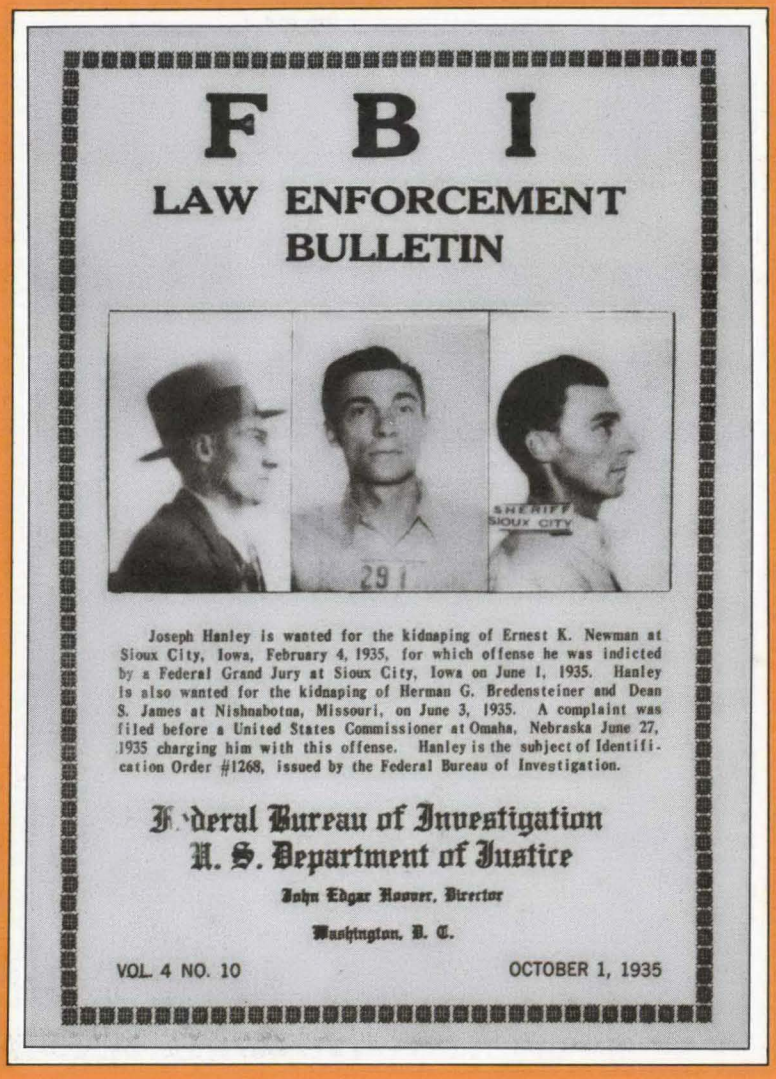
FBI Law Enforcement Bulletin

October 1985

"The Voice of the FBI"



Pathway to Professionalism

Contents

October 1985, Volume 54, Number 10

The Cover:
This month's cover illustrates the first issue of the *FBI Law Enforcement Bulletin* under this title in October 1935. (See article p. 2)

FBI
Law Enforcement Bulletin

Federal Bureau of Investigation
United States Department of Justice
Washington, DC 20535

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

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Director's Message

The Comprehensive Crime Control Act of 1984, signed into law by the President, contains provisions authorizing the Attorney General of the United States or a designee to transfer or share forfeited property with participating State or local law enforcement agencies. Prior to passage of this act, the Federal Government could not share forfeited property with other nonfederal law enforcement entities.

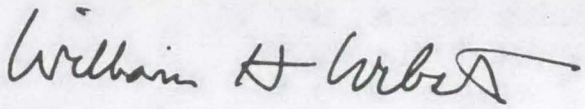
The intent of this new legislation is to enhance cooperation between Federal, State, and local law enforcement agencies, especially in drug investigations where most forfeitures occur. The Attorney General and I have fully supported efforts to implement the sharing provisions of the act.

Drug dealers view apprehension and conviction as a "cost of doing business," because the huge profits generated by this traffic provide an overwhelming incentive to those who ignore the social costs. But, by depriving those in this business of the profit, law enforcement can remove the primary incentive, plus provide law enforcement with additional resources to combat this illegal activity.

Procedures have been established by the Attorney General for State and local law enforcement authorities to follow in requesting a share of property seized under the Comprehensive Drug Abuse Prevention and Control Act of 1970 or the Racketeer Influenced and Corrupt Organizations Act. Seized property or proceeds from its sale can be equitably transferred to State or local law enforcement agencies which directly participated in the actions that led to seizure or forfeiture of the property.

To aid in requesting a share of such property, a U.S. Department of Justice form, "Application for Transfer of Federally Forfeited Property" (DAG-71), is now available from any of the local or regional offices of the FBI, DEA, or INS.

I believe that the new equitable sharing provisions of this law will definitely enhance law enforcement's cooperative efforts in this Nation's battle against illegal drugs and I urge State and local law enforcement authorities to take advantage of these new sharing provisions.



William H. Webster
Director
October 1, 1985

The FBI Law Enforcement Bulletin
Pathway to Professionalism

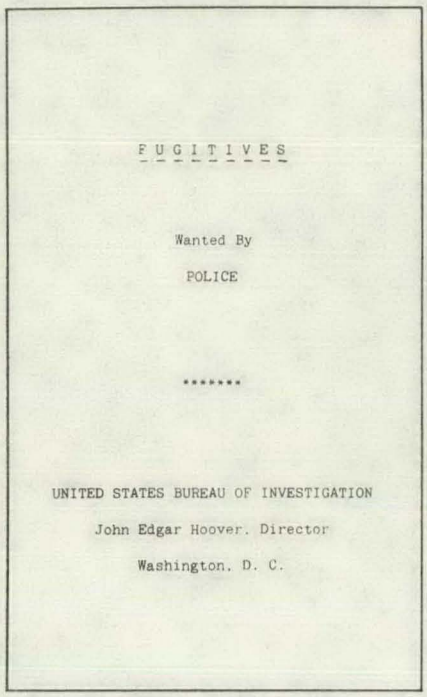
By
THOMAS J. DEAKIN
Special Agent/Editor
FBI Law Enforcement Bulletin
Federal Bureau of Investigation
Washington, DC

"The objective of the Bulletin, like that of the other cooperative functions of the FBI, is to advance the profession of law enforcement. It is the desire of the Federal Bureau of Investigation that this publication continue to be developed in such a manner that the greatest degree of service may be afforded to law enforcement generally."

J. Edgar Hoover
December 1947

The *FBI Law Enforcement Bulletin* was first published in 1932 to foster "the exchange of criminal identification data among . . . law enforcement officials." [1]

In a 1932 memo, Harold "Pop" Nathan, the first Assistant Director of the then Bureau of Investigation, suggested publishing a list of fugitives nationwide. The Bureau's Director noted on Nathan's memo: "I am very much impressed with the suggestion . . . we must continue to grow else we cannot justify our present existence. J.E. Hoover." [2]



FUGITIVES

Wanted By

POLICE

.....

UNITED STATES BUREAU OF INVESTIGATION

John Edgar Hoover, Director

Washington, D. C.

Listing fugitives in a publication for law officers was not a new idea; the Texas Rangers did it a half century before.[3] But a nationwide list, at first called *Fugitives: Wanted By Police,* with fingerprint classifications of the fugitives for identification, exemplified the innovations the FBI was initiating in law enforcement cooperation.

Just 3 years later, another memorandum was prepared for Director J. Edgar Hoover recommending that the name of the publication be changed to "FBI Police Bulletin" since a number of articles of interest to police had appeared in it, in addition to the listings of fugitives. Next to this suggestion, Hoover wrote, "Just a thought, instead of using police, how about 'law enforcement.' " [4]

And so, the title *FBI Law Enforcement Bulletin* appeared for the first time in October 1935—for all of law enforcement, not just police.

A memorandum on the name change to the Attorney General reported:

> "The Bureau gradually added to the bulletin articles of a scientific nature, information relative to police tactics and treatises concerning the more recent developments in law enforcement technique, until it became, in fact, a journal of a scientific and informative character for peace officials, thus necessitating a change in its name." [5]

The Bulletin has been a history of law enforcement's pathway toward

Special Agent Deakin

professionalism. As the FBI began to train police at the National Academy in the developing scientific, investigative, fingerprint identification, and Uniform Crime Reporting fields, developments marking the beginning of police progress toward professionalism were featured in the Bulletin.

The earlier *Fugitives: Wanted by Police* had carried an article on explosives from the St. Louis Police Department, a piece on the deciphering of charred records by scientists at the U.S. Bureau of Standards, other articles on fingerprinting, an article on testing for blood stains from the District of Columbia Police Department, and a profile of bombs by the New York City Police Department. Material from three outstanding local police agencies, from scientists, and from FBI experts set the standard for the next 50 years; the publication had already become a cooperative venture of law enforcement agencies and the scientific and academic communities.

Hoover wrote in the first issue of the *Law Enforcement Bulletin* in 1935:

> ". . . this publication should provide a clearing house 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."

Today, this is still the goal of the Bulletin.

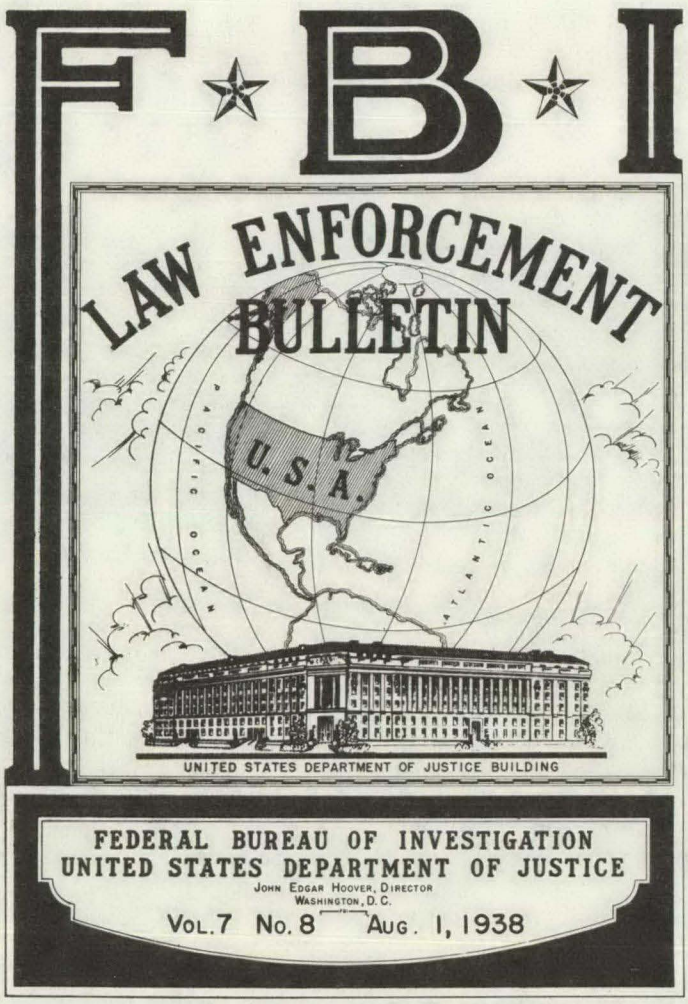
Later, future Directors of the FBI, Clarence M. Kelley and William H. Webster, would endorse Hoover's view of the Bulletin. In October 1982, Judge Webster wrote:

> "Over the years, the Bulletin took on a new direction and emphasis . . . 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, [and] forensic science developments . . . ." [6]

The country, having experienced the "Roaring Twenties" with their attendant postwar crime problems, reported by the Wickersham Commission (President Herbert Hoover's National Commission on Law Observance and Enforcement), went through what was called a "renaissance" in law enforcement. The 1930's were the decade of this "renaissance"; the FBI became the national exemplar of American law enforcement—and the Bulletin was the voice of the FBI.

The new FBI publication detailed what the FBI was doing to meet the Commission's challenges to law enforcement: Training toward professionalism, via the new FBI Police Training School (now the National Academy), scientific examination of evidence in the FBI's new Technical Laboratory, and new developments in the nationwide identification of fugitives through fingerprints.[7]

Contributions by nationally known police chiefs, such as August Vollmer, were indications that the Bulletin was in the vanguard of law enforcement pioneering. Vollmer, an innovative police executive in California (he hired college graduates as police officers for the first time), wrote a long piece on the ideals of police service. In a



prelude to police work in the behavioral sciences which developed much later in the 1970's, Vollmer wrote that the "policeman must intimately know the factors underlying human behavior if he hopes to succeed in his chosen profession." [9]

Vollmer and Hoover advocated freedom from political influence for police and rigid discipline from the top. This was based on both men's admiration for military professionalism, common to police reformers at this time. Cooperation between law enforcement agencies was also stressed by both. Hoover, in an early introduction to the Bulletin, compared law enforcement to "a great army moving against a common [criminal] enemy . . ." with the *FBI Law Enforcement Bulletin* as the "medium of making information available to all units engaged in the eradication of crime." [10]

The diverse nature of American law enforcement, with the majority of officers coming from very small departments, made classroom training a logistical problem in the 1930's, but this publication was one way to bring modern training to them. As American police departments were historically involved in local politics at this time, and crime was becoming an issue of national public concern, Hoover wrote in the Bulletin that "the public is demanding efficiency in its law enforcement agencies. This can be effected by raising the level of law enforcement work above the encroachments of political influence." He called for the training of police executives, which the FBI had begun with its new Police Training School.[11]

An introduction in 1936 noted that "the *FBI Law Enforcement Bulletin* has been published by the Federal Bureau of Investigation with the hope of assisting law enforcement officials . . . the purpose of this publication [has been] to provide a clearing house for successful police methods and a disseminating medium for important police information." [12] This is still true today, after a half century.

