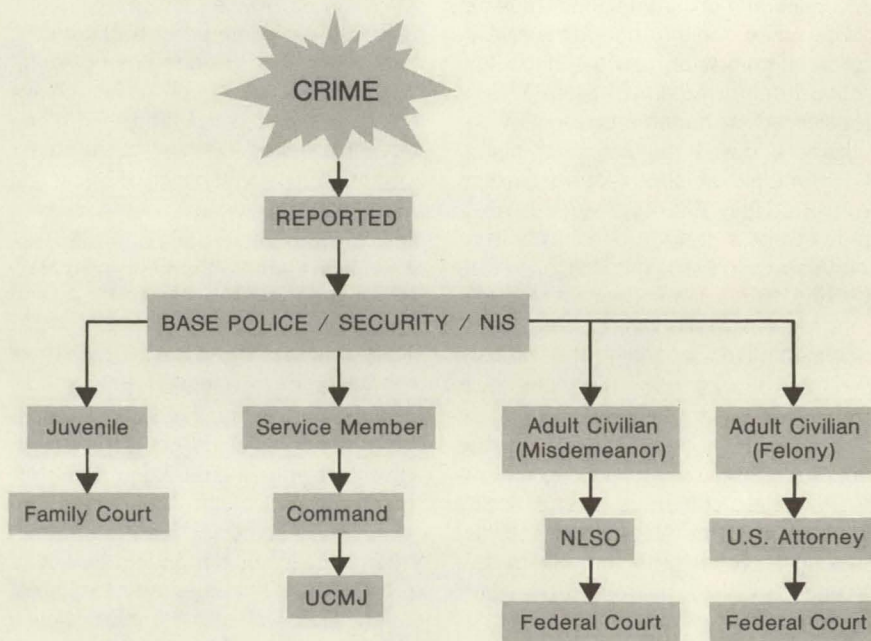


Figure 2







*Local and Naval authorities confer on a case.*

The officers also advise military audiences of procedures used to register misconduct complaints against police officers, either through a civilian police commission or the Honolulu Police internal affairs division. This is considered a constructive outlet for citizens who wish to voice a complaint.

Honolulu officers receive classes from the Navy attorney/Naval Investigative Service team. Speaking both to recruits at the Honolulu Police Academy and to sergeants and senior officers receiving inservice training, naval representatives acquaint the officers with the Navy's role and interest in effective law enforcement. A new facet of the program is a field trip by the Honolulu Police recruit class to a nearby naval air station to spend a day learning what the Navy does and discussing Navy life with the sailors. Exposing police officers to Navy personnel betters the relationship between the organizations.

During the 12-month period ending June 30, 1980, the liaison presentation was made to over 3,000 persons. The primary thrust of the education phase is to open lines of communication between the Navy community and police and to reaffirm that all are working toward the same goal. With frequently spirited questions and answer sessions, the points of view of both Navy personnel and police officers are exchanged, analyzed, and debated.

#### **Case Liaison Phase**

While the education phase may lessen tensions and increase participation in the criminal justice system, case liaison provides a direct opportunity for the Navy, Honolulu Police, and the prosecutor's office to work together. When a sailor or dependent is victimized off base, a factual report is immediately filed with the Honolulu Police and the sailor advises his unit of what occurred. The unit then prepares an electronic teletype message—a "situa-

tion report"—for the Commander in Chief, U.S. Pacific Fleets, with a copy also being provided to the Naval Legal Service Office, Pearl Harbor. There, the legal liaison attorney and the Naval Investigative Service agent will monitor the case as it progresses through the Honolulu Police and prosecuting attorney channels. Often, monitoring involves little more than keeping the command posted on the progress of the case.

Frequently, however, a detective or deputy prosecuting attorney will request assistance in making available a witness who is on-island, out-at-sea, or transferred to the mainland. The legal liaison now provides a dependable person who can quickly obtain needed information from the witness on location.

Prior to the legal liaison program, constraints on the city budget sometimes meant that no matter how meritorious the case, there was not enough money to bring witnesses from the east coast back to Hawaii. Because of this problem, the cases were sometimes dismissed, leaving the assailants





*The criminal justice system, both Federally and locally, is explained, with a focus on the Navy-Honolulu Police liaison program.*

free to prey again. Over the last several months, however, a number of victims have, at Navy expense, been flown back to Hawaii to testify in State criminal trials.

Alternatively, in cases where operational commitments of ships at sea have precluded the availability of sailors on a certain court date, close liaison with the Navy attorney has enabled prosecutors to obtain successfully continuances until the sailors are available to testify. The convictions obtained more than justify the trouble and expense in securing the attendance of important witnesses.

### **Making the System Work**

The result of the Navy legal liaison program in Hawaii is person-to-person contact between large and divergent organizations. This contact builds understanding and rapport and serves as a working reminder that dedicated people can come together to make the criminal justice system work. **FBI**



*Interaction among local and Naval law enforcement personnel is an important part of the program.*



# LAW ENFORCEMENT ACCREDITATION

## Meeting Tomorrow's Challenges Today

By KENNETH E. JOSEPH

*Executive Assistant Director  
Federal Bureau of Investigation  
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Last year, the Commission on Accreditation for Law Enforcement Agencies was formed to establish standards and develop an accreditation process that will give local law enforcement agencies an opportunity to demonstrate *voluntarily* that they meet professional criteria.

Accreditation of law enforcement agencies is not a new idea. Law enforcement executives have been involved in the development and implementation of standards within their individual agencies for many years. Every public and Presidential commission, as well as every published report of findings of those commissions, has cited the need for some type of systematic improvement in the delivery of law enforcement services in our country. But until now, the approach on a national basis somehow has not been right.

Accreditation, by definition, is attaining professional stature. It means that the practices of an agency are within defined terms of what services an agency should deliver to the public. This program is committed to improving the atmosphere in which law enforcement is conducted and to enhancing the professional stature of all law enforcement practitioners.

Efforts of other professions have been studied in developing the accreditation model, among them are the hospital and college accreditation programs and the corrections accreditation program. The best features of these models have been incorporated into the law enforcement accreditation effort. However, one common thread runs through each model examined—the need to have practitioners in on the process from the start. The program needs the greatest amount of field participation in the drafting from the beginning.

### Impact on Law Enforcement

To understand what this program means to each practitioner and what impact it will have on law enforcement, an overview of the program and how it will unfold in the coming months is in order. The program managers represent four associations: The International Association of Chiefs of Police (IACP), The National Organization of Black Law Enforcement Executives (NOBLE), The National Sheriffs' Association (NSA), and The Police Executive Research Forum (PERF). These associations are involved in the process of developing draft standards for the full range of administrative and operational procedures conducted by an agency. Each is concentrating on specific topics, conducting research, and formulating standards, as well as maintaining a support role in all other areas under staff consideration.



Standards research is based on field knowledge and field participation. The standards will measure accurately what services all law enforcement agencies in this country provide to the public, ranging from the role of the agency, administration and operations, to technical services.

#### **Past and Present Considerations**

There have been previous efforts in standards development, such as reports from the National Advisory Commission on Criminal Justice Standards and Goals and the American Bar Association/IACP standards on the urban police function, which suggested adoption of standards by law enforcement agencies. However, the only endorsements for the ideas of compliance with standards on a large-scale basis came from State law enforcement planning agencies and some nonlaw enforcement groups, such as the U.S. Conference of Mayors. Most law enforcement agencies did not choose to adopt these standards for several reasons:

- 1) There were no means for implementing the standards;
- 2) No method was outlined for determining compliance; and
- 3) As the impetus for standards did not come primarily from within law enforcement, there was little grass roots support for their use.

This current effort in standards development is different from the very beginning, which is not to say that many of those standards developed earlier aren't good ones. These standards envision an eventual accreditation process where agencies will actually apply for and be awarded that status. This requires a new kind of standards, written for measurability with accreditation in mind. The standards language, therefore, will be different. Each standard can be answered "yes" or "no." Each will contain an individual thought and each will be supported by an explanatory commentary.

#### **Organization**

Approval of the standards is the responsibility of a 21-member commission, who were all appointed and unanimously confirmed by the executive directors and presidents of the four participating organizations. There are 11 law enforcement professionals and 10 representatives from public and private sectors across the country, including a judge, a professor, a State representative, a county commissioner representative, a city manager, city council members, and a governor. Of the 11 law enforcement representatives on the commission, 4 serve as rotating chairmen—Chief of Police Glen King, Dallas, Tex.; Dr. Lee Brown, Public Safety Commissioner, Atlanta, Ga.; Chief of Police Thomas Hastings, Rochester, N.Y.; and Sheriff Dick Wille, West Palm Beach, Fla.

The commission, in conjunction with the staff, has developed working relationships with others involved in the delivery of law enforcement services. These range from individual agencies to criminal justice education departments of colleges and universities to associations such as the National Association of State Directors of Law Enforcement Training (NASDLET) and the International Association of College and University Security Directors.

The staff managers of each participating organization are: William T. Dean, (IACP); William Matthews, (NOBLE); Tom Finn, (NSA); and Roy McLaren, (PERF). Donald J. Anderson of the Law Enforcement Assistance Administration (LEAA) serves as the project monitor. The commission also employs a full-time public information organization whose representative is Karen A. Donnelly.

An average of three commission meetings a year is planned for the duration of the program, and the meetings will be held in different areas of the country. The staff of the four organizations involved in the program meet at least weekly to coordinate staff research, develop standards, and supervise the program.





Executive Assistant Director Joseph

### What Will Accreditation Mean?

There are several advantages of an accreditation program. First, it is an effort by law enforcement to define and determine a set of goals and objectives within its own profession. It will increase the cooperation between the law enforcement agency and other elements in the criminal justice system. After all, law enforcement officers are the first link in the criminal justice process. But without the solid and prepared support and cooperation of the rest of the criminal justice system—one that can handle an increase in caseload—the improvement process may stop right there.

The enhanced status afforded with accreditation should allow the agency to be more effective in its recruiting and provide an accredited agency a solid platform for building and maintaining public confidence.

Other benefits of this effort should result in higher morale within an agency. Standards should have a positive effect on the attitude an officer brings to the job, which in turn affects the timely and responsive performance of individual duties. It institutionalizes change and encourages change from within a positive atmosphere. It allows a yardstick for measuring the department—a yardstick created and promulgated by those who know law enforcement the best—practitioners like yourselves.

### Contributions From The Field

There are many ways the commission is asking for practitioner support. One of the methods, which has been adopted and modified by the staff, is our Manual for Drafting Standards or the Practitioners Package. The package was developed originally to allow members on committees of the associations to review staff work on standards and give their comments before presenting them to the commission. It was considered so indispensable to the development of practical standards that the full staff of the commission developed a sister package for use with law enforcement practitioners as a whole.

The response, to date, has been very positive. Law enforcement executives and others involved in the criminal justice field not only are very interested in the program but have indicated a keen interest in contributing to the program on a continuing basis. The program does not intend to develop standards in a vacuum; support and guidance of the law enforcement profession is needed through all phases.

### Current Status of Program

The first phase (a 3-month period) is complete. The commission was appointed and a set of criteria for standards developed. The criteria will assure that the standards will be practical, clear, relevant, and comprehensive. Articles of incorporation and bylaws for the commission were developed and approved. An outline of the *topical* areas, or areas the standards will cover, was developed as part of the first phase.

The second phase began in January 1980. Work is concentrated on the design of a standards format, the completion of the listing of topical areas, research on standards, drafting of actual standards for submission to the commission, and developing field test technology.

