



Aircraft Theft

FBI LAW ENFORCEMENT BULLETIN

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The Cover

Both aircraft owners and law enforcement personnel can take steps to minimize the problem of aircraft theft. See story page 2.

**Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535**

William H. Webster, Director

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Director's Message

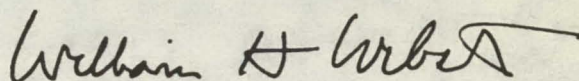
This month marks the beginning of the 51st year of publication for the FBI Law Enforcement Bulletin. Initially called, in 1932, "Fugitives Wanted by Police," the first issue of the Bulletin simply contained a listing of wanted persons. However, an article on explosives, reprinted from the St. Louis, Mo., Police Department training publication, appeared in the third issue, in November 1932. Subsequent issues featured articles on fingerprint evidence, ciphers, examination of metals, and glass fractures—all subjects that were beginning to be addressed by law enforcement in those early days of scientific crime detection. This led to the renaming of the publication in October 1935, when it officially became known as the FBI Law Enforcement Bulletin.

Over the years, the Bulletin took on a new direction and emphasis, perhaps more so in the 1980's than in any other decade, as law enforcement gained the hallmarks of a professional service. Readers can now benefit from articles on management techniques, personnel matters, special operations, legal developments, and computer management, as well as training, investigative techniques, current crime problems, forensic science developments, and state of the art training.

The Bulletin is still a "national periodical of interest and value in the field of law enforcement." This was the summation of a young lawyer, John Edgar Hoover, when he described the Bulletin in a 1935 Director's Message and wrote "the publication should provide a clearinghouse for police officials regarding successful police methods, a medium for the dissemination of important police information, and a comprehensive literature pertaining to the scientific methods in crime detection and criminal apprehension."

To observe this 50th anniversary, I would like to recall Director Clarence M. Kelley's Message just 5 years ago, that the Bulletin's most fundamental aspect has been "the remarkable degree of cooperative assistance that it has sustained in this and preceding years."

The thousands of articles contributed over the years by law enforcement personnel have amounted to a great, and valuable, contribution to the professionalization of the business of crime detection. To all these authors, may I offer the FBI's sincere thanks.



William H. Webster
Director
October 1, 1982

Aircraft

PIPER

Aircraft Theft

By

UDY C. WOOD, JR.

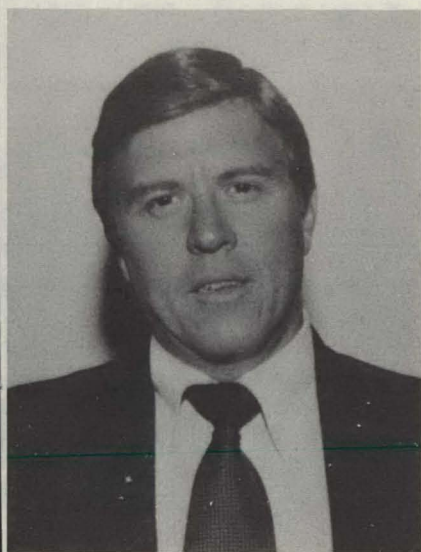
Special Agent

National Crime Information Center

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Washington, D.C.





Special Agent Wood

The rate of aircraft theft and theft of avionic equipment is increasing at an alarming rate in the United States. According to the Aircraft Owners and Pilots Association's International Aviation Theft Bureau (IATB), airplane thefts increased more than 217 percent between 1978 and 1980. (See fig. 1.) In January 1982 there were 347 stolen aircraft reports on file at the FBI's National Crime Information Center (NCIC). (See fig. 2.) These stolen aircraft represent a multimillion-dollar loss to insurance companies and members of the aviation community.

Figure 1

**Aircraft Thefts/Recovery Statistics
1978 to 1981**

YEAR	THEFTS	RECOVERED/ LOCATED
1978	76	30
1979	162	102
1980	241	115
1981	214	148

Total value of aircraft stolen in 1980—
\$20.7 million

Total value of aircraft stolen in 1981—
\$25 million

*Statistics compiled by Aircraft Owners
and Pilot's Association International
Aviation Theft Bureau.

Law enforcement officials nationwide are acutely aware of the increased use of stolen aircraft in the international smuggling of narcotics. The modern-day aircraft smuggler is not restricted by roads or ports and can fly his illegal cargo to any part of the country.

The El Paso Intelligence Center (EPIC) in El Paso, Tex., a federally administered intelligence support facility for law enforcement, estimates that more than half of all aircraft thefts in the United States during 1980 and 1981 were drug-related. Of the aircraft recovered during this time period, more than 50 percent were recovered outside of the State where the theft occurred. More significant is the fact that 80 percent of these same recovered aircraft were determined to be involved in drug-related cases.¹

A comparison of EPIC's drug-related aircraft theft and general aviation smuggling problem areas with NCIC's stolen aircraft theft entries reveals an interesting parallel. States with high aircraft theft statistics also have a high drug-related aircraft theft/aircraft smuggling ratio.² (See fig. 3.)

Aircraft Thieves

Airplanes are relatively easy to steal as long as the thief knows how to fly and is familiar with airport procedures. Ignition systems can be hot-wired, and in many cases, the owner leaves the keys in the aircraft or at local service facilities located on the airfield. After starting the aircraft, the thief simply contacts the airport control tower to advise them that he is ready for takeoff. If, during the flight to his destination, the thief is required by Federal Aviation Administration (FAA)

Figure 2

Breakdown of Stolen Aircraft by State as of January 1, 1982

Alabama	1	Missouri	2
Alaska	6	Nebraska	1
Arizona	30	Nevada	8
Arkansas	2	New Jersey	2
California	62	New Mexico	10
Colorado	4	New York	8
Florida	77	North Carolina	6
Georgia	9	Ohio	3
Idaho	2	Oklahoma	7
Illinois	5	Oregon	1
Indiana	9	Pennsylvania	5
Kansas	2	Rhode Island	1
Kentucky	2	South Carolina	3
Louisiana	10	Tennessee	5
Maine	1	Texas	40
Massachusetts	2	Utah	1
Michigan	4	Virginia	1
Minnesota	2	Washington	2
Mississippi	2	Wisconsin	5
		All others	2

Total aircraft on file—345.

regulations to make additional radio contacts, he simply provides the reporting station with a false identification number and continues his flight.

Avionic Thefts

An additional area of aircraft-related thefts is the loss of avionic equipment. Avionics are the radios, navigation equipment, radar, and other electronic components used in the safe operation and navigation of the aircraft. This type of theft alone results in multimillion-dollar losses each year.

The avionic thief, unlike the aircraft thief, does not need to fly the stolen item away. With nothing more than simple handtools, he can easily break into the aircraft, and in a short period of time, remove the desired electrical component. The sophisticated avionic equipment manufactured today (some items are no larger than a shoebox) can cost more than \$10,000. Thieves have little trouble fencing these goods and often steal preordered items for their buyers. A popular scheme is to steal all the radios from a particular type of aircraft and then steal the radios from another aircraft of the same type, replacing them with the radios stolen from the first airplane. The owner of the second airplane may never know the radios he is using are not his own. The owner of the first aircraft will report the theft and provide the investigating officer with the serial numbers, if he knows them. He will stand very little chance of ever recovering the stolen property. The thief sells the second set of radios to an innocent buyer with little fear of being discovered, since the original owner will probably never be aware that his radios were stolen.

Law Enforcement Problems

Although many law enforcement agencies use aircraft on a daily basis

for crime prevention and investigation, few departments have officers specializing in the investigation of aircraft or avionic thefts. Frequently, the only information provided to the officer taking the theft report is the aircraft registration number, which is commonly referred to as the "N" number. This is the letter "N" followed by either a series of letters or numbers or a combination of both. The letter "N" must be the first character in all U.S.-issued registration numbers, which usually appear on each side of the rear section of the aircraft or on the vertical fin (the vertical part of the tail assembly). These numbers can be easily altered or painted over, precluding quick visual identification. In addition to "N" numbers, aircraft also have individual serial numbers, much like vehicle identification numbers (VIN). This aircraft identification number (serial number) is recorded on a data plate that must be attached to the body of the aircraft. The data plate, which is fireproof, will usually list the aircraft's manufacturer, model and serial number. The location of the aircraft data plate is left to the discretion of the manufacturer.

The FBI, as manager of NCIC, maintains a nationwide online computer/telecommunication system which contains over 9 million records for stolen property, wanted persons, miss-

Figure 3

Aircraft Thefts	Drug-Related Aircraft Thefts	General Aviation Smuggling Problem Areas
1. Florida	Florida	Florida
2. California	California	Texas
3. Texas	Arizona	Georgia
4. Arizona	Texas	California
5. New Mexico	Georgia	New Mexico
6. Georgia	New Mexico	Arizona

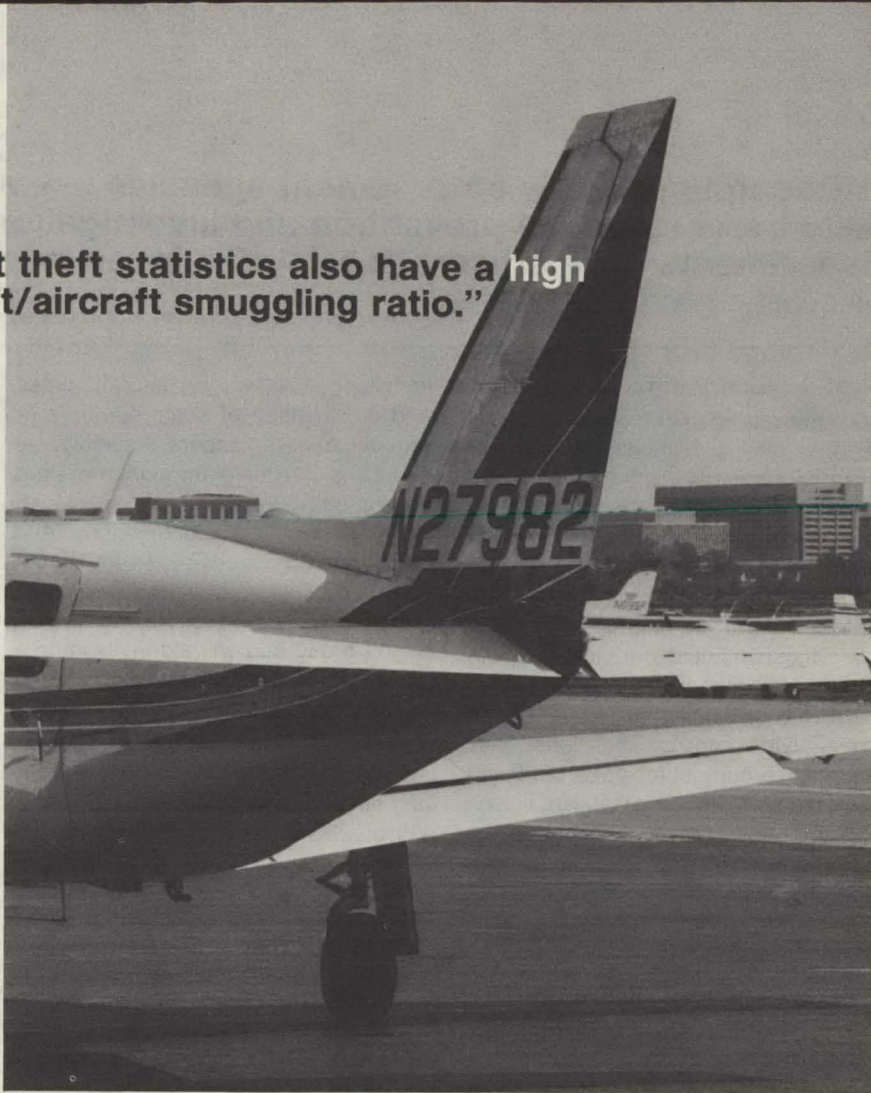
"States with high aircraft theft statistics also have a high drug-related aircraft theft/aircraft smuggling ratio."

ing persons, and criminal histories that are instantaneously available to more than 60,000 local, State, and Federal criminal justice agencies throughout the United States, Puerto Rico, U.S. Virgin Islands, and Canada. Stolen aircraft are listed in the NCIC Vehicle File; stolen avionics are listed in the NCIC Article File.

Theft Prevention

Aircraft owners can take the following steps to assist in the prevention of aircraft theft:

- 1) If the aircraft cannot be stored in a locked hanger, it should be parked in a well-lighted and secure area of the airfield.
- 2) Aircraft tiedown straps (used to secure the aircraft to the parking spot in case of high winds or prop wash) should be a metal cable of sufficient strength to discourage cutting.
- 3) Keys should not be left in the aircraft. If left with a local service facility or rental agency, insure that they are locked in a secure place when not in use.
- 4) Antitheft devices, such as wheel locks or other items which immobilize the aircraft should be used.
- 5) Owners should have a complete list of all serial numbered items on the aircraft (engine, avionics, and other components). This list should be kept in a secure place away from the aircraft.