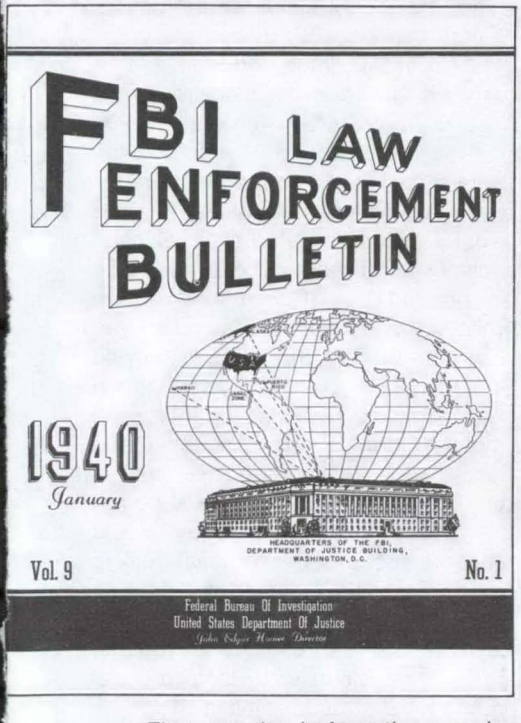
The year 1939 saw the end of a decade of criminal activity that finally moved America and its leaders of law enforcement to take action. Then, President Roosevelt in a statement printed in the October Bulletin directed that the FBI take charge of espionage and sabotage investigations. World War II had begun in Europe.

The War Years and Beyond

Beginning with the first issue in 1940, and continuing until 1965, the Bulletin listed topic headings in the table of contents—areas that reflected needs for police training that the FBI had featured in the Bulletin's first 5 years—*Scientific Aids, Police Training, Police Records* (especially the Uniform Crime Reports) and *Identification.* Other headings highlighted areas of increasing police interest—*Traffic* and *Police Communications.*

". . . Hoover again emphasized the training of police through the 'pages of this Bulletin.'"

The January 1940, issue of the Bulletin carried an article under *Police Communications* by Bruce Smith, a lawyer known for his management surveys of American police departments. The International Association of Chiefs of Police (IACP) later called Smith one of four men in the United States of "influence for good in American law enforcemnent." The others were August Vollmer, O.W. Wilson, and J. Edgar Hoover, giants of law enforcement's leadership in the first half of this century.[13]



Five months before the war involved the United States, the topic heading *National Defense* was added to the Bulletin with an article on the "Duties of Police in National Emergencies." From 1942 until 1945, the Bulletin began publishing every other month because of the paper shortage in World War II.

Introduction topics during the war covered not only national defense matters, including how to order revolvers earmarked for police use, but also professional matters—police training, fingerprints, and Uniform Crime Reports (with the number of reporting agencies growing from 1,127 to 4,300 by 1940)—were still emphasized during these years.

Just before the Bulletin completed its first decade, J. Edgar Hoover wrote about progress in law enforcement professionalism and urged:

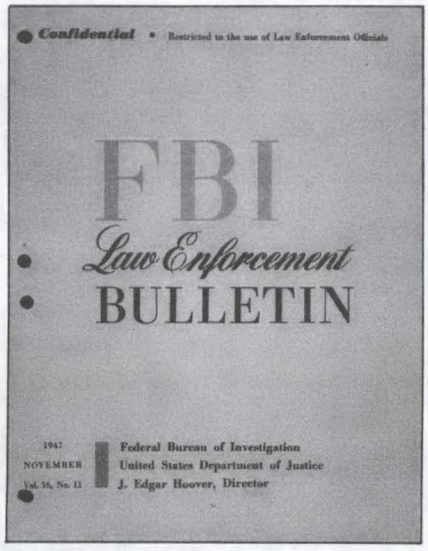
> ". . . careful selection of personnel; high educational requirements; thorough training of personnel; rigid discipline; promotions based on merit; freedom from the chains of political interference; detailed investigations; appreciation of evidence; protection of the innocent; complete elimination of any slight semblance of third degree tactics; unbiased testimony in courts of law and protection of civil liberties.[14]

These methods built the FBI, and he believed local law enforcement should be constructed on the same foundations.

Immediately after the war, in March 1946, Hoover again emphasized the training of police through the "pages of this Bulletin." He stressed that all officers should have access to the Bulletin. Training also came from the FBI-sponsored National Academy and from local police schools—277 were held in 1939 in almost every State.

The Decade of the Fifties

The 1950's brought an increase in the juvenile population of the United States and a tremendous in-



crease in juvenile delinquency. The Bulletin carried numerous articles on then new police programs to cut juvenile delinquency; these were supported by Director Hoover in Bulletin introductions, more on this subject than any other.

This period, with the Korean War, saw an increase in alerts to local police on internal security and communism. Professionalism in law enforcement, cooperation between law enforcement agencies, Hoover's support for the IACP, honesty in law enforcement, and police pay, as well as his opposition to any national police, were also covered in introductions.

In September 1958, Hoover wrote about child abductions and kidnapings and recommended that children be fingerprinted so they could be later identified. He anticipated by 30 years the 1980's problem of missing children and the surge of child fingerprinting for identification.

"In 1964, . . . Hoover called professionalism a 'cooperative effort' between universities, local governments, and law enforcement."

As a result of an article which appeared in a 1955 Bulletin on the use of dogs in police work in London, England, the St. Louis, MO, Police Department was one of the first large city departments to adopt a canine program.[15] St. Louis contacted the London police and sent an officer over there in 1958 to train with the first dog St. Louis acquired, according to a followup article in the Bulletin.[16]

In the 1950's, technology was addressed in articles on FM radios, then beginning to be used in police work, and the first use of helicopters by the New York City Police Department. The problem of a lag in the social sciences was addressed by the New York City Police Department in "Some Modern Horizons in Police Training" in September 1957.

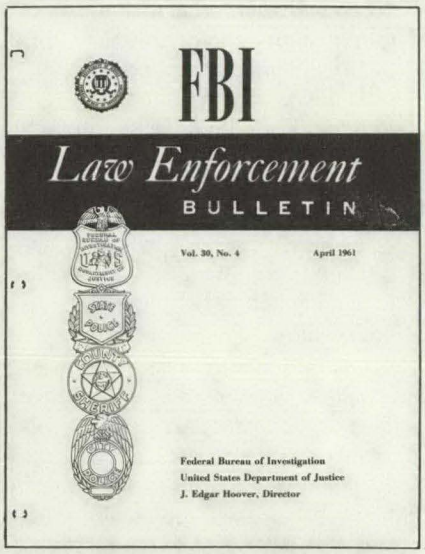
The preceding May had seen "FBI Training Assistance for Local Police" addressed, which noted: "The *FBI Law Enforcement Bulletin* is published as a means of providing up-to-date law enforcement techniques . . . for reference material . . ." or use in classroom instruction. This article noted the 542 FBI-sponsored schools on civil rights for local police held in 1956 alone and the initiation of statewide schools in latent fingerprint work (the Bulletin had run articles on the latter subject contributed by the Syracuse, NY, and Columbus, OH, police departments).[17]

Articles on the use of seatbelts in 1956, on the role of an alcohol clinic by a California sheriff, and on the role of policewomen in Philadelphia and Cincinnati showed that the Bulletin was ahead of its time in this decade, too.

The Turbulent 1960's

An article on civilian review boards, a controversial topic in this decade, appeared in July 1966. Various treatments on riot control from New York City Police, the Pennsylvania State Police, the U.S. Army, Hong Kong Police, and a university, and on civil rights from the FBI were timely in this riotous time.

IACP views on professionalism, followed by articles on data processing, the National Crime Information Center (NCIC), video identification in



Florida, and a 1968 California story on computer applications in law enforcement were indicative of the Bulletin's up-to-date approach.

Timely articles on pursuit driving training, psychedelic drugs, and a management professor's piece on the budget process also showed the Bulletin's view of modern policing. Director Hoover's Messages in the Bulletin concerned various facets of the crime problem, civil disobedience, civil rights, communism, and riots during this period.

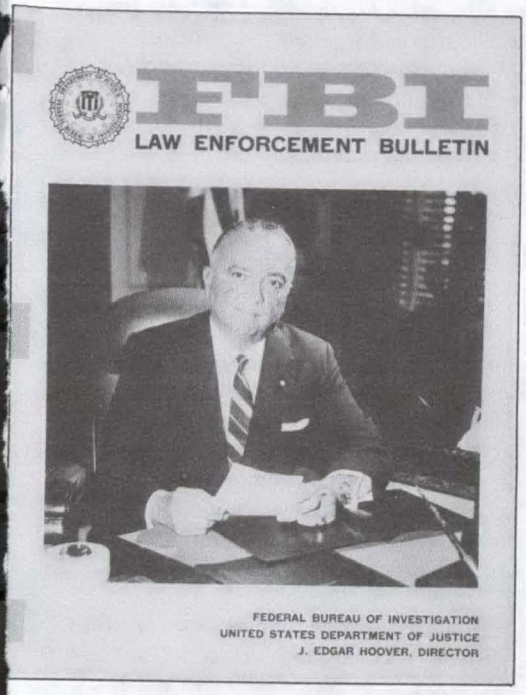
In 1964, just before the great expansion of college training for police, Hoover called professionalism a "cooperative effort" between universities, local governments, and law enforcement. He wrote:

> "More states should be making available essential police training. More universities and colleges should be initiating and increasing courses of study oriented toward the development of a career police profession. Law enforcement must raise its sights, broaden its outlook, and insist on a higher caliber of performance." [18]

August Vollmer, the early advocate of police professionalism, and Hoover had differed over legal training in the field of law enforcement. Hoover, a lawyer, wanted his Agents to be lawyers and urged at least some legal training for all police officers. Vollmer felt a more general education to be sufficient. Hoover's view prevailed, and law enforcement moved closer to the purpose of enforcing the law. The FBI has long emphasized legal training for its Agents, and through the National Academy and local police training schools, has extended this instruction to local police.

Later, Director Webster would support Hoover's view of legal training for police. In the November 1984, Bulletin he announced a new FBI National Law Institute established by the FBI's Legal Counsel Divison for local police legal advisors, writing:

> ". . . the complexity of legal issues encountered by law enforcement officers, managers, and administrators in recent years highlights the need for each law



enforcement agency to have ready and continuous access to a qualified legal advisor." [19]

New Directions in the 1970's

J. Edgar Hoover died in 1972, but before his 48-year career in law enforcement ended, he initiated the "Legal Digest," so named in February 1971, and since then the most popular feature of the Bulletin. It is written by law-trained FBI Agents who teach law courses at the National Academy to police officers so they understand police needs in the field of legal education.

When this continuing series of articles on developments in the criminal law that affect policing first appeared under the heading, "Legal Digest," one county prosecutor wrote and asked that his entire staff be added to the Bulletin mailing list.[20] The Legal Digest began with a memorandum by Special Agent Dwight J. Dalbey, who later became the FBI's first Assistant Director of the Legal Counsel Division, after various legal articles by judges and district attorneys were well-received by police readership.

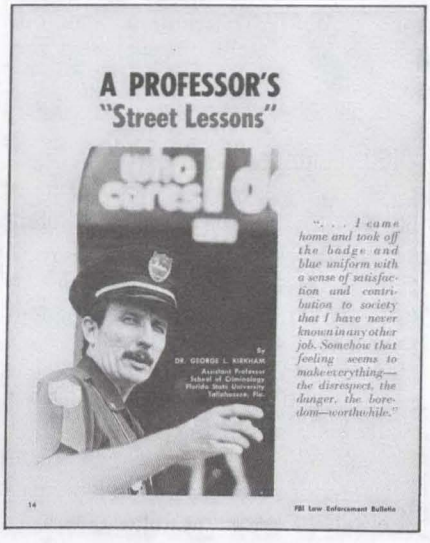
Dalbey wrote in 1967 that a way for the FBI to meet "the deep and broad demand for legal training in the police field" was "through publication of legal articles in the *FBI Law Enforcement Bulletin.*" Director Hoover, conscious of the sweeping changes in the criminal law then being made by the Supreme Court, noted on this memo, "More the better." [21]

Clarence M. Kelley succeeded Hoover as Director of the FBI, after L. Patrick Gray served a time as Acting Director. A Special Agent in Charge when he retired, Kelley was a career FBI Agent who then became chief of police in Kansas City, MO. Director Kelley's June 1974, Message in the Bulletin gave his definition of professionalism in police work: It requires the qualities of intelligence, dedication, courage, humaneness, and the knowledge generated by cooperation and training, but it especially requires integrity. "No law enforcement officer can be a professional without being honest."

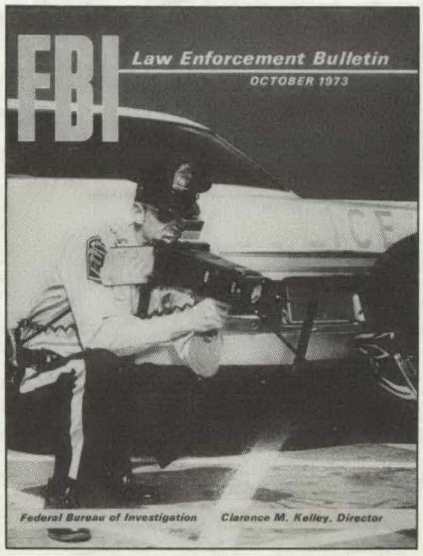
He saw to it that the Bulletin carried articles by other law enforcement professionals, including academics, on this subject. One, by Professor James Q. Wilson of Harvard, noted:

> "In the 1950's the dominant police issue in this country was that of professionalism and integrity. Police chiefs spent most of their time dealing with the problem of integrity. In the 1960's, without losing sight of integrity, the dominant concern for the progressive police administrations became police-community relations. It seems to me that in the 1970's the dominant issue is the need to redesign police organizations and operations so they can better serve crime-control and community-service objectives . . . ." [22]

Another article that illustrated the problems of the 1970's was "A Professor's 'Street Lessons' " by a criminology professor who became a working police officer as a "means of establishing . . . the accuracy of what I and other criminologists had been saying about the police for so long." Instead, at a time when police were so much under attack on campuses and in the academic community, he learned that "lawful authority . . . is the only thing which stands between civilization and the jungle of lawlessness." This became the most widely reprinted of any article that had appeared in the Bulletin.[23]



"The *FBI Law Enforcement Bulletin* is committed to a continuation of reportage of progress in law enforcement. . . ."