The third phase will pick up in January 1981, and continue for a 15-month period. This period will cover the actual field testing process, modification of standards as necessary, and the development of the accreditation process. Subsequently, the commission will become an independent body, which should be accomplished within a 2-year period beginning in mid-1982.



Using the Practitioners Package and other information elements, the staff currently is drafting standards language. The first set of staff-developed standards has just been forwarded to the commission. The staff will be meeting in October with the commission to review the standards submitted for their consideration.

Field testing will uncover some areas which will require more research and thought than had been originally anticipated. It is expected that modifications will be required for some standards. Field testing will be followed by the final promulgation of standards for approval by the commission and the beginning of the accreditation process for agencies.

### **The Accreditation Process**

The staff expects the process to be initiated when an agency applies for accreditation and is sent a self-assessment format to complete. The commission will review that assessment and may recommend tentative accreditation status.

Next, the commission will send a small evaluation team to examine the agency's compliance with each of the standards. If the evaluation team confirms the agency's compliance with the standards, accreditation status will be awarded by the commission.

There are regional differences, size differences, and functional differences within classes of law enforcement agencies. The commission will take these factors into consideration during the standards development phase, as well as during the accreditation phase.

The program must be realistic. It should blend the best of differing parts of the country and share what has worked with that which hasn't in a uniform, systematic approach. The entire success of the program will be dependent on those standards.

If standards are proposed that are barely minimum, justice would not be done to the accreditation process. A balance needs to be struck between the ideal and the real, so that achieving accreditation will result in improvement in services by most of the agencies that complete the process.

This program is an opportunity. The commission is reviewing the work of the staff who have sifted through masses of research, field drafted standards and comments, and sample programs and field testing. It is their job to make sure those standards are representative of what is happening in the law enforcement field and to provide an opportunity for individual officers, as well as departments, to increase their professionalism.

Those standards should not be "pie-in-the-sky." They should be realistic, measurable, and concrete. The program will not tell agencies "how to"; it will point out "what to" and leave "how to" to individual law enforcement executives.

Some groups and some individuals may view this accreditation effort as another attempt at Federal intervention in local law enforcement. This is not true. It may be funded by a grant from LEAA, but standards are being drafted by law enforcement practitioners, not bureaucrats, with full involvement from the field, police managers around the country, and approved by a distinguished commission with broad representation from the State and local levels.

The accreditation process will work. The law enforcement community is one of the most cooperative and cohesive in this country. For years, departments have contributed to the FBI's Uniform Crime Reporting Program, even though those departments may be called on the carpet for what the statistics show. Law enforcement is a group motivated by the genuine desire to help people and to cope with some of the symptoms of society's ills.

The program has just started down the road. At the next commission meeting the staff will have prepared the first standards. The field-drafted standards are beginning to come in, along with questions and comments.

The commission is tying into a network of experts, ranging from officials in cities that have received Federal Government monies through LEAA to those individuals in departments that have developed special programs on their own.

This is perhaps a landmark effort for law enforcement. This program may be one of the most significant federally funded efforts directed toward providing assistance to local law enforcement agencies.

The overall goal is the improvement of law enforcement services in this country. With budget cuts and inflation, law enforcement faces many problems today. Some of those problems can be solved by looking at the lessons of the past; others need a look to the future—a future characterized by changing technology and other advances.

This process of accreditation will assure that our standards, once developed, will continue to be a dynamic, evolving set of tools to improve the delivery of law enforcement services.

**FBI**



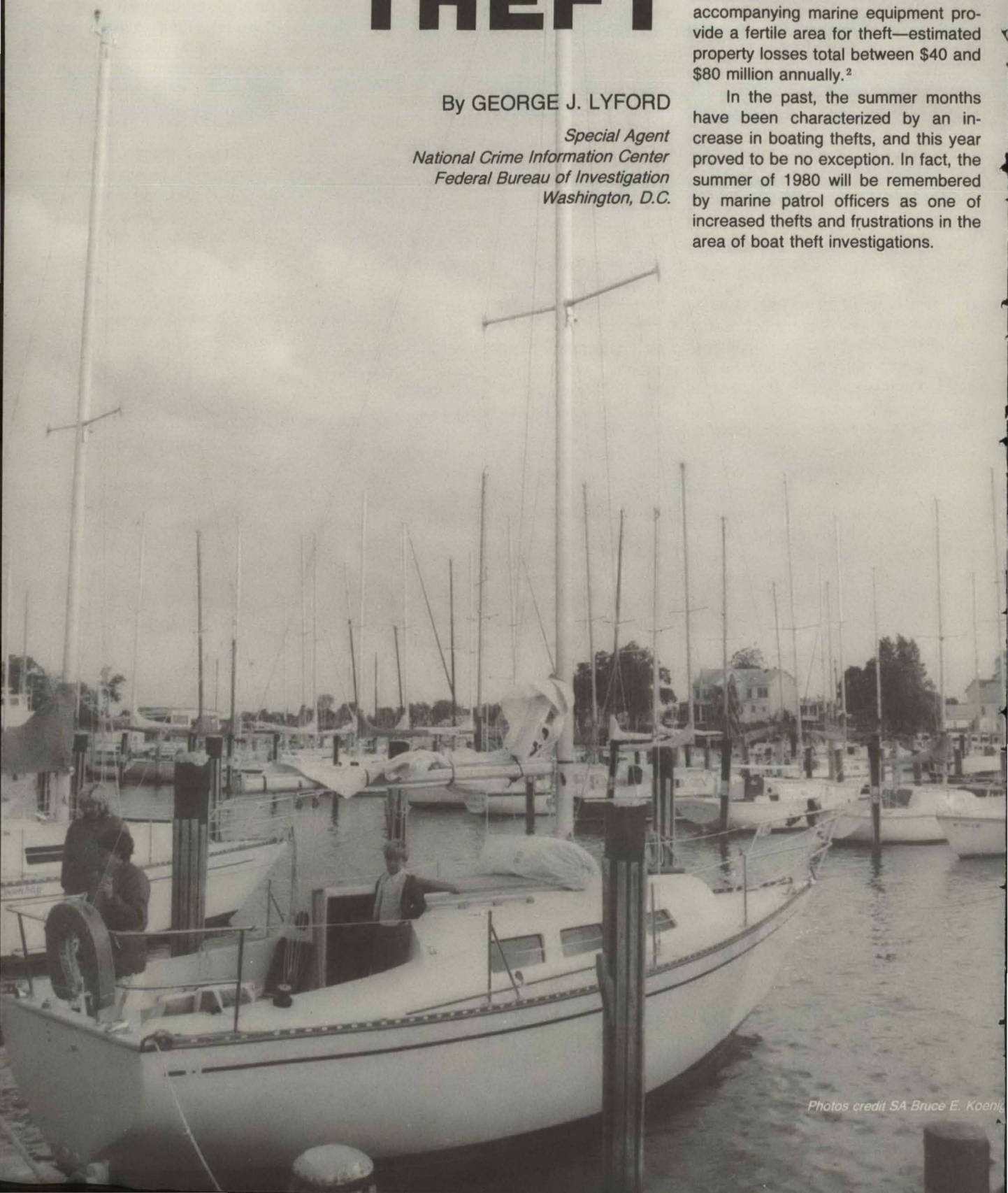
# BOAT THEFT

By GEORGE J. LYFORD

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In 1979, the American boating community spent approximately \$6 billion on the purchase and maintenance of the 8.3 million commercial and pleasure crafts presently registered in the United States.<sup>1</sup> These boats and accompanying marine equipment provide a fertile area for theft—estimated property losses total between \$40 and \$80 million annually.<sup>2</sup>

In the past, the summer months have been characterized by an increase in boating thefts, and this year proved to be no exception. In fact, the summer of 1980 will be remembered by marine patrol officers as one of increased thefts and frustrations in the area of boat theft investigations.



*Photos credit SA Bruce E. Koenig*



To combat boat thieves effectively, it is essential that patrol officers are properly trained and the boating community cooperates with law enforcement. Traditionally, this is the time of the year when northern marine patrol units are being deactivated and officers are returning to their regular patrol duties. However, the coming winter months should be used by law enforcement as a period of extensive training for patrol officers and as a time for community awareness programs for boat owners.

### Marine Patrol Training

The law enforcement community should insure that general patrol officers know how to check the documentation and identification number of any boat encountered during the course of normal patrol. The Federal Boat Safety Act of 1971 mandates a hull identification number (HIN) on all boats built since January 1, 1973. Although the HIN has been in effect for several years, it is still virtually unknown to many law enforcement officers.

A typical HIN will consist of 12 characters. The first three characters are the manufacturer's identification code, which is assigned by the Commandant, U.S. Coast Guard. Characters 4 through 8 are assigned by the manufacturers and must be letters of the English alphabet, Arabic numerals, or both, except the letters I, O, and Q. Characters 9 through 12 indicate the date of certification. These characters must be either Arabic numerals, with characters 9 and 10 indicating the month and characters 11 and 12 indicating the last two numerals of the year, or a combination of Arabic numerals and letters of the English alphabet, with character 9 indicated as "M," characters 10 and 11 the two numerals of the model year, and character 12 the month of the model year. The first month of the model year, August, must be designated by the letter "A," the second month, September, by the letter "B," and so on until the last month of the model year, July.

A manufacturer may display additional characters after the 12 required characters, if they are separated by a hyphen. (See fig. 1.)

Knowledge of the HIN structure is invaluable when an officer is checking a boat's registration, which is required in 45 States. In many cases, it will, at least, provide patrol officers with a starting ground if further investigation is warranted.

Another tool available to law enforcement officers in the investigation of marine thefts is the National Crime Information Center (NCIC). The NCIC boat file became operational in 1969, with an initial listing of 2,470 stolen boats. Presently, 21,000 stolen crafts are entered in NCIC. This file was established to assist law enforcement in combating the ever-increasing stolen watercraft problem. For NCIC purposes, a boat is defined as a vessel for transport by water, constructed to provide buoyancy by excluding water, and shaped to give stability and permit propulsion. This definition includes every type of watercraft, from commercial ships to jet skis and rafts.







Special Agent Lyford

Figure 1

ABC	12345	0774	—	12C
Coast Guard Assigned Code	Hull Serial Number	Certifica- tion Date		Optional Additional

Boats are entered into NCIC if they have an affixed registration or document number. However, a permanently attached serial number may be entered into the NCIC boat file, if a theft report has been made. The one exception to this is a boat stolen prior to registration or documentation, even if a hull serial number is permanently secured to the boat. An authorized agency may enter a loaned, rented, or leased boat that has not been returned, if an official police theft report is made or a filed complaint results in the issuance of a warrant.

Added to the frustrations of boat theft investigation is the fact that there are no accurate, up-to-date statistics on the number of boats stolen or the value of stolen marine equipment. There is also the problem of poor coordination of information and a general lack of identifying data on boats. These facts, when coupled with the confusion of boat owners over the correct agency to report the theft, make boat theft investigations a frustrating experience.

### Community Awareness Programs

Community awareness programs can be used as another means to combat the rapidly increasing number of boat and marine equipment thefts. During winter months, police departments can teach simple anticrime techniques to members of the boating community. Two areas which should be stressed are property records/identification and physical security.

Boat owners should be instructed to:

- 1) Maintain an inventory of all marine property, listing manufacturer, model, and serial number of each item, and

- 2) Permanently mark all items with a unique identifier (major items should be marked in several places).

