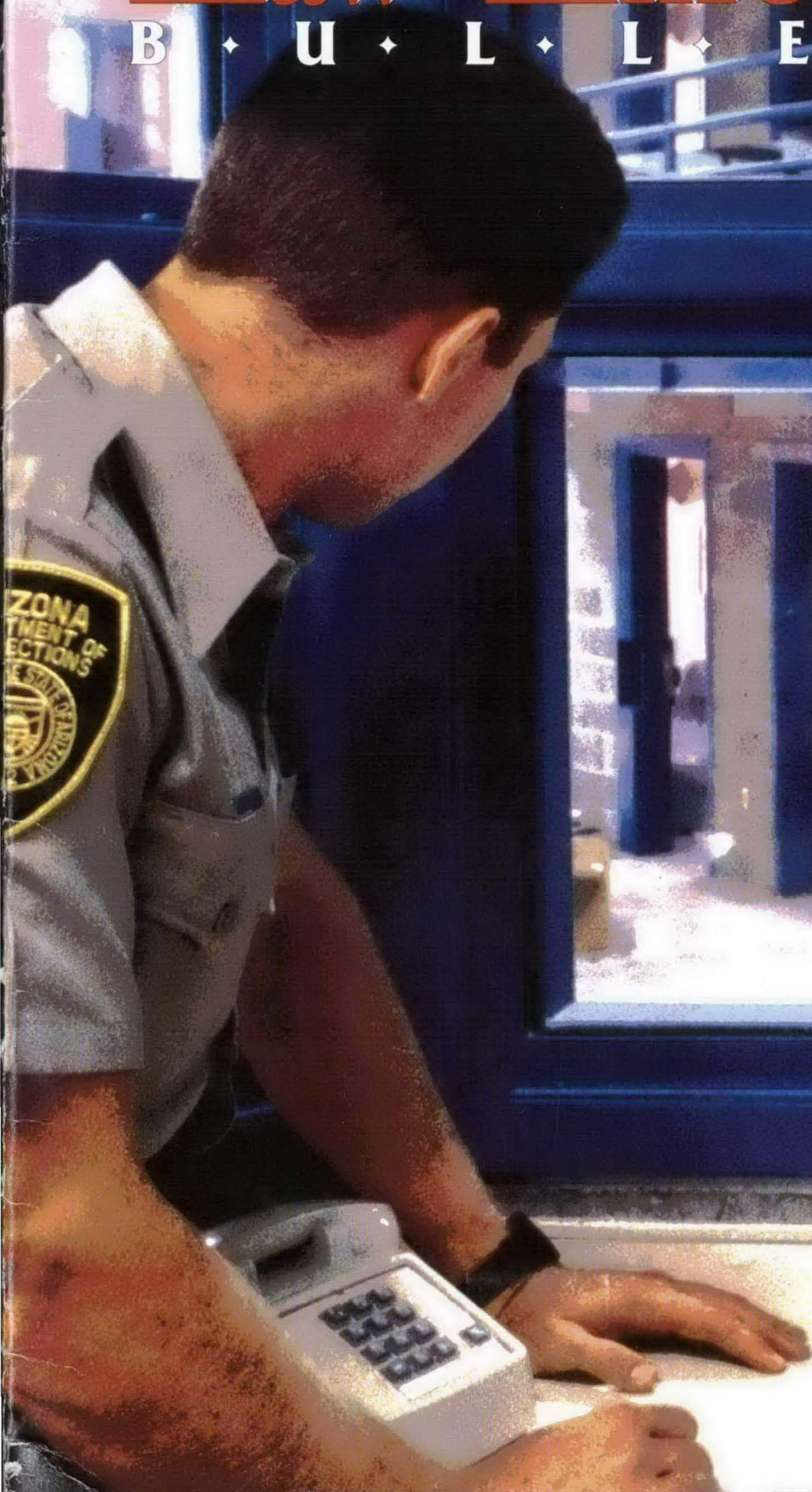




OCTOBER 1993

# FBI Law Enforcement

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Corrections



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Louis J. Freeh,  
Director

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# FBI Law Enforcement

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## Introducing the New FBI Director

**L**ouis J. Freeh has been sworn in as the Director of the Federal Bureau of Investigation. Director Freeh was serving as a U.S. district court judge for the Southern District of New York at the time of his appointment by President Clinton.

Born in Jersey City, New Jersey, Director Freeh graduated Phi Beta Kappa from Rutgers College in 1971. Three years later, he received his J.D. degree from Rutgers Law School and subsequently was awarded an LL.M. degree in criminal law from New York University Law School.

Director Freeh became an FBI agent in 1975 and served in the New York City field office and FBI Headquarters in Washington, DC. In 1981, he joined the U.S. Attorney's Office for the Southern District of New York, where he spent 10 years as a Federal prosecutor. There, he served as Chief of the Organized Crime Unit, Deputy U.S. Attorney, and Associate U.S. Attorney. During this time, he headed the prosecution of the Sicilian Mafia case known as the "Pizza Connection," the largest and most complex criminal investigation ever undertaken by the Federal Government.

From May 1990 to July 1991, at the appointment of the U.S. Attorney General, Director Freeh served as the special prosecutor in charge of "VANPAC," the Federal mail bombing and civil rights murder case of Federal Judge Robert Vance of Birmingham, Alabama, and Alderman and NAACP official

Robbie Robinson of Savannah, Georgia. In 1991, former President George Bush appointed Director Freeh as a U.S. district court judge.

During his career, Director Freeh has been recognized on numerous occasions for his accomplishments. Twice, in 1987 and 1991, he received the Attorney General's Award for Distinguished Service, the second highest annual honor given by the Department of Justice. Other commendations include the John Marshall Award for

Preparation of Litigation, awarded annually by the Attorney General, and the Federal Law Enforcement Officers Association Award for his efforts in prosecuting the "Pizza Connection."

Director Freeh and his wife, Marilyn, a former FBI employee, have four sons. ♦



*Director Freeh*



# Prisons

## *Partners with the Community*

By JOHN R. SCHAFER and DOUGLAS ZISER

NCCF photo by Dick Fernandez, FBI

**I**n general, the public views correctional facilities as a necessary evil. Even so, most citizens do not want one built in their communities. Prisons can, however, create a solid economic base in a community, while creating a suitable environment for those on both sides of the wall.

The North County Correctional Facility (NCCF), located north of Los Angeles in Sangus, California, serves as an example of a prison that provides a more livable approach for all those involved with the facility. The philosophy underlying the design and construction of the facility radically departs from the



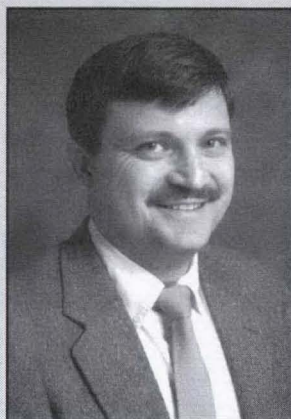
traditional way of viewing prisons. Overall, the NCCF was not built as a place where offenders are punished, but rather as a place where they serve their punishment.

The NCCF officially began operation on March 1, 1990, but years of careful planning led to this juncture. Stringent State and Federal regulations, as well as the community's high expectations, governed the design team's efforts. As a result, the NCCF stands as an aesthetically pleasing, technologically advanced correctional facility that has been accepted as part of the surrounding community.

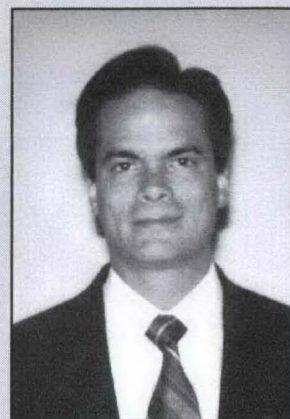
### COMMUNITY RELATIONS

Perhaps the most important consideration in living in partnership with a prison is creating and strengthening community relations. Prior to the opening of the NCCF, a transition team established a liaison program to assist with the assimilation of the NCCF into the community. The transition team members addressed community associations and social clubs in order to educate citizens about the operation of the prison. Community members were also invited to take guided tours of the NCCF to inspect the modern security measures employed to keep the community safe.

Another goal of the transition team was to dispel the rumors and myths regarding correctional facilities. Once citizens learned all the facts regarding the NCCF, they no longer feared having a correctional facility in their community. But the acceptance by the community rests, in large part, with the design and technological advancements incorporated into the NCCF.



*SA Schafer serves in the Los Angeles FBI Field Office.*



*SA Ziser serves in the San Juan FBI Field Office.*

### DESIGN OF THE FACILITY

The \$138 million NCCF houses up to 2,900 inmates and is part of the Los Angeles County Correctional System (LACCS), one of the largest in the Nation with 11 separate facilities. Staffed and operated by deputies from the Los Angeles County Sheriff's Department and civilian support personnel, the NCCF operates various rehabilitation industries, to include a bakery, print shop, and sewing shop. The items produced in these shops are used to meet the needs of both the LACCS and the county itself.

A unique feature of the NCCF is that it was designed in part by a team of administrators and correctional officers and not exclusively by architects and contractors who possess limited knowledge regarding the ongoing operations of a correctional facility. From the outset, the design team set out to create a community-friendly facility that employed new technology and provided functional workspace.

### New Technology

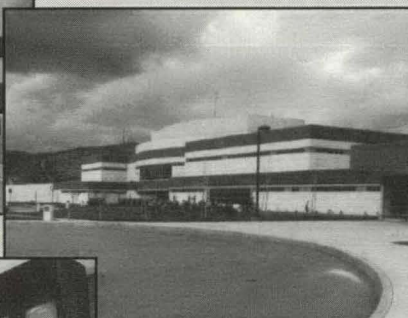
To begin, the design team visited as many correctional facilities in the United States as possible. These fact-finding trips provided invaluable information regarding new technology and procedures implemented by other institutions. Since the NCCF design team consisted of administrators as well as correctional officers, each met with their counterparts when visiting other institutions. This allowed the design team to learn how specific systems worked—or sometimes did not work—before these systems became part of the NCCF.

For example, the design team visited a newly constructed correctional facility that employed technologically advanced pneumatic locking door devices. After a short period of time, facility personnel discovered the pneumatic locks could be easily defeated by placing a strip of cardboard between the locking piston and the door frame. The failure of this locking device





*Interior and exterior views of the NCCF.*



NCCF photos by Dick Fernandez, FBI



allowed inmates free access to restricted areas of the prison. This required the correctional facility to spend thousands of dollars replacing this system with a more conventional locking device.

### **Community Friendly**

The second objective of the NCCF design team involved creating a facility that would blend into the natural surroundings of the community. Specifically, the design team sought an alternative to dual chainlink fences topped with multiple rows of wire and guard towers. To create a more attractive setting, high brick walls conceal rows of wire and guard towers from the public's view. Consequently, to the community and the outside world, the NCCF more closely resembles a college campus than a correctional facility.

The landscape consists of large, well-maintained areas of grass, flowers, and trees. The earth-tone facade of the NCCF and surrounding walls blend into the local environment. The NCCF also maintains a full-time painting support crew whose responsibilities include keeping the facility freshly painted and free from graffiti.

### **Functional Workspace**

Third, to create a functionally efficient workspace within the NCCF, the design team interviewed the deputies and civilian support personnel who would work there. Using accounts of their experiences at other correctional facilities, the design team eliminated many of the problem areas in the construction plans. By doing this, NCCF designers accommodated workers' needs and allowed employees to make a

positive contribution to the design of the facility. For the most part, much of what is incorporated into the facility's interior is the result of employee input.

### **THE FACILITY'S INTERIOR**

Unlike a typical linear cell block construction, inmates are housed in circular-designed dormitories. Each dormitory accommodates up to 48 inmates, and 4 dormitories constitute a unit. At the center of each unit stands a staff station equipped with a computer. This enables the staff station officer to access basic information regarding an inmate's release date, holds placed on the inmate by other law enforcement agencies, court dates, and other pertinent information.