- 6) Aircraft logbooks are a wealth of information for stolen aircraft investigations, containing such things as aircraft modifications, etc. There should either be a separate copy of the logbook or the original should be stored away from the aircraft.
- 7) Owner identification numbers (social security numbers) can be engraved on components that have removable serial number plates. Business cards can be hidden in doors, under carpets, in seats, or other areas in the aircraft as long as they do not restrict the movement of flight controls.
- 8) Radios and navigation equipment should be checked regularly to insure that they have not been switched.
- 9) A current color photograph of the aircraft should be kept. This will be a valuable aid to the investigating officer in the event the aircraft is stolen. The paint color and scheme may be the quickest way to locate the aircraft if the "N" numbers have been changed.
- 10) When a theft is discovered, a local law enforcement agency, not the FAA, should be contacted. The FAA does not have jurisdiction in aircraft or avionic thefts.

"Although many law enforcement agencies use aircraft on a daily basis for crime prevention and investigation, few departments have officers specializing in the investigation of aircraft or avionic thefts."

What Can Law Enforcement Do?

Law enforcement officers should become familiar with aircraft and aircraft components. They should visit aircraft manufacturing plants in their area and ask them to provide information regarding the location of aircraft "N" numbers, serial numbers, data plates, and part numbers.

Officers should contact local aircraft dealers who will be able to supply them with brochures depicting aircraft types, styles, and configurations. They should also contact local aircraft insurance companies to establish liaison with the field adjuster, who will be

knowledgeable about aircraft types and the location of serial numbers or production part numbers. An additional source is available through the Drug Enforcement Administration, which prints a booklet titled "General Aviation Aircraft Used by Drug Smugglers." This booklet contains photographs of most aircraft being produced today and will aid investigators in the quick visual identification of specific aircraft types.

Stolen aircraft data should be immediately entered into NCIC. Aircraft and aircraft engines are entered in the Vehicle File; aircraft parts and avionics

are entered in the Article File.

Nationwide stolen aircraft alerts may be placed by providing the local FAA General Aviation District Office (GADO) or FAA Flight Service Station with descriptive information of the aircraft. The aircraft alert is then forwarded to all FAA control towers and aircraft controllers. FAA can also provide law enforcement with a microfiche printout of the ownership history of all aircraft registered in the United States.

Although aircraft-related thefts decreased by 13 percent in 1981, the value of the stolen aircraft increased by \$4.3 million, primarily because two jet aircraft with a combined value of over \$7 million were stolen. Both jet aircraft were recovered.

Between January 1978, and January 1981, 693 aircraft were reported stolen. A total of 395 aircraft—57 percent—have been recovered or located. (See fig. 1.) Aircraft that have been verified as seized in foreign countries and have not yet been returned to the registered owners or insurance companies are listed as being "located."

Owners of aircraft should be educated in ways to prevent the theft of their property. It is also up to law enforcement personnel to educate themselves in the area of aviation equipment. Through this combined effort, progress may be made in the fight against aircraft theft.

FBI



We are currently living at a time when the stable state of social systems has been lost. Views and ideologies of occupations, organizations, and traditional institutions are experiencing perpetual transformation. Law enforcement institutions are no exception in terms of change and should not be exempt from scrutiny if they are to fulfill the needs of a complex society. We should not, however, be discouraged by the complexity of social changes, for as Donald A. Schon says, "No established institution in society now perceives itself as adequate to the challenges that face it."¹ We should, instead, acknowledge and accept the need for change, develop systems that deal effectively with the rapidity of change, and provide for leaders who are willing to meet the challenges of complexity.

This article explores the changes and transformations occurring in law enforcement agencies as a result of the loss of the stable state, examines what causes these changes, and dis-

Beyond the Stable State

Schon's idea of dynamic conservatism indicates that organizations strive to maintain a stable state as long as possible by minimally accommodating new ideas.² As an organization moves beyond the stable state and begins to accept change, the driving force behind the change begins to lose its momentum. Momentum is gradually dissipated as an idea reaches a satisfactory level of acceptance and the system assimilates the change. The new idea becomes, then, a part of the stable state and replaces the old idea.

Schon further states that ideas that produce change travel in clusters.³ While only a portion of these ideas are successfully used, they can still bring about substantial - organizational change and produce a significant rippling effect and concomitant anxiety throughout the system. The greatest anxiety develops in those employees who are close to the change process but have no input into the process. The anxiety level drops in proportion to the

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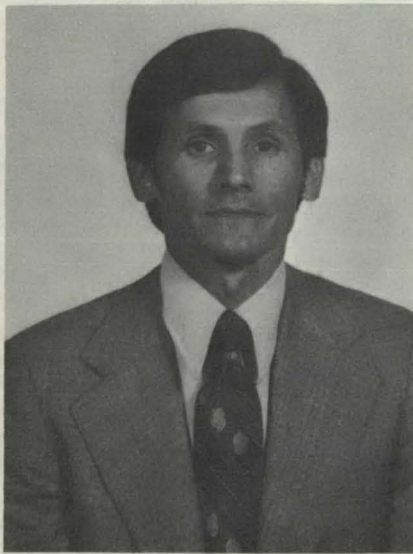
Leadership and Transformation

cusses the managerial traits necessary for future law enforcement leaders to deal with change. Finally, this article examines one specific managerial tool, situational leadership, developed by Paul Hersey and Kenneth Blanchard, which provides a situation-specific method for managing while working within a complex, changing environment.

individual's distance from the center of change.

Responses in law enforcement organizations to the loss of the stable state have been mixed. One negative response is sometimes voiced as a desire by leadership to return to "the way it used to be."⁴ Another is what Schon calls "mindlessness,"⁵ which is the avoidance of the dreaded reality of the present. These negative responses only undermine the purpose and the functioning of the agency. Positive re-

sponses, on the other hand, allow for creative solutions to new problems. Future leaders must respond in an optimistic and positive manner to change in order to deal effectively with the transformation. They must accept that change is inevitable, recognize the transformation, and realize the need to develop new tools by which to manage the transformation.



Special Agent Gerardo

Transformation

Transformation takes place in law enforcement, as in other agencies, for many reasons. Post-Watergate morality, societal expectations, accountability for expenditures, technological advances, diversity of values among employees, and scarcity of resources contribute to a sense of loss of a stable state in the organization.

Some managers find themselves at odds with the values they see prevalent in younger employees. A manager must understand, however, that diverse value systems are representative of the population he serves. He must, as a leader, learn to understand the varied value systems in order to manage more effectively within this ever-changing environment.

The new employee, whether employed by law enforcement or any other organization, is motivated by a multitude of factors and looks at employment quite differently from the manager. Today's new employee shops for a job, takes a look at wages and short-term benefits, and makes comparisons from one job to another. He leaves one agency for another if his personal needs are better met. This job transience can result in a lack of commitment that has been evident in many organizations. As Arnold Deutsch explains, "Never before have so many asked so much for doing so little."⁶ This concept, known as the entitlement theory, is defined "... as the perception that one is entitled to some things he or she does not have to work for."⁷

Employees have become very independent and find protection in civil service regulations, affirmative action programs, new personnel practices, and the alternatives civil litigation provides. This sense of independence has created and continues to create serious management problems when a leader fails to use appropriate leadership styles. Managers must be aware that their styles of leadership need to take into account these varied employee value systems as part of the total working environment. Therefore, future leaders need to understand the changing values of employees. In addition, they need to possess specific managerial attributes to use leadership tools effectively.

The Future Leader

According to Harlan Cleveland in his book, *The Future Executive*, the complexity of modern organizational systems is diffusing the opportunity to lead and is intensifying the demands for effective leadership.⁸ Cleveland states that as organizations become more complex, leaders must increase the number of persons consulted in the decisionmaking process. This requires certain demonstrated managerial attributes.

Effective leaders have particular attributes according to Cleveland. The effective leader:

- 1) Always has a great tolerance for ambiguity;
- 2) Makes sense of what appears to be complex and enjoys working in a complex environment;
- 3) Is intellectual and possesses more general rather than specialized experience;
- 4) Provides a forum for open and diverse discussion and consequently receives an

“An integral part of the situational leadership theory . . . is the relationship between the variables within the leader, the follower, and the given situation.”

abundance of data to use in his decisionmaking process; and

- 5) Adapts well and handles the tensions that arise in this open climate.

From Cleveland's point of view, the nature of future leadership is its lack of visibility. The leader finds satisfaction in internalizing the fact that he does a commendable job. A leader with these attributes is receptive, then, and employs managerial tools to meet the needs of his everchanging organization.

Managerial Tools: Situational Leadership

One tool that can be useful to an effective leader is Hersey and Blanchard's "situational leadership theory." According to these two authors, "Leadership is the process of influencing the activities of an individual or group in efforts toward goal achievement in a given situation."⁹ An integral part of the situational leadership theory, therefore, is the relationship between the variables within the leader, the follower, and the given situation. Situational leadership affords the manager the latitude to be flexible in his leadership styles and skills in order to vary his behavior. "If the needs and motives of his subordinates are different, they must be treated differently."¹⁰

Experience shows that the acceptance of a leader by a group or an individual is paramount in determining the leader's effectiveness. A follower accepts or rejects the leader and therefore determines the level of personal power the leader has. Even though the leader possesses position power, he will be totally effective only if his followers accept him, award him personal power, and thus produce at successful levels in both quality and quantity of work. Situational leadership,

therefore, places emphasis on the relationship of the leader to his followers. This requires that the leader be aware of the maturity levels of his followers, of the various styles of leadership he can employ, and of the impact of developmental and regressive cycles on his leadership.

Maturity of Followers

The situational leadership model focuses on the maturity of the followers. Maturity is defined within the model as "the capacity to set high but attainable goals, willingness and ability to take responsibility, and education and/or experience of an individual or group."¹¹

The leader must consider these maturity variables for each employee in each assigned task. For example, a police officer assigned to an investigative detail may possess few investigative skills, but may possess many other skills. He is mature in a general sense, but immature in terms of investigative skills. Not only must the leader assess the maturity level of each individual employee, but also the maturity of the group as a whole. An example is the assignment of several officers possessing different maturity levels to the same surveillance. The complexity of their specific assignment must be correlated to their individual skills.

Maturity is composed of two factors—willingness (motivation) and ability (competence). Evaluation of employees requires that the leader assess both maturity factors for each employee. There are a total of four combinations of the two factors, identified as follows:

- M1 = followers are neither willing nor able to take responsibility;
- M2 = followers are willing but not able to take responsibility;

- M3 = followers are able but not willing to take responsibility; and
- M4 = followers are willing and able to take responsibility.

The maturity levels of followers, therefore, comprise a range from M1 to M4, with M1 being low maturity level, M4 being high maturity level, and M2 and M3 being considered moderate maturity levels. (See fig. 1.)

Figure 1

High	Moderate		Low
M4	M3	M2	M1
Mature			Immature

Task Behavior and Relationship Behavior

In addition to maturity levels, the situational leadership model "is based on a curvilinear relationship between task behavior and relationship behavior and maturity."¹² Task behavior is the extent to which leaders organize and define the roles of the members of their group (followers) and explain what activities each is to do and when, where, and how to do it. Relationship behavior is the extent to which leaders maintain personal relationships between themselves and members of their group (followers) by opening up channels of communication, providing socioemotional support and "psychological strokes," and facilitating behaviors.¹³

Upon determining the maturity level of the follower or group, the leader

“Employing effective leadership styles at all levels of an organization can be a significant factor in the accomplishment of its goals.”

employs a specific leadership style. As the maturity level of the follower increases in a given task, the leader should begin reducing task behavior and increasing relationship behavior until the follower has reached a moderate level of maturity. As the follower moves into and above the high moderate level of maturity, the leader decreases both his task behavior and relationship behavior. As the maturity level of the follower moves from immature to mature, the leader must select an appropriate leadership style. Situational leadership theory describes four leadership styles comparable to the four maturity levels.

Leadership Styles

Situational leadership divides effective leadership into quadrants. These four areas are defined according to a correlation between task behavior and relationship behavior. Labeling the four leadership styles is useful for quick diagnostic judgments.

High Task/Low Relationship

Behavior (S1) is referred to as “telling” because this style is characterized by one-way communication. The leader defines the roles of followers and tells them what, when, and how to do various tasks.

High Task/Low Relationship

Behavior (S2) is referred to as “selling” because most of the direction is still provided by the leader. The leader attempts through two-way communication and sociemotional support to get the followers to accept psychologically decisions that must be made.