With regard to physical security, it is suggested that boat owners:

- 1) Invest in high-quality padlocks for all doors. Sliding windows and portals should have solid, inside bolts and all hatches should have inside hasps or padlocks;

- 2) Use hardened steel chains or steel cable for mooring or dock lines instead of rope;

- 3) Use locking devices that immobilize outboard motors or remove vital parts of the motor, i.e., spark plugs, rotor, or prop;

- 4) Insure adequate lighting on docks, piers, walkways, parking areas, and around buildings and offices;

- 5) Install alarm systems which use either flashing lights, horns, or sirens;

- 6) Remove all loose gear on boats located on trailers and place frame on blocks. Dismantle the trailer coupler;

- 7) Aid police in investigations by promptly reporting crimes and suspicious activity.

The magnitude of the boating and marine theft problem is ample reason to work on police training and community awareness projects in the coming months. Only through the dedication and hard work of law enforcement and the cooperation of the boating community can the profit be lowered and the risk raised for marine thieves. **FBI**

### Footnotes

<sup>1</sup> "Boat and Marine Equipment Theft," summary report of a 1969 national workshop, University of Rhode Island, Marine Advisory Service, 1980.

<sup>2</sup> Ibid.



# The Michigan State Police Diversion Program

By SGT. JACK R. SHEPHERD

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Police juvenile diversion programs are becoming increasingly popular throughout the country; however, one of the major criticisms of these programs is that they actually "widen the net" by bringing more youths into contact with the juvenile justice system. A large portion of this problem can be avoided if diversion programs are structured around written guidelines and specific criteria designed to assist departmental personnel in the decisionmaking process.

The Michigan State Police diversion program has been in existence since 1975. The success of this program lies in the uniform application of written guidelines at 64 State police posts located throughout Michigan. Another key ingredient of the program is the acceptance and support of the program by departmental administrators and field personnel.

Michigan State Police troopers apprehend over 7,000 youths each year; however, as a result of this program, over 2,500 youths are diverted annually from the juvenile justice system.

## **Investigating Officer's Responsibilities**

The most important component of the Michigan State Police diversion program is the trooper in the field. This person has total responsibility for determining how a juvenile offender will be handled once an apprehension has been made. Even though an investigating officer is never required to divert a youth who has been apprehended, he must adhere to a set of screening guidelines that assist in determining if a youth is eligible to be diverted.

The screening guidelines are based on the severity of the crime committed. If a youth has been involved in a felony offense against a person (armed robbery, rape, etc.) or any repeat felony offense against property, such as a breaking and entering, he cannot be diverted. All misdemeanors and so-called "status offenses" (runaway, truancy) may be diverted at the investigating officer's discretion. If the officer decides that juvenile court would be the best manner in which to handle the youth, he proceeds through the petitioning process.

If, on the other hand, the investigating officer decides that the youth would benefit more through diversion, the case must be referred to the post's community services office for examination.





*Sergeant Shepherd*



*Colonel Gerald Hough*

## **Responsibilities of the Post Community Services Officer**

Each of the 64 State police posts in Michigan have a trooper assigned to the role of post community services officer (P.C.S.O.). This trooper has the combined responsibility for all juvenile, crime prevention, and public relations activities at the post. The major function of the P.C.S.O. is to develop and maintain all aspects of the department's diversion program. This includes monitoring all juvenile complaints and maintaining juvenile files at the post.

The P.C.S.O. is also charged with developing a liaison with community-based resources that can be used as referral sources for troubled youths and their families. Agencies and resources are limited only to the degree of their availability and the extent to which an acceptable level of cooperation can be attained between the post and the referral source.

Whenever a youth is referred to the P.C.S.O., the officer's responsibility is to apply a set of written criteria that will ultimately determine the youth's eligibility as a diversion candidate. The five diversion criteria that are applied include:

- 1) Nature of the offense
  - a. relative seriousness of the crime
  - b. degree of criminal sophistication
  - c. desire of the victim/complainant to prosecute
- 2) Age of the offender
  - a. intellectual and emotional maturity
- 3) Nature of the problem that led to the offense
  - a. evidence of any obvious emotional, psychological, physical, or educational problem
- 4) A history of contacts or use of physical violence
  - a. contact with neighboring police agencies  
(Is the youth a recidivist?)

5) Character of the offender and history of behavior in school, family, and peer group settings

- a. contact with school officials
- b. peer group relationships
- c. family characteristics, parental harmony, and sibling relationships

Once the diversion criteria have been applied, the P.C.S.O. is in a better position to determine whether a youth will be offered the alternative of diversion. If he finds anything that precludes the use of diversion, a petition is then sought. Assuming that the youth appears to be a good candidate for diversion, the P.C.S.O. would begin the actual diversion procedures.

## **Diversion Procedures**

The P.C.S.O. is required by departmental policy to schedule a conference with the parents (or guardian) and the youth to discuss possible options. This conference, which is normally conducted at the post, is totally voluntary but does require the complete cooperation of both the parents and the youth. Parents and youths are advised that if they agree to diversion, no petition will be requested. It should also be noted that the diversion conference is held only after the investigation is completed, and no promises of diversion are made during the investigative phase.

If the conference results in an agreement, the P.C.S.O. and the family have two options. First, the youth may be released to his parents without any further involvement. This disposition is perhaps the purest form of diversion in that it removes the youth from the "system" at an early point. It is also the most popular form of diversion; P.C.S.O.'s use this option approximately 78 percent of the time. The second



option involves referral to an outside agency. This course of action is used approximately 22 percent of the time and includes the use of a variety of agencies.

If it is decided that an outside agency might be able to assist a family, a "diversion referral agreement" is completed. This form is designed primarily for referral and feedback and gives the referral agency basic information about the youth. It also gives the agency an opportunity to provide the post with feedback concerning the referral. It should be stressed that the diversion referral agreement is not a contract and does not bind anyone to a specific course of action. It is designed to foster better communication between the family, the referral agency, and the post.

What happens when a youth or his family decide against diversion? The P.C.S.O. may request a petition; however, officers are encouraged not to send youths to court merely out of spite. If the P.C.S.O. sincerely believes that the youth would benefit from the court experience, a petition may be sought. Another situation that might send a family to court would occur if the parents demanded their "day in court" to resolve the problem. In reality, though, families almost never turn their backs on the program and overwhelmingly welcome the positive attention to their problem.

### **Referral Agencies**

Each State police post uses a variety of referral agencies depending on what is available. Common sources of referral include: Youth services bureaus, school counselors, Catholic family services, and area recreation programs.

Of particular importance is the fact that every post has developed a liaison with a minimum number of outside agencies for referrals. This is significant, as the Michigan State Police have posts in urban as well as rural regions of Michigan's upper and lower peninsulas.

Costs for operating the diversion program are kept low through the use of existing outside agencies. While P.C.S.O.'s often hold lengthy interviews with families, they do not counsel in the true sense of the word. Instead, the P.C.S.O., acting with the post commander (lieutenant), serves as a catalyst in the community in the development of youth service bureaus. Post commanders also attempt to secure grants for diversion services in their community. P.C.S.O.'s also serve on advisory boards for runaway shelters, youth service bureaus, and similar youth agencies in their areas.

### **District Coordinators**

The Michigan State Police is organized into eight districts. Eight district coordinators, all lieutenants, have responsibility for the department's juvenile, crime prevention, and public relations programs. The district coordinators play a major role in the area of quality control and program evaluation of the department's diversion program. District coordinators review all juvenile complaint reports for compliance with departmental policy. They also assist both the post commander and the P.C.S.O. with maintaining of the post's diversion program. All facets of the program are routinely evaluated by the district coordinator who makes recommendations for improvements when appropriate.

### **Summary**

The success of any program rests with its organization and the people who are operating it. The Michigan State Police diversion program relies on fully developed written guidelines that give both investigating officers and departmental specialists specific roles. Both ingredients are important in maintaining statewide uniformity and program control.

This program emphasizes the use of available community resources and the abilities of individual post community services officers. While the program does have well-developed written guidelines, it also allows for total discretion on the part of the investigating officer. All of these factors combined have contributed to the overall growth and acceptance of the program, allowing the Michigan State Police to successfully divert approximately 40 percent of all the youths that are apprehended annually by the department.

**FBI**



# EVALUATING RECRUIT PERFORMANCES THROUGH ROLEPLAYING

By SGT. TIMOTHY N. OETTMEIER

*Police Department  
Houston, Tex.*

Throughout the tenure of most recruit training programs, police trainees (cadets) are held responsible for a vast amount of information; the value of this information, however, does not really begin to come into focus until it is applied to a "realistic situation." The Houston Police Academy's recruit training crime scene program is an attempt to involve the cadets in "realistic situations" where they can apply the knowledge gained from previous classroom lectures, visual aids, and demonstrations.

Instead of conducting a war game type of "cops and robbers," the Houston crime scene program consists of variations of two types of crime—a robbery scene and a burglary scene. These scenes were selected due to their versatility—the cadets perform a large number of tasks veteran officers often handle and are conducted in the evening hours, using police cars, radios, and weapons. Actual business locations are used for the enactment of the training exercises. Complainants, suspects, and witnesses are, in reality, academy staff members and field training officers (FTO's).



*The cadets attempt to position a struggling robbery suspect for a search prior to placing him in the patrol car.*



*The cadets must acknowledge their call and locate the business address before driving to the scene.*



The crime scene program is subdivided into a demonstration night and two separate crime scene sets. The demonstration night consists of having the cadets report to a crime scene location to observe the enactment of an actual scene by the FTO's.

Initially, the FTO's conduct the first scene in "slow motion," stopping frequently to explain to the cadets why they reacted in a particular fashion. The cadets are allowed to interact with the FTO's as the scene progresses. Eventually, the cadets observe this scene and others occurring in a normal manner, free of any interruptions. On conclusion of the demonstration exercises, the FTO's answer any additional questions the cadets have.

The remainder of the program consists of two separate sets of crime scenes. Set #1 consists of scenes with a low level of difficulty designed to be conducted without any physical confrontations between the cadets and suspects. The difficulty level rises in Set #2—the scenes now consistently reflect any problems encountered during daily patrol procedures. (Hostage situations, ambush tactics, and barricaded suspect situations are avoided as these require a special type of train-

ing cadets do not normally receive.) If, at the conclusion of these two sets, a cadet has failed any of the exercises, he is given the opportunity to complete another exercise similar in nature to the one failed.

What sets the Houston program apart from other programs of this type is the realism of the various crime scene exercises and the ability of the trainers to evaluate cadet performances.

### The Preparation

Throughout the training program, the academy staff prepares the cadets to function as capable probationary police officers. The majority of the preparation comes from classroom lectures, visual aids, and various demonstrations. While it is absolutely necessary to subject the cadets to several weeks of academic instruction, complete preparation to become a successful probationary police officer involves going beyond classroom activities. Emphasis, therefore, is placed on the "practical application" of training in a realistic setting. As a consequence, mid-way through the training program, a gradual shift occurs—the cadets become more involved in practical exercises. It is through participation in these exercises that the cadets are more prepared to cope with the rigors of the crime scenes.

The cadets must complete, for example, a map reading exercise specifically designed to force them to use a city map to locate and drive to various addresses and buildings throughout the city. Prior to participating in the crime scene program, the cadets must also complete an "officer safety and survival exercise" designed to have the cadets search various mock scenes. The basic objective is to have the cadets correctly apply various searching techniques and procedures learned in the classroom. There are no physical confrontations. If suspects are found, however, the cadets are assessed on how well they conducted the search, not whether they controlled the suspect. Finally, the cadets must complete a minimum 12 hours of basic firearms training prior to their crime

scene participation. This is necessary to insure that each cadet is capable of handling his firearm in a safe and efficient manner. (It should be noted that the cadets receive proficiency firearms training later in the academy program.)