The close interaction between the staff station officer and the inmates creates a more personal relationship, thus lessening the probability of miscommunication. In addition, personal interaction between the staff officers and the inmates, combined with direct visual control of the dormitories, creates a sense of openness that helps to ensure a violence-free atmosphere.

The circular design of the dormitories also allows the NCCF staff station officers to see directly into all sections of each dormitory through widely spaced, diamond-shaped bars. These bars serve to lessen eye strain for the staff officers and provides inmates a more open environment.

Each dormitory is equipped with a shower system that permits inmates to shower at their convenience. In addition, the dormitories also have televisions and an area with stainless steel tables and stools



that can be used for recreational purposes or for serving meals to the inmates in the event of a lockdown.

For mealtimes, the food is brought from the kitchen, and the entire prison population is fed in their respective dormitories, thus saving 1 1/2 hours for each meal service. This procedure also cuts down on corridor travel, lowers potential for violence to and from the cafeteria, and dramatically reduces overtime pay for kitchen personnel. The total cost savings is approximately \$240,000 per month.

Designers selected neutral shades of brown, tan, and beige for the interior of the facility. These soft colors provide a calming psychological effect on inmates and employees alike. Moreover, a series of 5-inch-wide windows stretching from floor to ceiling allow natural light to flood the long corridors. The narrow windows, which can be safely fitted with less expensive glass, reduce the possibility of escape through these openings.

To enhance visual control, corrections administrators chose dark blue jumpsuits for the inmates' uniforms. The dark blue provides the best contrast against the varied brown-tone backdrop of the dormitories. This visual enhancement reduces the potential for unauthorized activities.

#### **ADVANCED TECHNOLOGY**

The NCCF employs the latest advanced technology. The facility is equipped with a computer-driven security and fire safety system operated from a centrally located control room. The control room operator can control every door within the facility, operate security

cameras, and activate the fire safety system. Each door and security camera within the complex has its own unique set of operating instructions stored within the computer. When a security officer activates a particular door or camera, the computer monitor displays the corresponding operating instructions. This is also true in the event of fire or other emergencies.

“

***...the most important consideration in living in partnership with a prison is creating and strengthening community relations.***

”

Within the control room, computer keyboards are conspicuously absent. The design team intentionally gave the control room the feel of a hard-wire system by installing heavy duty buttons and switches instead of keyboards.

This system effectively integrates high technology with equipment familiar to the operator, thus reducing computer anxiety. When these buttons and switches are pushed or turned, they execute a computer command similar to typing a command on a standard computer keyboard. This system eliminates the need for computer training and allows an inexperienced officer to learn control room procedures in a relatively short period of time.

Due to the unique design features of the NCCF, it became necessary for the contractors to use novel techniques to meet construction requirements. For example, the NCCF was the first institution of its kind to use self-locking doors. The door lock automatically recycles itself to the locked position when the door is closed. This locking system, which was designed specifically for the NCCF, is now widely used in similar institutions throughout the country.

Additionally, cement floors in the NCCF were sealed with a low maintenance compound that actually shines itself with normal foot traffic. The installation of these chemically treated floors saves approximately \$75,000 annually in maintenance costs.

Maintenance costs are cut even further because the NCCF has been designated a non-smoking facility. The ban on smoking saves approximately \$50,000 in paint, smoke detector maintenance, and air filters for the heating and air conditioning units.

#### **CONCLUSION**

The NCCF was designed and built using the team concept. Team members consisted of individuals representing all aspects of the correctional system.

More important, the NCCF stands as a model correctional facility for those faced with the prospect of having a correctional facility built in their community. This program has shown how a community and a prison can live in harmony on either side of the high brick walls. ♦



# Linguistics in the Courtroom

By  
PENELOPE O. PICKETT, M.F.S

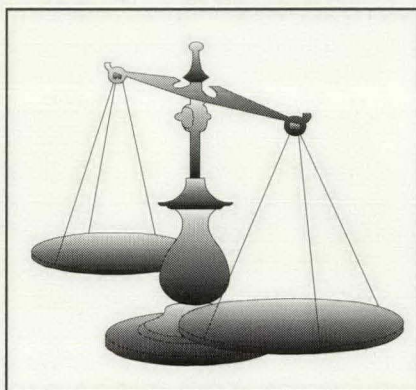
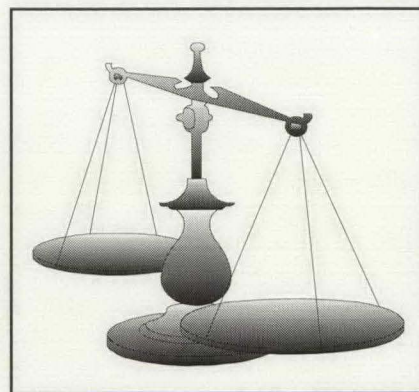
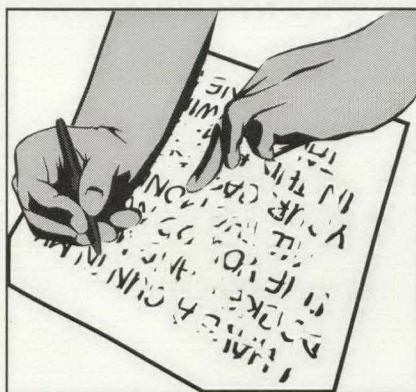
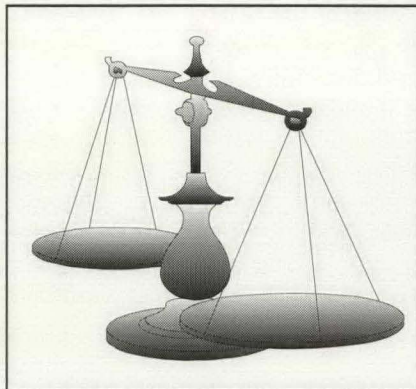
**W**ith increasing frequency, the term "linguistics" is being heard in the courtroom as linguists bring their expertise to bear during judicial proceedings. Both prosecutors and defense attorneys realize the effectiveness of linguistic testimony which, oftentimes, turns a case around. Because linguistic analysis and testimony can influence investigations and the outcome of cases tried in court, the law enforcement community may benefit from knowing what to expect from the discipline of linguistics.

This article discusses three types of linguistic analysis presented in the courtroom. It shows the differences among the three types by providing examples and explaining the analytical focus of each.

## LINGUISTIC ANALYSIS

Linguistics, the scientific study of language, is a well-established discipline that interlinks with other disciplines. The 1980's saw the beginning of a wave of linguistic activity in civil and criminal investigations, which swelled into the decade of the 1990's.

Although various linguistic analysis interrelate with judicial matters, the predominant activity



centers around three basic types of examination and testimony—author/speaker comparison, author/speaker assessment, and discourse analysis. All three focus on language usage and involve comparison methodology, each from a different perspective.

## Author/Speaker Comparison

Linguistic examinations can compare a written communication with a voice communication or a typewritten text with a computer printout. These examinations can also be conducted on two or more



written documents or two or more voice recordings.

In the author/speaker comparison process, linguistic examiners analyze and compare applicable elements of the specific communications. These elements include vocabulary selection, syntax, phraseology, spelling, style, format, sentence length, pronunciation, intonation, pitch, rate of speech, voice quality, etc.

When testifying in court, linguistic experts might present computer printouts of word frequency counts and analyses, which show correlations of common word choice or word length between two communications, or words infrequently used by the general population. Experts might also demonstrate comparisons of other items, such as grammatical constructions and errors or speaking characteristics. The following cases illustrate author/speaker comparisons<sup>1</sup> in linguistic examinations.

**Case #1:** In late 1989, package bombs killed a Federal judge in Alabama and an attorney in Georgia. A linguistic examination by the FBI Laboratory compared the typewritten communiques associated with the bombings to documents known to have been authored by a prime suspect in the case. (Traditional document examination determined that the communiques and the documents were prepared on the same typewriter.) As a result of the linguistic examination, FBI examiners concluded that this suspect was not responsible for the bomb communiques.

When the FBI Laboratory received known writings of another suspect, Walter Leroy Moody, Jr., a

linguistic examination determined that this suspect most likely authored the bomb communiques. This caused investigators to shift their attention to Moody, who was subsequently identified as the perpetrator and later tried and convicted.

**Case #2:** A police chief in Pennsylvania received threatening letters in disguised and distorted handprinting.<sup>2</sup> Linguistic examiners were able to compare the threatening letters to letters in normal handwriting written by the suspect. This examination revealed sufficient similarities in vocabulary, grammar, spelling, etc., for examiners to conclude that the suspect most likely composed the anonymous letters. The suspect, the town's former police chief, subsequently confessed.

**Case #3:** "Dear Sir: I have been involved in espionage for several years..." So began the first in a series of anonymous typewritten letters to the FBI that revealed participation in a spy ring. Later, when

John Walker and his family came under investigation for espionage, known writings of his friend, Jerry Whitworth, were printed out from computer memory and submitted to the FBI Laboratory for comparison with these anonymous typewritten letters.

Because the questioned documents were typewritten and the documents of known authorship were computer printouts, the Laboratory could not conduct a traditional document comparison examination. Linguistic comparison examinations, however, found strong similarities in word usage, grammar, spelling, and format, concluding that Whitworth most likely authored the anonymous letters. Whitworth was later convicted for his participation in the spy ring.

#### **Author/Speaker Assessment**

In analyzing communications to determine demographic and psychological characteristics of the author/speaker, the linguistic

***"...linguistic analysis  
and testimony can  
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outcome of cases tried  
in court...."***



*Ms. Pickett is a forensic linguist assigned to the FBI Laboratory in Washington, DC.*



examiner looks at the same features as in the comparison examination, e.g., vocabulary selection, syntax, phraseology, etc. The examiner basically does the same type of comparison examination, but in author/speaker assessments, uses population standards as the comparative material.

Unfortunately, a comprehensive, centralized set of population standards does not exist, even though linguists, sociologists, psychologists, and others have conducted studies on the various factors<sup>3</sup> that could be used to identify otherwise anonymous authors. Without a full data bank of such standards, current author/speaker assessments<sup>4</sup> depend on an examiner's own knowledge of standard textbook usage, academic studies, and familiarity with language usage of various demographic groupings, as well as on the examiner's experience.

Using knowledge and experience, and the ability to obtain supplemental information, the examiner makes qualified determinations concerning an author's/speaker's age, sex, education, occupation, geographic/ethnic background, veracity, etc. At present, this type of examination serves as an investigative aid and is not intended for court testimony. As comparison standards become more developed, however, the results of linguistic examinations will undoubtedly be the subject of more frequent expert witness testimony.

**Case Example:** In Fayetteville, Tennessee, the body of a teenage girl was found in her bathtub. The investigation of this homicide centered on adult males until the FBI

Laboratory conducted an examination of a note thought to be connected to the homicide.

Linguistic analysis of the note determined that the vocabulary, grammar, and style were most likely that of a teenage male. Investigators then turned their attention to the teenage population, in which they eventually found the perpetrator. They subsequently learned that the male teen committed a similar crime in a neighboring jurisdiction.

**“  
...examination and  
testimony...focus on  
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involve comparison  
methodology, each  
from a different  
perspective.  
”**

#### Discourse Analysis

“[There were] one hundred and twenty-five differences between what I heard on the tape and the transcript.”<sup>5</sup> A linguist made this statement while testifying as an expert witness for the defense. With this comment, the linguist set the stage for his analysis, which pointed out major flaws in the State's case and which led to the defendant's acquittal.

Discourse analysis,<sup>6</sup> conducted in the judicial system context for court testimony, is the analysis of conversations recorded on audio or videotape that are used as evidence in court. This analysis is offered to

facilitate accurate listening, or accurate understanding, of what was said in the recording.

Correcting transcripts that may be used as listening guides is one manifestation of discourse analysis. Another involves explaining the dynamics of conversation to show who is more in control of a particular conversation, what underlying agenda each participant has, and so on.