New issues in law enforcement, such as team policing, the handling of victims, and physical fitness for law enforcement officers, were covered. Director Kelley, as chief in Kansas City, developed a concern with police management which led to numerous articles on this subject, including one in September 1976, on the FBI's new National Executive Institute.[24]

The Bulletin Today

Judge William H. Webster took over as Director of the FBI in February 1978, when Clarence Kelley retired; his first message in the *FBI Law Enforcement Bulletin* was on minority recruitment in law enforcement. Webster, serving as a Federal appellate judge at the time of his appointment, wrote in the July 1978, Bulletin:

> "One of my first acts as the new Director of the FBI was to increase efforts to recruit qualified minority and female applicants for the Special Agent position. . . .Minority representation in all law enforcement agencies is equally sound—and equally required by law. It was not a historic accident that in the early days of organized peacekeeping in this country, police forces had heavy ethnic, particularly immigrant, representation."

Judge Webster brought not only an increased sensitivity for the law to the FBI but also a sense of historical perspective. For the Bulletin, too, there were new directions. January 1981, introduced our first "theme" issue, the entire contents being devoted to one subject. The first theme issue was on collective bargaining, with articles assembled by the FBI's Training Division staff.

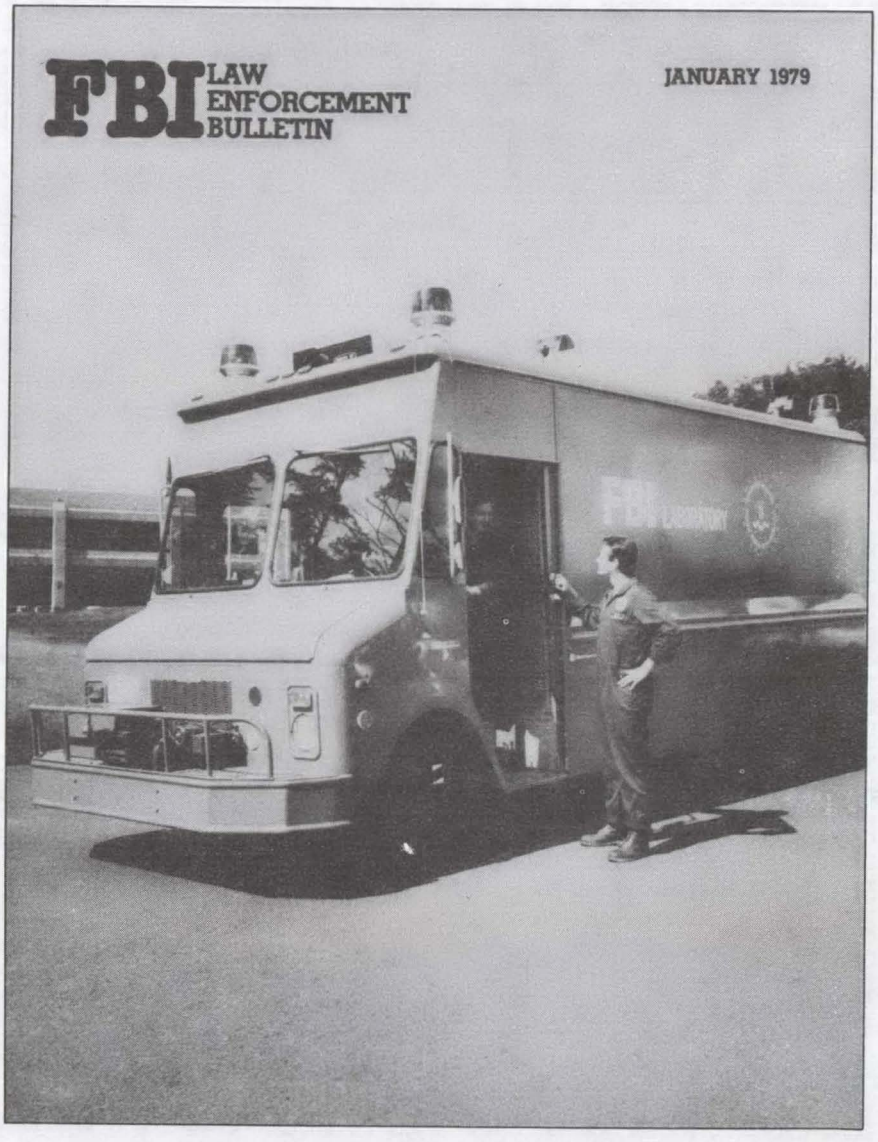
The next theme issue appeared in January 1984, on the subject of pedophilia and child pornography, just as great public and Congressional interest in this topic developed. So much so, that for the first time the Bulletin had to go back on the press to print an extra 10,000 copies of this issue to answer requests. A special issue on deadly force was introduced by Director Webster's Message, noting that this was the ultimate issue facing the law enforcement profession, "for no court can correct a deadly mistake once it has been made." [25]

Over 66,000 copies of the Bulletin are printed each month, compared with the 5,000 when the publication first appeared. These are made available without cost to all Federal, State, and local law enforcement agencies, to National Academy graduates, and to law enforcement professionals throughout the world. Also, the Bulletin is furnished to other criminal justice professionals who request it, such as educators in the field, prosecutors, and judges. Unfortunately, budget restrictions preclude furnishing the Bulletin to the many citizens interested in

BULLETIN EDITORS

As the *FBI Law Enforcement Bulletin* did not have a masthead until 1978, it is appropriate to list the editors here:

SA Bernard M. Suttler 1938(?)—1943
SA George L. Carroll 1943—1947
SA Edward C. Kemper 1947—1952
SA Dwight J. Dalbey 1952—1955
SA Lawrence J. Heim 1955—1959
SA Charles E. Moore 1959—1961
SA C. Benjamin Fulton 1961—1972
SA John H. Campbell 1972—1976
SA Thomas J. Haddock 1976—1977
SA Thomas J. Deakin 1977—present



crime prevention today; however, the Government Printing Office does send the Bulletin to over half (870) of the depository libraries around the country, which are available to the public.

Today, the Bulletin receives over 120 potential articles annually, either directly or from police training coordinators in each FBI field office who have daily contact with police, but budget constraints permit the printing of only 60 or so over the course of the year. For this reason, the Bulletin staff seeks articles not previously published that give clear explanation of new and successful ideas that improve the profession of policing.

The *FBI Law Enforcement Bulletin* is committed to a continuation of reportage of progress in law enforcement so that descendants of officers now serving will continue to learn and grow in professionalism during the next half century. FBI

Footnotes

[1] J. Edgar Hoover, "Introduction," *Fugitives: Wanted By Police,* vol. 1, No.1, January 1932, p. 1.

[2] Harold J. Nathan, Memorandum for Director, July 18, 1932.

[3] Erik Rigler, "Frontier Justice," *FBI Law Enforcement Bulletin,* vol. 54, No. 7, July 1985, p. 16.

[4] Clyde Tolson, Memorandum for Director, July 25, 1935.

[5] J. Edgar Hoover, Memorandum for Attorney General, October 24, 1935.

[6] William H. Webster, "Message from Director," *FBI Law Enforcement Bulletin,* vol. 51, No. 10, October 1982, p. 1.

[7] J. Edgar Hoover, "Introduction," *FBI Law Enforcement Bulletin,* vol. 4, No. 9, September 1935, p. 1; vol. 5, No. 7, September 1936, p. 1; vol. 5, No. 11, November 1936, p. 1.

[8] J. Edgar Hoover, "Introduction," *FBI Law Enforcement Bulletin,* vol. 19, No. 1, January 1950, p. 1.

[9] August Vollmer, "Police Ideal of Service," *FBI Law Enforcement Bulletin,* vol. 6, No. 2, February 1937, p. 3.

[10] J. Edgar Hoover, "Introduction," *FBI Law Enforcement Bulletin,* vol. 6, No. 4, April 1937, p. 1.

[11] J. Edgar Hoover, "Introduction," *FBI Law Enforcement Bulletin,* vol. 5, No. 6, June 1936, p. 1.

[12] J. Edgar Hoover, "Introduction," *FBI Law Enforcement Bulletin,* vol. 5, No. 7, July 1936, p. 1.

[13] Roy C. McLaren, "In Memoriam: Orlando Winfield Wilson," *The Police Chief,* vol. 37, No. 1, January 1973.

[14] J. Edgar Hoover, "Introduction," *FBI Law Enforcement Bulletin,* vol. 13, No. 6, November-December 1944, p. 1.

[15] Sgt. Eugene Broders, St. Louis Police Department (ret), telephonic interview by author, June 6, 1985.

[16] Walter Dorn, "Man-Dog Teams Serve St. Louis Most Effectively," *FBI Law Enforcement Bulletin,* vol. 30, No. 3, March 1961, p. 3.

[17] *FBI Law Enforcement Bulletin,* "FBI Training Assistance For Local Police," vol. 26, No. 5, May 1957, p. 16.

[18] J. Edgar Hoover, "Introduction," *FBI Law Enforcement Bulletin,* vol. 33, No. 5, May 1964, p. 1.

[19] William H. Webster, "Message from Director," *FBI Law Enforcement Bulletin,* vol. 53, No. 11, November 1984, p. 1.

[20] George M. Scott, county attorney, Hennepin County, MN, letter to Director, FBI, March 12, 1971.

[21] J.J. Casper, Memo to Mr. Mohr, "Police Training, Legal Materials," February 1, 1967.

[22] James Q. Wilson, "A Long Look at Crime", *FBI Law Enforcement Bulletin,* vol. 44, No. 2, February 1975, p. 2.

[23] George L. Kirkham, "A Professor's 'Street Lessons'," *FBI Law Enforcement Bulletin,* vol. 43, No. 3, March 1974, p. 2.

[24] *FBI Law Enforcement Bulletin,* "The FBI's National Executive Institute: Educating Law Enforcement's Top Level Managers," vol. 47, No. 9, September 1976, p. 3.

[25] William H. Webster, "Message from Director," *FBI Law Enforcement Bulletin,* vol. 54, No. 4, April 1984, p. 1.

Blueprint for the Future of The Uniform Crime Reporting Program

By
PAUL A. ZOLBE
Section Chief
Uniform Crime Reporting Section
Federal Bureau of Investigation
Washington, DC

The first two phases of a comprehensive study of the Uniform Crime Reporting (UCR) Program are complete, and a report entitled "Blueprint for the Future of the Uniform Crime Reporting Program" has been issued. Conducted for the FBI and the Bureau of Justice Statistics (BJS) by a private research firm and overseen by a joint BJS/FBI task force, the study began in September 1982. The first phase examined the original UCR Program and its evolution into the current program. The second phase examined alternative potential enhancements to the UCR system and concluded with the production of a set of recommended modifications presented in the report. Upon adoption of the recommendations, the third and final phase of the study will commence to design the data collection incorporating the proposals and to implement the revised system.

The most significant recommendations of the "blueprint" relate to unit-record reporting, the proposed two-component system, and quality assurance. As opposed to the current summary reporting system, under unit-record reporting law enforcement agencies would report data on each offense and arrest individually. The proposed two-component system would entail the reporting of much the same information as today by about 95 percent of the law enforcement agencies, known as level I participants. The level II component, consisting of the Nation's largest agencies, as well as a sampling of all others, would report more extensive data encompassing many more offense categories. Quality assurance recommendations include routine audit procedures, agency self-certification of minimum reporting-system standards, increased feedback to local agencies, and strengthening of State UCR Program quality assurance measures.

Also addressed in the report is the potential integration of UCR data with National Crime Survey (NCS) estimates and Offender-Based Transaction Statistics (OBTS), as well as data publication series and user services. The tasks for the implementation and operation of the revised system are outlined with a schedule for implementation and estimates of the costs involved.

Set forth below are the blueprint's major recommendations with a brief discussion of each.

Unit-record Reporting

—Convert the entire UCR system to unit-record reporting in which local law enforcement agencies submit reports on each individual offense.

—Convert the entire UCR system to unit-record reporting in which local law enforcement agencies submit data on each individual arrest.

These two recommendations are the most central to the entire revision of the program. A conversion to unit reporting will increase accuracy by allowing most tabulations to be computerized and by furnishing a sound basis for edit checks and audits. Unit reporting will also provide the flexibility required for indepth analytical capabilities. Possible disadvantages include the possible interruption of the long-term statistical series, potential delays in obtaining summary counts of offenses and arrests in agencies without computer systems, and probably of most concern, unit-record reporting may be more expensive.

Level I Component

—Retain data collection for part I offenses only, but eliminate negligent manslaughter altogether and broaden the rape category to include all forcible sexual offenses.

"The most significant recommendations of the 'blueprint' relate to unit-record reporting, the proposed two-component system, and quality assurance."

—Distinguish attempted from completed offenses.

—Eliminate use of the "hierarchy rule" by which offenses are not counted when they occur in conjunction with more serious offenses, but retain the hierarchy rule offense as the first offense reported to distinguish primary and secondary offenses.

—Redefine aggravated assault more explicitly in terms of the use of weapons and/or the extent of injury to facilitate distinguishing it from simple assault.

—Collect additional information on criminal homicides and collect circumstances of homicide as a code rather than as a narrative description.

—Distinguish among crimes against businesses, crimes against individuals or households, and crimes against other entities.

—Distinguish crimes against residents of a jurisdiction from crimes against nonresidents, so as to be able to adjust for large influxes of nonresidents either as daytime business populations or as tourists.

—Collect value of property stolen and recovered by a actual value.

—Record incident numbers on each arrest report to allow correlating offenses and arrests and distinguish exceptional clearances by type in order to increase the accuracy of clearance data and provide greater analytic use.