As the cadets complete each of these practical exercises, they begin to envision the scope of a police officer's job. Enthusiasm and excitement are generated and the cadets begin to pay more attention in class.

### The Procedure

When the time arrives for the cadets to complete the crime scene exercises, the previous practical exercises have conditioned them to demonstrate that they are capable of performing those tasks normally performed by veteran police officers. Each cadet, consequently, must successfully complete the following crime scene format:

- 1) The cadets are issued service pistols, police holsters, and blank ammunition. The cadets supply their own notebooks, pens, flashlights, handcuffs (city issue), and city maps;

- 2) The cadets attend a simulated rollcall session conducted by an academy staff member. They are assigned to work in "two-man" units; general announcements are made in addition to a brief pep talk. Upon dismissal, the cadets locate and inspect their cars and sign on duty before receiving their first call;

- 3) The cadets perform as primary and backup unit members before the conclusion of the night's activities. As a primary unit member, the cadets are dispatched to a scene (which they must locate), conduct the appropriate investigation, and when the arrest is made, dispose of the case by receiving authorization to book the suspect from the mock detective, booking the suspect with the mock booking officer, and returning to service to await the next call for which they will serve as a backup unit. While they are awaiting their next call, the cadets work on their offense report; and







*Sergeant Oettmeier*



*B. K. Johnson  
Chief of Police*

4) Once a cadet has completed the role of a member of a backup and primary unit, he is required to complete all the necessary forms and offense reports associated with the case and file charges with the mock district attorney before the training ends.

### **The Scenes**

Impromptu crime scenes usually result in a difficult scene with gunfire and confusion for the cadets. To counteract this, the staff-developed crime scene scenarios are based upon actual experiences of veteran police offi-

**“This approach to recruit training has proven successful in producing persons who are capable of becoming competent police officers.”**

cers. Each scenario briefly sets the scene and describes the basic actions of the FTO's. The FTO's are then allowed to select the scenario they wish to recreate. Upon conclusion of one scene, another scenario is selected and the FTO's again act as complainants and suspects. This procedure results in the cadets being exposed to variations of robbery and burglary crime scenes. This procedure also prevents the cadets from being able to gain an advantage through collaboration about a scene prior to their actual participation in it.

### **The Evaluation Process**

Most recruit training programs attempt to evaluate the abilities of cadets through written tests. The results of the crime scene program, however, can provide additional information to measure a cadet's capabilities. Not only are the cadets' performances observed, evaluated, and documented, but these observations are transformed into numerical scores and compared against other cadets' performances, making it possible to examine how successfully a cadet can perform actual police duties and responsibilities.

With the advent of this program, a determination can be made as to how well a cadet: (1) Complies with departmental policies and procedures, (2) copes with various degrees of stress, (3) applies acceptable physical restraint, (4) conducts appropriate interviews and interrogations, and (5) is capable of writing acceptable offense reports. Special attention is directed toward determining whether a cadet is capable of making the proper decision to use deadly force. The misuse of deadly force results in automatic failure of the crime scene exercise. This emphasizes to the cadet the seriousness of the action he has taken. He must realize that the misuse of deadly force can not be erased.

In order to devise an appropriate measuring instrument for the crime scene program, evaluative criteria were developed. After analyzing the curriculum outlines for all of the relevant courses, consulting with veteran officers and detectives, and examining a number of offense reports, the critical elements were identified. These elements include: (1) Approach to the scene, (2) control of the scene, (3) control of the complainant and/or witnesses, (4) handling of the suspect, (5) procedural knowledge, (6) safety reactions, and (7) cooperation/support with partner. Together, these elements represent the essential characteristics present in most variations of robbery and burglary crime scenes.

Once these critical elements were identified, an appropriate rating scale was devised. The scale adopted was found in the field training and evaluation program (FTOP) originally developed by Michael Roberts, Ph. D. and the San Jose Police Department, San Jose, Calif. In 1977, the Houston Police Department adopted a modified version of Roberts' original FTOP.



## The Rating Scale

After examining the evaluative scale used in the Houston program, it was decided that with suitable modifications, a similar scale would be used for the crime scene program. The use of a five-point Likert scale allowed the staff to identify five different degrees of performances. By specifically identifying these performance levels, the staff was able to enhance the objectivity of the evaluation process.

If one is to attain any degree of success in measuring performance skills during a crime scene exercise, it is necessary to devise an objective set of standardized guidelines. It is through the application of these guidelines that the objectivity of the evaluative process is enhanced even more. A considerable amount of time, therefore, was taken to devise an acceptable set of standardized guidelines for the crime scene program. The guidelines for the robbery and burglary scenes were taken primarily from a combination of interviews with experienced patrol officers, FTO's, and detectives, a review of all standards taught in the relevant courses, and through modifying the performance criteria used within the Houston FTOP.

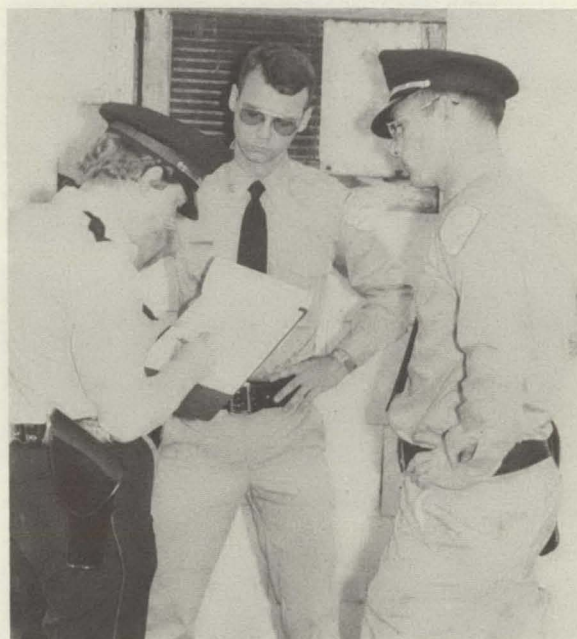
## Preparing the Evaluators

It is essential that all evaluators be trained in the art of evaluating "field performances." This is why the recruit training staff sought the assistance of the FTO's, who have received extensive training in the art of assessing performance skills. Due to this training and the fact that they are relatively unbiased observers, the FTO's have assumed the responsibility of evaluating the primary unit members.

Prior to the participation of FTO's in the crime scene program, additional training and consultation were provided. This was done in order to incorporate the use of the standardized guidelines in the crime scene program, in addition to reviewing and identifying those factors which can lead to biased evaluations. The evaluators were also given adequate time to learn and review the guidelines before being given

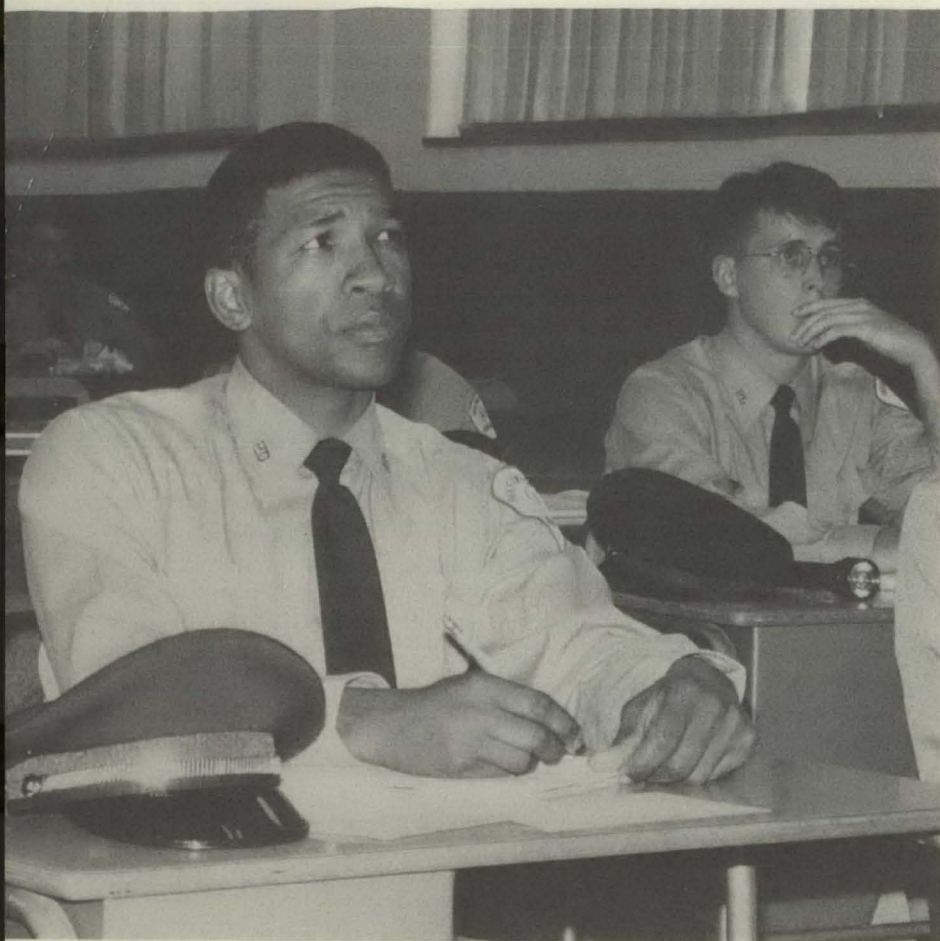


*The cadet must decide instantly if this subject is the "complainant" or "suspect" at the scene of an "armed robbery in progress" call.*



*All crime scene exercises end with a critique of the cadets' performances.*





*The realism of the crime scene program is reflected in the facial expressions of the cadets during their rollcall session.*

the responsibility of evaluating performances displayed in experimental settings.

Failure to follow the basic guidelines would result in the evaluators applying their own personal standards of performance to the evaluation of cadet performances. Should unreliable standards become a part of the evaluation process, objectivity diminishes and subjectivity intensifies. Unrestrained subjectivity must be avoided if the program is to generate valid evaluative information.

As they progress through the crime scene exercise, each primary unit cadet member is evaluated separately by an attending FTO. Upon conclusion of the exercise, the FTO's individually critique the cadet's performance. This one-to-one interaction greatly enhances the learning process. When the critique has ended, the cadets return to service to complete the remainder of the crime scene format.

### **Conclusion**

Additional evaluations are made throughout the program. Cadets, for example, are expected to perform specific tasks when serving as members of a backup unit. These tasks are examined by qualified academy training personnel to determine whether the behavior demonstrated by the cadets is considered acceptable. The cadets are also held responsible for completing the necessary paperwork that is generated from each crime scene exercise. Once the paperwork has been completed, it is evaluated.

This multifaceted evaluative approach of examining paperwork and primary and backup unit performances allows the training staff to determine how well the cadets perform a multitude of tasks and responsibilities. Through implementing the crime scene program, the staff is able to give consideration to as many aspects of a police officer's job as is possible. Each cadet, therefore, must be able to demonstrate that he or she is potentially capable of becoming a *complete* police officer. Every effort is made to replicate those conditions and demands that confront veteran officers.



This realistic approach to training culminates with Houston's mock trial program. The actual mock trial exercise begins 1-2 weeks after the last set of crime scenes has been completed. It is conducted in a courtroom with veteran district attorneys and judges in their normal roles. Each trial is based on offense reports generated by the cadets from the crime scenes.