To perform a discourse analysis, the linguist first typically prepares a corrected transcript from which to work. Corrections are almost always necessary because most transcribers do not realize that there are different types of transcripts, and therefore, they produce transcripts that do not meet the stringent accuracy requirements of law enforcement.<sup>7</sup>

Next, the linguist analyzes the conversation, identifying such things as topics raised in the conversation, who raised them, and the responses to them. Issues of entrapment and inaccuracy in case facts (both transcription and listening errors) are highlighted in this type of analysis.

**Case Example:** After Senator Harrison A. Williams, Jr., had been convicted of bribery in the ABSCAM case, the U.S. Senate debated his censure and expulsion. During the debate, Senators heard a linguist's statement of his analysis of the videotapes in question, concluding, “Despite all of the strategies used by the Government agents to accomplish these aims [of recording a self-incriminatory act or statement by the Senator], the recorded evidence makes it abundantly clear that they fail.”<sup>8</sup>



## APPROPRIATENESS FOR COURT

Linguistics, a well-established discipline recognized by the scientific community for decades, has proven helpful in examining evidential communications in case investigations. But, is linguistic analysis appropriate for court testimony requiring an expert witness?

Some judges believe so and have allowed the testimony; others have not. A judge's decision to allow linguistic analysis as expert testimony often hinges on whether that judge believes the testimony would aid the trier of fact. It can also depend on whether the judge believes that the benefit to the trier of fact outweighs the influence that scientific testimony may have on the jury's decision. Each case calls

for independent evaluation of admissibility.

## CONCLUSION

Linguistic analysis and testimony in criminal cases include three major types—author/speaker comparison, author/speaker assessment, and discourse analysis. Whenever cases involve written or recorded language as evidence, linguistic analysis may become involved in the investigation and court proceedings. Being able to differentiate among these three types of analysis will assist the law enforcement community in understanding how each could affect a particular investigation or trial. ♦

### Endnotes

<sup>1</sup> Other terms may be used for author/speaker comparisons. These include forensic linguistics, psycholinguistics, authorship identification, speaker identification, comparative stylistics,

forensic stylistics, stylistic analysis, stylometry, forensic phonetics, and disputed authorship.

<sup>2</sup> *United States v. Clifford*, 704 F.2d 86 (3d Cir. 1983).

<sup>3</sup> Studies have been conducted on such factors as word frequency counts, dialects, accents, regional expressions, social setting influence on language, sex and age differences in language usage, occupational jargon, word associations, psychological influences on language, and ideational disturbance.

<sup>4</sup> Author/speaker assessments may be referred to by other terms, such as forensic linguistics, psycholinguistics, authorship identification, speaker identification, psychological profiling, demographic profiling, stylistic analysis, and threat assessment.

<sup>5</sup> *State of Texas v. Thomas Cullen Davis*, Case 16838 (Criminal District Court, Tarrant County, TX, October 18, 1979).

<sup>6</sup> Topic analysis, conversational analysis, linguistics, and sociolinguistics are other terms used to refer to discourse analysis.

<sup>7</sup> P.O. Pickett, "Transcripts for Law Enforcement: Special Requirements," *Journal of Forensic Sciences*, JFSCA, 34, No. 5, September 1989, 1250-1258.

<sup>8</sup> 128 Cong. Rec. S1620 (1982) (reading of Exhibit 7).

## Wanted: Photographs

**T**he *Law Enforcement* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the numerous tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

John Ott, Art Director, *FBI Law Enforcement Bulletin*,  
J. Edgar Hoover F.B.I. Building, 10th and Pennsylvania  
Avenue, NW, Washington, DC 20535.



# Police Practices

## The Transition Document

By Lawrence W. Majerus



**I**n January 1993, the leadership of the Nation changed political hands peacefully as the power structure that had existed for a dozen years gave way to a new one. This tradition of peaceful transition is one of the great strengths of American democracy—one to which nations have aspired for nearly two centuries.

Unfortunately, power shifts do not always proceed with the relative calm that accompanies changes in presidential administrations. Even the smoothest transition creates a certain degree of uncertainty and anxiety. Within a law enforcement context, much has been written about the profound effects that a change in command can have on departments and their personnel and how agencies can deal with the fear and concerns associated with internal transitions.<sup>1</sup>

Often overlooked, however, are the repercussions of political change *outside* departments and their resulting effects on municipal law enforcement agencies. Like changes in internal command, these external transitions—in mayoral administrations, city councils, and other local governing entities—can also have a significant impact on police departments and their personnel.

Reality dictates that every law enforcement agency in the Nation deal with a changing political landscape. For this reason, the Douglas, Wyoming, Police Department recently developed a transition document designed to familiarize newly elected city officials with the department. The 13-page booklet provides a written tour of the agency, highlighting its organizational structure, statutory and case-law foundations, budget requirements, personnel, equipment, relationships with other agencies, goals and objectives, and special programs. One of the primary purposes of the transition document is to furnish incoming officials and administrators with accurate information concerning the police department to assist them when framing policy.

### POLITICAL CHANGE

The conditions that led to the development of the transition document are not uncommon to communities throughout rural America. In January 1993, all council positions in the City of Douglas, with the sole exception of the office of the mayor, changed hands. Almost overnight, by election or appointment, a city government with little *governing* experience—the



only official with any tenure was the mayor, who had served on the council for 2 years—now administered the city's affairs.

The chief of police, the city administrator, and other department supervisors comprising the city's management team identified a potentially disruptive tendency for transitional fears to develop as a result of such a broad-based change in power. Initial efforts to communicate with the council-elect had been frustrated by the damaged relationships that often occur during hard-fought local election campaigns. Efforts at calming concerns throughout the police department and other government agencies were further thwarted by a steady stream of unsubstantiated innuendos from the age-old "rumor mill" that inevitably arose from the void of accurate information.

In an attempt to restore a credible information exchange, the police department explored the viability of creating a written package designed to convey the same information normally communicated during an orientation process. When completed, the transition document provided a full departmental tour in a clear, written format.

## **ISSUES ADDRESSED**

### **Organizational Structure**

After a brief introduction from the chief, the transition document begins with a flow chart that outlines the divisions within the police department. The chart also highlights each division's general responsibilities, as well as the supervision of special programs and the management of the agency's computer network.

### **Statutory and Case-law Foundations**

The transition document then describes the municipal code references that established the police department, as well as the powers of the chief and officers serving in the department. The document

provides brief examples of Federal and State controls—citing the State's Police Officer Standards and Training Commission hiring and training regulations, case-law establishing jurisdiction, and Federal acts that regulate records release, civil rights violations, the Americans with Disabilities Act, and other Federal programs.

### **Budget**

The document outlines the police department's budgetary allocations, including division allotments and percentage of the overall budget that represent operating costs and salaries. To further familiarize council members with the department's financial outlays, examples are provided that illustrate the estimated hourly cost to field one patrol officer, as well as the expenses accrued to process a typical arrest for driving under the influence.

### **Personnel**

A discussion of the police department's personnel, including part-time employees and volunteers, is also provided.

This section breaks down the number of officers serving in each division and their ranks. The discussion also includes such statistics as the average age of department employees, average work experience in the department and in the field of law enforcement, education level, and certificates held for inhouse training.

### **Equipment**

To give readers a further indication of the department's capabilities, the booklet provides a brief inventory of the equipment issued to officers. It also notes the supplies available for use during emergency situations.

### **Relationships with Other Agencies**

This section of the document briefly describes the police department's interaction with other local—as well as county, State, and Federal—public safety

**“Reality dictates that every law enforcement agency in the Nation deal with a changing political landscape.”**



agencies. To reinforce readers' appreciation of the department's many and varied commitments, the transition document highlights its allocation of resources to area task forces.

### Goals and Objectives

To assist council members and other readers to understand the long-term aspirations of the police department and its leaders, the transition document outlines the department's primary goals and objectives. First among these is to advance implementation of the community policing model by adopting a more proactive, rather than reactive, approach to providing police services.

### Special Programs

The transition document concludes with a discussion of the special initiatives being implemented by the department to enhance its mission. The discussion shows how the many programs—from a new bike patrol to a school-based alcohol and drug awareness

series—support the proactive, community-oriented policing philosophy of the department.

### CONCLUSION

Any transition in power creates uncertainty and a degree of anxiety. With a transition document, the leaders of the Douglas, Wyoming, Police Department provide newly elected and appointed city officials with credible information regarding the police department. This information not only serves as a useful introduction to the department but also ensures that incoming city government officials possess accurate information with which to make their decisions. Such information can reduce the uncertainty surrounding any transition. ♦

#### Endnote

<sup>1</sup> Mark H. Moore and Darrel W. Stephens, *Beyond Command and Control: The Strategic Management of Police Departments*, Police Executive Research Forum, Washington, DC, 1991.

*Chief Majerus heads the Douglas, Wyoming, Police Department.*

## Bulletin Alert

### Pager Lookalike

Officers of the Washington, DC, Metropolitan Police Department seized this "mini-revolver" from a suspect arrested for a drug-related offense. The .22-caliber firearm is easily concealed, and when placed in a pocket, can be mistaken for an electronic paging device. Law enforcement officers should be alert to these weapons, which can be purchased through the mail.

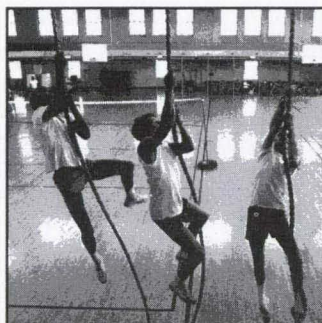




# Boot Camp for Prisoners

By

JODY KLEIN-SAFFRAN, Ph.D.  
DAVID A. CHAPMAN, and  
JANIE L. JEFFERS



**I**n this era of rising crime rates, over-crowded prisons, and increasing recidivism rates, criminal justice administrators confront serious problems that require innovative responses. The search for solutions to these problems has generated some interesting rehabilitation programs.

Among the emerging programs is an approach that administrators in the Bureau of Prisons (BOP) believe may well be an effective method of rehabilitating first-time offenders. The shock incarceration program—also known as boot camp—is a prison-based program

modeled after traditional military boot camps. The program, which emerged in the late 1980's in some State correctional systems, exposes inmates to a daily regimen of strict discipline, physical training, military drills, and work details. In addition, some of the programs also incorporate substance abuse counseling and adult basic and secondary education.

The number of shock incarceration programs at both the State and the Federal level has grown over the years. While many of the current programs differ in specific correctional philosophy and program

activities, there is some consistency in these different approaches.

A primary goal of shock incarceration programs is to change the offenders' behavior to dissuade their involvement in criminal activity. The highly regimented and disciplined environment provided by this type of program facilitates such behavior changes. Shock incarceration programs also prepare participants for successful reintegration into society.

Currently, the BOP has two shock incarceration programs, one for male inmates and one for female inmates. This article discusses the



shock incarceration program for male prisoners—the Intensive Confinement Center (ICC)—located in Lewisburg, Pennsylvania. (The female program is located at the Federal Prison Camp in Bryan, Texas.) It describes how the program began, how officials choose inmates for the program, how the program is evaluated, and how participants eventually re-enter society.

### THE FEDERAL PROGRAM

The Federal Intensive Confinement Center Program at Lewisburg Prison, which is designed to incarcerate 192 male Federal offenders, began with 42 inmates in January 1991. Since then, there have been 17 training cycles involving 917 inmates.

The ICC provides inmates with a highly structured, spartan environment of physical training, labor-intensive work assignments 6

days per week, education and vocational training, substance abuse treatment, and life-skills programs that promote the inmates' successful reintegration into mainstream community life.

Furthermore, the program promotes positive change in inmates' behavior. It focuses inmates' efforts on responsible decisionmaking, developing self-direction and a positive self-image, and finding and maintaining employment.

Each training cycle at the ICC lasts 180 days. The incentive for entering the program is the opportunity for inmates to serve the remainder of their sentences, a portion greater than would otherwise be possible, in a community-based program.