Since the level I component will be comprised of law enforcement agencies that range in size from 1 to more than 1,000 officers, the data collection must accommodate the varying levels of information maintained by those agencies. Hence, the level I collection would be similar to the current system, but in unit-record form. The above-recommended modifications to today's system were predicated on the conversion to unit reporting and were arrived at after careful consideration of the resultant workload burden and costs, importance of the purposes for the data's collection, the possible availability of similar data from other sources, the effects on data accuracy, and the effects on the UCR time series.

The level I component, like the current UCR, will continue to provide crime statistics from virtually all local law enforcement agencies in the United States. This breadth of coverage is essential to the public and police in assessing local crime conditions.

Level II Component

—Participation in the level II component should be sought from all agencies serving populations in excess of 100,000 and a sample of at least 300 smaller agencies.

—Part II, as well as part I, offense data should be collected and the offense-type categories used should be more detailed than the current categories.

—Detailed incident data describing the nature of the criminal incident, including victim and offender characteristics, victim-offender relationship, use of force, nature and extent of injury, and type of location, should also be collected.

—Data describing the characteristics of each law enforcement agency and its policies should be collected from reporting agencies. These data should be assembled together with demographic, socioeconomic, and physical characteristics of the jurisdiction, which should be obtained from other sources, such as the U.S. Census Bureau.

—The system should be designed to allow for a variety of levels of State program participation.

To supplement the level I nationwide collection of Crime Index data, the level II component of the revised UCR Program would furnish indepth information on all offenses. The primary objectives of the level II collection are to provide national and regional estimates of the incidence, nature, circumstances, victims, and offenders of all crimes reported to law enforcement, as well as to provide crime statistics for representative groups of agencies which will provide law enforcement agencies a base from which to evaluate local problems.

One of the key features of the level II component is its ability to provide accurate national and regional estimates while being implemented by a relatively small fraction of agencies. In this way, the burden on local contributors is enormously reduced. The agencies included in level II would be selected in such a way that their crime statistics would be nationally and regionally representative.

Quality Assurance

—Institute routine, ongoing audits of samples of participating UCR agencies in order to establish the extent of error in the system on a continuing basis.

—Require self-certification by agencies that their records system meets a basic set of requirements for participation in UCR.

—Develop improved feedback to agencies through self-administered proficiency tests, annual reports on common audit errors, and regular reports to individual agencies on the extent of edit discrepancies in their UCR submissions.

—Strengthen State UCR Program quality assurance, including expansion of State program audits.

A review of UCR audit and quality assurance procedures at the Federal, State, and local levels showed that the accuracy of UCR data could not be absolutely assessed. Since accurate and consistent reporting is essential and widespread concern regarding reliability exists, a combined program of auditing, establishing recordkeeping standards for contributing agencies, and providing support and feedback from the national and State levels was developed. The quality assurance procedures should provide definite information on the extent of error and improve reporting quality.

Integration with NCS and OBTS

—Develop the UCR, NCS, and OBTS systems as complementary programs providing complementary crime statistics for multiple purposes. The strengths of each of these data systems should be continued and enhanced, rather than compromised to achieve face comparability.

—Structure the UCR and NCS data so as to permit reconciliation of the two.

—Develop data structures and associated audit procedures with an eye toward eventual analytic integration of the estimation of crime rates and trends from UCR and NCS data. Methods for developing combined estimates from the two data sources are not yet sufficiently developed to justify near-term plans for integrated data analysis.

—Design the UCR system to allow linkage of police records to the prosecution and court records collected by OBTS systems.

UCR collects information about law enforcement operations—crimes reported, arrests, and law enforcement personnel resources. A complete criminal justice information system would, ideally, also include data on crime victims, crimes not reported to law enforcement, and what happens after arrest. No single source can provide all these data, but with the proposed redesign, UCR figures can link to some degree with victimization statistics produced by NCS and the prosecution, court disposition, and sentencing information maintained by the various OBTS systems. Even though the UCR, NCS, and OBTS data records will not be routinely linked on a case-by-case basis, the ability to integrate UCR statistics with those of the other two entities will be made possible through the above recommendations. In the long term, such integration could facilitate the interpretation of each system's findings and assist in identifying error in each system, thus providing better estimates.

Publications, Analyses, and User Services

—Create six publication series, including:

1) An annual report that is basically factual but more textual and interpretive than the current report;
2) Quarterly releases of crime counts and trends;
3) Annual compilations of statistics similar to those currently in *Crime in the U.S.;*
4) A series of computer-generated special reports to individual agencies or groups of similar agencies;
5) A series of occasional publications analyzing special issues about crime, primarily directed at researchers; and
6) Other series to provide for publication of methodological details and technical documentation.

—Issue UCR reports at least once a year jointly with a corresponding report from the National Crime Survey.

—Provide a continuing analysis capability for reconciliation of UCR and NCS data, evaluating seriousness weights, and preparing technical documentation and special studies.

—Support continued and enhanced user services, including a user data base with files linked over time, the capacity to draw samples of offenses for analysis either by the UCR staff or by outside researchers, and response to public queries.

Based on input from law enforcement officers, researchers, and other UCR users, the above recommendations address stated needs for more interpretation of UCR figures than is currently furnished in *Crime in the United States.* Law enforcement agencies pointed to the additional need to identify comparable local jurisdictions and to discuss differences in crime rates and clearances. Regarding user services, it was found that a more flexible analytical file was needed.

The proposed publication plan took into account the needs to serve a variety of audiences; to provide crime statistics at the national, regional, and local levels; to provide both factual information and guidance on data interpretation; and to establish a limited set of publications, but provide for other reports on an "as needed" basis. Also considered were the differences in data available from the level I and level II agencies.

FBI

Search and Seizure Policy
Development and Implementation

"Understanding search and seizure terminology can be the difference between success and failure in developing the policy/procedure."

By
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The U.S. Supreme Court, in establishing a "bright line" demarcation (easily understood and applied rules) [1] of permitted Government intrusion, has practically outlined when the Government may cross fourth amendment protected thresholds and seize physical evidence. Yet, many police training officers, policy planners, and law enforcement practitioners do not know the law of search and seizure. Many believe search and seizure to be complex and ominous. Officers muddle through investigatory searches, confident that they can search a person under arrest, but are far less certain about his car, office, or home. Many lawful searches are not made because of the officer's uncertainty.

Regardless of an officer's incognizance of the law, its complications and pitfalls, or of the good faith under which the officer acts, the Supreme Court established a bright line demarcation for a reason. The Supreme Court, and by extension all lower courts, expect police officers to *know and obey* the law.

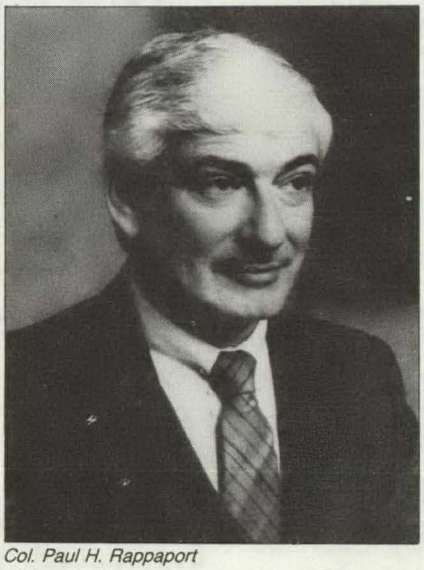
This article follows two premises—(1) one must know the law to obey and enforce it, and (2) the responsibility for appropriate application of the law by an officer is, in part, the responsibility of the law enforcement agency.

To state simply, there are two objectives to be pursued by law enforcement agencies: (1) Implement a search and seizure policy and procedure, and (2) supplement the policy and procedure with a training document and program.

The Goal

Officers will make mistakes. Realistically, no amount of training and planning can anticipate every possible search situation and appropriate response. For these reasons, a goal of 100-percent legal searches in only 90 percent of investigations should be expected. In *Texas* v. *Brown,* [2] for example, police officers in Fort Worth, TX, seized a balloon suspected of containing contraband. Though all nine Supreme Court Justices upheld the constitutionality of the seizure, a majority could not agree on a particular rationale, and several Justices left open the question of the constitutionality of the search. No agency can

Officer Ahlers



Col. Paul H. Rappaport
Chief of Police

hope to establish ironclad procedures to meet every situation or be impervious to legal analysis. In setting the expectation of 100-percent legal searches in 90 percent of investigations, though, the law enforcement agency fosters a thorough knowledge of the law, guides its officers in enforcement, and respects the truism that reasonable people can differ in the application of law to fact.

Preliminary Coordination

Development of policy and procedures regarding search and seizure should involve the top executive of the agency and representatives from the Planning and Research Section, the Education and Training Section, the State or district attorney's office, and the office of law, solicitor's office, or attorney general.

Any endeavor to develop a search and seizure policy and procedure must have the support of the organization's command personnel. In a paramilitary structure, this is most easily accomplished by an order from the highest authority, who must realize the need for and benefits of such a policy.

While planning and research personnel bear primary responsibility for drafting the proposed search and seizure policy/procedure, achieving the objective requires transmitting effectively the information to field officers. To keep the policy and procedure from becoming cumbersome, a separate training guide or bulletin should be prepared. This guide will facilitate explaining the procedure and will provide a discussion forum for sensitive, problematic, and complex areas. For example, no procedure could efficiently include all information regarding the legally and politically sensitive topic of strip searches. The training bulletin and program could, however, cover this topic in depth.

Most local prosecutors will welcome an effective search and seizure policy/procedure. Errors and omissions in development and implementation may be avoided if the local prosecutor is included in almost every aspect of the research and development phase. Also, since every police department operates under authority of either local, State, or Federal Government, counsel to the Government should be included in the planning stages. Typically, counsel is familiar with the civil liability incurred by officers either personally, or as agents of the Government, and can help tailor the policy to curb potential civil litigation.

Research

One person should have primary responsibility for overseeing the research and development of the policy/procedure. In most instances, this task should be assigned to a member of the planning staff. Researching this topic requires more than a simple analysis of fourth amendment law. It is necessary to research a number of legal and extralegal issues and then draft policy and procedure in a number of areas.

The staff member assigned to conduct the research should begin by contacting a professor of criminal procedure at any American Bar Association accredited school of law. The professor, like the prosecutor, can help avoid pitfalls by providing an outline of fourth amendment applicability, warrant preference, and exceptions to the search warrant requirement. The staff member must take time to become familiar with the nomenclature of the fourth amendment. For example, what one authority refers to as "fourth amendment inapplicable" may be alluded to as "no standing to object" by another authority. Understanding search and seizure terminology can be the difference between success and failure in developing the policy/procedure.

Next, a foundation document, such as *Criminal Procedure—An Analysis of Constitutional Cases and Concepts,*[3] should be selected to serve as a basis for research. The value of such a text is in its sound analysis of legal principles.

Fourth amendment research should occur next, with the objective of developing a basic understanding of the fourth amendment. Particular attention should be given to fourth amendment applicability, search warrant preference, and search warrant exceptions. With respect to the exceptions, the staff should be aware of the reason for the exceptions, the predicate necessary for intrusion, the scope of the permitted intrusion, and any logical extensions of the exception (i.e., auto exception may include boats and aircraft). Once this initial research is completed, a rough draft of the search and seizure policy/procedure, reflecting the jurisdiction's and agency's interests and needs, may be formulated.

Problems

Simply knowing the law is not enough. For example, in the case of a strip search, consider a State which, though it has no authoritative case law on point, favors allowing law enforcement officers great latitude in conducting strip searches of arrested persons. In reviewing case law generally, the rationale of the court appears to support strip searches necessary for the protection of the arresting officer. Based on this, one might recommend allowing random strip searches of anyone arrested. However, most people acknowledge the problems that such a policy would create. Thus, there is a need for policy decision to buttress research and accepted practices.

Guidelines

The following points and recommendations are offered as a starting point when drafting search and seizure policy/procedure. Individual circumstances, training history, and experience may suggest alternatives better suited to agency needs.

Compliance—It is suggested that an officer's conduct be judged (for purposes of enforcing the policy/procedure) by a standard of honest and reasonable good faith compliance with the order. Mixed questions of law and fact often puzzle the brightest legal scholars. However, the integrity of our legal system relies on the honesty of police officers, especially when officers claim exceptions to the search warrant. In the area of prisoner searches, a *professional* standard of conduct is recommended, and it should be reinforced in a prisoner search training program.

Police Officer's Status—Very generally, the fourth amendment is implicated when privacy rights are intruded upon by the Government. Members of a department should be directed to consider *any* search and/or seizure by police to be a governmental action. If any member of the department encourages or directs a private individual to acquire evidence (search and/or seizure), it should be considered governmental action.

Probable Cause—Probable cause is the basis for a search warrant and should be defined and printed as part of the policy/procedure. Most search warrant exceptions are also based on probable cause.

Search Warrant Required—The department should require a search warrant for every search and seizure, unless the search and seizure meets a warrant exception. Where an officer truthfully applies for a warrant, and a neutral and detached magistrate or judge issues the warrant, the officer should be judged by the department to have prima facie proof of compliance with the policy/procedure requirement for a search warrant. Should the warrant fall on appeal for lack of probable cause, the officer should not be penalized.[4]

Service of Search Warrants—The department must decide on the acceptable methods for serving a search warrant. One suggestion is to require the presence of a supervisor at warrant service and the photographing of premises before and after a search is conducted. The objectives should be collecting and preserving all seizable evidence, avoiding unnecessary damage to property, and officer safety.

Stop and Frisk—The common law of stop and frisk, as cited in *Terry* v. *Ohio,*[5] has been codified in some

"Since all searches are judged by the constitutional umbrella called 'reasonableness,' a speculative method of justification will not suffice."

jurisdictions. In Maryland, for example, code provisions create certain administrative responsibilities for an officer conducting such a "limited search." The policy/procedure should, at a minimum, reference these administrative responsibilities if they exist.

Arrestee Search—The predicate for a lawful arrestee search is a *lawful custodial arrest.* This should be defined in the policy/procedure and will often be based on statute. Custodial arrest provisions of the motor vehicle code should also be included.