Through the mock trial, the cadets are able to tie together the components of a police officer's job. The importance of the previous exercises is shown during the trial procedure as the cadets are subjected to a direct examination and the strenuous demands of a thorough cross-examination. The strength of the cadet's case rests upon his ability to withstand the stress of this pressure, in addition to testifying in an accurate manner as to what actually occurred at the scene of their crime.

Furthermore, this forces the cadet to realize the importance of completing an offense report in an accurate manner.

At the culmination of the mock trial, the cadets are able to visualize what the job of a police officer entails. At this point, they have been subjected to the problems of a police officer's job, and in each instance, have been told how well they performed their major responsibilities and tasks.

This approach to recruit training has proven successful in producing persons who are capable of becoming competent probationary police officers. Cadets come away from the crime scene program wanting more involvement, claiming it is an excellent learning experience and generally believing that they are about to engage in a professional that is demanding but also rewarding.

**FBI**

*For further information about the crime scene program, contact Sgt. Timothy N. Oettmeier, Recruit Training Division, Houston Police Department, Houston, Texas 77002, or call 713-222-4747.*

## Stabilizing the Transitory Fingerprint

Problems sometimes occur when photographing latent fingerprints developed through breath condensation. The visibility of the latent fingerprint is of such transitory nature that extended handling and exposure are not feasible.

This problem can be somewhat alleviated by lowering the temperature of the object by using a refrigerator or freezer. The difficulty encountered here is that the item being handled will not stay cool long enough for more than a few photographic exposures. While the results using this method are satisfactory, the method is somewhat awkward.

The introduction of a super coolant, such as dry ice, has been found to be a practical way to lower the temperature of the object to be photographed. Extreme care should be taken not to have any body contact with the coolant as injury may occur.

To stabilize and photograph a transitory fingerprint made visible through breath condensation and the use of a super coolant:

- 1) Place the coolant in a properly insulated container so that surrounding surfaces are not damaged from the extreme cold;
- 2) A working surface is made by placing a ductile material, such as glass or metal, over the container opening;
- 3) Place the object on the ductile cover. The latent fingerprint is made visible through breath condensation;
- 4) To stabilize the latent fingerprint, the surface of the object is covered immediately with a piece of glass or another optically clear material;
- 5) After a few seconds pass, excessive condensation should dissipate, leaving a visible and stabilized fingerprint; and
- 6) Photograph the print with a copy or fingerprint camera. The type of film, lighting, and exposure will vary according to the color of the background and the clarity of the fingerprint.



# RETIREMENT

## Is it the end or the beginning?

By CAPT. THOMAS AMMANN  
and OFFICER PAUL MEYER

*Police Division  
Cincinnati, Ohio*

From recruit classes through various inservice training programs, police agencies place heavy emphasis on developing and maintaining their officers' proficiency in decisionmaking. However, it seems the agency often overlooks training at a very important point in an officer's career—RETIREMENT.

Recently, the Cincinnati Police Division was informed that a revised pension system for the State of Ohio would soon be implemented. This change would allow police officers to retire at age 48 rather than the previous 52 years of age.

A review of the division's personnel records indicated that of 939 sworn officers, 106 would be eligible to retire under the new pension system. Realizing the potentially large number of police officers facing retirement, a brainstorming session was conducted by the academy's staff to formulate a framework for a preretirement seminar.

### Program Formulation

A survey of numerous police agencies revealed few programs for the potential retiree. The private sector was surveyed, and it was discovered that the more-progressive corporations conduct retirement programs on a limited basis.

A comprehensive program needed to be designed to assist the potential retiree. Areas to be covered in the program would include physical and psychological trauma associated with retirement, financial advice, need for wills and/or trusts, and second career orientation, as well as an explanation of the new system's benefits.

As the planning progressed, input was solicited from the Great Oaks Vocational School District of the State of Ohio, which was offering a retirement program. The Cincinnati Police Division's pension system liaison officer was also contacted for his ideas. After considerable discussion, a 12-hour preretirement seminar was formulated. It would be offered on an off-duty status three successive Wednesday nights, 4 hours each night, to any sworn member of the police division contemplating retirement within the next year.

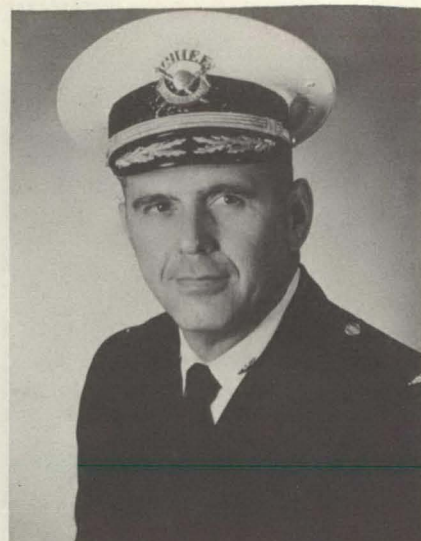




*Captain Ammann*



*Officer Meyer*



*Myron J. Leistler  
Chief of Police*

The police academy distributed questionnaires throughout the division inquiring as to whether personnel were interested in attending a preretirement seminar and whether spouses could accompany them. (This was considered an essential part of the program, since emotional and marital problems can result from retirement.) When the questionnaires were returned and the results tabulated, the figures revealed that out of 106 potential retirees, 37 sworn members and 18 spouses would attend.

As planning for the program progressed, it became apparent that retirement is often associated with a feeling of rejection and diminution of personal worth. One afternoon, while completing the course outline, an officer called the academy concerning a situation unrelated to the retirement seminar. After several minutes, discussion tumbled toward the proposed program. When asked why he decided not to attend the seminar, the officer offered several reasons. It appeared, however, that the real reason was his refusal to accept the fact he was old enough to retire. His parting comment was, "I'm too young to retire."

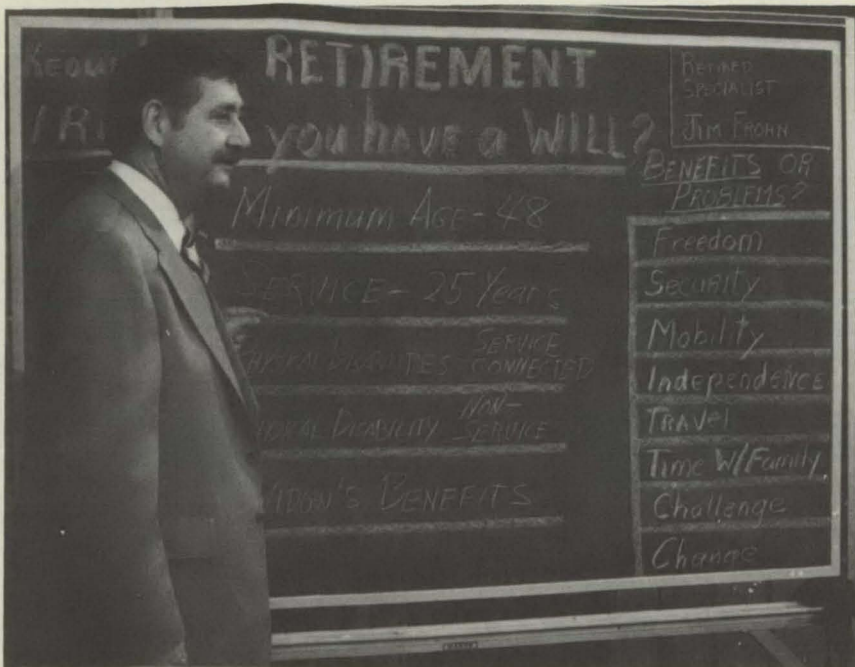
### **Program Content**

The initial 4-hour segment of the seminar addressed the benefits of the recently revised pension system, as well as second career opportunities. The lecturer on pension system benefits was a police specialist who had served on the board of the Police and Firemen's Disability Pension Fund at local and State levels for over 20 years. A retired vice president of a large financial institution then discussed State-funded training programs and counseling available for those seeking a new career. He also discussed his personal adjustment to a second career.

The second evening consisted of the more technical monetary decisions facing the potential retiree—wills, trusts, and investments. An attorney, and long-time instructor at the University of Cincinnati, explained the advantage of having a current will. He also presented an informative session concerning the advantages of trusts. During the final session for the evening, an investment adviser from a local bank discussed the various options available when considering stocks, bonds, and retirement accounts, together with their effect on retirement income.

The final evening was divided into three parts—insurance, mental health, and physical health. The vice president of a local insurance company discussed using insurance to advantage after retirement. The next instructor was a psychiatrist who delved into the mental and emotional health of both the retiree and his spouse during the retirement years. He pointed out that the potential increase in time spent together can be a source of marital friction and stressed the need for outside hobbies and interests to occupy the newly acquired leisure time. The final portion of the evening, presented by a field representative fitness expert of the Cincinnati Recreation Commission, addressed the need for continued physical fitness. Health problems related to the aging process were specifically discussed.





Pension Specialist Jim Frohn explains to the class retirement requirements and options available under the new plan.



Numerous handouts were given to all participants to assist them in making correct decisions.

Midway through the program, several participants urged the police academy to consider asking a retired officer to share his view of retirement. As a result, on the final evening, a former sergeant agreed to an informal exchange on the subject.

As is the case with many of the programs presented by the police academy, the retirement seminar was recorded on 1/2-inch reel-to-reel video tape. The purpose of taping the program was twofold: To assist the academy staff in improving future programs and to provide a makeup class for anyone who may have missed a session. The tapes are available in the academy library for the convenience of the participants.

## Evaluation

Each program presented at the Cincinnati Police Academy is evaluated by the attendees. Everyone is requested to rate the course on a scale of one (lowest) to five (highest). In addition to soliciting a numerical score, the evaluation forms provide space for additional comments and suggestions. This program was rated an overall 4.73.

Comments offered ranged from "an excellent program, very motivating and long overdue," to "all speakers deserve the highest praise for their presentations."

The preretirement seminar illustrated to the potential retiree that even beyond his active service, the police division is genuinely interested in his well-being. It also marked the first time that police officers and their spouses attended training classes together at the academy.

The written evaluations and informal exchanges among the seminar participants, instructors, and academy staff demonstrated the program's value. Consequently, the seminar will be offered on an annual basis in the future.

## Conclusion

Thoughts of career development, particularly in law enforcement, involve consideration of promotions, transfers, details, and assignments. The critiques of this preretirement seminar have fostered the belief that retirement may be the most ignored phase of career development.

The Cincinnati Police Academy strongly urges both public and private sectors to consider expanding the concept of career development to include preparation for retirement. As one of the officer's wives stated in her evaluation, "This (seminar) was a very noble gesture on the part of the Police Division. My husband and I looked at retirement with reservation; now we look at it not as the end of a career, but the start of a new and different lifestyle."

**FBI**



# The Announcement Requirement in Entry of Residential Premises

By W. PHILIP JONES

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

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

## The Rule of Announcement

There are few more sensitive responsibilities of law enforcement than forcibly entering private homes to arrest or search. The rule of announcement, analyzed in this article, prescribes the requirements for such entries:

- Officers must announce identity, authority, and purpose before using force to enter premises
- Forcible entry is authorized only after an occupant's refusal of admittance
- Exceptions to the announcement rule exist in case of danger or other emergency circumstances
- Use of ruse or pretext, without force, generally is not prohibited by the announcement rule

A great number of arrests and searches occur inside residential premises. In such cases the physical act of obtaining entry into the residence is critical. The U.S. Supreme Court has held that "a lawful entry is the indispensable predicate of a reasonable search."<sup>1</sup> No matter how valid the warrant or proper its execution on the inside of a residence, unless there is compliance with the rule of announcement, evidence obtained as a result of that entry will be susceptible to suppression.