### Eligibility Criteria

Optimally, candidates for the ICC program are recently sentenced

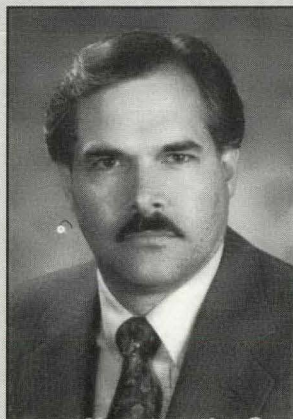
individuals who meet certain eligibility criteria. However, when the program began, there were only a few eligible individuals who had been recently sentenced. As a result, BOP administrators decided to transfer inmates already incarcerated in a minimum-security facility into the ICC, provided they met program criteria. Now that the program is operational, direct court admissions account for over 80 percent of admissions into the ICC. The remaining 20 percent of the inmates are eligible inmates who are transferred from other institutions.

There are six basic requirements that all ICC participants must meet. They must:

- Be serving a sentence of 12 to 30 months
- Be serving their first period of incarceration or have no lengthy periods of prior incarceration



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*Mr. Chapman, the associate warden at the Correctional Institute at Loretto, Pennsylvania, was the ICC's first administrator.*



*Ms. Jeffers is with the Community Corrections and Detention Division, Bureau of Prisons National Office of Citizen Participation in Washington, DC.*



- Volunteer for participation in the program
- Be a minimum security risk
- Be 35 years old or younger when they enter the program
- Lack medical restrictions.

### Orientation

Once the inmates arrive at the ICC, they participate in a 2-week admission and orientation (A & O) that familiarizes them with the mission, purpose, and scope of the facility, the benefits of the program, and the activities in which they will participate. During this period, officials also discuss the strict daily schedule, which begins at 5 a.m. and ends at 10 p.m.

During A & O, inmates may opt to leave the program. Those who decide that they do not wish to continue in the program transfer to regular institutions. The ICC administrator also has the option of expelling participants who do not abide by ICC rules and regulations. These inmates return to traditional prison programs to serve the remainder of their court-imposed sentences without benefit of the accelerated community corrections program phases.

### Daily Schedule

A typical weekday at the ICC begins with a 5 a.m. wake-up call. At 8 a.m., the inmates march to their designated work, education, or counseling assignments. Between 8 a.m. and 4:30 p.m., inmates participate in these assignments, as well as in military drill exercises. At 4:30 p.m., inmates have a 1-hour military-type physical training period.

After a dinner break, inmates resume work call and team activities. (During team activities, team leaders work with inmates to improve personal habits, team spirit, and military drill skills.) The official workday ends at 8:40 p.m., and the lights go out at 10 p.m.

**“**  
*...the ICC  
 Program...promotes  
 the development of  
 self-discipline,  
 respect, and life-  
 coping skills.*  
**”**

### Community Reintegration

When inmates successfully complete the ICC portion of the program, they transfer to a Community Corrections Center (CCC). The CCCs are located throughout the country, and inmates are transferred to the facility closest to their home area.

Inmates entering CCCs begin a three-phase approach to integrating back into the community. Inmates gain increased freedom in each phase if they demonstrate responsible, law-abiding behavior.

The amount of time spent in each phase at the CCC depends on the length of the inmate's sentence. For example, an inmate sentenced to 21-24 months will spend 6 months at the ICC and between 3 and 4

months in each of the other community phases.

Inmates are expected to maintain regular employment in the community throughout their stay at the CCC. And, as do all Federal prisoners, they must pay 25 percent of their salaries to the CCC to help offset the cost of their incarceration.

During Phase I, unless inmates are at work, they must remain in the center. They do receive permission to leave for religious services or other preapproved purposes, but all family visits or leisure activities take place at the center.

Inmates who satisfactorily complete this phase may then progress to Phase II, the prerelease phase. During Phase II, inmates may visit family and friends outside the center until the evening curfew time. In addition, inmates in this phase may obtain weekend passes and furloughs.

Inmates who successfully complete Phase II move into the final phase—home confinement. During this phase, inmates may live in their own homes under certain restrictions and reporting requirements, such as electronic monitoring, for the remainder of their sentences.

### EVALUATING THE PROGRAM

As of August 1993, 917 offenders had been sent to the Lewisburg ICC. Of those, 167 inmates still remain in the ICC phase of the program, while 156 inmates have transferred out before completing the 180-day program. Of this number, 45 inmates received disciplinary transfers, 17 were removed for medical reasons, 1 was remanded to the



### Daily ICC Schedule

- *5 a.m.*  
Inmate wake-up call  
Guards account for all inmates  
30-minute physical training period
- *6:45 a.m.*  
Breakfast  
Living area inspection
- *8 a.m.*  
Inmates march to their designated work, education, or counseling assignments
- *9:15 a.m.*  
15-minute military drill exercise and resume work
- *12 p.m.*  
Lunch and medication call
- *1 p.m.*  
Inmates resume work, education, and counseling sessions
- *4:30 p.m.*  
1-hour military-type physical training period
- *5:30 p.m.*  
Dinner
- *6:30 p.m.*  
Work call and team activities resume
- *8:40 p.m.*  
Official workday ends and guards again count inmates
- *10 p.m.*  
Lights out (Officials relax this rigorous schedule on holidays and Sundays to allow inmates time for personal telephone calls, religious services, and personal time. However, televisions and radios are not allowed at any time.)

Immigration and Naturalization Service for deportation, and the remaining 93 opted out during the A&O process.

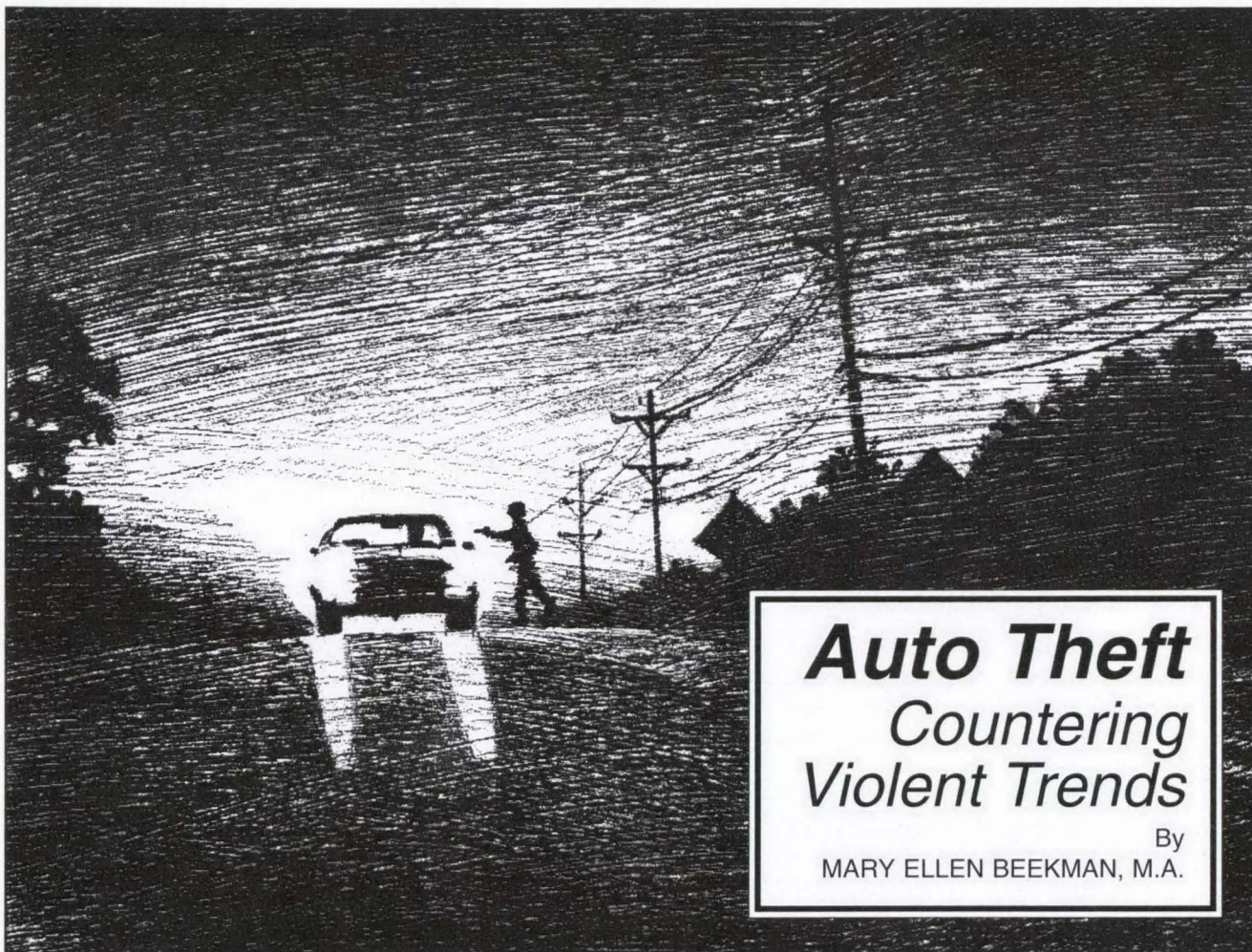
In an effort to evaluate the ICC Program, BOP researchers are examining the development and operation of the program, as well as its cost. They are also examining changes that occur in offenders who participate in the ICC, as opposed to a matched sample of offenders who do not. Finally, they are conducting postrelease followups on ICC graduates to determine job success and whether the inmates have refrained from criminal activity.

### CONCLUSION

Three critical components contribute to the success of the prisoner rehabilitation process: The institutional experience, the community's involvement in the offender's life, and the offender's personal actions and choices. Prisons need to provide inmates with access to appropriate programs; communities must provide support in terms of job placement, counseling, and housing; and offenders must choose to better themselves and to become law-abiding citizens. The ICC Program provides inmates with all of these necessary components.

Although the ICC Program is not a program for hardened criminals, it offers younger offenders the chance to "mend their ways." The program promotes the development of self-discipline, respect, and life-coping skills. It helps inmates gain the critical skills they need to begin anew and become productive citizens. ♦





## ***Auto Theft Countering Violent Trends***

By  
MARY ELLEN BEEKMAN, M.A.

**A**ccording to the most recent Uniform Crime Reporting (UCR) statistics, over 1,661,700 vehicle thefts occurred in 1991.<sup>1</sup> This record-high number continues an alarming trend that began in the mid-1980's. Between 1984 and 1991, the number of vehicle thefts increased by 61 percent. In 1991, direct losses to the American public traceable to this crime totaled nearly \$8.3 million.<sup>2</sup>

As disturbing as the rising rate of vehicle theft is, an even more ominous trend recently began to dominate the Nation's headlines. Armed vehicle theft, led by its most infamous and widespread variety—carjacking—represents a violent

escalation in an already-booming area of criminal activity.

### **ARMED VEHICLE THEFT**

#### **Carjacking**

An informal survey of FBI field divisions determined that just over 19,000 carjackings occurred throughout the United States in 1991; over 25,000 were estimated to have occurred in 1992.<sup>3</sup> While these figures actually represent a small proportion of the overall number of vehicle thefts (less than 1 percent), the random nature, acute sense of violation, and threat of violence inherent in carjacking provoke intense community fear of this crime.

Although a limited number of armed vehicle thefts appear to be sponsored by theft rings or criminal gangs, carjacking, in general, continues to be a crime of opportunity, committed by individuals or small groups. Analysis of FBI cases and discussion with supervisors in more than 30 field offices—who maintain regular contact with local and State police agencies—reinforce the position that very few armed vehicle thefts are actually the work of organized theft rings or criminal gangs.

Methods used by carjackers vary. For the most part, more organized groups tend to commit the highly publicized “bump and run” and “rolling road block” thefts.



However, analysis indicates that the majority of carjackings occur in parking lots, residential streets or driveways, service stations, and intersections.

### Theft from Parking Garages

While the now-familiar carjacking method is the most notorious strain of armed vehicle theft, it is not the only type. Car thieves in metropolitan areas have also been known to "case" parking garages looking for vehicles, which they then steal after incapacitating garage attendants.

In a scheme investigated by the FBI's New York City field office during "Operation Fleetwheels," several armed individuals would enter 24-hour public parking garages that were "inventoried" earlier in the day by a member of the theft ring to ensure a sufficient number of targeted vehicles. The subjects forced the garage attendant(s) at gunpoint into the trunk of a nearby

vehicle, as a member of the theft ring located the keys to selected automobiles. Within minutes, each ring member drove out of the garage with a luxury vehicle.