High Relationship/Low Task

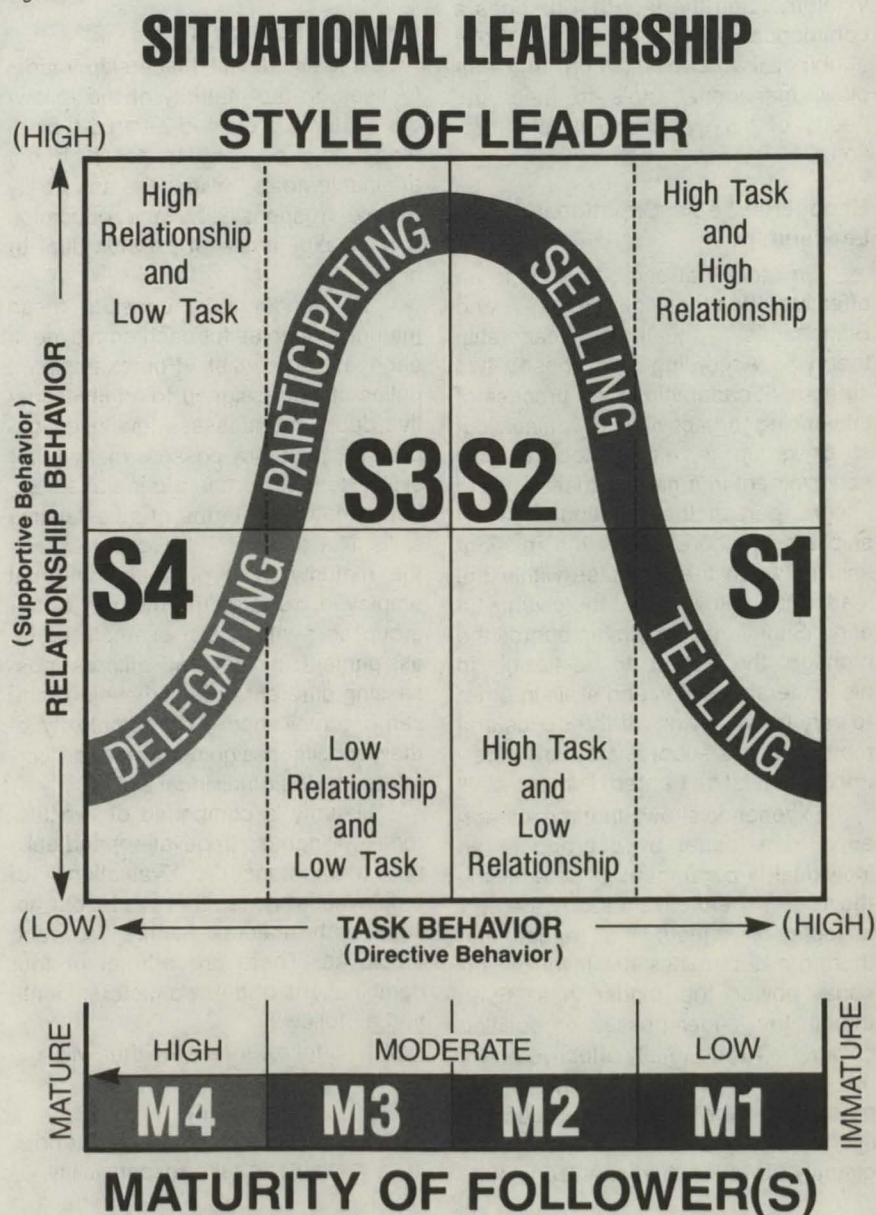
Behavior (S3) is called “participating” because the leader and followers share in decisionmaking through two-way communication. The leader provides much facilitating behavior since he

has determined that the followers possess the ability and knowledge to perform the task.

Low Relationship/Low Task

Behavior (S4) is labeled “delegating” because the leader lets the followers “run their own show.”

Figure 2



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Because the followers are high in both task and psychological maturity, the leader applies only general supervision.

The leader, then, must select the appropriate style (S1 to S4) to suit the maturity level(s) (M1 to M4) of his followers. The diagram illustrates how this selection process works. By drawing a 90° angle from the appropriate point on the curvilinear continuum (the task/relationship correlation), the leader can determine the appropriate style. The quadrant in which the right angle and the curvilinear continuum intersect is the appropriate leadership style for that follower in that task. (See fig. 2.)

Developmental Cycle

The situational leadership diagram illustrates the process of identifying the maturity levels of followers and determining the most effective leadership style in a given situation. What can a leader do, however, when he identifies the maturity level of followers to be M1, not willing or able to perform the task? The leader must then select from various alternative methods to develop the relevant task maturity of the individual. This approach is known as the "developmental cycle."¹⁴

In developing the maturity of an individual or group, the leader must take a risk. He must delegate more responsibility and immediately reward any progress. Development, therefore, is a two-step process: First, "a reduction in structure (task behavior), and second, if adequate performance follows, an increase in socioemotional support (relationship behavior)."¹⁵ Development must occur in almost all tasks that are assigned to an individual, since his maturity level can vary depending on the task itself.

As the development of the follower progresses in the continuum to the high point of the curvilinear function (from S2 to S3), the process changes. At this point, the leader begins to reduce structure as well as socioemotional support. At this stage, the leader depends on the complexity of the task assigned and the performance potential of the individual or group in making the job assignment.

The Regressive Cycle

What happens, however, when an employee shows less maturity than he previously exhibited in his job? This condition, called the "regressive cycle," occurs when an individual or group begins to behave in a less mature manner than in the past. A decrease in maturity is generally attributed to "high strength competing responses" in the environment.¹⁶ Situations or forces beyond the work environment, such as family or community problems, may begin to affect a follower's work performance. Even though the work situation has not changed, the employee's performance may alter drastically.

For example, this cycle may occur with a model employee who is highly motivated and a high achiever. Not only is he an excellent employee, but he also has an outstanding personal life. The leader may have been employing the "delegation" style effectively. Suddenly, the employee has a serious personal problem, and the quantity and quality of his work begin to decline. A nonsituational manager may take the attitude, "Let's give him time and allow him to solve his personal problem." Hersey and Blanchard believe that what the employee really needs is a little more structure and direction, as well as significant increases in socioemotional support.

The leader needs to change his leadership style from a delegation mode to a participative mode. Once the regression appears to subside and the maturity level is stable and begins to improve, the leader uses the development cycle to reorient his follower.

Conclusion

This overview of situational leadership is presented in an attempt to reinforce the existing need for police executives to use all available tools in managing their organizations effectively. Employing effective leadership styles at all levels of an organization can be a significant factor in the accomplishment of its goals. As society and employee values change, agencies are forced to move from well-established, stable organizational and managerial states. In turn, managers must learn to adapt their styles and to use varied managerial tools in order to become more effective leaders. **FBI**

Footnotes

¹ Donald A. Schon, *Beyond the Stable State* (New York: W.W. Norton and Company, Inc., 1971), p. 17.

² *Ibid.*, p. 31.

³ *Ibid.*, p. 15.

⁴ *Ibid.*, p. 28.

⁵ *Ibid.*, p. 29.

⁶ Arnold R. Deutsch, *The Human Resources Revolution* (New York: McGraw-Hill Book Co., 1979), p. 57.

⁷ *The Washington Post*, Parade Magazine, November 25, 1979, p. 27.

⁸ Harlan Cleveland, *The Future Executive* (New York: Harper and Row Publishers, 1972), p. 5.

⁹ Paul Hersey and Kenneth A. Blanchard, *Management of Organizational Behavior: Utilizing Human Resources*, 3d ed. (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1977), p. 84.

¹⁰ *Ibid.*, p. 159.

¹¹ *Ibid.*, p. 161.

¹² *Ibid.*, p. 161.

¹³ *Ibid.*, pp. 103-104.

¹⁴ *Ibid.*, p. 194.

¹⁵ *Ibid.*, p. 195.

¹⁶ *Ibid.*, p. 200.

Outlaw Motorcyclists A Problem for Police

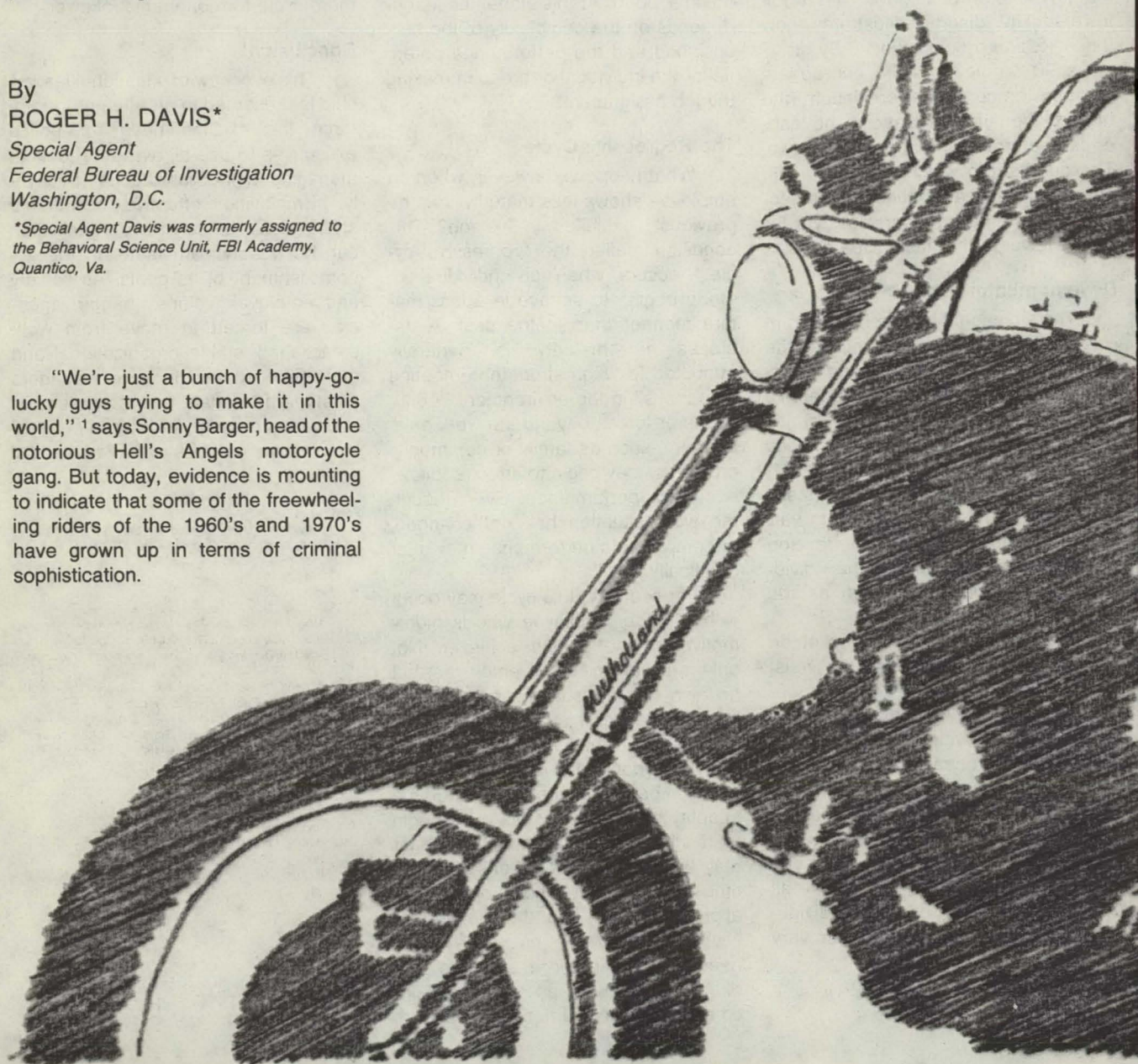
(Part I)

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"We're just a bunch of happy-go-lucky guys trying to make it in this world," ¹says Sonny Barger, head of the notorious Hell's Angels motorcycle gang. But today, evidence is mounting to indicate that some of the freewheeling riders of the 1960's and 1970's have grown up in terms of criminal sophistication.



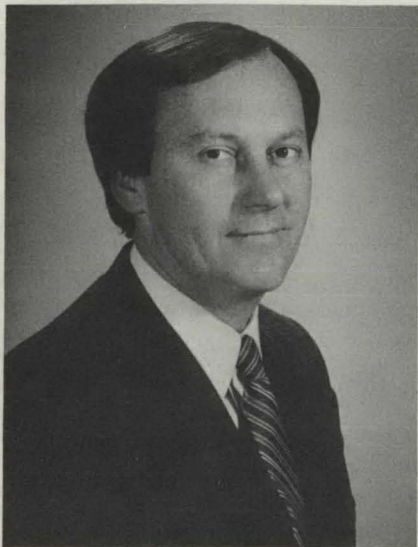
"The level of criminal involvement of persons connected with these adult gangs in the United States and Canada has influenced law enforcement officials to take a harder look at organized gang involvement in crime."



With a national law enforcement focus directed more and more toward criminal violence, outlaw motorcycle gangs have gained increasing national attention in recent years. According to Pennsylvania Congressman Robert Walker, "The problem of motorcycle gangs is pervasive and growing. They pose a serious threat to our society. . . ." ²

The level of criminal involvement of persons connected with these adult gangs in the United States and Canada has influenced law enforcement officials to take a harder look at organized gang involvement in crime. FBI investigations of the activities of some members of major motorcycle gangs in the United States have confirmed a deepening gang involvement in narcotics manufacturing and distribution, prostitution, weapons-related violations, extortion, murder, arson-for-hire, pornography, protection rackets, loan sharking, interstate transportation of stolen property and stolen motor vehicles, insurance fraud, and obstruction of justice.