Next, research should be conducted on strip and body cavity searches. While not necessarily the result of search incident to arrest, the usual strip search or body cavity search is conducted under some exception to the search warrant requirement (or simply conducted illegally). In almost every jurisdiction, case law exists which limits the intrusion into the privacy of the individual, or literally, the intrusion into the sanctity of an individual's body. Since this area is rife with civil litigation, it is important that a thorough evaluation of strip searches and body cavity searches be conducted. Since all searches are judged by the constitutional umbrella called "reasonableness," a speculative method of justification will not suffice. Knowing the law is essential.

Many problems can be avoided by developing a firm policy on arrestee search. Since the need for an officer to protect himself during or after an arrest cannot be disputed, it is important that officers be required to search arrested persons. However, most people agree that full strip searches or body cavity searches are *not* necessary for an officer's safety in most arrest situations. Thus, the parameters of the strip search and body cavity search must be carefully considered.

It is recommended that a body cavity search (other than in an emergency) be conducted only under authority of a search warrant and at a medically safe location. Not every hospital will agree to allow such a search upon its premises, even if the officer has a search warrant and the search is to be conducted by a physician. To avoid confusion and difficulty, procedures at facilities should be arranged prior to implementing the policy/procedure. One consideration is the use of the facilities and doctors of a penal institution within the jurisdiction.

Automobile Searches—Automobile exception searches should be distinguished from inventory searches. One of the decisions that must be made is whether, absent exigent circumstances, officers must secure a search and seizure warrant where probable cause exists to search a car which has been impounded by the police. More recent Supreme Court cases justify a warrantless search of a vehicle because of its diminished expectation of privacy coupled with probable cause.[6]

Evidence in DWI Cases—Another major area of the law, more open to criminal adjudication than civil disposition but nonetheless of increasing political importance, is the search and seizure area of "evanescent evidence," evidence which is capable of vanishing through the laws of nature and science. With national attention focused on the drunk driver, and the slaughter often resulting, States are passing increasingly statutory provisions which allow law enforcement officers to deliver suspects to competent medical personnel who may warrantlessly withdraw blood and/or breath samples to determine blood-alcohol content. As alcohol dissipates in the bloodstream, its evidentiary value diminishes during an investigation. Failure to know the statutory exceptions to a warrant requirement may mean that physical evidence in automobile manslaughter cases is lost forever solely because of officer unawareness.

Consent—In the area of consent, a written consent form for use by the officer should be developed. A policy decision must be made regarding an officer being allowed to search an area where lawful consent is given but the consenting party refused to sign the consent form. The agency may decide, for example, that a supervisor should make this decision on a case-by-case basis.

Inventory Search—An element considered in evaluating inventory searches is the inventory procedures of the law enforcement agency. Procedures must be detailed on impoundment situations and subsequent inventory searches.

Postmortem Examinations—Some States have laws regarding the search of dead persons by police officers. The law may mandate that officers take possession of all valuable property from the deceased and release this property to the next of kin. In unattended death situations, the agency should procedurally assign this duty to a particular officer, lest it remain undone by any of the crime scene technicians, investigators, and

patrol officers at the scene of the death.

Wiretapping—Because of the complex procedural requirements of wiretapping statutes, coordinating wiretaps with the prosecutor is important. It will also be necessary to consider hostage and barricaded subject situations and to coordinate agency policy and needs with the local telephone company. A contract or agreement should be in place prior to an actual hostage or barricaded subject situation.

Abandoned Property—The policy of the agency should include provisions for conducting a thorough search of abandoned property or vehicles that come into the custody of agency members.

Implementation

Once the rough draft of the search and seizure policy/procedure has been completed, it is necessary to begin the final process toward implementation. This is a sensitive period, since the needs of the executive officer, planners, trainers, prosecutors, and civil attorneys may vary.

A representative of the prosecutor's office most familiar with search and seizure case law should review the draft of the search and seizure policy/procedure before a final copy is prepared. Once this has been done, a copy of the final draft should be distributed to all parties involved in the preliminary coordination. Each person should then be advised to forward comments in writing to the author of the document.

The next step is to distribute a copy to a select group of department search and seizure practitioners (field supervisors, officers, and criminal investigators) for their thoughts. Occasionally, a conflict may arise which is not evident to the framers of the policy, but which would be immediately apparent to a day-to-day practitioner. For example, the policy on search and seizure of abandoned property may conflict with an agency policy on towing abandoned cars. Minor flaws such as this, which could be the death knell of an otherwise outstanding search policy, may easily be discovered during a review by practitioners.

A word of caution is in order. Do not become entrenched in philosophical differences over minor points of search and seizure law. It is important to maintain flexibility, since a well-crafted policy is better than no policy and reasonable men can disagree to the mutual benefit of all parties.

The policy statement itself should be brief, and the accompanying procedure should mandate specific behavior by the members of the agency. A final training document, with a cover letter from the executive officer, should be completed and reviewed by administrators prior to implementation.

Updating the Law

Criminal law changes regularly, dictating that a search and seizure policy/procedure and training document and program be reviewed and updated as needed. A natural opportunity for an annual review of the general order on search and seizure is in August, when the U.S. Supreme Court is not in session.

In addition, State and Federal search and seizure decisions which impact the parameters of permitted searches should be disseminated to law enforcement practitioners. The prosecutor's representative can help evaluate the potential impact of court decisions on the operations of law enforcement and should be contacted prior to any supplemental procedures or training.

Conclusion

Using the methodology described here, the Howard County, MD, Police Department developed and implemented a search and seizure policy/procedure and training bulletin. The response of the State's attorney's office and county office of law has been positive, and the American Civil Liberties Union specifically approved the strip and body cavity search provisions. For the police officer, the mandates of the Supreme Court are now standard operating procedure.

Bright line demarcation of the Supreme Court has created both an opportunity and a responsibility for law enforcement practitioners. The most efficient method of assuring that departmental intrusion into constitutionally protected areas is lawful is through the implementation of a search and seizure policy/procedure and related training documents and programs.

FBI

Footnotes

[1] *See, e.g., New York* v. *Belton,* 453 U.S. 454 (1981).

[2] *Texas* v. *Brown,* 460 U.S. 730, 103 S. Ct. 1535, 75 L. Ed. 2d 502, 51 U.S.L.W. 4361 (1983).

[3] Charles H. Whitebread, *Criminal Procedure—An Analysis of Constitutional Cases and Concepts.*

[4] *United States* v. *Leon,* 104 S. Ct. 3405 (1984); *Massachusetts* v. *Sheppard,* 104 S. Ct. 3424 (1984).

[5] *Terry* v. *Ohio,* 392 U.S. 1, 20 L.Ed. 2d 889, 88 S. Ct. 1868 (1968).

[6] *See, Cody* v. *Dombrowski,* 413 U.S. 433 (1973); *United States* v. *Johns,* 105 S. Ct. 881 (1984).

Law Enforcement Coordinating Committees

One District's Experience

By
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U.S. Attorney
and
L. LEE SMITH
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Central District of Illinois
Springfield, IL

Background

In 1981, as a result of a recommendation made by the U.S. Attorney General's Task Force on Violent Crime, U.S. attorneys were directed by the Attorney General of the United States to organize a law enforcement coordinating committee (LECC) in each Federal judicial district. LECC's were created to make better use of the combined resources of local, State, and Federal investigative and prosecutorial agencies.

In our judicial system, there is often a choice as to whether a case should be handled by a State or Federal authority, a particularly common circumstance with white-collar crime, narcotics, and interstate property offenses. Oftentimes, such a decision was not based on any rational criteria, but on who first established a "claim" to the case. This approach not only wasted resources but sometimes resulted in an investigation and prosecution in a system less likely to produce a conviction and eventual imprisonment.

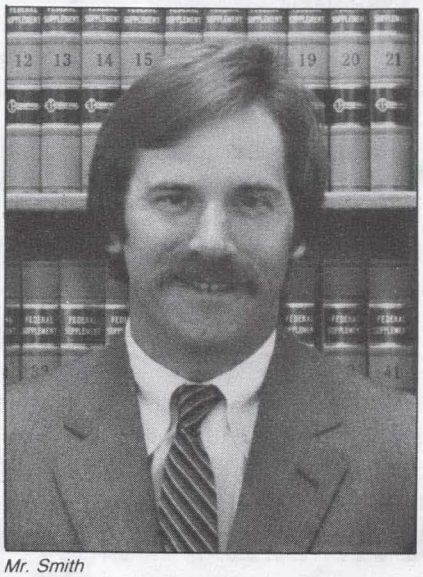
LECC's were created to address these problems. If representatives from local, State, and Federal agencies had a structured forum for meeting, they would be able to route these cases to the jurisdiction most likely to produce results, i.e., conviction, imprisonment, or forfeiture. For example, until the recent enactment of the Comprehensive Crime Control Act of 1984, a defendant found not guilty by reason of insanity in Federal court was returned to the general population. On the other hand, several States had provisions for involuntary commitment to mental health facilities for those people acquitted by reason of insanity or mental illness. Therefore, it was preferable to prosecute in State court a defendant who appeared to have a strong insanity defense. Conversely, it was often desirable to prosecute a white-collar crime case in Federal court, since many State statutes treated these crimes as misdemeanors and looked on white-collar criminals as less threatening to society.

As any experienced investigator or prosecutor who has been involved in both State and Federal systems is aware, each system has its advantages and disadvantages. For effective law enforcement, agents and prosecutors should use the system most appropriate for the particular case.

Implementation

In the Central District of Illinois, there is no single large population center. The district is typical of much of the Midwest in that the population

Mr. Fines



Mr. Smith

is scattered in rural areas and small- and medium-sized cities, with large-scale agricultural operations, heavy industry, and a sizeable portion of the population involved in State government, the insurance industry, and higher education. For these reasons, local investigative agencies have not developed sufficient personnel, resources, and experience to handle complex financial fraud or white-collar crime cases. As a result, most of these violations have been investigated by the Federal Bureau of Investigation (FBI), the Postal Inspection Service, the Internal Revenue Service (IRS), the Illinois Department of Law Enforcement, the U.S. attorney's office, and the Illinois Attorney General's Office.

In December 1981, the U.S. attorney for the Central District of Illinois organized the first meeting of the district's LECC, with 175 prosecutors and investigators attending. Subcommittees were formed in narcotics, violent crime, white-collar crime, rural crime, legislation, and long-range planning. Each subcommittee was headed by a State or local law enforcement officer and included State and Federal prosecutors and investigators as participants.

In keeping with the objectives of the LECC, several joint State/Federal investigations were started in the areas of narcotics, public corruption, and white-collar crime. Also, two State prosecutors were appointed special assistant U.S. attorneys to help on cases initiated by State investigators but prosecuted in Federal court.

The white-collar crime subcommittee set as one of its priorities the development of a training course for State and local law enforcement agents. By informing these law enforcement personnel of the availability of State and Federal resources, it was believed they would be better able to solve the particular problems facing them while investigating white-collar crimes and therefore combat this type of crime more effectively.

After soliciting suggestions for possible course topics from local criminal justice personnel, plans and scheduling for the course were finalized and the necessary instructional material was organized. Arrangements were made for the 5-day course to be held on the campus of a local junior college.

Local, State, and Federal law enforcement agents, State and Federal prosecutors, investigators from the Insurance Crime Prevention Institute, a team of instructors from the FBI Academy in Quantico, VA, and a director of security from a local bank were called on to instruct the over 70 local, State, and Federal law enforcement participants. Topics covered in the sessions ranged from fraud schemes (both insurance fraud and fraud against government programs) and domestic banking operations to computer investigations and interviewing and interrogating techniques in white-collar crime investigations. Course instructors also presented information concerning the analysis of questioned documents, domestic money laundering, the Bank Secrecy Act, and grand juries, search warrants, and forfeitures.

At the end of the course, evaluations were solicited from the participants. Each person was asked to rate on a scale of 1 to 5, with 1 being the

"Any LECC program, as a significant key to State and Federal law enforcement cooperation, should include training sessions."

highest rating, the organization, presentation, curriculum and content, and usefulness of each session. General comments and suggestions were also welcomed.

The highest ratings by the participants went to the instruction provided by FBI personnel and the visit to the local bank. The participants were not only appreciative of course material and handouts but also for the opportunity to meet and learn how to help each other. Other comments suggested a shorter course, more panels, and more time allotted for discussion.

Recommendations

Before attempting to organize any training program, it is essential to *know your audience.* Responses to a questionnaire sent to law enforcement agencies were used as the basis to design our course. Both general and specific sessions were incorporated, since those participating had a broad range of training and experience. However, because most students were experienced agents, the more specialized sessions were better received.

Another recommendation is to *plan with care.* A great deal of thought and preparation was put forth by the organizing committee so that each phase had a well-defined assignment of responsibility.

Of course, *knowledgeable, experienced instructors* offering *a variety of material* are the mainstay of any successful training program. Courses taught by representatives of the FBI, the Insurance Crime Prevention Institute, and the State Department of Law Enforcement were particularly well-received. One recommendation would be for training personnel to exchange information regarding their area of instruction so that sessions could be more closely related to each other. Also the *duration of the course* should be limited to 3 days. If necessary, a second session may be scheduled to cover additional topics.

A *"hands-on" experience* is beneficial and also permits students to see first hand what was covered by the lectures. For example, the onsite explanation of bank record systems proved to be a worthwhile exercise and was well-received by the students.

Finally, a *thorough evaluation* helps to identify strengths and weaknesses of the course and provides lessons for future conferences.

Conclusion

Any LECC program, as a significant key to State and Federal law enforcement cooperation, should include training sessions. Training strengthens law enforcement at all levels and enhances coordination in the fight against crime. When all levels of law enforcement cooperate, the community is better protected.