To evade the police, the perpetrators parked the stolen vehicles in another 24-hour garage. The thieves left with a parking stub, while the police searched nearby roadways for the recently stolen vehicles.

Later, ring members removed the license plates and placed temporary tags on the vehicles. After a day or so, the perpetrators retrieved the stolen vehicles and drove them to a new location, usually during rush hour. The perpetrators then stored the vehicles in a garage in another part of the city until they were resold.

### The Key is the Key

These types of crimes stem from a basic rule of today's car thieves: Obtain the keys, as well as the vehicle. Stealing cars—espe-

cially expensive automobiles—without keys invariably results in considerable damage to the vehicles, and thus, lowers their price on the illegal market.

This situation exists largely because manufacturers of luxury automobiles are taking steps to ensure that only individuals possessing the original keys can operate vehicles. Some manufacturers now make keys that cannot be easily duplicated commercially—the manufacturer is the only source of the key. Other automakers embed computer chips into ignition keys. Removing the key from the ignition immobilizes the vehicle, and only a key with a matching computer chip can start the motor.

In addition to the growing sophistication of factory precautions and the need to safeguard the value of stolen automobiles, the prevalence of vehicle security systems also underscores the need for thieves to steal the keys along with the vehicles. All of these factors seem to lead to a shift from traditional vehicle-theft techniques to more confrontational and violent methods.

### Backlash

A reformed car thief recently told investigators that "for every pro there is a con." The individual elaborated that whenever confronted by an obstacle, thieves find a way around it. Applying this to the automobile theft trade, he stated that the more sophisticated antitheft devices become, the more cunning thieves must be to overcome them.

This reasoning may help to explain the dramatic rise in armed vehicle thefts. In many cases,



Special Agent Beekman serves in the FBI's New York City Field Office.

**“Armed vehicle theft, led by its most infamous and widespread variety—carjacking—represents a violent escalation in an already-booming area of criminal activity.”**



carjacking represents a reckless, but effective, backlash against the use of sophisticated antitheft devices. From a thief's perspective, putting a gun to a victim's head overcomes any antitheft device.

At the same time, the use of sophisticated antitheft devices leads some drivers to assume a false sense of security. This sometimes causes them to abandon normal precautions.

Investigators concur that thieves will find a way to steal a vehicle, regardless of any antitheft system in place. Recently, thieves stole a stretch limousine from a driveway at the owner's business. They left behind only one item—the antitheft device that the owner attached to the steering wheel.

#### **THIEVES AND THE MARKET**

The majority of vehicles stolen by carjackers are taken for joyrides or to use in committing other crimes. Analysis suggests that, nationally, as many as 90 percent of the vehicles taken in carjackings are eventually recovered.

However, some vehicles taken through carjackings and the majority of vehicles stolen by conventional means, especially luxury automobiles, find their way to enterprises known as "chop shops," which deal in stolen car parts. The market for stolen vehicles also includes local drug dealers or other wealthy criminals who "order" specific luxury automobiles as status symbols.

Like most people, criminals enjoy a bargain and will seek to purchase "previously owned" vehicles at drastically discounted prices. Criminals order luxury automobiles through intermediaries who pur-

chase these stolen vehicles from street thieves.

#### **Disposal of Stolen Vehicles**

When carjackers or other thieves steal vehicles *for profit*, they generally attempt to dispose of them quickly through intermediaries. Once the vehicles are in their possession, the intermediaries determine the next step—either dismantling or alteration.

***"In many cases, carjacking represents a reckless, but effective, backlash against the use of sophisticated antitheft devices."***

Although some vehicles are entirely dismantled, or "chopped," for parts, in most cases, either the front or rear end of a stolen vehicle will be attached to a legitimate vehicle of the same type that has been damaged. In this way, the entire vehicle now becomes "legitimate." Chop shop operators then dismantle the rest of the stolen vehicle or discard the remaining parts completely.

If operators decide to make the entire stolen vehicle legitimate, they take it to an individual who specializes in altering vehicle identification numbers (VIN). This task became more complex in recent years, as manufacturers began imprinting

the VIN in several different locations within vehicles. Intermediaries rely on skilled alterers, since quality workmanship ensures a higher resale price. Generally, these specialists earn between \$1,500 and \$3,000 per vehicle.

In addition to the VIN, however, alterers must also legitimize the plastic MYLAR stickers that Federal law now requires manufacturers to place on certain major automobile parts. Because altering these stickers is more difficult than changing the VIN, some alterers purchase counterfeit MYLAR plates. In many jurisdictions, it appears that this type of counterfeiting is on the rise, aided by new computer technology that makes MYLAR counterfeiting easier.

#### **Documentation and Insurance**

Although altering the VIN and MYLAR plates effectively creates a "new" vehicle to sell, intermediaries must still obtain documentation so that the vehicle may be registered or exported.<sup>4</sup> Accordingly, these intermediaries generally know where and how to obtain counterfeit paperwork. Other times, they may attempt to legitimize vehicles by obtaining *valid* State titles.

Investigators also believe that some of these vehicles carry legitimate automobile insurance obtained through assigned risk pools by brokers who are aware of the vehicles' true status. Intermediaries who wish to bypass the expense of securing legitimate insurance can purchase less expensive fraudulent insurance identification cards.

To show the "reauthentication" of a luxury vehicle, intermediaries may take prospective buyers for a



## *Carjacking—One Department's Response*

When Detroit, Michigan, experienced a substantial increase in the number of carjackings, the police department responded by forming a task force whose primary responsibility is to investigate this crime. This departmental task force operates in addition to the multiagency Fugitive Task Force that focuses on the interstate aspects of violent vehicle theft. The Detroit Police Department task force serves as a central repository for reports, as a processing center for individuals arrested for carjacking, and as a source of information regarding manpower deployment.

Officers from the patrol force, the commercial auto theft unit, and the armed robbery unit make up the task force. The use of patrol officers on the task force prevents the depletion of personnel from one command and provides a source of information regarding the activities of individuals in their respective patrol areas. Personnel from the other two units give the task force the expertise needed to investigate and prosecute carjackings from all aspects, as well as to provide investigative training to less experienced members.

In addition, crime scene technicians, latent print experts, and crime analysts support the investigative efforts of the task force. Combining the efforts of the task force and support units allows criminal investigations to be consolidated, which ultimately increases the number of cases resolved.

The task force concentrates its efforts on a comprehensive crime prevention program, an intensified patrol force, the identification of habitual offenders, and the assurance of arrest and prosecution. With these methods, the task force works to minimize the impact of carjackings on the citizens of Detroit.

By educating and reminding the public of basic crime prevention techniques, the task force hopes to reduce the probability of a citizen becoming a victim. Augmenting the police force with roving uniform patrols and surveillance units enables the department to concentrate its crime reduction efforts in areas experiencing high rates

of criminal activity and allows for high police visibility. This high visibility also enhances community relations, increases the rate of apprehension, and serves as a deterrent to would-be carjackers.

The identification and apprehension of habitual offenders significantly reduces the number of carjackings because this random crime depends on opportunity. The department determined that a minority of the criminal element committed the majority of the crimes. Therefore, linking an individual to more than one crime proves to be a valuable tool in decreasing the number of future incidents. Also, obtaining multiple warrants enables prosecutors to employ habitual offenders status, which provides the court system with the means to give offenders longer sentences.

Because lack of prosecution and uncertainty of punishment caused the criminal element in Detroit to become more brazen in their acts against society, special prosecutors from the Wayne County Prosecutor's Office work with the task force to prevent these felons from slipping through the system. The prosecutors' involvement begins with the warrant and continues through sentencing. The use of special prosecutors aids victims who usually feel abandoned or confused with the criminal justice process, ensures that the suspects are properly charged, and sends a message that such serious offenses will be prosecuted to the fullest extent of the law.

While forming a task force did not provide an instant solution to the carjacking problem, it did help to reduce and control this criminal enterprise. Carjacking may be the wave of the 1990's. However, by combining crime prevention with intensified patrol and investigation and successful prosecution, this crime may soon be considered a relic of the past.

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*Written by Lt. Madelyn Williams of the  
Armed Robbery Unit, Detroit, Michigan, Police  
Department.*

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test drive. During the drive, the intermediaries may try to intentionally seek out a police patrol car and deliberately make a maneuver for which the vehicle will be stopped. The intermediary then allows officers to inspect the vehicle and even produces registration and insurance paperwork. This, of course, is to prove to the potential buyer that the true origin of the altered vehicle is undetectable, even by the police. Accordingly, vehicles that pass this test sell for a higher price.

### **Shipping Vehicles Across State Lines**

Theft rings also transport a number of altered vehicles to other States, where they are purchased by drug dealers or other criminals. Because State police agencies stop many of these stolen vehicles while en route via interstate highways, one ring of clever thieves recently began using car carriers to transport the vehicles. The perpetrators determined that the police rarely stop car carriers to examine the vehicles being transported.

### **COUNTERING THE PROBLEM**

Because aspects of motor vehicle theft come under both Federal and State laws, successful enforcement often requires the cooperation of various Federal, State, and local agencies. This is especially true in cases that involve organized crime groups, gang-sponsored theft rings, and the more violent groups of carjackers.

#### **Cooperative Efforts**

Cooperation in the form of multiagency task forces can be a successful strategy that impacts

significantly on armed motor vehicle thefts. Agencies in areas with high rates of violent vehicle theft should also consider establishing carjacking units and regional auto theft teams.

In some areas, previously existing task forces now place a new emphasis on violent vehicle thefts. In Atlanta, Georgia, the Metro Armed Robbery Task Force—which combines the resources of the

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”**

FBI and several other agencies—arrested a subject for carjacking in connection with surveillance being conducted regarding bank robberies. In Dallas, Texas, the multiagency Interstate Theft Squad now places a priority on investigations of automobile theft with suspected gang connections.

A rash of carjackings in the summer of 1991 led the Detroit, Michigan, Police Department to create a special task force to combat the problem. In addition, the Detroit division of the FBI sponsors the Fugitive Task Force to assist local police with the interstate aspects of

carjacking investigations. Through such aggressive efforts, investigators in the area have been successful in reducing overall carjacking rates, as well as in recovering the majority of vehicles stolen by carjackers.

### **Federal Legislation**

Congress responded to the carjacking problem by passing the Anti-Car Theft Act of 1992, which makes carjacking a Federal offense.<sup>5</sup> Motor vehicle theft is covered by this Federal legislation when an individual (or group of individuals) possessing a firearm takes, or attempts to take, a vehicle from another person by force, violence, or intimidation. The act also imposes severe penalties for convicted carjackers, to include fines and sentences up to life in prison.

The criminal justice system also needs to rethink the prosecution of armed motor vehicle thefts. Many of these crimes can be prosecuted under previously existing Federal statutes. In New York State, for example, prosecutors succeeded in winning convictions against several carjackers under the Racketeer Influenced Corrupt Organizations (RICO) statute. In this respect, agencies should work with U.S. attorneys offices to develop aggressive enforcement and prosecutorial strategies.

### **Involving the Community**

As with other crimes, public awareness concerning the techniques and motivations of carjackers and vehicle theft rings in general may represent the most effective countermeasure. Working with community groups to develop prevention programs helps to combat the problem. Accordingly, law



enforcement agencies should publicize and encourage citizens to adopt effective precautionary strategies.

## CONCLUSION

Motor vehicle theft has plagued society since the first Model T's drove off assembly lines. However, this crime, often viewed as "victimless," recently assumed a much more serious and violent tone. Armed vehicle theft—in all its forms—threatens the public's sense of safety and security.

Some observers note that by allowing car thieves to go largely unpunished for so many years, the criminal justice system paved the

way for more violent forms of vehicle theft. Others claim that the growing sophistication of automobile security systems drove thieves to more confrontational and brutal means.