The amount of criminal activity is alarming. Gang members are thriving on illegal profits reaped from their involvement in criminal enterprises. Law enforcement officers conducting gang investigations see these groups as posing complex criminal problems. Motorcycle gang members are now investing money gained from illegal enterprises into legitimate business ventures. Working relationships with other criminal groups have surfaced, and instances have been reported of motorcycle gang members accepting murder contracts, strong-arming business competitors, and being used as enforcers in collecting gambling debts.



Special Agent Davis

Complex violations committed by motorcycle gang members demand a deeper knowledge of group behavior. In order to be effective in gang investigations, law enforcement agencies must not only commit resources to intelligence analysis but also understand the structure and characteristics of the motorcycle gang.³

History

To understand the changing nature of law enforcement problems involving motorcycle gangs, it is important to know a brief history of these gangs in America. Many of the outlaw groups started as recreational groups, but all have drawn status and structure from the Hell's Angels. Hunter Thompson, who has written much about the Hell's Angels, traced the beginning of the gang to groups like the POBOBS⁴ and the Market Street Commandos. Both groups were said to include persons drawn together in loosely knit gatherings of individuals sharing a comparatively rare interest in motorcycles.⁵

The early group of Hell's Angels was only one of several motorcycle clubs active between the late 1940's and the 1960's. Several key media events brought the Angels to public attention and provided the media boost which propelled them toward a national reputation.

In the summer of 1947, in Hollister, Calif., and later in the fall in Riverside, Calif., thousands of motorcyclists gathered for motorcycle runs which ended in rioting, destruction of property, and in Riverside, two deaths. The events posed an awesome crowd control task for the small number of police officers in these two communities. In the summer of 1948, again in Riverside, Calif., 5,000 cyclists gathered, and again, the event turned into a riot. The Riverside police chief blamed this occurrence on visiting "outlaws," and the term "outlaws" began to be applied to individuals connected with some motorcycle clubs. Later, movies were made based upon incidents simi-

lar to the Hollister and Riverside events. Probably the most publicized of the movies was "The Wild Ones," in which bikers were portrayed as modern-day Robin Hoods seeking revenge on a world that did them wrong. This and several other similar movies romanticized motorcycle club behavior and sparked an interest, drawing others to motorcycle clubs.

Through the 1950's and early 1960's, police problems with motorcycle groups were primarily connected with controlling large gatherings. In July 1965, however, a rape incident occurred that changed the future role of the Hell's Angels. The gang held their annual rally at Bass Lake in California. Although the incident was relatively typical of problems connected with large gatherings of motorcyclists, media coverage primed the public for an incident and provided an "orgy of publicity that gave long dormant Hell's Angels eighteen years worth of exposure in six months and it naturally went to their heads."⁶

This creation of a national interest in motorcycle gangs in the 1960's was, in large part, a media phenomenon. Social scientists have identified the impact the media has upon behavior. The effects include not only changes in attitudes and values but also imitative behavior.⁷ The media boost given the Hell's Angels encouraged similar behavior in other motorcycle gangs.

Many gang members are now in their midthirties,⁸ and as the gangs matured, gang problems also changed. Police problems posed by outlaw gangs can be categorized into a number of areas, including crowd control, community fear, territorial battles for club dominance, rivalry over the control of narcotics and vice trade, and crime conspiracies.

Crowd Control

The frequent migration of gang members to rallies, such as annual Labor Day and Fourth of July runs, continue to draw police attention. Police agencies are spending valuable man-hours, both in planning and control of these large gatherings and in applying preventive measures to limit

problems with the groups. Additionally, there is a need for specific police intelligence-gathering activities, including identifying fugitives occasionally connected with some groups. Incidents occasionally occur in spite of police planning efforts.⁹

Community Fear

A more pervasive problem is the perception citizens have of the dangers posed by gangs in their communities. Reports of the presence of an adult gang, though legitimate cause for citizen anxiety, are difficult for police to deal with until an incident occurs. Incidents in various parts of the country have caused citizen action against gang presence in the community.¹⁰ In two cases, citizen concerns stirred action by city and county boards, precipitating charges that the police were afraid to deal with the gangs.¹¹

Territorial Battles

Battles for "turf" are a continuing law enforcement problem. Often, the rivalry results in violence confined between gang members.¹² Gang war deaths have resulted, however, in battles in public parking lots,¹³ attacks upon gang clubhouses,¹⁴ and firebomb and shotgun raids against homes.¹⁵ Frequently, outsiders are injured by gang violence. In New York, 5 people were killed and 22 injured in a vengeance war,¹⁶ and an innocent newsboy in Wisconsin was killed when he moved a bomb that was planted during a gang feud.¹⁷

Rivalry for Crime Dominance

Because of a reluctance by group members to cooperate, it is often difficult to sort out the motivations for violence between gangs. Frequently, the feuds begin over another altercation. As time passes, a cycle of retaliation continues until either its momentum weakens or an incident demanding police attention develops. In other cases, however, disagreements are for much larger stakes. Charlotte, N.C., is one such example. Problems with

Hell's Angels, Outlaws, and other gangs continue as the gangs struggle to dominate the area's lucrative vice and narcotics trade.¹⁸ Incidents in North Carolina have resulted in an intensified law enforcement effort against gang-related crime problems, including execution-style slayings.¹⁹

Crime Conspiracies

In the 1970's, another problem surfaced which served as an indicator of deepening gang involvement in criminal activity. A complex interstate network of associations developed between rebel gangs, and this "brotherhood" provided links for more sophisticated criminal activities. Crime territories were determined, and fixed roles and characteristic ways of doing business evolved. Particularly worrisome to law enforcement officers were the characteristics of organization that

**"Witness intimidation
by gang members . . .
is . . . a problem
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face in gang cases."**

made these groups so difficult to penetrate. The following components of organization similar to those seen among traditional organized crime groups were apparent among many outlaw gangs. These characteristics are perpetuated in gang activities today and warrant closer examination.

Codes of Silence

"A Hell's Angel is an honor society, man. We live by some of the strictest rules going and if you break one, you might not have the chance to break another."²⁰ Attributed to a Hell's Angel member, this quotation describes the rules by which outlaws live.

A Hell's Angel member, turned Government witness, provided evidence of a code of silence by describing the killing of two probationary members over the mere suggestion that one was a police informer.²¹ A Pagan gang member gave similar testimony. "'I just killed a snitch,' Boyd announced as he returned to the party. 'Is there any more?' As a Pagan prospect, Boyd had demonstrated his loyalty to the club."²²

Because of a strictly enforced code, there are few discussions with outsiders about gang-related criminal activities. The code appears to be imposed upon nonmembers as well. Witness intimidation by gang members, both directly and indirectly, is an extension of this code and a problem officers frequently face in gang cases. The Margo Compton case is an example of what happened to one person who testified against Hell's Angels. Not only was she slain, following her court disclosure about a club member's involvement in drugs and prostitution, but also killed were her 6-year-old twin daughters and the 19-year-old son of her boyfriend.²³

Motorcycle gang members' efforts at intimidation have also made police officers the target of gang violence. Police in New York arrested a gang member with a bomb, a revolver, and ammunition who said he wanted to blow up the police station.²⁴ A detective from Solano County, Calif. was crippled by a bomb blast in 1977 during his investigation of the Hell's Angels.²⁵ In Maryland, a deputy sheriff was shot and killed when he interrupted a Pagan gang member and an associate in a burglary.²⁶ In Garden Grove, Calif., a Hessian gang member shot his way out of a bar, killing one policeman and wounding four others.²⁷ In Portland, Oreg., an officer was killed in a raid on the Outsiders motorcycle gang headquarters.²⁸ These incidents, only a few of many, testify to officers' personal concern about working gang cases.²⁹

Mobility

The high degree of mobility of outlaw gangs is a hinderance to police agencies attempting to keep track of

and sort out the complex criminal connections among gangs and gang members. Outlaw rallies and funerals are attended by gang members from various parts of the country, making it difficult to identify individuals of police interest. These gatherings also provide opportunities for gang members to extend their criminal, as well as their social, networks.³⁰

The connections between members of diverse gangs are being used to perpetuate and extend the flow of contraband and to further other criminal activity. The mobility of many individuals connected with motorcycle gangs is well-documented in police files. In fact, some gangs have formed chapters, called nomads, where members do not belong to clubs based in a specific city but are members of a chapter of transients.

Security Networks

The extensive security precautions used by gang members also hinder law enforcement efforts. Police have discovered radio scanners in members' possession, and gang members and probates have been observed conducting surveillance of police officers and local prosecutors. Instances of attempted infiltration of Government and law enforcement agencies by gang members and associates have also been reported.³¹ There are also reports of occasional gang efforts to obtain information from law enforcement agency employees.

Criminal Enterprises

With an increasing level of criminal competence, gangs are committing more sophisticated crimes. The FBI and police departments throughout the United States are becoming more involved in investigations of outlaw gang members. In Indianapolis, Ind., police reported that gangs were "solidifying their ranks to form a national criminal network."³² Reports of gang infiltration into legitimate businesses in the

South and West are being linked with an enormous increase in vice activities.³³ In North Carolina, gangs are being referred to as "the new mafia," a result of the movement of some members into drugs and prostitution connected with businesses such as "photo and art studios and dating services."³⁴ In various parts of the country, authorities have identified gang-dominated crime networks, including millions of dollars of narcotics, stolen property, firearms, and explosives, as well as the harboring of fugitives.³⁵ Reports have also surfaced indicating gang members have now graduated to "murder-for-hire" enterprises.³⁶

The categories of gang problems law enforcement authorities face are numerous, and the nature and diversity of criminal enterprises associated with

"With an increasing level of criminal competence, gangs are committing more sophisticated crimes."

gang members are beginning to tax law enforcement resources. It is increasingly important, therefore, that law enforcement officials understand the behavior and characteristics unique to motorcycle gangs. The conclusion of this article will provide the reader with a sociopsychological profile of outlaw motorcyclists. **FBI**

(Continued next month)

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DO YOU HAVE TIME FOR A 16-YEAR-OLD WHO WANTS TO BE LIKE YOU?



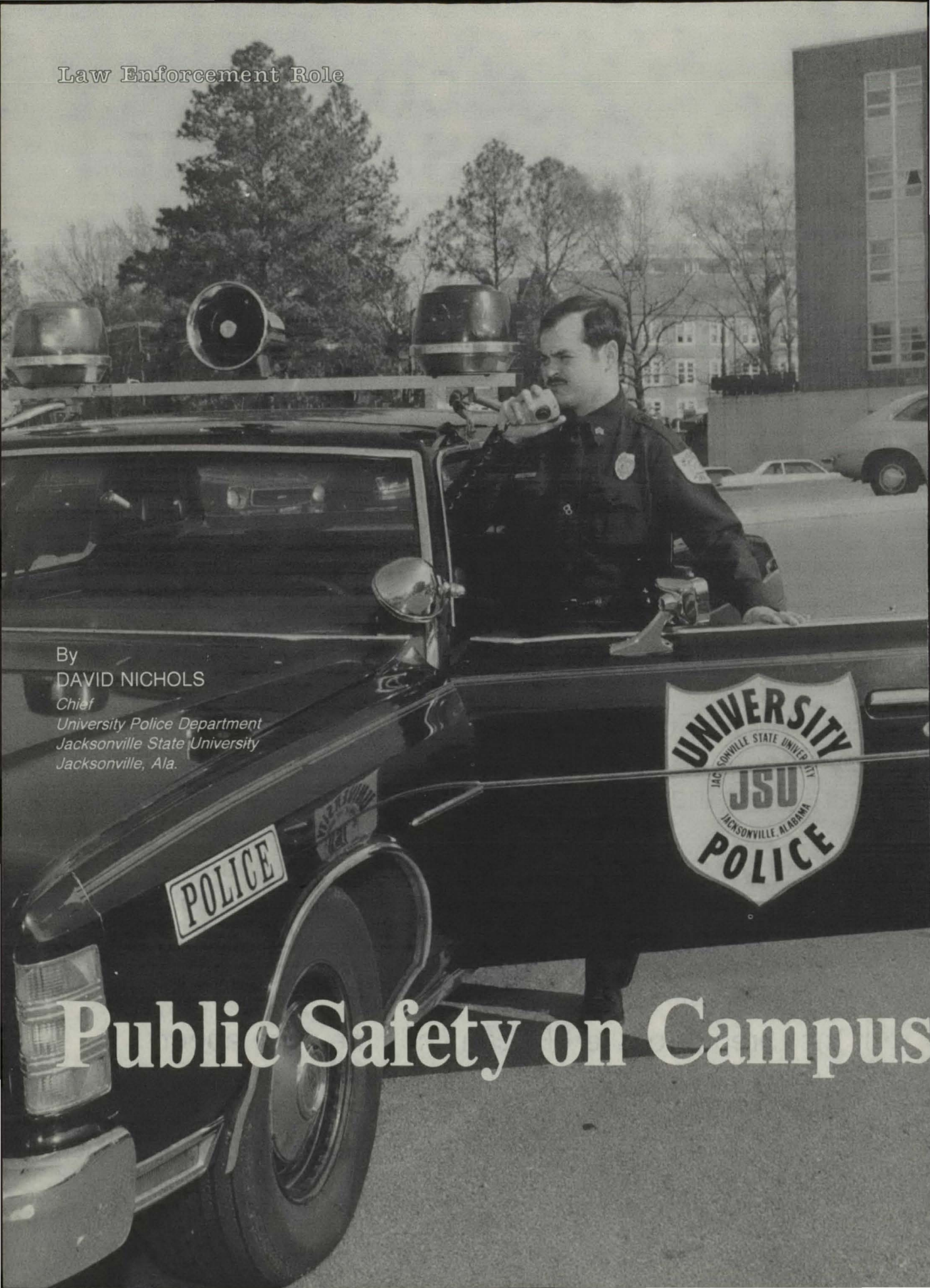
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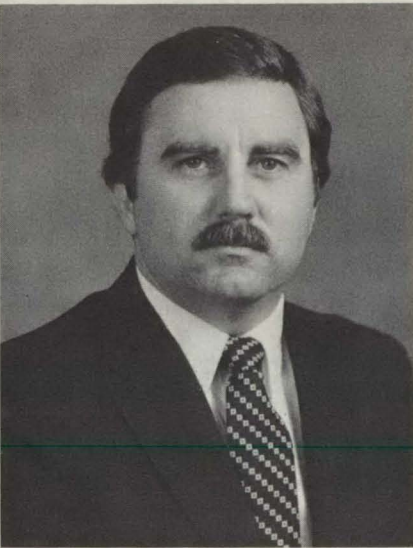