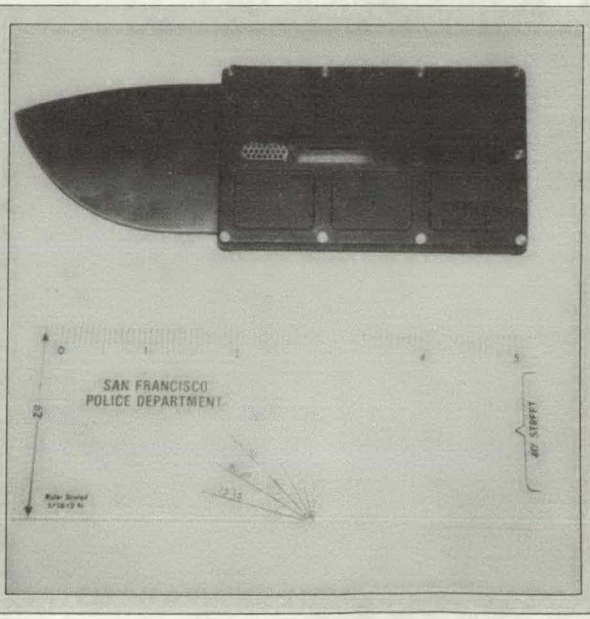
FBI

Big Knife

A recent search of a suspect revealed a weapon with which law enforcement personnel should be familiar.

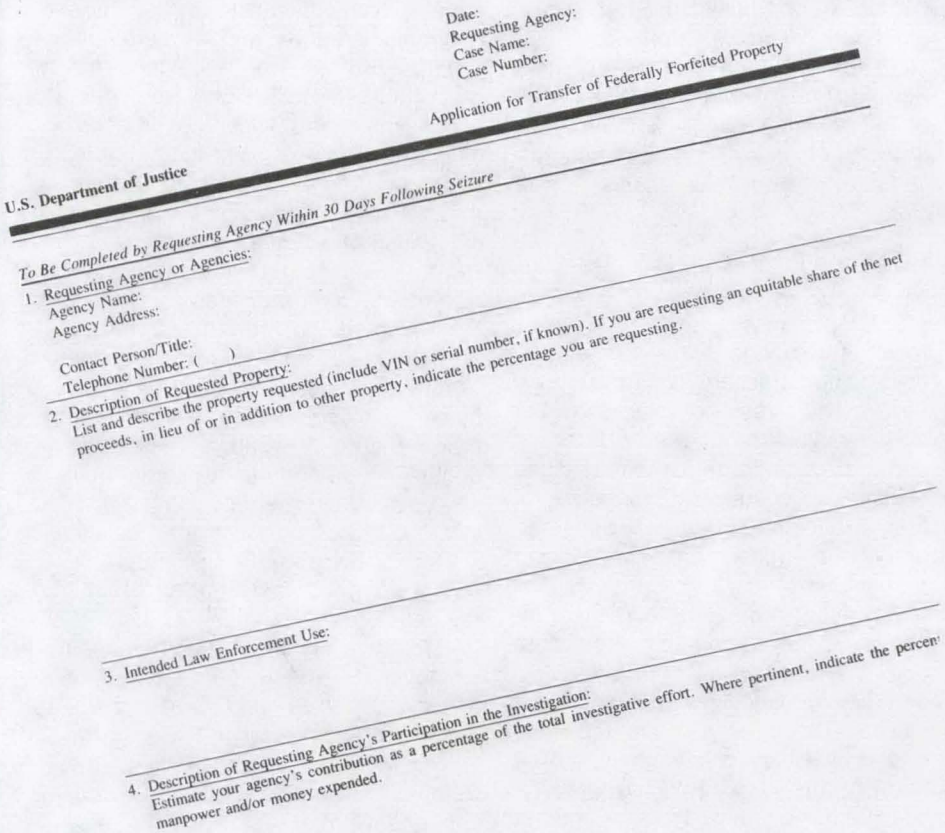
The weapon, about the size of a small pocket calculator, is a small plastic case containing a locking knife with a blade over 2-inches long. A small button on one side is depressed to release the locking mechanism for the blade of the weapon.

(Submitted by the San Francisco, CA, Police Department)



Sharing Federally Forfeited Property

As noted in the Director's Message, the Comprehensive Crime Control Act of 1984, which was signed by the President on October 12, 1984, now permits the Federal Government to transfer or share forfeited property with State or local law enforcement agencies. Regardless of its value, property such as vehicles, cash, and land that are forfeited as a result of violations of certain Federal statutes can be shared with those State and local law enforcement agencies that directly participated in the seizure or forfeiture.



Date:
Requesting Agency:
Case Name:
Case Number:

Application for Transfer of Federally Forfeited Property

U.S. Department of Justice

To Be Completed by Requesting Agency Within 30 Days Following Seizure

1. Requesting Agency or Agencies:
Agency Name:
Agency Address:

Contact Person/Title:
Telephone Number: ( )

2. Description of Requested Property:
List and describe the property requested (include VIN or serial number, if known). If you are requesting an equitable share of the net proceeds, in lieu of or in addition to other property, indicate the percentage you are requesting.

3. Intended Law Enforcement Use:

4. Description of Requesting Agency's Participation in the Investigation:
Estimate your agency's contribution as a percentage of the total investigative effort. Where pertinent, indicate the percen
manpower and/or money expended.

By
ROSEMARY HART
Associate Deputy Attorney General
U.S. Department of Justice
Washington, DC
and
LAURENCE E. FANN
Unit Chief
Legal Forfeiture Unit
Legal Counsel Division
Federal Bureau of Investigation
Washington, DC

"Share-the-wealth plan debuts: Funds from drug-related property sales to be split." [1]

This headline from a recent article in a Houston newspaper announced that for the first time, the U.S. Attorney General used newly created authority to share federally forfeited property with local law enforcement agencies. The property in question was a 33-acre Montgomery County, TX, farm valued at approximately $126,000 and "[l]abeled by drug agents as a 'marijuana-processing facility' for an international drug-smuggling gang . . . ." [2] The forfeiture was a result of teamwork between Federal, State, and local law enforcement agencies. Following this coordinated effort, the Attorney General, pursuant to a new Federal law, ordered the proceeds from the sale of the property to be divided equally among the Federal Government, the Montgomery County Organized Crime Control Unit, and the Texas Department of Public Safety.

Cooperative efforts among the Federal, State, and local agencies have been increasing over the past few years, especially in major drug trafficking cases. The new forfeiture provisions recognize that these cooperative efforts provide benefits to all levels of law enforcement. According-

Rosemary Hart

Special Agent Fann

ly, an express purpose of the sharing provisions is to provide an incentive for present and future law enforcement cooperation.

This article briefly discusses the types of Federal forfeiture, delineates the types of property subject to forfeiture under violations of Federal drug laws, identifies the statutes enforced by the U.S. Attorney General that permit sharing, and explains how State and local agencies can take advantage of the new sharing provisions.

Forfeiture Provisions of Federal Drug Laws

Today, most forfeitures are a result of violations of the Federal drug laws. Drug traffickers can amass huge fortunes as a result of their illegal activity. Traffickers often view detection and incarceration as a "cost of doing business" because the incentive of drug profits often far outweighs the potential of a prison term. By stripping the violator of the ill-gotten gains, the Government removes the primary incentive to engage in the illegal drug activity. Forfeiture also provides law enforcement agencies with additional valuable resources; the boats, planes, and vehicles used in drug trafficking can be forfeited and placed into official use as effective tools to combat illegal activity.

Federal forfeiture proceedings are either civil or criminal, depending on the facts of the particular violation and the prosecutive strategy. Although there are some similarities between the two, the biggest differences are the point at which the property can be seized for forfeiture and the legal standard of proof necessary to effect forfeiture. In a civil forfeiture, the proceedings are an action *in rem* against the piece of property itself and not the owner or claimant of the property, e.g., *United States* v. *One 1979 Mercury Cougar XR-7 VIN: 9H93F720727.*[3] The facts and circumstances must demonstrate that there is probable cause that the property violated the Federal law. Once the property is seized, forfeiture proceedings commence. Since the proceedings are civil and against the property, there can be a valid forfeiture whether the owner is charged or convicted of a violation of a Federal statute or not.

In a criminal forfeiture, conviction of the defendant precedes a separate conviction of the property for forfeiture. The facts and circumstances necessary to forfeit the property must meet a much higher standard of proof, that of beyond a reasonable doubt. The property is not seized until after conviction; therefore, there is an increased likelihood that the violator will sell or dispose of it prior to forfeiture, or if it is a "wasting asset," that it will deteriorate.

The two primary Federal statutes employed by the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) in the enforcement of drug laws are the Comprehensive Drug Abuse Prevention and Control Act of 1970, commonly referred to as the Controlled Substances Act (CSA),[4] and the Racketeer Influenced and Corrupt Organizations (RICO) Act.[5] The CSA provides for both civil and criminal forfeiture, while RICO provides for only criminal forfeiture.

Civil Forfeiture Under CSA

The types of property subject to civil forfeiture under CSA include:[6]

1) All controlled substances;
2) Raw materials and equipment

"Federal forfeiture proceedings are either civil or criminal, depending on the facts of the particular violation and the prosecutive strategy."

used to manufacture controlled substances;

3) Property used as a container for controlled substances or a container for materials and equipment used in the manufacture of controlled substances;
4) Vehicles, boats, and planes used to transport or facilitate the transportation of controlled substances;
5) Books, records, and research materials used in violation of CSA;
6) All money, negotiable instruments, securities, or other things of value exchanged for a controlled substance; all proceeds traceable to such an exchange; moneys, negotiable instruments, and securities used to facilitate a violation of CSA; and
7) Real property and any improvements thereon used or intended to be used to commit or facilitate the commission of a felony violation of CSA.

Criminal Forfeiture Under CSA and RICO

CSA provides for the criminal forfeiture of any proceeds or property derived from the proceeds of a CSA felony violation, any property used or intended to be used to commit or facilitate the commission of a CSA felony, or any interest in, claims against, and property or contractual rights affording a source of control over a continuing criminal enterprise (CCE).[7]

RICO provides for the criminal forfeiture of real property and buildings on the property, tangible personal property, such as cars and jewelry, and intangible personal property, such as stocks and bonds.[8]

Sharing Provisions

Attorney General Authority

Pursuant to the Comprehensive Crime Control Act of 1984,[9] the Attorney General or a designee is authorized to make an "equitable" transfer of the forfeited property "[s]o as to reflect generally the contribution of [the State or local law enforcement agency who directly participated] in any of the facts which led to the seizure or forfeiture of such property." [10] The Attorney General can authorize the transfer of the actual property, or as in the Texas case mentioned above, sell it and share the net proceeds. The Attorney General has delegated this authority to the head of the Federal investigative bureau that seized the property, the Director, Asset Forfeiture Office, Criminal Division, U.S. Department of Justice, or the Deputy Attorney General of the United States. This delegation of authority depends upon the value of the property and whether the nature of the forfeiture proceedings are either judicial, i.e., adjudicated in Federal court, or processed administratively by the investigative bureau that seized the property. The decision to transfer or share the property is not subject to review.

The Federal forfeiture provisions that permit equitable sharing of forfeited property with State or local law enforcement agencies apply to a number of Federal laws. In addition to CSA and RICO, sharing is permitted with respect to nine nondrug-related statutes. Eight of these nine statutes are enforced by the FBI and one is enforced by the Immigration and Naturalization Service (INS). Figure 1 lists all 11 of these statutes and the investigative bureau(s) that enforce them.

Using the Sharing Provisions

State and local law enforcement agencies can take advantage of the equitable sharing provisions of the new law in two ways. First, they can join forces with a U.S. Department of Justice investigative bureau in a Federal investigation and share in any property forfeited as a result of their direct participation in the seizure or forfeiture. Second, they can request that one of the investigative bureaus "adopt" a seizure they have made and then request an equitable share of that property once it is forfeited.

Adoptive seizures arise in situations wherein a State or local agency has made a seizure but determines that a State forfeiture proceeding is not possible or that a Federal forfeiture proceeding would be more advantageous. In those cases, the State or local agency may request a Federal investigative bureau to adopt the seizure and commence Federal forfeiture proceedings.

Cases will be accepted for adoption only when there is a valid prosecutorial purpose. However, since the FBI, DEA, and INS differ in their policies for accepting adoptive seizures, State or local agencies should contact the appropriate investigative bureau for further guidance.

Applying for an Equitable Share

All State or local law enforcement agencies that directly participated in a Federal seizure or forfeiture may re-

"The new Federal forfeiture provisions recognize the crucial role that State and local agencies play in Federal law enforcement efforts."

FBI and DEA:
1) Controlled Substances Act
2) Racketeer Influenced and Corrupt Organizations Act

FBI
1) Interstate and Foreign Commerce—Gambling Devices—Transportation Prohibited (codified at 15 USC 1177) (referred to as Transportation of Gambling Devices)
2) Organized Crime Control Act of 1970 (codified at 18 USC 1955) (referred to as Prohibition of Illegal Gambling Businesses)
3) Omnibus Crime Control and Safe Streets Act of 1968 (codified at 18 USC 2513) (referred to as Wire Interception and Interception of Oral Communications)
4) Copyrights Act (codified at 17 USC 509)
5) Child Protection Act of 1984 (codified at 18 USC 2253 and 2254)
6) Motor Vehicle Theft Law Enforcement Act of 1984 (codified at 18 USC 512)
7) Crimes and Criminal Procedure (codified at 18 USC 1762) (referred to as Prison-Made Goods)
8) Seizure of Arms and Other Articles Intended for Export (codified at 22 USC 401)

INS
1) Immigration and Naturalization Act (1952) (codified at 8 USC 1324) (referred to as Bringing in and Harboring Certain Aliens)

quest an equitable share of the forfeited property. These agencies should file their requests with the Department of Justice investigative bureau that handled the forfeiture. Before the request is filed, a participating agency should be mindful of the following conditions:

1) The Federal forfeiture must arise from a statute enforced by the Department of Justice.
2) The forfeiture proceedings must be conducted in accordance with procedures established pursuant to U.S. Customs laws.
3) The requesting State or local agency must be designated as a law enforcement agency under applicable State law.
4) All transferred or shared property must be used for law enforcement purposes.
5) The property must be transferred directly to the participating State or local agencies or by pass-through provision from a general fund.