While the root causes of armed vehicle theft may be debated for some time, the current task of law enforcement is to identify and employ effective measures to counter this crime. Experienced autotheft investigators understand that carjackings represent, in part, a natural and desperate reaction by car thieves to overcome obstacles placed before them. However, through cooperation, legislation,

crime-fighting initiatives, and aggressive prosecution, the criminal justice system can meet the challenges presented by this growing crime problem. ♦

## Footnotes

<sup>1</sup> *Crime in the United States, 1991*, Uniform Crime Reporting Program, Federal Bureau of Investigation, Washington, DC, August 1992.

<sup>2</sup> *An Analysis of Carjacking in the United States*, Violent Crimes and Major Offender Section, Federal Bureau of Investigation, Washington, DC, October 1992.

<sup>3</sup> *Ibid.*

<sup>4</sup> See Mary Ellen Beekman and Michael R. Daly, "Motor Vehicle Theft Investigations: Emerging International Trends," *FBI Law Enforcement Bulletin*, September 1990, 14.

<sup>5</sup> H.R. 4542, 102d Congress, Pub. L. 102-519, 106 Stat. 3384.

## Carjacking Safeguards: Advice to Give Motorists

**D**rivers should be encouraged to follow these safeguards against carjacking.

- Lock all doors, even when driving
- When stopped at a traffic light, leave enough space between your car and the car ahead for quick departure
- If another driver bumps your vehicle, do not stop. Either drive to a well-traveled area to inspect the damage or attempt to get the vehicle's license plate number and report it immediately to the police
- If parked in a shopping mall or supermarket parking lot, look around for anyone or anything suspicious before approaching the car. If you feel you are being watched, go

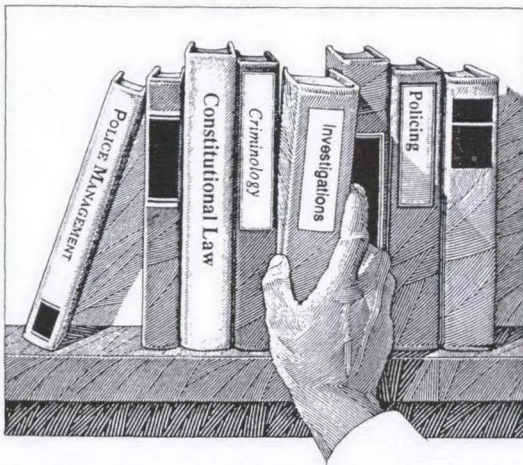
back to the store and ask someone to escort you or call the police

- Because many carjackings occur at gas stations, avoid filling up at stations in high-crime areas or at night. To avoid being placed in vulnerable situations, keep the vehicle's gas tank as full as possible
- If available, take freeways rather than streets through high-crime areas
- While driving, stay in the center lane; avoid being blocked into the curb lane
- Above all, if there is no escape, do not resist.

*Information obtained from Insp. Charles DeRienzo, New York City Police Department, Auto Crime Unit, and the FBI's Criminal Investigative Division.*



## Book Review



***Narcotics Investigative Techniques*** by Paul T. Mahoney, Charles C. Thomas, Springfield, Illinois, 1992, (217) 789-8980.

A good primer to drug investigations should be plainly written and describe practical techniques that investigators can realistically apply in their jurisdictions. *Narcotics Investigative Techniques* is written specifically for municipal police drug investigators and effectively maintains this perspective throughout the book. Arranged to mirror the logical progress of drug investigations, the text guides readers through the process with many helpful suggestions and case studies to illustrate particular points.

The book begins with a discussion of how to initiate drug cases and correctly points out that most cases begin before anyone reports a crime through official police channels. The author offers helpful suggestions regarding the potential sources of information—neighborhood complaints, drug hotlines, referrals through official channels, etc.—and provides clues on how to prioritize the information received. The text goes on to compare information management in small police agencies, as opposed to large metropolitan police departments. The author brings this discussion together by

describing in detail the development of a typical case, including expenses, workforce, interaction with other agencies, and the role of the community.

Because informants play an important role in many drug cases—whether investigators target street dealers or high-level distributors—the author devotes much discussion to this issue. The book provides drug investigators with clear and concise suggestions regarding the handling of informants—from general policy guidelines to informant motivation, day-to-day contact, and payments. The author then discusses not only the great potential rewards of using informants but also the possible complications, frustrations, and disasters that can result from the mishandling of informants. The presentation emphasizes the importance of maintaining a professional relationship with informants. The author also notes that limited informant budgets underscore the importance of careful selection and development of potential informants.

While much of the book focuses on the technical aspects of drug investigations, the final chapter explores the nontechnical facets of drug investigations, such as attitude and responsibility. The author correctly argues that these factors are just as critical as technical skill in developing successful drug investigations.

*Narcotics Investigative Techniques* offers an excellent introduction to the complex issues surrounding drug investigations. For police managers and investigators already experienced in drug investigations, the book provides a helpful general overview that will enhance their knowledge base and provide helpful suggestions.

Reviewed by  
SA W.K. Williams  
Organized Crime/Drug Intelligence Section  
Criminal Investigative Division  
Federal Bureau of Investigation  
Washington, DC



### Watching the Correctional Pendulum Swing

By George J. Miller

**W**hen I began my career as a caseworker at the Indiana Reformatory in the early 1950's, the correctional "pendulum" had just begun to make its dramatic shift from the punitive right to the permissive left. While the causes behind this dramatic shift can be infinitely debated, the *effects* quickly became apparent. Even today, after a significant "correction" to the pendulum during the 1980's, the legacy of the move toward permissiveness is clear: A general lack of respect for authority, a criminal element with little fear of swift or equitable retribution, and a citizenry that questions the capability of the criminal justice system to provide effective protection against crime.

Although the 1980's movement to the right balanced some of the previous excesses, it also created new problems. Factors such as increased drug enforcement efforts and mandatory sentencing guidelines led to intense prison overcrowding problems. Still, crime rates—those of violent crimes, in particular—did not fall.

The 1990's, then, must address the excesses of the past. An important element of success is to find a proper balance for the correctional pendulum.

#### THE PENDULUM SWINGS LEFT

Where, when, and why did the shift toward permissiveness begin? Educators point to the educational system during World War II, when a large proportion of the male population served in the armed services. While mothers worked long hours to fill vacated jobs, school administrators suggested overlooking "little Johnny's" shortcomings in school because few authority figures at home could assist in the child's discipline. The word was "don't blame Johnny" for his shortcomings, but try to sympathize with him. In time, this well-intentioned sympathy was carried too far to the point that Johnny, as a young

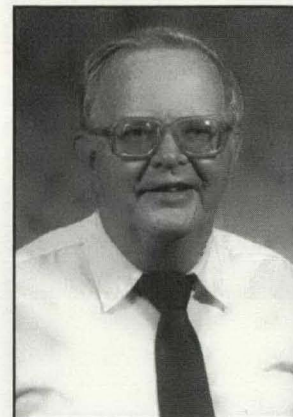
adult, was relieved of any accountability for his conduct.

Then came public assistance handouts and other government programs ready to excuse Johnny and his parents from their responsibilities. Eventually, this philosophy permeated further into family structures, as well as into the criminal justice system. If individuals could not be held accountable for their actions, then law enforcement agencies and the judicial system should, likewise, be lenient toward their behavior.

Beginning in the late 1950's and proceeding through the next two decades, the judicial system—often led by the Supreme Court—began to champion this cause. Alleged criminals demanded, and were often granted, "their rights," far beyond what they may have deserved. A series of landmark cases, including *Gideon v. Wainwright*, *Escobedo v. Illinois*, and *Miranda v. Arizona*,<sup>1</sup> awarded what I believe to be undue liberties to criminals, and in the process, restrained law enforcement and the courts.

The practical effects on the correctional system and society in general soon became devastating. As criminals and their interest groups demanded ever-increasing levels of due process, they literally began to bankrupt several States' correctional systems. The resulting budget strains effectively stifled any programs that could genuinely assist in offender rehabilitation and resocialization.

Meanwhile, circumstances within prisons often bordered on the absurd. In the late 1960's, courts began to accept the jurisdiction of inmate complaints



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and moved to restrict the authority of prison administrators. While many of these prison reforms addressed legitimate community and inmate concerns, other changes simply undermined the fundamental structure of the prison system. By the late 1970's, many observers found it difficult to determine who ran the prisons—the administrators or the inmates.

## THE PENDULUM SWINGS RIGHT

Then, suddenly, in the mid-1980's, public sentiment shifted again and began to dictate a "get tough" attitude toward criminals. This swung the pendulum dramatically back to the punitive right.

However, society may soon find that an exaggerated move to the right also produces disturbing results. In 1992, Federal and State prisons housed an estimated 900,000 inmates.<sup>2</sup> And, if current sentencing patterns continue, this number will increase at a rate of 7 to 8 percent annually. This could mean 1.5 million inmates in Federal and State prisons by the year 2001.<sup>3</sup>

Perhaps most disturbing, increased incarceration rates seem to have little effect on the situation on the streets. While the rates for some crimes leveled off, violent crime rates increased steadily during the 1980's. Not surprisingly, fear of crime also rose sharply. Although more offenders sit behind bars, citizens feel no more safe today than they did 10 years ago.

Is this really what society wants or needs? Will such numbers in our prisons really make us feel safe in our persons and property? Is this what our criminal justice system is all about—or is there another solution?

## SEARCHING FOR THE MIDDLE

If increased incarceration rates do not necessarily translate into safer communities, do alternatives exist? In his many speeches advocating

decriminalization of certain victimless crimes, Professor Norval Morris, former dean of the University of Chicago Law School, asserts that the criminal justice system should concentrate more specifically on those offenders whose behavior prevents citizens from feeling safe. As Professor Morris states, "We cannot legislate morality."<sup>4</sup> An attempt to do so with

prohibition during the 1920's proved not only futile but also self-destructive to society. When discussing the current status of society and the criminal justice system, Professor Morris and other proponents of decriminalization often speak about the "overreach of the criminal law."<sup>5</sup>

While sharp disagreement exists concerning the specific activities that law enforcement should or should not target, the concept of decriminalization may represent a viable option to building more prisons to incarcerate ever-increasing numbers of prisoners. Still, such

approaches do not address the causes that lead youths to become criminals and cause citizens to feel fearful in their own cars, homes, and communities.

## Defining the Problem

We may find some of the solutions by answering a basic question. How can we balance the correctional pendulum so that it veers neither too far to the left nor to the right?

To find the solutions, we have to recall how we came to be where we are now. Disintegration of societal values begins with a lost sense of personal responsibility. Society must correct the mistakes of the past and return to a stronger family values system—beginning with an emphasis on parental accountability. This sense of responsibility must then be instilled into each child.

In addition to a renewed sense of responsibility, we must also examine our attitude toward materialism. Our mistaken concept of greed destroys families from within. Should material accumulation really be

“  
Although more  
offenders sit behind  
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years ago.”



that significant to us, or are there higher values to which we as a society should aspire?

### Working Toward a Solution

Because members of the criminal justice community have a vested interest in the results, they should take a leadership role in formulating approaches to enhance a sense of social responsibility, especially among the Nation's youth. Police administrators may consider dispatching officers to local schools to deliver special civics lessons—a long-abandoned area of instruction in most school systems. These classes should be updated to reflect the interests and concerns of today's students and society in general, but the presentations should stress the importance of community responsibility.

Criminal justice agencies should also consider developing other community-oriented initiatives that foster strong family and community bonds. In the long term, by addressing the root causes that lead to crime, these efforts—if applied in a fair, aggressive, and consistent manner—may represent the most effective way to begin to reverse what appears, at times, to be an ever-rising tide of criminality.

### CONCLUSION

Many factors, including the philosophical aspirations of the Nation's leaders, determine the direction the correctional pendulum takes. However, the criminal justice community exerts considerable influence in shaping public sentiment in this area. Accordingly, criminal justice professionals should take this responsibility seriously and work to correct the pendulum by balancing the rights of the accused with the needs of the community. In so doing, we should remember the Latin adage—*in medio stat virtus*—"virtue stands in the middle." ♦

### Endnotes

<sup>1</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966).