Law Enforcement Role

By
DAVID NICHOLS
*Chief
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Public Safety on Campus



Chief Nichols

College and university presidents and top administrators are concerned with every area of the campus community and are committed to quality in both academic and support divisions. The assiduous top administrator is becoming more aware of the importance of effective public safety efforts on campus. While the primary mission of the institution should be that of facilitating academic development, the assurance of a safe environment conducive to the pursuit of educational goals is also essential. Personal safety and property security are major areas for which public safety services must be provided. The increasing liability awareness of the past few years has been a major concern of administrators when making public safety decisions.

During the past 2 decades, significant strides have been made in campus public safety. Innovative programs, as well as a new professionalism, have been achieved through supportive administrative efforts emanating from a cognizance and concern for the total environment of the institution. Public safety on campus includes law enforcement/security, fire safety, emergency medical services, and civil defense procedures. These services are particularly important for the residential campus community. College communities have the same public safety responsibilities as do the municipalities in which they are located and often share services through cooperative arrangements with the local government. However, the chief administrator knows that the ultimate responsibility for safety and security services rests with the institution. Therefore, the best services feasible within budgetary constraints must be afforded.

The selection of an individual to head the public safety department should be the first priority for the administrator. The right kind of leader can assist in setting goals and organizing and implementing programs. In the past, some college administrators gave little attention to public safety, which resulted in the director of the police/security department being chosen on criteria such as longevity within the department, being the oldest officer, and/or having extensive law enforcement experience, i.e., a retired State trooper, former municipal officer, retired military policeman, etc. Frequently, there was no emphasis on advanced education, keen communication skills, or an acceptable philosophy of the role of public safety services within the academic community.

Today, however, the trend is toward hiring individuals who possess a bachelor's degree as a minimum, have proven experience in community relations, have successful experience in law enforcement and other public safety services (preferably in a campus setting), have the ability to communicate effectively with the various publics both on and off campus, and possess human relations skills coupled with administrative abilities. An extensive, painstaking search and selection process is important when seeking competent candidates. A salary range should be attractive and commensurate with the credentials and qualities of a professional individual. Besides being able to relate to his personnel, this individual should be capable of communicating effectively with other administrative officials and students while developing a public safety program appropriate for that particular academic community.

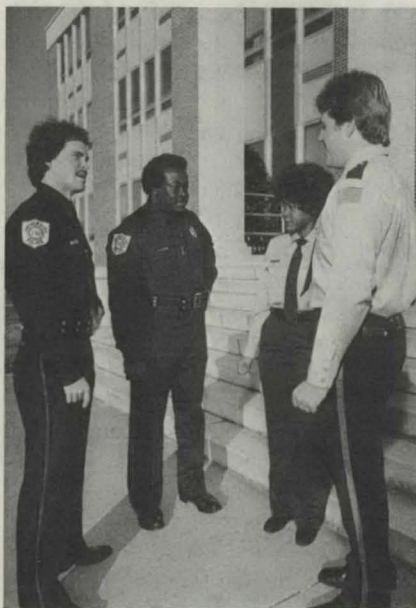
“... a viable public safety program for the campus community is an essential support service and a vital component in achieving the mission and goals of the institution.”

Campus law enforcement, which has witnessed more changes than any other public safety service, is one area which should receive special attention from the college president. As recent as the 1950's and early 1960's, the campus "protectors" were usually older (sometimes retired) security guards who had little formal education and often no police training. Their responsibilities entailed building security, custodial tasks, and parking enforcement. Situations requiring responses beyond these usually prompted administrators to summon local law enforcement officers to the campus. This arrangement met the needs of the campus community and fulfilled the expectations of the administration until the tumultuous 1960's when disorder and crime accelerated in the academic community. College presidents then realized the inadequacy of their campus "law" and were dissatisfied with the attitudes and methods of local police when handling sensitive situations. Subsequently, administrators concerned with students' needs, peace, and safety and the autonomy of law enforcement responsibilities on campus property realized it was time to change priorities and direction in order to create a more professional police/security department on campus.

During the 1970's, this new school of thought was reenforced by the increased publicity given to criminal incidents on campuses across the country (i.e., murders, rapes, assaults, and property loss) which resulted in many colleges and universities giving support to improving and strengthening law enforcement departments with better trained and educated personnel. These professional departments are often unnoticed but constitute a viable part of the law enforcement community. Today, innovative procedures, ad-

vanced systems, and up-to-date equipment complement the personnel who provide quality law enforcement/security services supportive of the missions and goals of universities across the country.

There are a few specific areas in which the progressive administrator must give careful consideration when evaluating and planning for better campus law enforcement/security services. Perhaps one of the most



Sworn officers (dark uniforms) and student patrol officers are assigned campus public safety duties.

important areas is personnel. Selecting and employing well-educated, intelligent individuals with the potential to be trained professionally and the ability to adapt to the campus environment is the key to establishing an effective campus law enforcement/security department. These professional "protectors" can better communicate with faculty, staff, students, and visitors, while providing quality performance to

meet the various needs that may arise in the campus community.

The training of university police has improved significantly in the last few years. Many university police and/or security departments have a large percentage of officers who are either working toward a degree or have attained an advanced degree, and many campus officers now are encouraged to attend State training academies. For example, in Alabama, all public college and university police officers are sworn peace officers and are required to meet the State minimum standards for police officers, which involves attending an 8-week law enforcement academy. In 1980, the Alabama Association of College and University Police Administrators sponsored the first statewide training seminar for campus law enforcement/security officers, which covered such topics as human relations, student relations, role conflicts, traffic and parking, and crowd control. In addition, public as well as private institutions are implementing inservice training programs for their campus officers.

In these days of budgetary constraints, services which can be provided by the campus police should be considered as a "two for the price of one" deal. The 24-hour patrol officer provides both physical and personal security on campus, and at no extra cost, serves as a public relations/information resource. Many departments employ a 24-hour radio communications operator who answers telephones, dispatches various emergency services (i.e. fire department and medical rescue), and provides general information and assistance to faculty, staff, students, and visitors. This 24-hour service also assists other departments on campus (e.g., maintenance, housing, food services, and health services) after regular working hours. A night



A 24-hour communications system must be provided for a campus public safety program to be effective.

Fire safety is a vital area of public safety.

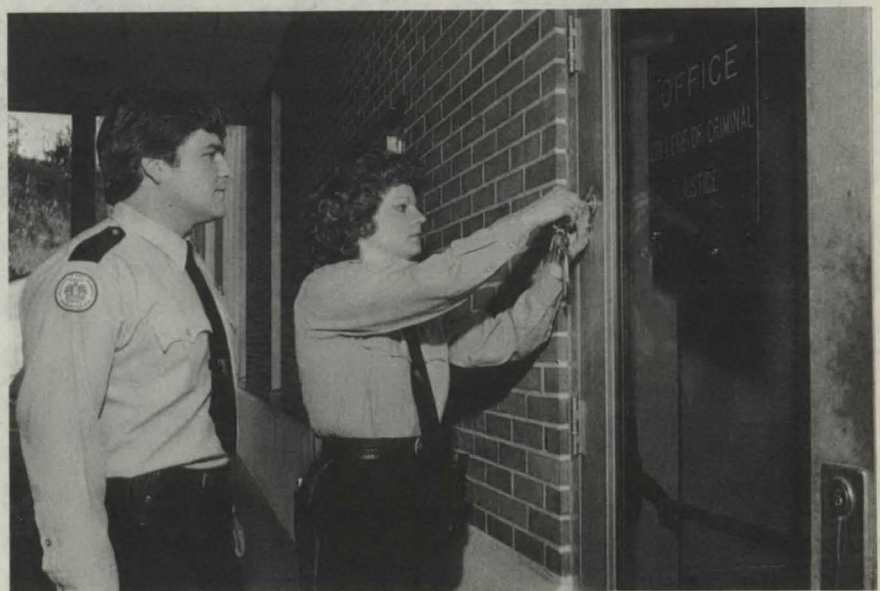


escort service for female students has been successful and creates a positive public relations image with students while providing comfort and safety. Another common responsibility performed by most police/security departments is building security. This service can be beneficial in several other areas, including energy conservation and safety hazard reporting.

Fire safety is another vital area of public safety which should be a high priority on every campus. Fire prevention and fire protection are the two components of a complete fire safety program. Currently, most universities rely on the local municipality to provide fire protection; however, a growing number of universities are beginning to take a more active role in fire safety for their campus. A fire safety program should include inspections, adequate written standard operating procedures, evacuation procedures, alarm systems,

water and hydrant information, and a good communications system. It is the responsibility of the top administrator to ensure that "all of the bases are covered" in the area of fire safety. Administrators must be able to cope with the reality of negligence and liability.

The first step toward assessing "what is" with respect to facilities and



Building security is just one component of public safety.

“. . . administrators should assess the philosophy and quality of their institution's public safety functions and support the planning, organizing, and implementing of an effective program.”

equipment is to have regular fire inspections conducted by trained individuals. These inspections include the inspection of fire extinguishers, alarm systems, and general safety standards within campus buildings. All inspections should be documented. Maintaining adequate records and written procedures is a necessity. Buildings should be equipped with local fire alarm systems including pull stations, fire detectors, and sprinkler systems, especially in residence halls. Many universities have installed a central 24-hour monitoring system located at the campus police/security office. With this procedure, all buildings with local systems are connected to the central panel which will indicate when a local system is activated, so that the fire department can be dispatched immediately. In addition to adequate fire detection equipment, evacuation procedures should be defined clearly and disseminated to building occupants. In dormitories, the use of student fire marshals has proved successful in evacuation, building/extinguisher checks, and communication with campus fire safety officials.

Since a fire safety department may be located within the university police/security department or housed under a separate division, it is vital that consistent and cooperative efforts be made by all university constituencies to maintain an effective program.

Another relatively new area of public safety is emergency medical service. In the past, the primary concern and subsequent emphasis of emergency medical services was on transporting the ill or injured to the nearest doctor or hospital emergency room. However, in the past 15 years, emergency medicine/medical rescue has come into its own. This service now provides medical technicians and paramedics with the most advanced equipment. These paramedics have the ability to administer drugs and sustain life until transportation is available.

While the doctrine of “in loco parentis” may not be strictly adhered to, university officials are still obliged to ensure supportive measures for these emergency circumstances. Numerous universities are hiring trained emergen-

cy medical technicians to serve as “first responders” in medical emergencies, while relying on local hospitals to provide full-service emergency medical rescue and ambulance service. The university's role, therefore, should be to cooperate with local medical services and maintain effective emergency procedures on the campus, which may include an emergency telephone number with a 24-hour communications operator who can dispatch whatever emergency service is needed.

Another major area of public safety of which the college president should be cognizant and give serious consideration is civil defense. Severe weather conditions, occurring frequently throughout the year, (i.e., tornadoes, snow and ice storms, hurricanes, flooding, etc.) are a threat to everyone on



University police chief (left) discusses fire/medical rescue procedures with local fireman/medic.

campus. Planning and special provisions for such weather conditions should be completed prior to the emergency circumstances and should include an alert/notification system, evacuation procedures, a backup power supply, emergency lighting, transportation, food services, and other provisions which may be necessary to maintain minimum life support. Some campuses use police patrol vehicle sirens and speakers to announce impending weather conditions and advice for safety precautions; others have used steam-powered whistles or large outdoor speakers to sound an "alert" warning or to give an "all clear" signal when the warning has passed. It is important to preface any alert/warning system with information regarding these signals.

A well-planned system will also incorporate evacuation drills for students. "Safe" locations should be equipped with a backup power supply, heat, and adequate restroom facilities. Educating the student population will ensure smooth exercise of procedures and negate panic and confusion. To ensure good planning and communications, other major disasters (i.e., bombings, explosions, fires, etc.) should also receive special attention. Cooperation with local government agencies and the civil defense is essential and will prove to be a "life saver" during exigent circumstances.