The participating agencies should file their request using the "Application for Transfer of Federally Forfeited Property" (DAG-71), which is available from local or regional offices of the FBI, DEA, or INS. The head of the requesting agency or a designee should complete this form. Applicants may use one form to request more than one piece of property or to request a combination of property and proceeds of sales arising from the same seizure in the investigation. If the investigation results in another seizure at a later date, the requesting agency may submit another application.

The application should be submitted within 30 days following the seizure of the property in a joint investigation, or in the case of an adopted seizure, within 30 days after the property is transferred to the Federal investigative bureau. Following the forfeiture, the applicant will be notified of the sharing decision. Requesting agencies must pay expenses associated with the forfeiture of the property and any mortgages or liens on the property, prior to transfer. A full accounting of these outstanding obligations will be furnished to the requesting agency before it is necessary to make a commitment to accept the property.

Conclusion

The new Federal forfeiture provisions recognize the crucial role that State and local agencies play in Federal law enforcement efforts. In an increasing number of cases, the Department of Justice investigative bureaus are finding that their investigations would have been more difficult, and in some cases, impossible, if they had not had the benefit of able assistance from their State and local counterparts. In recognizing the role of State and local agencies in Federal investigations, the new sharing provisions authorize the Attorney General to transfer to participating agencies an equitable share of the forfeited property. The new law will bolster law enforcement efforts at all levels and encourage future cooperative efforts.

FBI

Footnotes

[1] *The Houston Post*, 2/7/85, page 12-A.
[2] *Id.*
[3] 666 F.2d 228 (5th Cir. 1982).
[4] 21 USC 801.
[5] 18 USC 1962.
[6] 21 USC 881(a).
[7] 21 USC 853(a).
[8] 18 USC 1963(b).
[9] Pub. L. No. 98-473, 98 Stat. 1837 (1984).
[10] 21 USC 881(e).

Computerized Business Records As Evidence

Required Predicates to Admission

"Courts . . . demand a greater factual showing of genuineness before computerized documents may be admitted as evidence."

By
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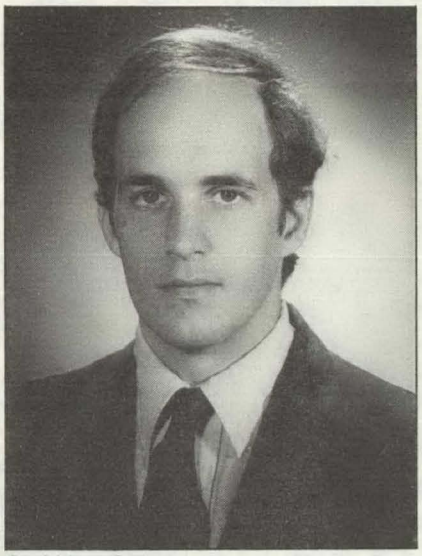
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, VA

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.

As the number of white-collar and financial crime investigations increases and the computerization of business records becomes pervasive, the need to use data stored in computers as evidence in criminal trials is likewise growing. Courts traditionally have favored hearing evidence from witnesses who have firsthand knowledge of the matter in question.[1] Such spoken evidence has been preferred in part because it provides the trier of fact an opportunity to observe the demeanor of witnesses and see their credibility tested through cross-examination.[2] However, where it is impractical or impossible for a witness to relate needed information, courts will admit documents subject to certain rules of evidence that are intended to serve as substitutes for the usual tests of credibility through observation of demeanor and cross-examination.[3] These tests of credibility are: (1) The requirement of authentication, (2) the "best evidence rule," and (3) the rule against hearsay evidence. These rules demand that certain facts regarding the origin and keeping of documents be presented prior to their admission as evidence.

Recently, courts have employed these rules of evidence to test the admissibility of documents that have been created using electronic computing equipment. These rules, modified through the evolutionary process of common law and by the legislative enactment of evidence codes such as the Federal Rules of Evidence, work to ensure the fidelity of computer-related evidence. Using these rules as a basis, courts have required new factual predicates for the admission of documents created and stored through the use of electronic computing machines.

If computerized documents are to be used as evidence in criminal prosecutions, investigators must collect the necessary facts to satisfy both the regular requirements for admission of documents and the special rules for computerized evidence. This article discusses the predicate facts that must be presented to offer successfully into evidence business records that have been stored by computer processes. It begins with a preliminary discussion of the three basic evidentiary requirements for admission of documents. Next, cases decided under the common law and various evidence codes involving computerized documents are examined. Finally,



Special Agent Sauls

some recommendations are offered to assist investigators gathering computerized records.

Authentication

Proper authentication requires the establishment, with facts, of the genuineness of a document.[4] Facts that are helpful in establishing authentication include those that reveal by whom and how a document was created and where and how it has been kept since its creation.[5] In short, authentication is a showing that a document is actually what it is claimed to be. Showing how the document was created and stored is fairly simple when documents are created using pen and paper. However, establishing how a document written by use of a computer has been created and stored is a more complex task because the recording process involves electronic activity that is not readily observable. Courts have expressed suspicion about invisible computer processes and demand a greater factual showing of genuineness before computerized documents may be admitted as evidence.[6]

Best Evidence Rule

The best evidence rule requires that the original document, whenever possible, be presented in court.[7] This requirement is satisfied by establishing that the document presented is the genuine original or that an exception to the best evidence rule should be invoked. One exception to the best evidence rule permits a true copy to be used when it is impractical or impossible to present the original.[8] Also, under certain circumstances, the law allows the introduction of a summary of the original document where that document is so large that its introduction would be unduly burdensome.[9] Documents created using a computer that are offered into evidence must be either original or meet the requirements of one of the exceptions to the best evidence rule.

Rule Against Hearsay

The rule against hearsay requires that before a document can be accepted into evidence to prove the truth of the information it sets forth, some characteristic of truthfulness must be present to serve as a substitute for the usual tests of observation of demeanor and cross-examination.[10] If a live witness states that he saw a certain person take money from a victim, the truthfulness of this witness can be tested in court. However, if that same person creates a document that relates the taking of the money and the document is presented in evidence, the statement's truthfulness cannot be challenged by the same methods. In that case, the truthfulness of the statement must be suggested by circumstances surrounding the creation of the document before a court will allow it to be considered by the trier of fact.

Exceptions to the rule against hearsay have evolved to allow for the admission of statements made under special circumstances that suggest reliability.[11] The most commonly employed exception involving computerized documents relates to records prepared in the regular course of a business' operation.[12] A business generally attempts to keep accurate records of its activities because such records are necessary for its successful operation. Because of this motiva-

"One exception to the best evidence rule permits a true copy to be used when it is impractical or impossible to present the original."

tion for accuracy, these records are considered sufficiently reliable to be admitted as an exception to the rule against hearsay.[13] Computerized business records prepared in the regular course of business may also qualify for admission under this exception to the rule against hearsay. Again, due to the invisible nature of computer processes, courts will require more facts regarding the methods of preparation and storage than is demanded for noncomputerized business records.[14]

Computerized Documents and the Common Law

One of the first appellate courts in the United States to consider the admissibility of computerized documents was the Supreme Court of Mississippi. In *King* v. *State ex rel Murdock Acceptance Corporation,*[15] a notary (King) was sued to collect the balance of a note that had been secured by property pursuant to a deed of trust which King had notarized. The notarized signatures were proved to be forged in a foreclosure action, which made the deed of trust worthless, and the holder of the note (Murdock) was seeking to collect the balance due from King. Computerized records of Murdock were introduced at trial to prove what payments had been made on the note and establish the balance due. The Mississippi court noted that *King* was the first case requiring it to rule on the admissibility of computerized records and applied the common law rule as follows:

> "The rules of evidence governing the admission of business records are of common law origin and have evolved case by case, and the Court should apply these rules consistent with the realities of current business methods. The law always seeks the best evidence and adjusts its rules to accommodate itself to the advancements of the age it serves." [16]

The question of authentication was apparently not raised by the litigants in *King.* This is probably because the court had an abundant factual basis for finding that the computer printouts were genuine. The printouts were records of the Murdock Acceptance Corporation. The corporation's assistant treasurer testified that he was in charge of the data processing department at Murdock's home office and that the computerized accounting records were maintained under his supervision. He also gave a very detailed explanation of how the records were created, maintained, and reproduced.

King did address the issue of whether the computer printouts were original records for purposes of the best evidence rule. The court first considered whether the computerized records stored on magnetic tape were original business records. Based on testimony, the court found that a record of payments on a Murdock account was originally made on "receipt blocks" at branch offices. These receipt blocks were then forwarded to the home office where they were verified. The information was then fed into the computer as it would have been entered into standard ledger books in a comparable manual accounting system. The receipt blocks were kept for a period of time, microfilmed, and then destroyed. The computerized information recorded on magnetic tape was regarded by Murdock as its permanent record of the transaction and was the place where the series of recorded transactions was first united into a single record. Comparing the computerized system to a manual ledger book system, the court held the computerized record rather than the receipt blocks constituted the original record.[17]

Having determined that the computerized record was the original, the court next addressed whether the printout presented in court was in fact a duplicate of the record stored by computer on magnetic tape, and therefore, inadmissible under the best evidence rule. In that regard, the court ruled as follows:

> "Records stored on magnetic tape by data processing machines are unavailable and useless except by means of the print-out sheets such as those admitted in evidence in this case. In admitting the print-out sheets reflecting the record stored on the tape, the Court is actually following the best evidence rule. We are not departing from the . . . rule, but only extending its application to electronic record keeping." [18]

Therefore, for purposes of the best evidence rule, the court held that the printout of the computerized record was the original document.

Since the computerized document was offered in evidence to prove the truth of its contents, a showing had to be made that the record was sufficiently trustworthy to allow for its admission under an exception to the rule against hearsay. The court held that the records in question fell within the bounds of the hearsay exception for records kept in the regular course of business. The court noted that it had previously ap-

"While the Federal Rules of Evidence allow for the introduction into evidence of computerized business records . . . courts require a greater factual foundation than is required for noncomputerized records."

proved the admission of manually prepared business records without requiring the persons preparing those records to testify.[19] In ruling that the person making the computer entries need not testify, the court set forth some special requirements for the admission of business records maintained using electronic computing machines. The court held that the offeror of such evidence must show:

> ". . . (1) that the electronic computing equipment involved is recognized as standard equipment, (2) the entries are made in the regular course of business at or reasonably near the time of the happening of the event recorded, and (3) the foundation testimony satisfies the court that the sources of information, method and time of preparation were such as to indicate its trustworthiness and justify its admission." [20]

While the admissibility of computer printouts in *King* was based on common law precepts, the court required a more-detailed foundation than is necessary for noncomputerized records.

The requirements set forth in *King* for the admission of computerized business records are equally applicable in criminal prosecutions. In *Brandon* v. *State,*[21] the Supreme Court of Indiana approved the admission of computerized telephone records in a prosecution for bank robbery. The court stated the justification for the business records exception to the hearsay rule as follows:

> "The theory behind this rule is that regularly maintained business records are admissible in evidence as an exception to the hearsay rule because the fact that they are regularly maintained records upon which the company relies in conducting its business assures their trustworthiness. The rules of evidence governing the admission of business records are of common law origin and have evolved on a case-by-case basis to keep pace with the technology of current business methods of record keeping . . . . Even though the scrivener's quill pens in original entry books have been replaced by magnetic tapes, microfiche files and computer print-outs, the theory behind the reliability of regularly kept business records remains the same and computer-generated evidence is no less reliable than original entry books provided a proper foundation is laid." [22]

In *Brandon,* foundation requirements for computerized business records were stated as follows:

> "[I]t must be shown that the electronic computing equipment is standard, that the entries are made in the regular course of business at or reasonably near the time of the happening of the event recorded, and that the testimony satisfies the court that the sources of information and method and time of preparation were such as to indicate its authenticity and accuracy and justify its acceptance as trustworthy." [23]

Computerized Documents and the Federal Rules of Evidence

The Federal Rules of Evidence, adopted for use in all Federal courts and which have served as a model for a number of State evidence codes, address the issues of authentication, the best evidence rule, and the rule against hearsay. While the Federal Rules of Evidence are based on the previously discussed common law precepts, they merit separate discussion because in some ways they modify the common law rules.

Authentication is dealt with in rule 901. The rule states that the " . . . requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." [24] Thus, authentication under the Federal Rules of Evidence is based on the common law requirement that before evidence is admitted, there must be a showing that it is genuine.

The common law best evidence rule survives in rule 1002 of the Federal Rules of Evidence. This rule states that "to prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required . . . ." [25] The Federal Rules of Evidence clearly envision the use of computerized evidence, since the definition of "writings" for purposes of rule 1002 includes "letters, words, or numbers, or their equivalent, set down by . . . magnetic impulse, mechanical or electronic recording, or other form of data compilation." [26] Rule 1002's demand for original documents is subject to a number of exceptions, and courts generally admit a duplicate of the original except where "a genuine question is raised as to the authenticity of the original," [27] or where it would be "unfair to admit the duplicate in lieu of the original." [28] Because of the overwhelming volume of documents likely to be encountered with computerized evidence, the Federal Rules of

Evidence also allow summaries of documents to be introduced where "[t]he contents of voluminous writings, recordings or photographs . . . cannot conveniently be examined in court . . . ."[29] However, where summaries are used, the original must be made available to opposing parties for examination.[30]

The admissibility of hearsay is governed by rules 801 through 806 of the Federal Rules of Evidence. Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."[31] The Federal Rules of Evidence include an expanded version of the common law business record exception which allows for the admission of:

> "[a] memorandum, report, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation . . . ."[32]

For purposes of this exception, business is broadly defined and "includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."[33]

While the Federal Rules of Evidence allow for the introduction into evidence of computerized business records in a fashion that is somewhat broader than the traditional common law rule, courts require a greater factual foundation than is required for noncomputerized records. For example, *United States* v. *Scholle*[34] involved a Federal narcotics conspiracy prosecution that took place after adoption of the Federal Rules of Evidence. The Government introduced into evidence computer printouts from a Drug Enforcement Administration (DEA) computer retrieval system called System to Retrieve Information from Drug Evidence (STRIDE). This system stored data reflecting the physical characteristics of drugs seized and tested in DEA's eight regional laboratories across the country. Characteristics recorded included the types of drugs, their potency, components, dilutants, location collected, date analyzed, packaging information, and price. The printouts presented in *Scholle* were offered as evidence that cocaine seized in two separate instances during the investigation was the product of a single drug organization and conspiracy.