This article will examine the requirement of announcement under the Federal statute,<sup>2</sup> which is similar to the announcement statutes adopted by the majority of States.<sup>3</sup> To accomplish this, the development and application of the requirement will be traced from the English common law courts to modern Federal courts.

## Historical Development

Early in the history of the English common law, there developed a precept that is often quoted in this country: "Every man's home is his castle."<sup>4</sup> This maxim arose as a result of English courts' concern with the sheriff's conduct in breaking open the doors of a residence to effect an arrest.<sup>5</sup> The courts feared that allowing the sheriff unrestricted freedom to force entry into a citizen's home would destroy a basic right of free men. William Pitt, Earl of Chatham, elaborated upon the common law rule before Parliament when he said:

"The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter, but the King of England cannot—all his force dares not cross the threshold of the ruined tenement."<sup>6</sup>

Notwithstanding the precept that every man's house is his castle, the English courts were cognizant that a total prohibition of forcible entry into a residence to effectuate an arrest would be unreasonably restrictive. They rec-



**“... absent extraordinary circumstances, announcement is required before entry to arrest, under codification of the common law rule.”**



*Special Agent Jones*

ognized that under certain circumstances, it would be necessary to grant law enforcement officers the authority to break open the doors of a dwelling to gain entry.<sup>7</sup> The courts were faced with the problem of balancing the government's duty to protect the state from criminal activity against the desire to safeguard the citizen's right to privacy within his home. The common law courts attempted to strike this balance by requiring that an officer not only have authority to demand entry but that he state this authority and purpose before forcing entry.<sup>8</sup> This rule was intended to protect the innocent citizen from the fright caused by a sheriff smashing in the door of a dwelling and to prevent damage to property by affording the occupant an opportunity to open his door voluntarily to allow admittance.

Early American courts perceived the value of the common law rule and fashioned their decisions after it.<sup>9</sup> In this century the announcement requirement has been codified in Federal law:

“The officer may break open any outer or inner door or window of a house or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.”<sup>10</sup>

Although the Federal statute is limited to Federal law enforcement officers, a majority of States have adopted similar statutes.<sup>11</sup>

To date, the U.S. Supreme Court has not had the opportunity to decide whether the requirements of the Federal announcement statute, with regard to entry to search, are incorporated into the U.S. Constitution. Nor has the Court specifically held that the fourth amendment<sup>12</sup> places such constitutional restrictions on State entries to search. However, the Court has held that absent extraordinary circumstances, announcement is required before entry to arrest, under codification of the common law rule.<sup>13</sup> It is probably correct to infer that this rule is equally applicable to entry to search. As stated by Mr. Justice Brennan in his minority opinion in *Ker v. California*:

“It was firmly established long before the adoption of the Bill of Rights that the fundamental liberty of the individual included protection against unannounced police entries.”<sup>14</sup>

“The protections of individual freedom carried into the Fourth Amendment . . . undoubtedly included this firmly established requirement of an announcement by police officers of purpose and authority before breaking into an individuals home.”<sup>15</sup>

Due to the enactment of legislation by the majority of States that in general follows the Federal statutory rule,<sup>16</sup> the question of whether announcement has a constitutional basis in many instances has lost significance. Even in those States without an announcement statute, the officer must be vigilant, for the Constitution requires that the officer's actions in gaining entry must be reasonable.<sup>17</sup>



Reasonableness will depend on the facts and circumstances of each case, and absent circumstances that would excuse announcement, an entry without proper notice probably would be considered unreasonable.

### Purposes of Statute

A principal guide to the interpretation of a statute is gained by analyzing its purpose. Because the Federal statute is typical of announcement statutes, a closer examination of it is useful. In *United States v. Phillips*, the court suggested that "at least three separate purposes are said to underlie Section 3109."<sup>18</sup>

The first purpose is the protection of an individual's right to privacy. This concept was expressed by Mr. Justice Brennan in *Miller v. United States*:

"Congress codifying a tradition embedded in Anglo-American law has declared in Section 3109 the reverence of the law for the individual's right of privacy in his house. Every householder, the good and the bad, the guilty and the innocent, is entitled to the protection designed to secure the common interest against unlawful invasion of the house."<sup>19</sup>

Mr. Justice Brennan explained this position in *Ker v. California* as follows: "Innocent citizens should not suffer the shock, fright or embarrassment attendant upon an unannounced police intrusion."<sup>20</sup> Privacy is further enhanced through announcement by reducing the possibility that an officer might mistakenly force entry into a wrong residence.

The second purpose was stated in *Sabbath v. United States*, where the U.S. Supreme Court expressed a belief that compliance with the statute would reduce the possibility of violence:

"[A]nother facet of the rule of announcement was generally to safeguard officers, who might be mistaken upon an unannounced intrusion into a home, for someone with no right to be there."<sup>21</sup>

The Court's concern is understandable upon examination of the entry in the *Sabbath* case. Federal agents had arrested a man named Jones in possession of cocaine. Jones claimed that the drugs belonged to Sabbath and agreed to assist the agents. The cocaine was returned to Jones, who proceeded to Sabbath's residence where he was admitted by a female occupant. The events were recounted as follows:

"The . . . agents waited outside for 5 to 10 minutes, and then proceeded to the apartment door. One knocked, waited a few seconds, and, receiving no response, opened the unlocked door, and entered the apartment with his gun drawn."<sup>22</sup>

It is reasonable to think that an occupant of a residence might resort to violence to defend himself from an unannounced intruder who breaks open a locked door following only a knock. Moreover, a violent reaction by the occupant is more likely when the officers are wearing civilian clothing and are not immediately recognizable as law enforcement officers.

The third purpose was expressed in *Phillips*,<sup>23</sup> where the court stated that the announcement requirement prevents the needless destruction of property. It is obvious that no property is destroyed when an occupant voluntarily admits an officer after he has announced and stated his purpose for demanding entry. On the other hand, refusal of admittance could well result in a splintered door dangling from a broken frame as a result of the forced entry. Although an officer must act in a manner that will prevent harm to himself or others, he must remember that the person whose home he is about to enter (no matter how guilty he may appear) is afforded both constitutional and statutory protection from unreasonably offensive actions by the police.

### Statutory Requirements

Four phrases form the keys to the Federal statute and similar components of State statutes:

- 1) "May break . . . door,"
- 2) "to execute a search warrant,"
- 3) "if, after notice of authority and purpose,"
- 4) "he is refused admittance."<sup>24</sup>

Analysis of these phrases offers insight as to the requirements of the rule of announcement.

The general rule is that whenever a law enforcement officer breaks into a residence, he must first comply with an announcement statute. Of significance is the term "break." In normal usage, break connotes a smashing or forcing,<sup>25</sup> but this limited interpretation of the term is not the one followed by the Federal courts.



**"... whenever a law enforcement officer breaks into a residence, he must first comply with an announcement statute."**

In *Keiningham v. United States*, the court defined the terms as used in the Federal statute to mean "entering without permission."<sup>26</sup> The U.S. Supreme Court in *Sabbath* added: "[C]onsidering the purposes of Section 3109, it would indeed be a 'grudging application' to hold . . . that the use of 'force' is an indispensable element of the statute."<sup>27</sup> A useful analogy is the definition given the term in burglary cases:

"What constitutes police 'breaking' seems to be the same as a burglary: lifting a latch, turning a door knob, unhooking a chain or hasp, removing a prop to, or pushing open a closed door of entrance to the house—even a closed screen door . . . is a breaking. . . ."<sup>28</sup>

It would appear that within the meaning of the Federal statute, a breaking is an unconsented entry into a dwelling by an officer exerting some physical action.

The courts' interpretation of the phrase "to execute a search warrant" has evolved not from the letter but from the spirit of the Federal statute. The U.S. Supreme Court has held that Federal agents must apply the standards of Section 3109 when executing a search warrant or when making an arrest, either with or without an arrest warrant.<sup>29</sup> The rationale supporting this determination is consistent with the English common law<sup>30</sup> and the early decisions in this country.<sup>31</sup> The three major purposes of the statute—restriction of unwarranted invasions of privacy, reduction of the propensity for violence, and lessening of the possibility of destruction of property—are the same whether the entry is to arrest or to search.

The phrase "if, after notice of authority and purpose" is perhaps the clearest of the keys. It means exactly what it says. Before breaking into an occupied residence,<sup>32</sup> the officer is required to announce his identity and state the justification for his demanding entry. Officers should be forewarned that because this requirement is clear cut, any deviation from it may well lead to a court declaring the entry illegal. The U.S. Supreme Court so held in *Miller*,<sup>33</sup> where the officer knocked and in a low voice said, "Police," without stating his purpose; in *Sabbath*,<sup>34</sup> where the agent knocked, waited a few seconds, and upon receiving no response, opened the unlocked door and entered; and in *Wong Sun v. United States*,<sup>35</sup> where the agent displayed his badge and identified himself to the occupant through a partially opened door, but failed to state his purpose before he pulled open the door and entered. The Court in *Miller* succinctly stated the requirement:

"This rule seems to require notice in the form of an express announcement by the officers of their purpose for demanding admission. The burden of making an express announcement is certainly slight."<sup>36</sup>

Unlike the notice of authority and purpose clause, the phrase requiring that "he is refused admittance" is not construed so literally by the courts.<sup>37</sup> Clearly, if an officer complies with the notice requirement and the occupant of the residence vocally refuses to allow entry, the officer's immediate forc-

ible entry into the residence to effectuate a lawful arrest or search will not violate the statute. However, clear refusals by the occupant are not always forthcoming.<sup>38</sup> In many instances, there may be no response to the officer's announcement,<sup>39</sup> or a "stall"<sup>40</sup> may be employed by the occupant to allow him time to destroy evidence or escape. In such cases, so long as the officer has reason to believe that there is someone inside and that this person has received notice of his presence, the officer may break in after allowing the occupant a reasonable time to respond to his demand for admittance. What constitutes a reasonable time is determined by the facts of each case,<sup>41</sup> and exigent circumstances, such as danger of physical harm, destruction of evidence, or escape, are important in making that determination.<sup>42</sup>

### **No Announcement Required**

Absent extraordinary circumstances the courts have been uncompromising in requiring law enforcement officers to comply with the announcement statute before breaking into a residence.<sup>43</sup> However, decisions enforcing the statute have recognized that under certain circumstances noncompliance with the requirements of the statute will be allowed. Mr. Justice Brennan, in his minority opinion in *Ker v. California*, listed three categories of circumstances which would excuse the requirement of announcement.<sup>44</sup>

First, announcement is not required "where the persons within already know of the officer's authority and purpose. . . ."<sup>45</sup> This statement is supported by the earlier decision of *Miller v. United States*, where the Court hypothesized the possibility that "without an express announcement of purpose, the facts known to officers would justify them in being virtually certain



**"... within the meaning of the Federal statute, a breaking is an unconsented entry into a dwelling by an officer exerting some physical action."**

that the (occupant) already knows their purpose so that an announcement would be a useless gesture."<sup>46</sup> In *United States v. Wylie*, a Federal appellate court upheld a conviction where officers having announced, "Police," but without stating their purpose for demanding entry, entered a suspect's house only minutes after a purse snatching.<sup>47</sup> The court stated that further announcement would have been a "useless gesture."<sup>48</sup>

Second, announcement is not required "where the officers are justified in the belief that persons within are in imminent peril of bodily harm. . . ." <sup>49</sup> The Court, in *Sabbath v. United States*, recognized that this exception included a justifiable belief that the subject was "armed or might resist arrest" and that some harm might have come to the officer or someone with him.<sup>50</sup>

Third, announcement is not necessary "where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officer in the belief that an escape or the destruction of evidence is being attempted."<sup>51</sup> This exception could be of value in such investigations as book-making and narcotics "where evidence could be quickly and easily destroyed."<sup>52</sup>

While exceptions to the general rule are of obvious importance to the officer, he must not allow them to swallow the rule. He must be sure of the underlying facts and circumstances which permit him to enter without complying with the statute. As with the determination of probable cause, a court is concerned with the facts and circumstances within the officer's

knowledge at the moment he makes the decision to enter. An error in judgment on the officer's part may result in a court holding unjustified his noncompliance with the statute, and as a result, any evidence seized may be suppressed or an arrest invalidated. It is of paramount importance that the basis for an officer's reliance on an exception to the rule be documented.<sup>53</sup> The courts will be reluctant to accept the officer's undocumented memory of the facts several months after the event when the matter is brought to trial or raised at a suppression hearing.