The key to such cooperative efforts is a well-planned, operative communication system. A special two-way radio frequency should exist for all emergency agencies to "plug into," since fire departments, emergency medical rescue, police, civil defense, and hospital emergency rooms may be needed from surrounding communities. An ineffective communications system will be detrimental to the mission at hand.

It is quite evident that a viable public safety program for the campus community is an essential support service and a vital component in achieving the mission and goals of the institution. Innovative procedures com-

bined with professionally trained personnel are relatively new developments which have proven successful in providing effective safety efforts and services. In being responsive to the needs of students and receptive to change, administrators should assess the philosophy and quality of their institution's public safety functions and support the planning, organizing, and implementing of an effective program.

FBI

Killings of Law Enforcement Officers Decline

During the first 6 months of 1982, 36 law enforcement officers were feloniously killed in the United States and its territories, representing a decline from the 49 line-of-duty deaths which occurred in the first half of 1981. Law enforcement agencies have cleared 32 of the 36 killings.

The victims included 24 city policemen, 11 county officers, and an employee of a State law enforcement agency. Four of the victim officers were attempting to thwart robberies or were in pursuit of robbery suspects,

three were answering burglary-in-progress calls or were pursuing burglary suspects, and nine were attempting arrests for other crimes. Seven officers were murdered upon responding to disturbance calls, six while enforcing traffic laws, and three were ambushed. Two victims were investigating suspicious persons or circumstances, one was handling a civil disorder, and another was slain while transporting a prisoner.

As in the previous year, firearms were the dominant weapons used—34 of the 36 officer killings were committed with firearms. Handguns were used in 24 of the murders, rifles in 8, and shotguns in 2. Of the remaining victim officers, one was intentionally struck by a vehicle; the other was stabbed to death.

The number of officers killed in the Southern States totaled 13, followed by 12 in the North Central States, 7 in the Western States, 2 in the Northeastern States, 1 in the Mariana Islands, and 1 in Puerto Rico.

THE CONSTITUTIONAL RIGHT TO PRIVACY AND REGULATIONS AFFECTING THE SEXUAL ACTIVITY OF LAW ENFORCEMENT EMPLOYEES

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

Many law enforcement agencies have an internal policy which regulates in varying degrees the personal conduct of employees. This policy frequently includes standards of conduct relating to an employee's off-duty sexual activity. In recent years, law enforcement agencies and managers have been confronted with litigation initiated by employees who claim that the implementation and enforcement of those policies impermissibly infringes on their constitutional right to privacy.

This article examines the constitutionally based right to privacy and alerts law enforcement personnel to the significant privacy issues that are involved in the development of a standards of conduct policy. The article will begin with a discussion of some U.S. Supreme Court decisions involving the constitutional right to privacy. Next, it will examine some decisions of State and Federal courts where law enforcement employees have alleged privacy deprivations. In the final section, specific recommendations will be offered concerning factors that a law enforcement manager should consider in formulating a standards of conduct policy.

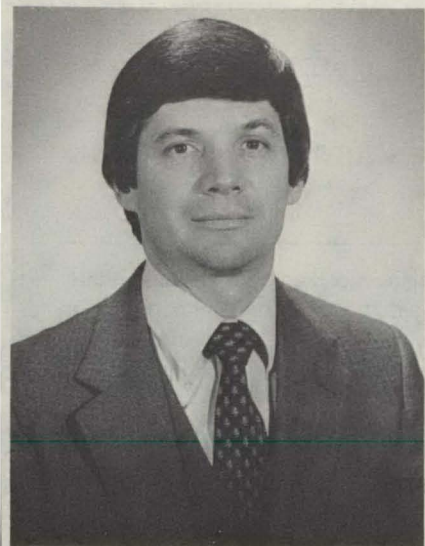
It is important to note at the outset what this article will not address. First, this article does not consider the full range of issues that are included within the constitutional right to privacy. Instead, the focus will be on the relationship between the right to privacy and private consensual sexual activity. Second, the article will not address privacy rights an employee might derive from State constitutions, State or Federal legislation, or union agreements. Third, the article will not examine other constitutionally based rights such as freedom of speech, freedom of association, equal protection, or due process.¹

One final point deserves mention. This article does not purport to set forth any views on the morality of particular sexual activity. People have different views on this sensitive and emotional subject which are shaped and colored by one's philosophy, experiences, religious training, attitudes toward life and family, and moral values. In short, the article is a legal analysis, not a moral judgment, and accordingly, any recommendations or conclusions should be considered only in that vein.

CONSTITUTIONAL PRIVACY AND THE U.S. SUPREME COURT

Overview

While the Supreme Court has decided a number of cases involving the constitutional right to privacy, it is important to emphasize two points which tend to complicate the job of assessing the scope of protection afforded by those decisions to a law enforcement employee's sexual activities. First, the U.S. Constitution does not contain any



Special Agent Schofield

clear textual support for a constitutional right to privacy. Second, the Supreme Court has not decided a case which clearly addresses the extent to which sexual activity is protected by the right to privacy.

Nevertheless, an examination of several Supreme Court opinions involving right to privacy claims should provide a useful foundation from which we can begin to make some principled judgments concerning the proper resolution of privacy claims in the context of employee sexual activity. However, one ultimately is faced with the difficult task of reasoning by analogy from these decisions which leave unanswered some important questions and reflect some disagreement among individual Justices.

Privacy Development

In 1965 in the case of *Griswold v. Connecticut*,² the Supreme Court declared unconstitutional a Connecticut statute which made the use of contraceptives a criminal offense. *Griswold* and a physician had been convicted because they gave information, instruction, and medical advice to married persons regarding means of preventing conception. While the six Justices who comprised the majority expressed some disagreement over the basis for the holding, they all concluded that the State birth-control law unconstitutionally intruded upon the right of privacy emanating from the U.S. Constitution.³ In a concurring opinion, Justice Goldberg noted that the holding in *Griswold* should not affect the constitutionality of State statutes which prohibit adultery and fornication, and it in no way interferes with a State's proper regulation of sexual promiscuity or misconduct.⁴

The scope of privacy protection recognized in *Griswold* was expanded in 1972 in the case of *Eisenstadt v. Baird*.⁵ In that case, a majority of six Justices invalidated a Massachusetts statute which prohibited the distribution of contraceptives except to married persons.⁶ Writing for the majority, Justice Brennan said:

"If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."⁷

In addition, the Court quoted with approval the following language from an earlier Supreme Court decision which appears to offer increased possibilities for privacy protection:

"(A)lso fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man."⁸

“... the right to privacy, where applicable, deserves special protection from governmental interference.”

One point that emerges clearly from the majority opinions in *Griswold* and *Eisenstadt* is that the right to privacy, where applicable, deserves special protection from governmental interference.

In 1973, the Supreme Court decided another important case involving the right to privacy. In *Roe v. Wade*,⁹ a majority of seven Justices declared unconstitutional a Texas abortion law that made it illegal to procure an abortion except by medical advice for the purpose of saving the life of the mother. Writing for the majority, Justice Blackmun noted that while the Constitution does not explicitly mention a right of privacy, the Court in prior decisions had recognized that such a right is contained in the concept of personal liberty and that it protects fundamental personal rights from governmental intrusion.¹⁰ The majority then concluded that this right is broad enough to encompass a woman's decision whether to terminate her pregnancy.¹¹

However, this right to privacy is not absolute or unqualified and may be restricted where the government can demonstrate compelling reasons for such restriction.¹² In that respect, the Court determined that the State's interest in proscribing abortion is compelling when the stage of pregnancy is reached where the fetus is deemed viable.¹³

It is difficult to discern from the opinions in *Griswold*, *Eisenstadt*, and *Roe* whether they establish a constitutional right of privacy or personal autonomy in private consensual sexual activity.¹⁴ However, several cases decided since those decisions suggest that the Supreme Court has not extended the constitutional right in personal autonomy to encompass claims beyond those activities relating to marriage, procreation, contraception, abortion, family relationships, and the rearing and education of children.¹⁵

Scope of Privacy Protection

In *Kelley v. Johnson*,¹⁶ the Court refused to expand the right to privacy to invalidate a regulation of a law enforcement agency concerning the length and style of a policeman's hair. The court distinguished the claim in *Kelley* from those in prior cases like *Griswold* and *Roe* by noting that the latter cases involved a substantial infringement of an individual's freedom of choice with respect to certain basic matters of procreation, marriage, and family life.¹⁷

In another case, *Paris Adult Theater v. Slaton*,¹⁸ the Court rejected a right to privacy claim involving the viewing of allegedly obscene films in a public theater. The Court drew a sharp distinction between public and private conduct and limited the holding of an earlier case, *Stanley v. Georgia*,¹⁹ to the viewing of such films in the privacy of the home.²⁰ The Court said the constitutionally protected privacy of family, marriage, motherhood, procreation, and child rearing is not just concerned with a particular place, but with a protected intimate relationship which can extend to the doctor's office, the hospital, the hotel room, or as otherwise required to safeguard the right to inti-

macy involved.²¹ In contrast, the Court said there is clearly no necessary or legitimate expectation of privacy which would extend to marital intercourse on a street corner.²²

With respect to private consensual sexual behavior, there is disagreement among individual Justices and legal scholars concerning the extent to which the right of privacy affords constitutional protection.²³ For example, in *Doe v. Commonwealth's Attorney*,²⁴ the Supreme Court summarily affirmed a Federal district court's dismissal of a challenge by a male homosexual to Virginia's sodomy law.²⁵ However, the precedential value of the Court's action in *Doe* is debatable because the Court did not hear oral argument and did not write an opinion setting forth its reasoning.²⁶

Predictably, disagreement over the significance of the Court's action in *Doe* surfaced the next term of the Supreme Court in the case of *Carey v. Population Services International*.²⁷ Writing for the majority, Justice Brennan observed that the Court had not definitively answered the difficult question whether and to what extent the Constitution prohibits State statutes regulating private consensual sexual activity among adults.²⁸ In response, Justice Rehnquist wrote in dissent that the decision in *Doe* had definitively established the constitutional validity of State statutes prohibiting certain consensual sexual conduct.²⁹

In the case of *Michael M. v. Superior Court of Sonoma County*,³⁰ Justice Rehnquist and Justice Brennan again

expressed their disagreement as to the affect of precedent on governmental authority to prohibit consensual sexual behavior. In his plurality opinion, Justice Rehnquist seemed to assume that a State could validly make sexual intercourse among teenagers a criminal act.³¹ In a dissenting opinion, Justice Brennan countered by observing that prior cases would not foreclose a privacy challenge to the State's power to criminalize consensual sexual activity.³² Justice Brennan argued that minors enjoy a right of privacy in connection with decisions affecting procreation and that it is not settled that a State may rely on a pregnancy-prevention justification to make consensual sexual intercourse among minors a criminal act.³³

The foregoing cases suggest that the exact contours of the constitutional right to privacy have not been clearly established.³⁴ The differing views expressed by Justices of the Supreme Court concerning the relationship between privacy and sexual activity increase the likelihood of future litigation on that issue.

The next section of this article will examine some cases decided in the lower Federal and State courts where employees have challenged the constitutionality of regulations affecting their sexual behavior. The first three cases will involve instances where privacy claims were rejected, and the remaining cases will represent decisions where privacy claims were sustained.