Authentication of the printouts presented little difficulty. Donald Johnson, Section Chief of the Investigative Service Section of DEA and the founder of STRIDE, identified the printouts as a product of the system and described how the system functioned. This was sufficient to demonstrate that "the matter in question [was] what its proponent claim[ed]."[35]

The admissibility of the printouts was also challenged on hearsay grounds. While holding the printout qualified as an admissible business record, the court expressed concern regarding the use of computerized business records. Cautioning that the ". . . complex nature of computer storage calls for a more comprehensive foundation,"[36] the court added to the requirements of the "regularly kept records" exception by holding that "the original source of the computer program must be delineated, and the procedures for input control including tests used to assure accuracy and reliability must be presented."[37] This suggests a strong preference for expert testimony regarding the computer and records system whenever computerized business records are offered into evidence.[38]

Computerized Documents and State Evidence Codes

A case decided by the Connecticut Supreme Court, *American Oil Co.* v. *Valenti,*[39] illustrates how State evidentiary statutes based on common law precepts achieve results similar to those reached in *King* and *Scholle*. American Oil Company sought to collect money from a surety after the principal debtor (Valenti) refused to make payments. American Oil sought to prove the amount it was owed through the introduction of computer printouts summarizing the state of the principal debtor's accounts. The issues of authentication and best evidence were not raised. Instead, the court was asked to determine whether American Oil had satisfied the requirements of the business records exception to the hearsay rule. That exception, as then codified in the Connecticut General Statutes, provided as follows:

> "Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of such act, transaction, occurrence or event, if

"Courts must be able to determine from the evidence presented that computerized documents are genuine, trustworthy, and probative."

> the trial judge finds that it was made in the regular course of any business, and that it was the regular course of such business to make such writing or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter." [40]

The court held that computer printouts qualified as a "record" under this statute, noting that such a holding "reflects the revolution in data processing that is part of modern reality." [41] The court stated that inclusion of computer business records within this exception to the hearsay rule was appropriate "because computer records are part of ordinary business activities, created for business rather than for litigation purposes, [and] they carry with them the assurance of regularity that is a large element in establishing their trustworthiness." [42] The court was not willing, however, to embrace computer records without some reservation. Accordingly, the court suggested in the following quotation the desirability of having expert testimony regarding the creation and processing of computerized business records. The court said:

> "Business records that are generated by computers present structural questions of reliability that transcend the reliability of the underlying information that is entered into the computer. Computer machinery may make errors because of malfunctioning of the 'hardware,' the computer's mechanical apparatus. Computers may also, and more frequently, make errors that arise out of defects in 'software,' the input procedures, the data base, and the processing program. In view of the complex nature of the operation of computers and general lay unfamiliarity with their operation, courts have been cautioned to take special care 'to be certain that the foundation is sufficient to warrant a finding of trustworthiness and that the opposing party has full opportunity to inquire into the process by which information is fed into the computer.' "[43]

A New Jersey appellate court in *Monarch Federal Savings and Loan Association* v. *Genser* [44] also addressed the reliability of computerized business records. The court set strict rules regarding what facts must be presented before computer printouts will be accepted in evidence under New Jersey's evidence code. The court held that in addition to the facts required for the admission of noncomputerized business records, the proponent of computerized records must show (1) the methods and circumstances of the computer record's preparation, (2) the type of computer employed, (3) the permanent nature of the record storage, (4) how daily processing of information to be fed into the computer was conducted resulting in permanent records, (5) that the sources of information from which the printout was made have been specified, the original source of the computer program delineated, and the reliability and trustworthiness of the information fed into the computer established, and (6) that the methods and circumstances of preparing the computer printout are set out, including the competency of the computer operators, the acceptance of the computer used as standard and efficient equipment, the procedure for the input and output of information, including controls, tests, and checks for accuracy and reliability, the mechanical operations of the machine, and the meaning and identity of the records themselves. The court noted in addition:

> ". . . factors listed regarding the methods of preparation are not intended to be exhaustive. A trial court may require further proof as is necessary to justify the admission of a computer record." [45]

The court also required that a computer printout must have been made in the regular course of business rather that specifically for purposes of trial.[46]

Nonbusiness Computerized Documents

Since the computerized business records have been accepted in many courts,[47] investigators may attempt to introduce nonbusiness computer records in a similar fashion.[48] While this article does not purport to address the topic of nonbusiness computerized documents, several general principles can be discussed. Authentication and best evidence requirements for nonbusiness records would be similar to those for computerized business records, though there is support for the position that authentication requirements are reduced where evidence is taken from the possession of a criminal defendant.[49] However, since the business records exception is unavailable, either a substitute exception to the rule against hearsay must be found or it must be established that the offered evidence is not hearsay. In that regard, an out-of-court statement by a defendant or one of his co-conspirators is by defini-

tion not hearsay.[50] Thus, computerized records created by a criminal defendant or his co-conspirators would also be nonhearsay and admissible,[51] if the requirements of proper authentication and the best evidence rule are met. Information offered as the basis of expert opinion, including computerized data, is also outside the realm of excludable hearsay.[52] A document offered to prove something other than the truth of its contents, such as knowledge, intent, or absence of mistake, is also considered nonhearsay.[53] Therefore, investigators confronted with nonbusiness computerized records should make inquiry to see if they are admissible under any of these principles or other recognized exceptions to the rule against hearsay.

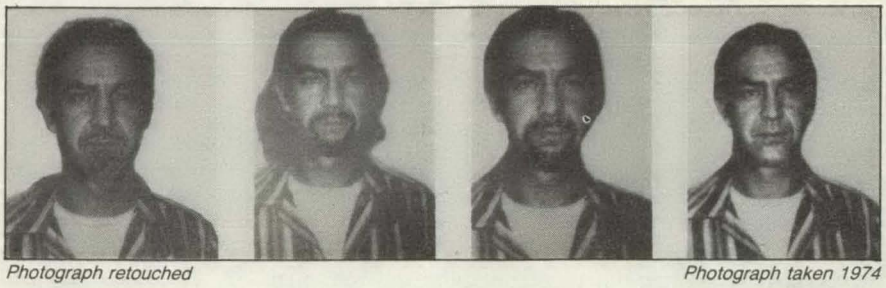
Conclusion

It is essential that a proper factual foundation be laid so that a court may find that the process of creating and maintaining computerized business records is as reliable as it would be had the record been made by pen and paper. The process of writing with a pen on paper is known to us all. For computerized documents to be accepted, the process of computerized creation must also become familiar to courts. In meeting the evidentiary requirements of their jurisdictions for the admission of computerized documents, investigators must discover detailed facts about the involved computer equipment, programs, methods of operation, and the identity of expert witnesses who may assist in familiarizing a court with these facts. The prosecution must be prepared to show that the computer used is recognized as standard equipment and that the sources of information and method of preparation satisfy the requirements for trustworthiness. Courts must be able to determine from the evidence presented that computerized documents are genuine, trustworthy, and probative. The importance of computerized evidence necessitates that investigators carefully gather the required predicate facts for its admission. FBI

Footnotes

[1] *See generally* McCormick, *Handbook on the Law of Evidence,* secs. 244–247 (2d ed. 1972).
[2] *Id.* sec. 245.
[3] *See generally id.* sec. 245.
[4] *Id.* sec. 218.
[5] *See generally id.* secs. 219–224.
[6] *See United States* v. *Russo,* 480 F.2d 1228 (6th Cir. 1973), *cert. denied,* 414 U.S. 1157 (1973).
[7] McCormick, *supra,* sec. 230.
[8] *See generally id.* secs. 237–240.
[9] *State* v. *Kane,* 594 P.2d 1357 (Wash. Ct. App. 1979); *see also* FED. R. EVID. 1006.
[10] *See generally* McCormick, *supra,* sec. 245
[11] *Id.*
[12] *See* Bender, David, *Computer Law Litigation,* sec. 6.02[1] (1984).
[13] *Id.* sec. 6.01[3].
[14] *Id.* sec. 6.02[6].
[15] 222 So.2d 393 (1969).
[16] *Id.* at 397.
[17] *Id.*
[18] *Id.* at 398.
[19] *Id.* at 397, 398.
[20] *Id.* at 398.
[21] 396 N.E.2d 365 (1979).
[22] *Id.* at 370.
[23] *Id.*
[24] FED R. EVID. 901(a).
[25] FED R. EVID. 1002
[26] FED R. EVID. 1001(1).
[27] FED R. EVID. 1003.
[28] *Id.*
[29] FED R. EVID. 1006.
[30] *Id.*
[31] FED R. EVID. 801(c).
[32] FED R. EVID. 803(6).
[33] *Id.*
[34] 553 F.2d 1109 (8th Cir. 1977), *cert. denied,* 434 U.S. 940 (1977).
[35] FED R. EVID. 901.
[36] *United States* v. *Scholle, supra* note 34, at 1125.
[37] *Id.*
[38] *See United States* v. *Russo, supra* note 6, (noting that foundation witnesses were qualified as experts by education, training, and experience).
[39] 426 A.2d 305 (1979).
[40] *Id.* at 308.
[41] *Id.* at 309.
[42] *Id.*
[43] *Id.* at 310 (quoting McCormick, *Handbook of the Law of Evidence).*
[44] 383 A.2d 475 (N.J. Super. St. Ct. Ch. Div. 1977).
[45] *Id.* at 488.
[46] *Id.* at 486. There is considerable dispute on this point. For a contrary holding, *see Commonwealth* v. *Hogan,* 387 N.E.2d 158 (Mass. 1979).
[47] Monarch, *supra* note 44, at 482 (citing numerous cases).
[48] A logical analysis might follow the reasoning that the fact a computer was used to create a document instead of pen and paper is irrelevant provided a proper foundation is laid for admission and the opposing party is given an opportunity to challenge the evidence. *Cf. United States* v. *De Georgia,* 420 F.2d 889 (9th Cir. 1969). *See also Palmer* v. *A. H. Robbins Co., Inc.,* 684 P.2d 187 (Colo. 1984 *en banc).*
[49] Wharton, *Criminal Evidence* sec. 521 (13th ed. 1972). *But see United States* v. *King,* 472 F. 2d 1 (9th Cir. 1973), *cert. denied sub nom. Arias* v. *United States,* 414 U.S. 864 (1973).
[50] FED. R. EVID. 801(d)(2)(A) and 801(d)(2)(C).
[51] *Cf. United States* v. *Bruner,* 657 F.2d 1278 (D.C. Cir. 1981).
[52] FED. R. EVID. 703, *cf. United States* v. *Bastanipour,* 697 F.2d 170 (7th Cir. 1982), *cert denied,* 460 U.S. 1091 (1983).
[53] *See United States* v. *Bruner, supra* note 51.

WANTED BY THE FBI



Photograph retouched *Photograph taken 1974*

Because of the time factor in printing the FBI Law Enforcement Bulletin, there is the possibility this fugitive has already been apprehended. The nearest office of the FBI will have current information on this fugitive's status.

Mac Edward Williams

Mac Edward Williams, also known as Lyle Bargo, Ikey Joe Chadwell, Joe Ikey Chadwell, Joe Dillman, Robert Gilfert, David Millwright, Buddy Williams, Edward Mac Williams, William H. Winfrey, and others

Wanted for:

Interstate Flight—Murder; Escape

The Crime

Mac Edward Williams is being sought by the FBI for unlawful flight to avoid prosecution for murder. Williams, a reported narcotics user, is wanted in connection with escaping from the Harlan County, KY, jail on July 3, 1974, following his arrest for the July 1973 murder of a man who was shot with a .45-caliber revolver and then buried in a pile of sawdust in Harlan County.

A Federal warrant was issued on December 6, 1974, at Pineville, KY.

Description

Age	44, born February 6, 1941, Harlan, KY.
Height	6'1".
Weight	170 pounds.
Build	Medium.
Hair	Brown.
Eyes	Blue.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Farmer, golf caddie, laborer.
Scars and Marks	3-inch scar little finger of right hand; 4-inch scar near left elbow; abdominal surgical scar; tattoos: Tulip, left bicep; Dog, right bicep; two hearts and letters "MS," right forearm; "LOVE" on fingers of right hand; "MINE AND YOURS" on chest.
Remarks	Known to wear a mustache, goatee, and sideburns at times.
Social Security Numbers Used	400-56-3230; 403-62-1229.
FBI No.	417 485 D.

Caution

Williams, a reported narcotics user, is being sought for escape while awaiting trial for a murder in which the victim was shot to death. He is reportedly armed with several pistols and a sawed-off shotgun. He is an escape risk and should be considered armed and 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, DC 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:

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Fingerprint Classification:
18 0 1 U-r 13 Ref: 9
L 17 U 17

I.O. 4975

Right ring fingerprint

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Washington, DC 20535

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Questionable Pattern

This pattern, at first glance, appears to be a central loop-type whorl. A closer examination, however, reveals the lack of a recurve in front of the inner delta. This pattern is classified as a loop with seven ridge counts. However, a reference search would be conducted as a central pocket loop-type whorl with a meet tracing.

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The Bulletin Notes

Communications Officer Pamela Harrington of the St. Clair County, MI, Sheriff Department received a call on a May 1985 afternoon from a mother whose baby had stopped breathing and was turning blue. Communications Officer Harrington was able to calm the mother and give her instruction on how to administer CPR to the child. The local hospital credits this instruction with saving the life of the child, and the Bulletin joins Ms. Harrington's superiors in recognizing her vital role.

Officer Harrington