#### **Ruse Entries**

Due to unforeseeable situations which often confront modern law enforcement, officers may be unable to comply with the announcement statute or bring their actions within the exceptions to it. The only feasible alternative available to an officer seeking a peaceful entry may be to deceive the occupant into permitting the officer to enter the premises.

Police occasionally have employed a ruse to gain entry into a residence in order to effectuate an arrest or search. Stealth and strategy can be successfully employed in this manner;<sup>54</sup> however, deliberate care must be taken by the officer to insure that his actions remain within the law. A legal hurdle that deceptive tactics, in the course of gaining entry, often fail to clear is the announcement requirement. An error in judgment by the officer with regard to this requirement offers the court no choice but to exclude any evidence obtained as a result of the tainted entry.<sup>55</sup>

Although the U.S. Supreme Court has not ruled on the use of a ruse or pretext to gain entry, the majority of lower Federal courts which have considered the question have held that entries obtained in this manner are not barred by the announcement statute. An analysis of the leading decisions of the U.S. courts of appeals, concerning deceptive entries to make an immediate arrest or search of the premises, offers the law enforcement officer considerable insight into the lawful and effective use of deception to make entry without announcement.<sup>56</sup>

The occupant's reaction to a ruse can be as varied as his imagination. If the ruse is successful in getting the occupant to the door, the officer must be prepared to deal quickly with the numerous situations which can occur. In general, there are three types of responses which are favorable to the officer: The occupant, without inviting the officer inside, can crack the door to see who is there; he can open the door fully without inviting entry; or he can invite the officer inside. To be prepared for each of these situations, the officer must understand the court decisions relating to them.

The most common reaction to a knock is for the occupant to crack the door a few inches to see who is there. In *Jones v. United States*,<sup>57</sup> a Federal appellate decision, detectives went to Jones' apartment to execute a search warrant for narcotics. The officers had the building janitor knock on Jones' door. When a voice from within asked who was there, the janitor responded, "Janitor." Jones then opened the door 3 or 4 inches and a detective thrust in his badge and stated that he had a search warrant. Jones attempted to flee and the officers broke open the door.



**"... a court is concerned with the facts and circumstances within the officer's knowledge at the moment he makes the decision to enter."**

*Jones* vividly demonstrates how a ruse alone can fail to get the officer inside, and in fact, leaves him in a situation where he must comply with the rule requiring announcement before entering. When Jones realized that the janitor was not alone, the ruse had ended. The entry was lawful because the officer identified himself and stated his purpose before entering.<sup>58</sup> The ruse, however, was successful to the extent that the door was partially opened and the occupant was placed in a position where he could be seen by the officer. This in itself was of great benefit to the officer because Jones could not be at the door and destroying narcotics at the same time.

If the ruse is more convincing or the occupant less wary, the door may be opened wide to the officer. In *Ponce v. Craven*,<sup>59</sup> officers had the manager of a motel announce that there was a telephone call for one of the occupants. When the occupant opened the door to go to the phone, the officers immediately entered and arrested the suspect. Although this case is concerned with the applicability of the California announcement statute,<sup>60</sup> the court's reasoning would appear to be equally appropriate to such statutes in other jurisdictions:

"[O]nly if police resort to breaking must they announce their purpose. The employment of a ruse which results in the occupant of a dwelling voluntarily opening the door and thereby allowing officers to enter without announcement of purpose is not a breaking. . . ." <sup>61</sup>

The courts generally have not required the officer to identify himself and state his purpose before entering when the door has been opened wide by the occupant.<sup>62</sup> In such cases there is no breaking, the occupant is present at the door, and by opening the door, there is an inference of consent to the entry. However, it is good practice, when circumstances permit, for the officer to state his identity and purpose once the door has been opened. Such an announcement could be accomplished as the officer enters through the doorway.

For the officer attempting to gain entry into a subject's residence by use of a ruse, the hoped-for result is an invitation by the occupant for the officer to enter. In *Smith v. United States*,<sup>63</sup> Federal agents posed as telephone repairmen and were voluntarily admitted by the defendant. The court held that because the defendant voluntarily admitted the officers, there was no violation of the announcement statute when they arrested him and searched his residence. The key to any such entry is that it must be pursuant to a voluntary invitation by the occupant. If the ruse is followed by any force constituting a breaking, the entry will be held in violation of the announcement requirement.<sup>64</sup>

### Summary

Law enforcement officers must remember that the statutory rule of announcement with regard to entry into a residence requires that the officer knock, announce his identity, and state his purpose before forcing entry. There are three exceptions to this rule. They excuse the officer's noncompliance with the announcement requirement before forcible entry: (1) If the person within knows of the officer's authority and purpose; (2) where the officer is

justified in believing that announcement would result in imminent peril or bodily harm; or (3) where the occupant, if made aware of the officer's presence, would attempt to destroy evidence or escape.

Under certain conditions deception is an acceptable approach. An officer relying on a ruse must be voluntarily admitted by the occupant of the residence without resorting to a "breaking." Even where the ruse is successful in obtaining a peaceful entry, sound practice would suggest that an announcement of identity and purpose be made at the earliest opportunity.

Officers must be mindful that their actions have to be reasonable under the circumstances of the particular case. The courts will not allow overzealous police action to defeat the purposes of the announcement statutes. Care should be taken to gather the facts, plan the entry, and insure that reason guides the actions. **FBI**

### Footnotes

- <sup>1</sup> *Ker v. California*, 374 U.S. 23, 53 (1963).
- <sup>2</sup> 18 U.S.C. Section 3109 (1971).
- <sup>3</sup> ALA. CODE tit. 15, Section 155 (1959); ALAS. CODE CRIM. PRO. Section 12.25.150 (1972); ARIZ. REV. STAT. ANN. Section 13-1411 (1956); ARK. STAT. ANN. Section 43-414 (1964); CAL. PENAL CODE Section 844 (West 1972); C.Z. CODE tit. 6 Section 3741 (1963); FLA. STAT. ANN. Section 901-19(1) (Supp. 1973); GA. CODE ANN. Section 27-308 (1966); IDAHO CODE Section 19-611 (1948); IND. STAT. ANN. Section 9-1009 (Burns 1956); IOWA CODE ANN. Section 755.9 (1950); KAN. STAT. ANN. Section 62-1819 (1964); KY. REV. STAT. Section 70.078 (1971); LA. CODE CRIM. PRO. ANN. art. 224 (West 1967); MICH. STAT. ANN. Section 28.880 (1972); MINN. STAT. ANN. Section 629.34 (1947); MISS. CODE CRIM. PRO. tit. 99 Section 99-3-11 (1973); MO. ANN. STAT. Section 544.200 (1953); NEB. REV. STAT. Section 29-411 (1965); NEV. REV. STAT. Section 171.275 (1967); N.Y. CODE CRIM. PRO. Section 120.80(4) (McKinney 1971); N.C. GEN. STAT. Section 15-44 (1965); N.D. CENT. CODE ANN. Section 29-06-14 (1960); OHIO REV. CODE ANN. tit. 29, Section 2935.12 (page supp. 1972); OKLA. STAT. ANN. tit. 22, Section 194 (1969); ORE. REV. STAT. tit. 14, Section 133.290 (1971); S.C. CODE ANN. tit. 53, Section 53-198 (1962); S.D. COMPILED LAWS ANN. tit. 23, Section 15-14 (1967); TENN. CODE ANN. tit. 40, Section 807 (1955); TEX. CODE CRIM. PRO. ANN. art. 18.18 (Vernon 1966); UTAH CODE ANN. tit. 77, Section 13-12 (1953); V.I. CODE ANN. Section 3566 (1967); WASH. REV. CODE ANN. Section 10.31.040 (1961); WYO. STAT. ANN. Section 7-165 (1959).



<sup>4</sup>Hansard, *Parliamentary History of England* (1813), vol. 15, col. 1307 (this statement is imputed to William Pitt, Earl of Chatham, during a debate in Parliament concerning searches incident to a tax on cider, March 1763).

<sup>5</sup>13th Yearbook of Edward IV (1461-1483) at folio 9 (held breaking of door by sheriff to arrest in civil suit in debt or trespass unlawful).

<sup>6</sup>*The Oxford Dictionary of Quotations* (2d ed. 1953) 379.

<sup>7</sup>1 Hale, *Pleas of the Crown*, 583 (1736): "A man, that arrests upon suspicion of felony may break open doors, if the party refuse upon demand to open them. . . ."

<sup>8</sup>*Semayne's Case*, 77 Eng. Rep. 194 (K.B. 1603): "In all cases where the King is a party the sheriff, (if the doors be not open) may break the party's house, either to arrest him, or do other execution of the King's process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming and to make requests to open the door."

<sup>9</sup>*Barnard v. Barlett*, 10 Cush, Mass. 501, 502 (1852): "The maxim of law that every man's house is his castle. . . has not the effect to restrain an officer of the law from breaking and entering a dwelling house for the purpose of serving a criminal process upon the owner. In such case the house of the party is no sanctuary for him, and the same may be forcibly entered by such officer after a proper notification of the purpose of the entry, and a demand upon the inmates to open the house, and a refusal by them to do so."

<sup>10</sup>18 U.S.C. Section 3109 (1971), compare 18 U.S.C. Section 3109 with *Semayne's Case*, *supra* note 8, and *Barnard*, *supra* note 9.

<sup>11</sup>*Supra* note 3.  
<sup>12</sup>U.S. Const. amend. IV states: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>13</sup>*Supra* note 1.

<sup>14</sup>*Id.* at 47.

<sup>15</sup>*Id.* at 48.

<sup>16</sup>*Supra* note 3.

<sup>17</sup>*Ker*, *supra* note 1 at 38: "[T]he method of entering the home may offend federal standards of reasonableness and therefore vitiate the legality of an accompanying search."

<sup>18</sup>497 F. 2d 1131, 1133, (9th Cir. 1974).

<sup>19</sup>357 U.S. 301, 313 (1958).

<sup>20</sup>*Supra* note 1, at 57.

<sup>21</sup>*Sabbath v. United States*, 391 U.S. 585, 589 (1968).

<sup>22</sup>*Id.* at 587.