LOWER COURT DECISIONS

Privacy Claims Rejected

In *Fabio v. Civil Service Commission of the City of Philadelphia*,³⁵ the Supreme Court of Pennsylvania ruled that a Philadelphia police officer's constitutional right to privacy was not violated by his dismissal for sexual misconduct. The officer was discharged for "conduct unbecoming an officer" after it was demonstrated that he induced his wife to consent to an extramarital affair with a fellow police officer and then participated in an extramarital affair with his wife's 18-year-old sister. In rejecting the officer's claim of a privacy infringement, the court said that even if the officer's conduct was protected by the Constitution, the right to privacy is not an unqualified right, and at some point, the government's interest may become sufficiently compelling to sustain a regulation of that activity.³⁶ While noting that in Pennsylvania individuals have the right to engage in extramarital sexual activities free from the threat of criminal prosecution, the court held that the State has a wider latitude and different interests in regulating the activities of its employees than in the behavior patterns of the citizenry at large.³⁷

Accordingly, the court concluded that even under the strictest standards of review, the government's interests were sufficiently compelling to overcome the officer's privacy claim.³⁸ In ruling that police officers can be held to a higher standard of conduct than other citizens, including other public employees, and that the officer's conduct had adversely affected his department, the court said:

"The government must tread lightly when it investigates and regulates the private activities of its police officers. Public employers must be careful not to transform anachronistic notions of unacceptable social conduct into law. However, when an employee's private life is the center of rumors, when it adversely affects his fellow workers, when it corrupts his family members, and when it results in complaints to his employer, governmental intervention is warranted."³⁹

In *Childers v. Dallas Police Department*,⁴⁰ a Federal district court ruled that Childers, an admitted homosexual, was not deprived of his right to privacy when the Dallas Police Department refused to hire him for a position in the property division of the department.⁴¹ The court acknowledged that while the interests of the government frequently conflict with the constitutional interests of its employees, the government in certain instances has a right as an employer to control the conduct of its employees.⁴²

Moreover, the court interpreted the Supreme Court's decision in *Doe v. Commonwealth's Attorney*⁴³ as implying that homosexual conduct does not enjoy special constitutional protection and concluded that the *Doe* decision was binding precedent.⁴⁴ The court added that even if homosexual conduct was in some respects protected by the Constitution, the Dallas Police Department would only be required to show that its decision was rationally related to legitimate governmental purposes.⁴⁵ Recognizing the special needs of law enforcement employment, the court said:

"There are a myriad of grounds upon which the police department's actions and the regulations upon

“... while the interests of the government frequently conflict with the constitutional interests of its employees, the government in certain instances has a right as an employer to control the conduct of its employees.”

which those actions were based may be found appropriate for the full and efficient accomplishment of the police department's mission. The regulations serve to protect the integrity of the police department and to maintain discipline. There is legitimate concern about tension between known and active homosexuals and others who detest homosexuals. There are also legitimate doubts about a homosexual's ability to gain the trust and respect of the personnel with whom he works. Moreover, the police department could rationally conclude that tolerance of homosexual conduct might be construed as tacit approval, rendering the police department subject to approbation and causing interference with the effective performance of its function.”⁴⁶

While it does not involve a law enforcement employee, the decision in *Hollenbaugh v. Carnegie Free Library*⁴⁷ deserves brief mention. In that case, the Supreme Court refused to review a decision of a lower Federal court sustaining the discharge of two public library employees for living in an openly adulterous relationship.⁴⁸ In rejecting the privacy claim, the district court limited the protection afforded by the right to privacy to only those fundamental rights and personal intimacies associated with the home, the family, motherhood, procreation, and child rearing.⁴⁹ The court said there is no fundamental privacy right for two persons, one of whom is married, to live together in an openly adulterous relationship.⁵⁰

Privacy Claims Sustained

In *Shuman v. City of Philadelphia*,⁵¹ a Federal district court ruled in favor of an officer who had been dismissed pursuant to a policy of the Philadelphia Police Department. The officer, who was separated from his wife, had become romantically involved with an 18-year-old woman. Following a series of complaints from the woman's mother and an Internal Affairs Bureau surveillance, the officer was subjected to an official interview concerning his personal relationship with the woman. The officer refused to answer questions concerning his off-duty personal life despite being warned that a city ordinance provided that he could be dismissed for his refusal to cooperate. Subsequently, the officer was dismissed for his refusal to answer questions during an official departmental investigation.

The court noted that where there is a zone of privacy protecting activities of an employee, compelled disclosure in and of itself may be unconstitutional absent a strong countervailing State interest.⁵² In this regard, the court said that the Supreme Court's decision in *Whalen v. Roe*⁵³ had recognized the existence of a legitimate strand of privacy involving an individual's interest in avoiding disclosure of personal matters.⁵⁴

Moreover, the court found that private sexual conduct is within the “zone of privacy” and is protected from unwarranted governmental intrusion. The court said some matters fall within this zone not because they necessarily relate to the exercise of substantive rights, but because they are private and constitute areas of one's life where the government simply has no legitimate interest.⁵⁵

The court noted, however, that an employee's privacy rights are not absolute and that if the sexual activities of a public employee were open and notorious, or if such activities took place in a small town, the public employer might very well have an interest in investigating such activities and possibly terminating the employee.⁵⁶ With respect to the facts in *Shuman*, the court ruled that the department had failed to meet its burden of demonstrating how the officer's private sexual activities impacted on his job as a police officer and said the officer could not be dismissed for his refusal to answer questions concerning his personal life.⁵⁷

In *Smith v. Price*,⁵⁸ a panel of the U.S. Court of Appeals for the Fifth Circuit assumed without deciding that a police officer's adulterous relationship was included within the right to privacy.⁵⁹ The privacy issue was not directly decided because the court concluded that the officer's sexual conduct was not a motivating factor in his dismissal. The court determined that the department had other legitimate reasons for the termination, including the officer's visits to the woman's home while on duty without notifying the dispatcher and his failure to report the taking of his police gun and gunbelt.⁶⁰

In *Major v. Hampton*,⁶¹ a Federal district court ruled that an Internal Revenue Service agent was improperly

dismissed even though his discharge was based on a finding that he had engaged in off-duty extramarital sexual activities.⁶² While conceding that some types of off-duty sexual conduct might seriously jeopardize the ability of a particular employee, the court said the government does not have an unlimited license to inquire into the private lives of its employees.⁶³

The court noted that the peculiar relationship of employer-employee permits the government, when it acts as employer, to require more of its employees than it may require of the general public.⁶⁴ However, the court said those governmental prerogatives are more limited in instances where an employee's fundamental rights are affected.⁶⁵ In those instances, a compelling as compared to a rational justification must be demonstrated to justify an infringement.⁶⁶

The court then acknowledged the fact that the degree of protection afforded sexual activity by the right to privacy is not clearly defined, but concluded that the dismissal of the agent was not justified even under the less rigorous "rational basis" standard.⁶⁷ In that regard, the court observed that the agent's adulterous conduct occurred in the City of New Orleans, was circum-spect, and had not brought any significant discredit to his employer. Focusing on the factors to be assessed, the court said:

"To some degree the determination whether an employee's off-duty acts tend to discredit either the employee or his employer must depend upon the nature of the acts, the circumspection or notoriety with which they are performed, and the atmosphere of the community in which they take place."⁶⁸

One final case merits some attention. While it does not involve the privacy claim of an employee, the recent decision in *People v. Onofre*⁶⁹ illustrates a significant expansion of the right to privacy doctrine. In that case, the Court of Appeals of New York held that the State consensual sodomy statute was violative of the constitutional right to privacy. In describing the constitutional right to privacy, the court said it is a right of independence in making certain kinds of important decisions, with a concomitant right to conduct oneself in accordance with those decisions, undeterred by governmental restraint.⁷⁰ Noting that the Supreme Court's decision in *Eisenstadt* distinguished between public and private morality, the court concluded that the State had failed to demonstrate how government interference with the practice of personal choice in matters of intimate sexual behavior out of view of the public and with no commercial component will serve to advance the course of public morality or do anything other than restrict individual conduct and impose a concept of private morality chosen by the State.⁷¹ In summary, the court said:

". . . (T)here has been no showing of any threat, either to participants or the public in general, in consequence of the voluntary engagement by adults in private, discreet, sodomous conduct. Absent is the factor of commercialization with the attendant evils commonly attached to the retailing of sexual pleasures; absent the elements of

force or of involvement of minors which might constitute compulsion of unwilling participants or of those too young to make an informed choice, and absent too intrusion on the sensibilities of members of the public, many of whom would be offended by being exposed to the intimacies of others. Personal feelings of distaste for the conduct sought to be proscribed . . . and even disapproval by a majority of the populace, if that disapproval were to be assumed, may not substitute for the required demonstration of a valid basis for intrusion by the State in an area of important personal decision protected under the right of privacy drawn from the United States Constitution-areas, the number and definition of which have steadily grown but, as the Supreme Court has observed, the outer limits of which it has not yet marked."⁷²

DEVELOPING POLICY

It is important for law enforcement agencies to develop policy that is both understandable and fair to employees and effective in meeting agency needs. When that policy attempts to regulate an employee's off-duty sexual conduct, law enforcement managers should be particularly sensitive to the potential right of privacy claims highlighted by the cases discussed in this article.

“... it is ... important for law enforcement agencies to provide employees with notice of the factors that will be evaluated in deciding whether sexual conduct will result in disciplinary action.”

Those cases reveal differing modes of analyses regarding whether private sexual activity is protected by the right to privacy and to what extent. While it is difficult to offer definitive predictions about how courts will resolve employee privacy claims in future litigation, there are nevertheless some principles emanating from the cases upon which there is general agreement. Set forth below are those areas of consensus which should be considered when a standards of conduct policy is being formulated.

1) While a law enforcement employee cannot be required to surrender his constitutional rights as a condition of employment, law enforcement employers can restrict to some extent the constitutional freedoms of their employees because of the peculiar needs associated with the employer-employee relationship. The degree of restriction permissible depends on the nature of the right affected. For example, if a fundamental right such as freedom of speech is infringed, the government would be required to show a compelling justification. Conversely, if the right is not fundamental, such as hair length, then only a rational reason is required to justify a departmental regulation. The distinction between compelling need and rational basis is significant in terms of the burden on the employer to provide justification for disciplinary action.

2) Use of catch-all provisions like “conduct prejudicial to good order” or “conduct unbecoming an officer” have been viewed as constitutionally fair and adequate notice as long as the specific basis for discipline is consistent with substantive constitutional standards.⁷³ Recognizing that it is not feasible to delineate all the types of conduct and circumstances that would constitute “conduct unbecoming an officer,” it is nonetheless important for law enforcement agencies to provide employees with notice of the factors that will be evaluated in deciding whether sexual conduct will result in disciplinary action.

3) The courts are divided over the question of whether an employee's private consensual sexual conduct is entitled to protection as a fundamental constitutional right. Assuming *arguendo* that it is and that compelling reasons would be required before disciplinary action would be constitutionally appropriate, the following are legitimate questions for a law enforcement employer to consider:

- A. Has the employee engaged in conduct which is subject to criminal punishment within the jurisdiction of the employing agency?
- B. Was the employee's conduct private and discreet or open and notorious?
- C. Has public confidence and respect for the law enforcement agency been substantially diminished?
- D. Has the conduct damaged agency efficiency or morale?
- E. Has the conduct impaired the ability of the employee to objectively and diligently complete work assignments or to handle classified information?

CONCLUSION

The right to privacy issues discussed in this article are complex and require some careful balancing of competing interests. It is reasonable to anticipate additional litigation as courts attempt to further develop and define the scope of protection afforded by the constitutional right to privacy. In view of the fact many governmental entities face the prospect of strict liability for policy that violates an employee's constitutional rights,⁷⁴ it is imperative that law enforcement agencies develop policy on a principled basis consistent with constitutional requirements. Furthermore, the assistance of competent legal advice in the development and implementation of such policy will reduce the probability of subsequent liability and also increase the confidence of law enforcement personnel in the legitimacy of a standards of conduct policy.

FBI

Footnotes

¹ For a discussion of the constitutional rights of law enforcement employees, see Daniel L. Schofield, “Public Employment and the U.S. Constitution—Recent Supreme Court Opinions,” *FBI Law Enforcement Bulletin*, July & August 1978.

² 381 U.S. 479 (1965).

³ *Id.* at 485-86. Justices Black and Stewart dissented, arguing that there is no constitutional right to privacy. *Id.* at 507.

⁴ *Id.* at 498-99. Chief Justice Warren and Justice Brennan joined this opinion.

⁵ 405 U.S. 438 (1972).

⁶ *Id.* at 443. The Court found that the statute violated the rights of single persons under the Equal Protection Clause of the 14th amendment.

⁷ *Id.* at 453.

⁸ *Id.* at n. 10.

⁹ 410 U.S. 113 (1973).

¹⁰ *Id.* at 152-53.

¹¹ *Id.* at 153.

¹² *Id.* at 155.

¹³ *Id.* at 164.

¹⁴ A number of legal commentators have viewed *Griswold* as marking the advent of an era of constitutionally protected sexual freedom. See Grey, “Eros, Civilization and the Burger Court,” 43 *Law & Contemp. Prob.* 83, 84 (1980).

¹⁵ See “Developments in the Law—The Constitution and the Family,” 93 *Harv. L. Rev.* 1156 (1980).

¹⁶ 425 U.S. 238 (1976).

¹⁷ *Id.* at 244. The Supreme Court has also refused to expand the scope of protection afforded by the right to privacy in the following three cases: *Whalen v. Roe*, 429 U.S. 589 (1977) (governmental storage of personal data in computers); *Paul v. Davis*, 424 U.S. 693 (1976) (injury to reputation); *Paris Adult Theater v. Slaton*, 413 U.S. 49 (1973) (viewing obscene films in a public theater).

¹⁸ 413 U.S. 49 (1973).

¹⁹ 394 U.S. 557 (1969).

²⁰ 413 U.S. 66, n. 13.

²¹ *Id.*

²² *Id.*

²³ For a comprehensive review of the differing views of legal commentators, see Katz, "Sexual Morality and the Constitution: *People v. Onofre*," 46 Albany L. Rev. 311 (1982) and Karst, "The Freedom of Intimate Association," 89 Yale L. J. 624 (1980).

²⁴ 425 U.S. 901 (1976).

²⁵ *Doe v. Commonwealth's Attorney*, 403 F. Supp. 1199 (E.D. Va. 1975). The Federal district court held in a 2 to 1 vote that the sodomy statute was constitutional, over contentions that it deprived adult males engaging in regular homosexual relations consensually and in private of their constitutional rights to privacy.