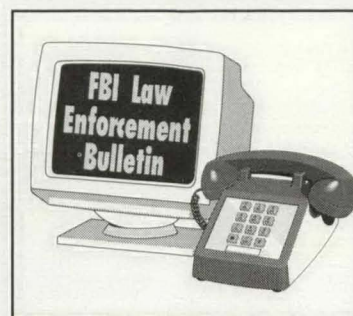
<sup>2</sup> Harry E. Allen and Clifford Simonsen, *Corrections in America*, 5th ed. (New York: Macmillan Co., 1989).

<sup>3</sup> *Ibid.*

<sup>4</sup> Norval Morris, "Politics and Pragmatism in Crime Control," *Federal Probation*, September 1971.

<sup>5</sup> *Ibid.*

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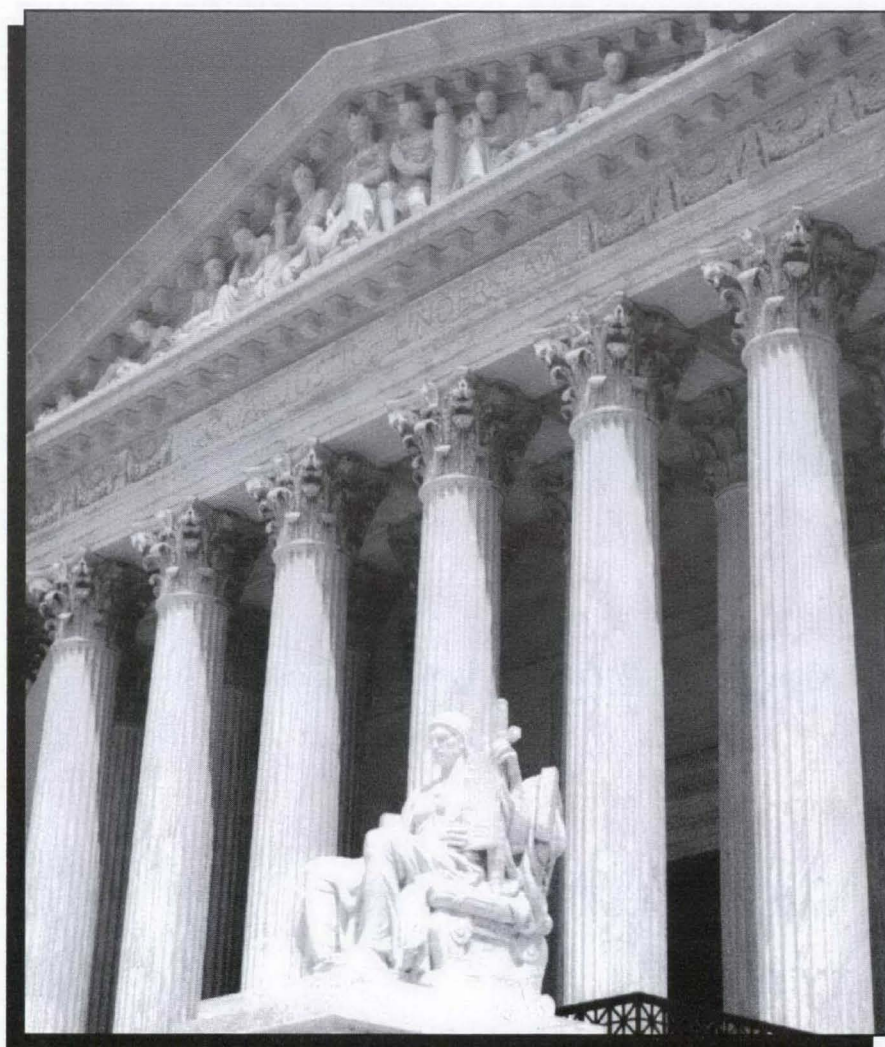
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# Supreme Court Cases

## 1992-1993 Term

By  
WILLIAM U. McCORMACK, J.D.



**T**he 1992-1993 term of the U.S. Supreme Court produced nine decisions of particular importance to law enforcement. In these cases, which

will be discussed in brief, the Court established an important and useful rule concerning the development of probable cause during a pat-down search and reaffirmed the law con-

cerning criminal defendants' standing to challenge illegal searches and seizures. The Court also determined that officers who assist citizens in civil proceedings, such as evictions, may be held civilly liable for fourth amendment violations and decided not to bar habeas corpus petitions for alleged *Miranda* violations.

Other Court decisions in this term overruled a troublesome 1990 Supreme Court double jeopardy decision, loosened the standards for the admissibility of scientific evidence, and held that the eighth amendment's Excessive Fines Clause must be considered in forfeiture actions. The Court also ruled on a case involving a large-scale forfeiture of a pornographer's business assets and decided the legality of bias-motivated penalty enhancement provisions.

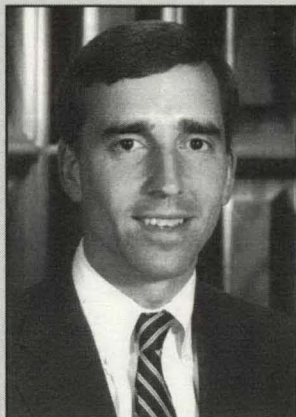
### ***Minnesota v. Dickerson*, 113 S.Ct. 2130 (1993)**

In *Dickerson*, the Court ruled on the constitutionality of a law enforcement officer's seizure of contraband from a detained suspect who was patted down for weapons. The Court determined that probable cause to seize contraband may be developed through an officer's sense of touch during a lawful pat-down search for weapons.

In the case, police saw the defendant leave a building considered to be a notorious "crack house" and take evasive action upon spotting the police. Officers then stopped and frisked the defendant based on reasonable suspicion that he was carrying drugs and was armed and dangerous.

The officer conducting the pat-down search felt a small lump in the





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defendant's front pocket and examined it with his fingers by squeezing, sliding, and manipulating it. The officer thought it was a lump of crack cocaine in cellophane and reached into the defendant's pocket to retrieve the package, which turned out to be crack.

The Supreme Court ruled that an officer can develop probable cause for seizing contraband based on the officer's tactile sense. The Court compared the sense of touch to sight by noting that the plain view seizure doctrine allows a seizure when an officer, lawfully present in a location, sees an object reasonably believed to be evidence of a crime. The Court reasoned, by analogy, that when an officer conducting a lawful pat-down search feels an object whose contour or mass makes its identity as contraband immediately apparent, the officer may seize that object if probable cause that the object is contraband exists.

However, the Court found the seizure in this particular case illegal

because the officer's pat-down search of the defendant went beyond the scope of a lawful search authorized by *Terry v. Ohio*, 392 U.S. 1 (1968). The Court stated that a *Terry* pat-down search is limited to a frisk for weapons, and in this case, the officer's continued exploration of the defendant's pocket by squeezing, sliding, and manipulating the lump after having concluded the pocket contained no weapon was unrelated to the purpose for a *Terry* frisk, and therefore, was illegal.

*Dickerson* is an important case for law enforcement officers because it clarifies that an officer can establish probable cause by the sense of touch during a *Terry* frisk. Although the seizure was held invalid in this case, officers conducting lawful pat-down searches may, through training, experience, and other surrounding circumstances, establish probable cause that a detainee is carrying contraband, such as drugs.



***United States v. Padilla*, 113 S.Ct. 1936 (1993)**

In *Padilla*, the Supreme Court examined the question of a criminal defendant's right to challenge a violation of the fourth amendment when the defendant is involved in a

conspiracy. The Court held that a defendant charged as a conspirator in a drug smuggling operation does not have standing to challenge an illegal search of a vehicle used to transport drugs based solely on the defendant's supervisory or oversight role in the drug smuggling operation.

In the case, police stopped a suspicious car because it was going too slow. After checking the driver's license and believing that the driver fit a drug courier profile, officers asked for and received consent to search the car. They subsequently found 560 pounds of cocaine in the trunk. The driver then agreed to cooperate with the police by making a controlled delivery of the cocaine to other defendants in the case.

The U.S. Court of Appeals for the Ninth Circuit upheld a motion to suppress the cocaine. The 9th Circuit concluded that the vehicle stop was illegal and that defendants in supervisory roles in the drug conspiracy had the right to challenge the fruits of the illegal vehicle stop based on their supervisory roles. The Supreme Court reversed and held that conspirators do not have standing to challenge illegally seized evidence based solely on their participation in an operation and/or supervision of the place searched.

The Supreme Court reaffirmed the principle that defendants can only suppress evidence obtained in violation of the fourth amendment, if they demonstrate that their fourth amendment rights were violated. The Court concluded that expectations of privacy and property



interests govern whether a defendant may challenge an illegal search or seizure and that the existence of a conspiracy neither adds to nor detracts from such expectations or interests.

The *Padilla* decision is helpful to law enforcement because it reaffirms that only defendants with a reasonable expectation of privacy or property interest in the item or area searched have standing to challenge the legality of the search in a criminal prosecution.



***Soldal v. Cook County, Illinois*,  
113 S.Ct. 538 (1992)**

In *Soldal*, the Court examined the liability of a law enforcement officer for a fourth amendment violation when the officer becomes involved in enforcing a property action between private parties. The Court determined that a law enforcement officer who assists in an unlawful eviction may be held liable for an illegal seizure under the fourth amendment.

The plaintiffs in this civil suit were the subject of eviction proceedings filed by the owners of a trailer park. Two weeks before a scheduled court hearing on the eviction, and contrary to Illinois law, the trailer park owners chose to

forcibly evict the plaintiffs and contacted the sheriff's department to request the assistance of deputy sheriffs.

When the trailer park owners began to wrench the sewer and water connections off the side of plaintiffs' trailer, one of the plaintiffs told the deputy sheriffs that he wanted to file a complaint for criminal trespass. After consulting with the trailer park owners and a district attorney, a deputy told the plaintiff that he would not accept a complaint because this was a landlord-tenant matter, and they were going to go ahead and continue to move out the trailer. Throughout this period, the deputy sheriffs allegedly knew that the trailer park owners did not have an eviction order and that their actions were unlawful.

After a State judge ruled that the eviction had been unauthorized, the plaintiffs filed this civil suit, under 42 U.S.C. §1983, alleging that the deputies and trailer park owners had violated their fourth amendment and due process rights. The U.S. Court of Appeals for the Seventh Circuit held that the plaintiffs had no cause of action against the deputies because there was no seizure as contemplated by the fourth amendment and no deprivation of due process. The Supreme Court reversed the Seventh Circuit and held that the actions of the trailer park owners and the deputies constituted a seizure within the meaning of the fourth amendment.

The Court stated that a seizure of property under the fourth amendment occurs when there is some meaningful interference with an individual's possessory interest in

that property. The Court disagreed with the Seventh Circuit that a seizure only occurs when a citizen's liberty or privacy interests are affected and ruled that even though the deputies did not intrude into any privacy interests or deprive plaintiffs of their liberty, the action of carrying away the mobile home was a seizure of plaintiffs' property under the fourth amendment.

The Court suggested that the deputies should have awaited a proper State judgment before assisting in the eviction. In that regard, *Soldal* is a significant case for law enforcement officers who assist or participate in eviction proceedings, repossessions, or other civil property disputes. Officers involved in such activity should be aware that because their actions may be judged under the reasonableness standard of the fourth amendment, they should ensure that any civil proceedings supporting their actions are proper and lawful.



***Withrow v. Williams*, 113 S.Ct.  
1745 (1993)**

In *Withrow*, the Supreme Court distinguished *Miranda* violations from fourth amendment violations, with respect to habeas corpus proceedings. The Court held that



criminal defendants can continue to raise *Miranda* violations in habeas corpus proceedings, even though the Court previously restricted habeas corpus petitions that raised fourth amendment issues.