<sup>23</sup>*Supra* note 18, at 1133.

<sup>24</sup>*Supra* note 2.

<sup>25</sup>*Webster's New World Dictionary*, William Collins and World Publishing Co., Inc., 1977.

<sup>26</sup>287 F. 2d 126, 130 (D.C. Cir. 1960), the court continued: "We think that a 'peaceful' entry which does not violate the provisions of Section 3109 must be a permissive one, and not merely one which does not result in a breaking of part of the house."

<sup>27</sup>*Supra* note 21, at 589, the court continued: "[T]o be sure, the statute uses the phrase 'break open' and that connotes some use of force. But linguistic analysis seldom is adequate when a statute is designed to incorporate fundamental values and the ongoing development of the common law."

<sup>28</sup>Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 798, 806 (1924).

<sup>29</sup>*Miller*, *supra* note 19, at 309: "It applies as the Government here, concedes, whether the arrest is to be made by virtue of a warrant, or when officers are authorized to make an arrest for a felony without a warrant." *Id.* at 306 "[T]he validity of the entry to execute the arrest without warrant must be tested by criteria identical with those embodied in 18 U.S.C. Section 3109, which deals with entry to execute a search warrant."

<sup>30</sup>*Supra* note 8.

<sup>31</sup>*Supra* note 9.

<sup>32</sup>*United States v. Agrusa*, 541 F. 2d 690, 698 (8th Cir. 1976): "[U]nnounced and forcible entries into vacant premises, even homes, in order to conduct a search, are constitutional in absence of exigent circumstances, provided that the search and seizure is pursuant to warrant and reasonable under the circumstances."

<sup>33</sup>*Supra* note 19.

<sup>34</sup>*Supra* note 21.

<sup>35</sup>371 U.S. 471 (1963).

<sup>36</sup>*Supra* note 19, at 309.

<sup>37</sup>*United States v. Allende*, 486 F. 2d 1351, 1353 (9th Cir. 1973): "There need be no affirmative refusal of admittance under the statute. The refusal may be implied."

<sup>38</sup>*Masiello v. United States*, 317 F. 2d 121, 122 (D.C. Cir. 1963): "Indeed it would be an unusual case coming before the courts where an occupant affirmatively 'refused admittance' or otherwise made his refusal known verbally. . . ."

<sup>39</sup>*United States v. Hobson*, 519 F. 2d 765 (9th Cir. 1975); in this case the Federal agents were seeking a heavily armed individual who had shortly before killed an unarmed guard. The court found the facts to be: "With respect to the entry, the officers banged loudly at . . . (the) door and yelled, 'FBI—Open the door.' They waited 10 to 30 seconds without response and broke in the bedroom window to gain admittance." Considering the circumstances, the court held: "With all of this in mind, the officers would have been foolhardy to wait any longer than they did." *Id.* at 776.

<sup>40</sup>*United States v. Valenzuela*, 596 F. 2d 824 (9th Cir. 1979).

<sup>41</sup>*United States v. Jackson*, 585 F. 2d 653, 662 (4th Cir. 1978): "It is the rule that the time which must elapse after knocking and announcing their identity and purpose by the searching officers before breaking and entering varies with the exigencies of each case."

<sup>42</sup>*United States v. Luster*, 342 F. 2d 763 (6th Cir. 1975) (agents sought to arrest a suspect on narcotics charge, their announcement at door resulted in muffled screams from inside). The court held, "The circumstances called for quick action. . . ." *Id.* at 766.

<sup>43</sup>Compare *Miller*, *supra* note 19, at 313: "Because the petitioner did not receive that notice before the officers broke the door to invade his home, the arrest was unlawful, and the evidence seized should have been suppressed;" with *Wong Sun*, *supra*, note 35 at 485: "Thus verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officer's action in the present case is no less the 'fruit'"; and *Ker*, *supra* note 1 at 47: "Even if probable cause exists for the arrest of a person within, the Fourth Amendment is violated by an unannounced police intrusion into a private home . . . except (where exigent circumstances relieve the officer from the necessity of announcement)." (parenthetical added)

<sup>44</sup>*Supra* note 1, at 47.

Similar exigent circumstances were recognized in *Miller v. United States*, 357 U.S. 301, 309 (1958).

<sup>45</sup>*Ker*, *supra* note 1, at 47.

<sup>46</sup>*Supra* note 19, at 310.

<sup>47</sup>462 F. 2d 1178 (D.C. Cir. 1972).

<sup>48</sup>*Id.* at 1188.

<sup>49</sup>*Ker*, *supra* note 1, at 47.

<sup>50</sup>*Supra* note 21, at 591.

<sup>51</sup>*Ker*, *supra* note 1, at 47. See also *United States v. Bethea*, 598 F. 2d 331 (4th Cir. 1979) (Officers broke into front door of residence to arrest subject who was attempting to flee).

<sup>52</sup>*Id.* at 40.

<sup>53</sup>*United States v. Smith*, 520 F. 2d 74 (D.C. Cir. 1975).

<sup>54</sup>*Leahy v. United States*, 272 F. 2d 487, 490 (9th Cir. 1960): "There is no constitutional mandate forbidding the use of deception in executing a valid arrest warrant."

<sup>55</sup>*Gatewood v. United States*, 209 F. 2d 789, 790 (D.C. Cir. 1953): "[T]he breaking of the door was unlawful, the presence of the officers in the apartment was unlawful, and so the arrest was unlawful."

<sup>56</sup>See *Jones v. United States*, *infra* note 57; *Ponce v. Craven*, *infra* note 59; and *Smith v. United States*, *infra* note 63.

<sup>57</sup>304 F. 2d 381 (D.C. Cir. 1962).

<sup>58</sup>*Id.* at 384. The appellate court quoted from the trial judge's findings of fact and conclusions of law in affirming the conviction:

"I think the officer was entirely within the law and within the proprieties. After all, the officer knew that he was entering a headquarters for the sale of narcotics. He feared, quite properly, that when the defendant was running for the bathroom he might have thrown some incriminating narcotics down the drain. I do not think the officer was under any obligation to accord that opportunity to the defendant. In fact, if he had accorded it, I think he would have been guilty of dereliction of duty. I think he complied with the requirements of 3109. He identified himself, he showed the search warrant, and of course, he acted very rapidly immediately after that in order to prevent the destruction of it."

"We have to remember that, after all, the officers are there to protect the community."

"I find as a fact and conclude as a matter of law that the warrant was properly executed . . . that he had a search warrant and was not admitted." (footnotes omitted)

See also *United States v. Seelig*, 498 F. 2d 109 (5th Cir. 1974) (Federal agent knocked and upon occupant's inquiry, responded quietly, "Cliff." Occupant opened the door slightly and agent identified himself, displayed his badge and shoved the door open and entered); and *United States v. Syler*, 430 F. 2d 68 (7th Cir. 1970) (a Federal agent knocked at the door and shouted, "Gas man." When the occupant unlatched the screen door and began opening it, the agent pulled it open farther and as he entered, he announced his identity and stated his purpose).

<sup>59</sup>409 F. 2d 621 (9th Cir. 1969).

<sup>60</sup>*Supra* note 3.

<sup>61</sup>*Ponce*, *supra* note 59, at 626.

The court continued: "The same rule has been applied in interpreting the analogous Federal statute 18 U.S.C. [Section] 3109. . . ."

<sup>62</sup>Compare *Ponce*, *supra* note 60, with *United States v. Raines*, 536 F. 2d 796, 799 (8th Cir. 1976) (Federal agent gained access to subject's residence by claiming to be a friend of a previously arrested person associated with occupant); *United States v. DeFeis*, 530 F. 2d 14, 15 (5th Cir. 1976) (agents accompanied informant to door and rushed in when subject opened door to allow informant to enter); *United States v. Hill*, 508 F. 2d 345 (5th Cir. 1975) (agent claimed to be insurance salesman); and *United States v. Beale*, 445 F. 2d 977 (5th Cir. 1971) (agents gained entry to subject's motel room by having manager knock).

<sup>63</sup>357 F. 2d 486 (5th Cir. 1966).

<sup>64</sup>*Supra* note 54, at 489.



# WANTED BY THE FBI



Photographs taken 1979.

## Joanne Deborah Chesimard

Joanne Deborah Chesimard, also known as Joanne Deborah Byron Chesimard, Joanne Byron, Joan Chesimard, Joanne Chesimard, Joanne Debra Chesimard, Joanne Chesterman, Joan Davis, Joanne Davis, Justine Henderson, Sister Love, Barbara Odoms, Assata Shakur, and others.

### Wanted for:

Interstate flight—Murder.

### The Crime

Chesimard, who is being sought as an escapee from custody, was at the time of escape serving a life sentence for the shooting murder of a New Jersey State trooper. She is reported to be a member of a revolutionary organization which has an extensive history of criminal activity involving violence.

A Federal warrant was issued on November 3, 1979, at Newark, N.J.

### Criminal Record

Chesimard has been convicted of murder.

## Description

Age ..... 33, born July 16, 1947, New York, N.Y. (not supported by birth records)  
 Height ..... 5'6".  
 Weight ..... 127 to 138 pounds.  
 Build ..... Slender.  
 Hair ..... Black.  
 Eyes ..... Maroon.  
 Complexion ..... Medium.  
 Race ..... Negro.  
 Nationality ..... American.  
 Scars and Marks ..... Bullet scars on abdomen, chest, left shoulder, and underside of right arm; round scar on left knee.  
 Occupations ..... Tutor, writer.  
 Remarks ..... May be wearing Afro hairstyle.  
 Social Security No. Used ..... 051-38-5131.  
 FBI No. .... 11 102 J7.

## Classification Data:

NCIC Classification:  
 AAAAAA0711AAAAA0409  
 Fingerprint Classification:  
 7 1 aAa 11

1 aAa

## Caution

Chesimard should be considered armed, extremely 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.



Right thumbprint.



# Change of Address

Not an order form

# FBI LAW ENFORCEMENT BULLETIN

**Complete this form and return to:**

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

Name

Title

Address

City

State

Zip

## Decline in Number of Officers Killed

Preliminary statistics compiled by the FBI's Uniform Crime Reports reveal that 50 law enforcement officers, representing local, county, State, and Federal agencies across the Nation and in Puerto Rico, were feloniously killed during the first 6 months of 1980. The number of officers killed declined by 12 percent when compared to those slain during the same period of 1979.

A geographic breakdown shows that 23 officers were killed in the Southern States, 10 in the Western States, 8 in the Northeastern States, 7 in the North Central States, and 2 in Puerto Rico.

Twelve officers were slain while enforcing traffic laws. Eight were killed while attempting to thwart robberies or in the pursuit of robbery suspects; 3 while attempting arrests of burglary suspects; and 11 while attempting to effect arrests for other crimes. Seven officers were slain responding to disturbance calls; 5 upon investigating suspicious persons and circumstances; and 2 while handling mentally deranged persons. An additional two officers died in ambush-type attacks.

Firearms predominated as the weapons employed to kill officers, with 47 deaths resulting from their use. Handguns were the murder weapons in 33 of the incidents; rifles in 8; and shotguns in 6. Of the remaining three officers, two were killed with vehicles and one with a knife. Seven of the slain officers were killed with their own revolvers.



**U.S. Department of Justice**  
Federal Bureau of Investigation

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*Washington, D.C. 20535*

## Interesting Pattern

This pattern is a plain whorl with an outer tracing. The unusual aspect of the pattern is the appearance of the word "is" in the center of the whorl.