²⁶ One legal commentator has suggested that the absence of any real threat of prosecution of the *Doe* plaintiffs suggests that the Court's affirmance might have rested on a ripeness ground. See L. Tribe, American Constitutional Law 989 (1978). Justices Brennan, Marshall, and Stevens dissented from the summary disposition and urged that the case be set for oral argument.

²⁷ 431 U.S. 678 (1977). The Court declared unconstitutional a New York statute which regulated the distribution of nonmedical contraceptives.

²⁸ *Id.* at 694, n. 17. Justice Brennan was able in *Carey* to restate the holding of *Griswold* (in light of *Eisenstadt* and *Roe*) as follows: "*Griswold* may no longer be read as holding only that a state may not prohibit a married couple's use of contraceptives. Read in light of its progeny, the teaching of *Griswold* is that the Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the state." After noting that "intrusion into 'the sacred precincts of marital bedrooms' made (the law in *Griswold*) particularly 'repulsive,'" he added that "subsequent decisions have made clear that the constitutional protection of individual autonomy in matters of childbearing is not dependent on that element." *Id.* at 687.

²⁹ *Id.* at 718, n. 2.

³⁰ 450 U.S. 464 (1981).

³¹ *Id.* at 472, n. 8.

³² *Id.* at 491, no. 5.

³³ *Id.*

³⁴ One author has summarized these cases as follows: "Thus, the right to privacy has sprouted at least two branches: a broad protection of the home from governmental intrusion and a safeguarding of certain intimate relationships when confined to appropriate locations closely associated with the very nature of the relationship." See "Application of the Constitutional Privacy Right to Exclusions and Dismissals from Public Employment," 1973 Duke L. J. 1037, 1044-45 (1973).

³⁵ 414 A.2d 82 (1980).

³⁶ *Id.* at 89. There are a variety of instances where an officer's sexual activities may involve conduct which is clearly beyond the protection of the constitutional right to privacy. For example, an officer may engage in sexual activity while on duty in a public place or may use force or intimidation. For a comprehensive discussion of sexual misconduct cases not involving right to privacy claims, see "Sexual Misconduct or Irregularity as Amounting to Conduct Unbecoming an Officer, Justifying Officer's Demotion or Removal or Suspension from Duty," 9 ALR 4th 614 (1981).

³⁷ The court noted that Pennsylvania had eliminated the crime of adultery in 1972 and the civil cause of action of criminal conversation in 1976. 414 A.2d at 89.

³⁸ *Id.* at 90.

³⁹ *Id.*

⁴⁰ 513 F.Supp. 134 (N.D. Tex. 1981).

⁴¹ The job in the property room entailed handling and recording all property and drugs coming into the custody of the police department, as well as occasionally going to the scene of a crime. *Id.* at 137.

⁴² *Id.* at 139-40.

⁴³ 425 U.S. 901 (1976).

⁴⁴ 513 F.Supp. at 146.

⁴⁵ *Id.*

⁴⁶ *Id.* at 147-48.

⁴⁷ 436 F.Supp. 1328 (W.D. Pa. 1977), *aff'd mem.*, 578 F.2d 1374 (3d Cir. 1978), *cert. denied*, 439 U.S. 1052 (1978).

⁴⁸ Both Justices Brennan and Marshall objected to the denial of certiorari. Justice Marshall characterized the lower court's decision as an unwarranted intrusion into the privacy of public employees absent a showing of a substantial governmental interest. *Id.* at 1056. (Marshall dissenting).

⁴⁹ 436 F.Supp. at 1333.

⁵⁰ *Id.* at 1334. In the case of *Wilson v. Swing*, 436 F.Supp. 555 (M.D. N.C. 1978), a Federal district court concluded that adultery is not protected by the constitutional guarantee of privacy or association. The court said that a police officer who had engaged in an extramarital affair involving another police officer was validly disciplined because the action was rationally related to the department's interest in morale, discipline, effectiveness, and reputation in the community.

⁵¹ 470 F.Supp. 449 (E.D. Pa. 1979).

⁵² *Id.* at 458.

⁵³ 429 U.S. 589 (1977).

⁵⁴ 470 F.Supp. at 458.

⁵⁵ *Id.* at 458-59.

⁵⁶ *Id.* at 459.

⁵⁷ *Id.* at 461. The court noted that adultery had not been a crime in Pennsylvania since 1972. Moreover, the court concluded that the officer's activities were done privately, unobtrusively, and without publicity.

⁵⁸ 616 F.2d 1371 (5th Cir. 1980).

⁵⁹ *Id.* at 1375. In a concurring opinion, Judge Hill objected to the panel's assumption that the U.S. Constitution guarantees the right to commit adultery. *Id.* at 1380.

⁶⁰ 616 F.2d at 1375-76.

⁶¹ 413 F.Supp. 66 (E.D. La. 1976).

⁶² The facts revealed that the agent had rented an apartment in New Orleans, together with three other males, for the purpose of sexual relationships with consenting females during off-duty hours. *Id.* at 67.

⁶³ *Id.*

⁶⁴ *Id.* at 70.

⁶⁵ *Id.* at 69.

⁶⁶ *Id.*

⁶⁷ *Id.* at 70, n. 2.

⁶⁸ *Id.* at 70.

⁶⁹ 415 N.E.2d 936 (N.Y. Ct. App. 1980), *cert. denied*, 451 U.S. 987 (1981).

⁷⁰ *Id.* at 939.

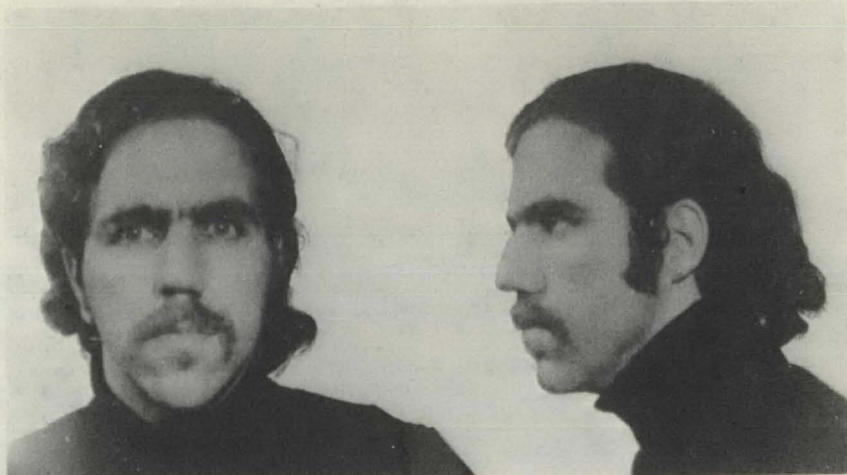
⁷¹ *Id.* at 941.

⁷² *Id.* at 941-42. The *Onofre* decision has been characterized as a remarkable extension of the Federal right to privacy because the court read a right to choose one's means of sexual gratification into the Supreme Court's decisions on birth control, abortion, and obscenity. Moreover, the decision is noteworthy because it constitutes the first judicial victory for advocates of sexual freedom for homosexuals in a case in which homosexual acts were directly at issue. See Katz, "Sexual Morality and the Constitution: *People v. Onofre*," 46 Albany L. Rev. 311, 312-13 (1982).

⁷³ *Davis v. Williams*, 617 F.2d 1100 (5th Cir. 1980), *cert. denied*, 449 U.S. 937 (1980). The court noted that these phrases require a person to conform his conduct to an imprecise but comprehensible normative standard. *Id.* at 1103.

⁷⁴ See Daniel L. Schofield, "Law Enforcement and Governmental Liability—An Analysis of Recent Section 1983 Litigation," *FBI Law Enforcement Bulletin*, January 1981.

WANTED BY THE FBI



Photographs taken 1975

Raymond Luc Levasseur

Raymond Luc Levasseur, also known as John Joseph Boulette, Jack Mills, John R. Mills, Edward John Pichette, Joseph Michael Mocchi, Robert Raymond, Walter Rogers, "Animal," "Jimmy," and "Melville"

Wanted for:

Bank Robbery; Interstate Flight—Unlawful Possession of a Weapon

The Crime

Levasseur has been added to the FBI's list of Ten Most Wanted Fugitives. He is being sought for his alleged involvement in armed bank robberies and for weapons violations.

Federal warrants were issued on September 30, 1976, and on February 23, 1977, in Portland, Maine, charging Levasseur with bank robbery. A Federal warrant was also issued on July 12, 1976, in Providence, R.I., charging him with unlawful interstate flight to avoid prosecution for the crime of unlawful possession of a weapon.

Description

Age35, born October 10, 1946, Sanford, Maine
Height6'
Weight185 pounds.
BuildMedium.
HairBrown.
EyesGreen.
ComplexionDark.
RaceWhite.
NationalityAmerican.
OccupationsForklift operator, laborer, lumber mill worker.

RemarksHas been convicted for selling marihuana.

Scars & MarksScars on right elbow, around outside of right eye, and on right ankle; bottom of left ear lobe missing; tattoos: dragon on upper right arm, panther's head with "Liberation" on left arm.

Social Security Nos. Used006-44-3289.
004-70-7449.
FBI No.791 943 G.

Caution

Levasseur, a reported member of a revolutionary group that has claimed credit for several acts of violence and which allegedly finances its operations

through criminal activities, has been known to possess numerous weapons in the past. He may be accompanied by Thomas William Manning, FBI Identification Order 4734, one of the FBI's Ten Most Wanted Fugitives. Consider both armed and extremely dangerous.

Notify the FBI

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

Classification Data:

NCIC Classification:
17AA11CO1309AA10PO09

Fingerprint Classification:
17 L 9 A OO 13 Ref: 1
S 2 A 10 2
I.O. 4733



Right ring fingerprint

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

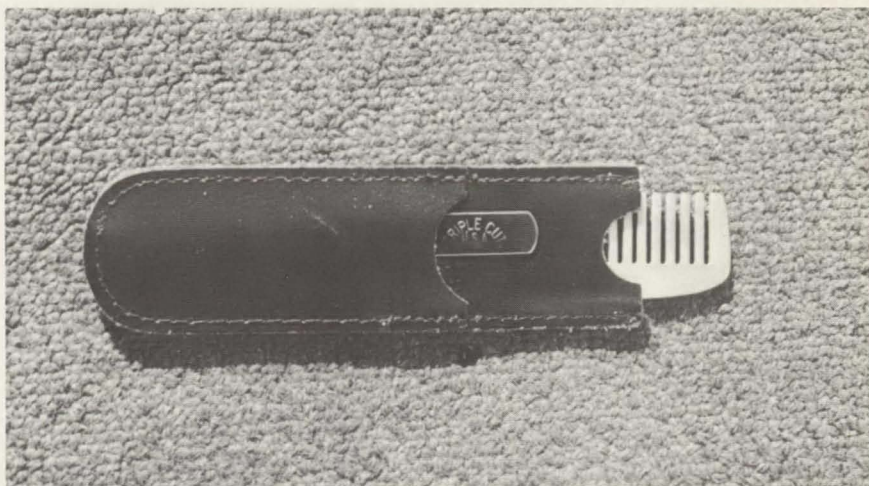
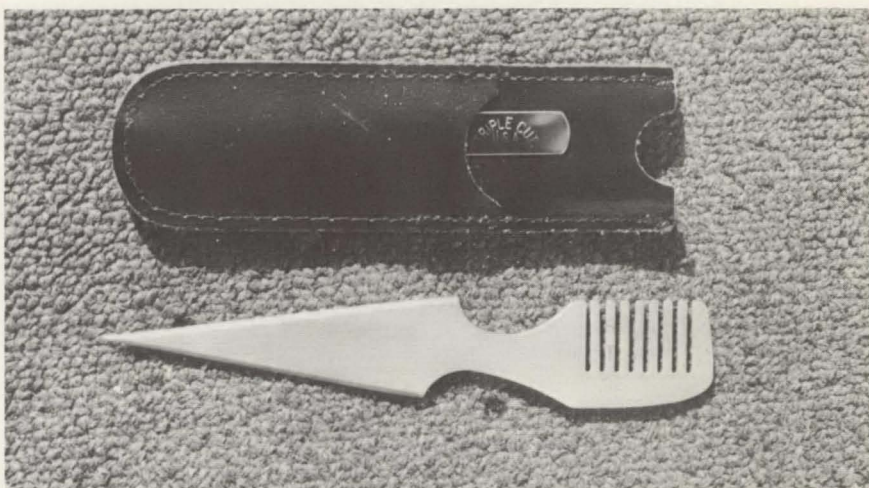
State

Zip

Comb Knife

This comb knife, designed and developed by a custom knife maker, is being offered for sale to the general public. While in its carrying case, the item appears to be only a comb; however, the concealed portion is a blade constructed of stainless steel.

(Originally submitted by the Rochester, Minn., Police Department. Photographs submitted by the Tennessee Valley Authority.)



U.S. Department of Justice
Federal Bureau of Investigation

Official Business
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Federal Bureau of Investigation
JUS-432

Second Class



Washington, D.C. 20535

Interesting Pattern

This pattern is a central pocket loop whorl with an outer tracing. The unusual aspect of the pattern is the appearance of a face in the center of the pattern.