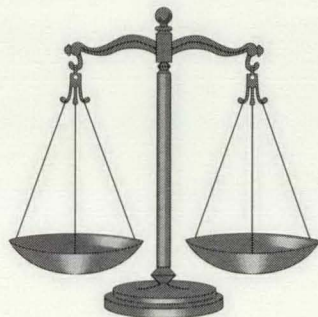
In this case, police contacted the defendant at his home, seeking information about a double murder. After agreeing to go to the police station for questioning, the defendant was searched and then driven to the station in a police car. The officers did not give the defendant *Miranda* warnings before they obtained a confession, even though a police report indicated that the defendant was arrested at his home.

The defendant's motion to suppress his confession was denied by the State trial court, and he was convicted of murder. After State appellate courts upheld the trial court's ruling, the defendant petitioned for a writ of habeas corpus in U.S. District Court, which ruled that the defendant's confession was taken in violation of *Miranda* because he was in custody when interrogated.

The U.S. Supreme Court reviewed the case to examine whether a *Miranda* violation may be raised in a habeas corpus proceeding. The Court concluded that even though *Stone v. Powell*, 428 U.S. 465 (1976), disallowed habeas review of fourth amendment violations, *Stone* did not preclude such review for *Miranda* violations. The Court noted that the fourth amendment exclusionary rule is not a personal constitutional right and does not enhance the reliability of the criminal trial. On the contrary, *Miranda* safeguards a fundamental trial right and

serves to guard against the use of unreliable statements at trial.

The Court suggested the *Withrow* decision should not be burdensome to law enforcement because the number of habeas corpus petitions alleging *Miranda* violations will be small. The Court noted: "We must remember in this regard that *Miranda* came down some 27 years ago. In that time, law enforcement has grown in constitutional as well as technological sophistication, and there is little reason to believe that police today are unable, or even generally unwilling, to satisfy *Miranda*'s requirements."



***United States v. Dixon*, 113 S.Ct. 2849 (1993)**

In *Dixon*, the Supreme Court reviewed the effect of the fifth amendment's Double Jeopardy Clause on two criminal prosecutions for conduct, which had already been the subject of contempt proceedings. The Court barred criminal prosecution in one case and allowed it in the other. More significantly, however, the Court overruled its decision in *Grady v. Corbin*, 495 U.S. 508 (1990), which had caused significant confusion in the courts.

In the first case, the defendant was released on bond after being arrested on second-degree murder charges and was then subsequently arrested for possession of cocaine. After being held in criminal contempt for violating the terms of his pretrial release, the defendant was sentenced to 180 days in jail. The lower courts held that double jeopardy barred the drug prosecution, because the defendant had already been held in criminal contempt based on the same conduct.

In the second case, the defendant was the subject of a civil protection order requiring that he not molest, assault, or threaten his estranged wife. He was eventually held in criminal contempt and sentenced to 600 days' imprisonment for violating the protection order. After he was indicted for the threats and assaults that led to his contempt order, an appellate court held that double jeopardy barred prosecution.

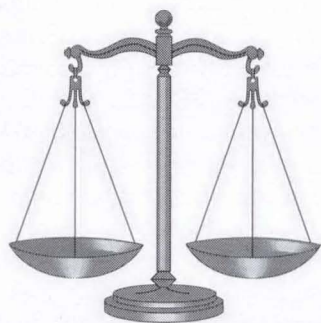
In reviewing these two double jeopardy cases, the Supreme Court noted the existence of two tests for determining whether a second prosecution violates double jeopardy. The first test from *Blockburger v. United States*, 284 U.S. 299 (1932), focuses on whether the "same elements of the offense are involved in both prosecutions." The second test, established in *Grady*, requires courts to determine if the "same conduct" is involved in both prosecutions. The Court determined that the *Grady* case was wrongly decided and overruled it.

Focusing exclusively on the *Blockburger* test, the Court determined that because the defendant's drug indictment did not include any



element not contained in his previous contempt proceeding, the drug prosecution was prohibited by double jeopardy. However, in the assault case, the Court found that while one simple assault count in the defendant's indictment violated double jeopardy, the remaining counts for assault with intent to kill and threats to injure or kidnap were not barred by double jeopardy because the criminal contempt prosecution was based solely on simple assault.

*Dixon* represents an important case for law enforcement for two reasons. First, it overrules the *Grady* decision, in which the government was prohibited from prosecuting a drunk driver for manslaughter because he had pled guilty to two related traffic offenses before the manslaughter prosecution. Second, *Dixon* reminds law enforcement of the potentially adverse consequences of criminal contempt proceedings for conduct that the Government may later want to prosecute criminally.



***Daubert v. Merrill Dow Pharmaceutical, Inc.*, 113 S.Ct. 2786 (1993)**

In *Daubert*, the Supreme Court reviewed the standard for the

admission of scientific evidence and held that the "general acceptance in the relevant scientific community" standard has been superseded by the Federal Rules of Evidence. This ruling will arguably make it easier for scientific evidence, such as DNA, to be used at criminal trials.

This case arose out of a civil suit by two children who alleged their birth defects were caused by a drug produced by the defendant. Each side in the suit submitted affidavits from experts on the potential effects of the drug. Using a standard established in *Frye v. United States*, 293 F.1013 (1923), the lower courts ruled that the opinions of the plaintiffs' experts were not based on scientific evidence generally accepted in the relevant scientific community.

The Supreme Court reversed and held that only the Federal Rules of Evidence should be used to determine the admissibility of scientific evidence. In that regard, Rule 702 of the Federal Rules of Evidence provides that scientific, technical, or other specialized knowledge is admissible if it will assist the trier of fact to understand the evidence. The Court cautioned that scientific evidence can still be excluded under other rules in the Federal Rules of Evidence if that evidence is confusing or misleading, even though based on scientific methods.

The *Daubert* case appears to lower the threshold for admissibility of scientific evidence. As a result, forensic evidence developed by such emerging technologies as DNA will likely face a less rigid standard for admissibility at criminal trials.



***Austin v. United States*, 113 S.Ct. 2801 (1993)**

In *Austin*, the Supreme Court determined that forfeitures of property must be analyzed in light of the Excessive Fines Clause of the eighth amendment. In the case, the defendant pled guilty to State cocaine charges, and thereafter, the Government brought a civil forfeiture action under 21 U.S.C. §§881(a)(4) and (a)(7) against the defendant's auto body shop and mobile home, which he had used to sell and store small quantities of cocaine.

The Supreme Court ruled that forfeiture proceedings against property are monetary punishments, and as such, are subject to the limitations of the eighth amendment's Excessive Fines Clause. The Court reasoned that this clause is concerned with punishment and not with whether the punishment arises in a civil or criminal proceeding brought by the Government. Reviewing the historical roots of forfeiture and modern forfeiture practice, the Court determined that forfeiture generally has a punitive purpose, and thus, is governed by the eighth amendment.

The *Austin* case may have a detrimental impact on law enforcement's efforts to use forfeiture as a



means to discourage criminal acts. Now, courts will be required to consider whether a particular forfeiture violates the eighth amendment's prohibition against excessive fines.



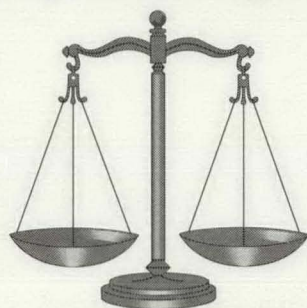
***Alexander v. United States*, 113 S.Ct. 2766 (1993)**

In *Alexander*, the Supreme Court evaluated free speech rights in an obscenity case in light of Federal forfeiture laws under the Racketeer Influenced and Corrupt Organizations Act (RICO). The Court held there is no first amendment violation in the forfeiture of books, magazines, and videotapes, as well as other assets, that are part of a RICO enterprise.

The defendant was in the "adult entertainment" business and was charged in a 41-count indictment alleging the operation of a racketeering enterprise in violation of RICO. As a basis for the obscenity and RICO convictions, the jury determined that four magazines and three videotapes were obscene. The defendant was sentenced to 6 years' imprisonment and a \$100,000 fine. In addition, under 18 U.S.C. §1963(a)(2), which allows the forfeiture of real estate, assets, and proceeds of a racketeering enterprise, the court ordered the forfeiture of defendant's businesses and almost \$9 million acquired through racketeering activity.

The Supreme Court held this large-scale forfeiture was not in violation of the first amendment because the defendant's assets, including his books, magazines, and videotapes, were forfeited as a result of their connection to the racketeering enterprise, not because of their expressive content. The Court noted also that the forfeiture occurred after a criminal trial in which the assets' connection to the racketeering enterprise were established beyond a reasonable doubt.

The *Alexander* case constitutes a victory for prosecution efforts to shut down illegal adult entertainment businesses because the scope of possible forfeiture after a RICO obscenity conviction is significant.



***Wisconsin v. Mitchell*, 113 S.Ct. 2194 (1993)**

In *Mitchell*, the Supreme Court upheld the constitutionality of State statutes that enhance the punishment for crimes motivated by hatred or bias based on race, religion, gender, etc. The Court upheld a Wisconsin statute that enhanced criminal penalties for certain crimes in which the victim was selected because of race, religion, color, disability, sexual orientation, or national origin.

In the case, a group of black men, including the defendant, were discussing a scene from the movie "Mississippi Burning," and the

defendant asked the group if they felt "hyped up" to "move on" some white people. Shortly thereafter, a young white boy walked by and was attacked by the group. The victim was rendered unconscious and remained in a coma for 4 days. The defendant was convicted of aggravated battery for his role in the assault.

Because of the Wisconsin penalty enhancement statute, the defendant's maximum sentence was increased from 2 to 7 years, and he received 4 years' imprisonment. The Wisconsin Supreme Court reversed the defendant's conviction, holding that the penalty-enhancement provision violated the first amendment.

The Supreme Court reversed and upheld the Wisconsin penalty-enhancement scheme because it addressed conduct unprotected by the first amendment. The Court stated that courts have always been allowed to consider a wide variety of factors in determining a sentence and that racial or other bias may also be considered when relevant to the crime. The Court distinguished its earlier decision in *R.A.V. v. St. Paul*, 112 S.Ct. 2538 (1992), which struck down an ordinance explicitly directed at such expressions as bias-motivated speech or messages, and noted the statute in this case was aimed at conduct unprotected by the first amendment.

*Mitchell* is an important decision for legislators who want to enact legislation that more severely punishes bias-motivated conduct. So long as a bias-motivated sentence enhancement is tied to criminal conduct unprotected by the first amendment, State legislators can enact statutes increasing the punishments for bias-motivated crimes. ♦



## *The Bulletin Notes*

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.



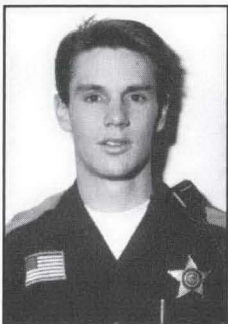
*Officer Fouch*

Officer William Fouch of the Prince William County, Virginia, Police Department responded to the report of a shooting at an area residence. After learning that the suspects had fled the scene, Officer Fouch entered the home to search for the victim. As a hostile crowd gathered and started to threaten Officer Fouch, he found the victim and began to administer first aid to a critical chest wound. Despite the increasing hostility of the crowd, Officer Fouch continued to apply pressure to the wound, stabilizing the victim until emergency medical units arrived.



*Officer Johnson*

Officer Mark Johnson of the Madison, North Carolina, Police Department risked his life to save a young man whose raft had overturned in the waters of a cold and rain-swollen river. As the rapidly tiring victim clung to a tree limb, Officer Johnson waded into the river with a lifeline tied around his waist. He was immediately swept under by the strong currents, but managed to locate an underwater tree trunk and propel himself to the victim. Officer Johnson grasped the young man, and both were pulled to shore by fellow rescuers.



*Deputy Nelson*

While off duty, Deputy James Nelson of the White Pine County, Nevada, Sheriff's Office heard a disturbance in the alleyway behind his house. He then heard three blasts from what sounded like a large caliber rifle. After instructing his wife to call the sheriff's office, Deputy Nelson put on his uniform and proceeded to investigate. Once outside, he apprehended a suspect who was trying to flee the scene. It was later determined that the suspect attempted to murder three individuals with a rifle, but was unsuccessful when one of the intended victims seized the weapon. The suspect was on his way to get another gun when he was apprehended.



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