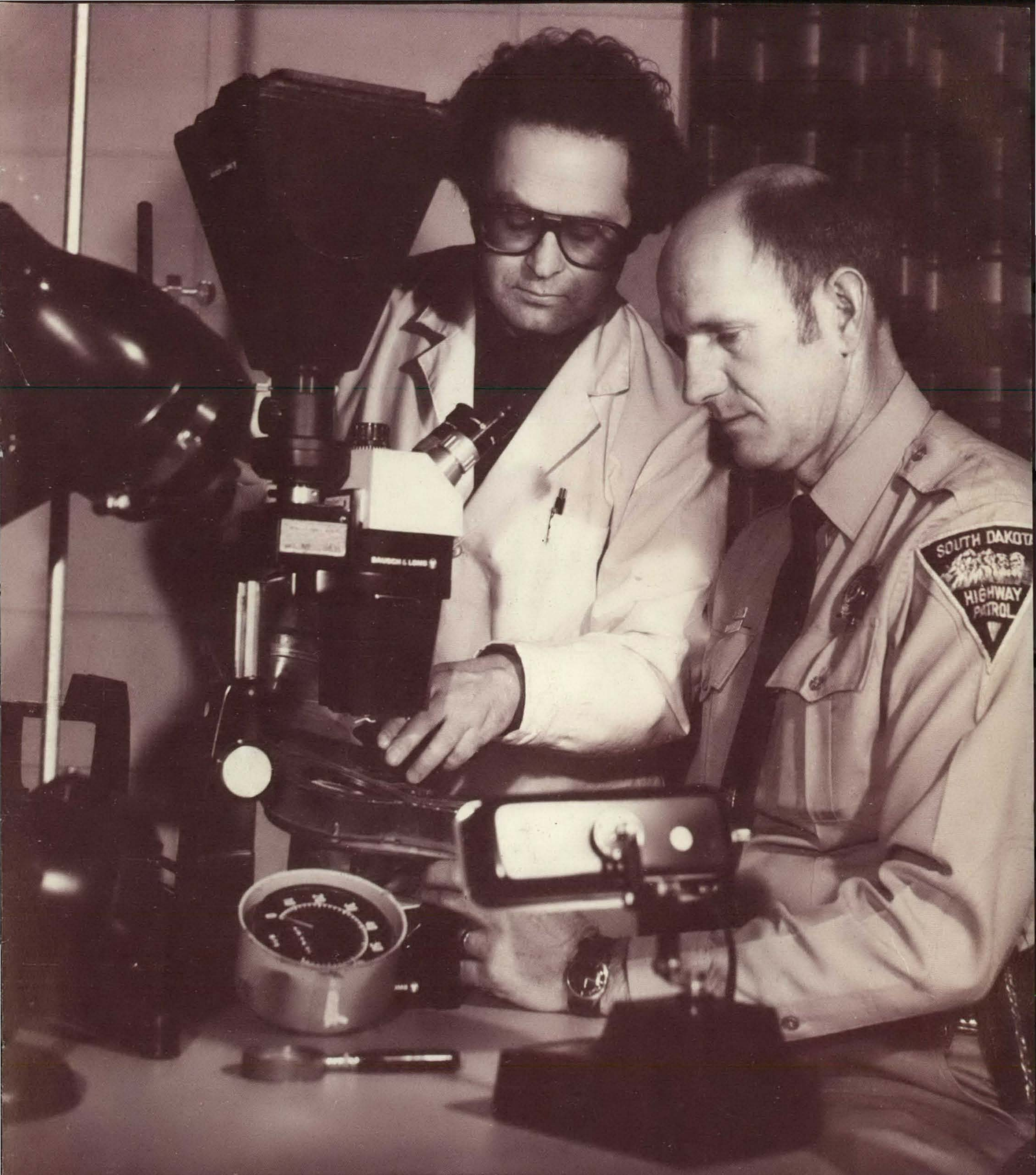


FBI LAW ENFORCEMENT BULLETIN

MARCH 1980

Director's Message

Information from sources is the raw material of evidence needed in a court of law. But when sources are afraid to furnish information, the criminal justice process, our bulwark against anarchy, faces a breakdown.

Time and again informants and potential sources have told us they are afraid to furnish information because their identities might be disclosed under the Freedom of Information Act and this would ruin their reputations, subject them to lawsuits, or endanger their lives.

In one recent case, an elderly victim was kidnaped and beaten, but information about the location of the suspects was withheld by a potential source—because of Freedom of Information Act considerations. A subpoena had to be obtained, and the several hours delay in getting the needed data led to a needless death—one of the suspects shot and killed another person just a few hours before his arrest.

Congress passed the Freedom of Information Act to allow the electorate to be better informed about the workings of its Government. This it is doing, but today the act needs some fine tuning regarding law enforcement information. Congressional committees that oversee FBI operations have invited the submission of possible refinements to the act.

The first change we propose is to divide FBI records into two categories, the first of the most sensitive kind—those pertaining to foreign intelligence, foreign counterintelligence, organized crime, and terrorist activities. The public's need to know that the FBI is discharging its responsibilities in these areas should be channeled through the Congress, the executive and judicial branches, not to the organized crime group that made a concerted effort to obtain records which, when pieced together, might have identified highly sensitive sources, nor to foreign agents or terrorists who can assure their own security by knowledge that the FBI has no information about their activities in a particular locale—a confirmation we are required to give under the present act.

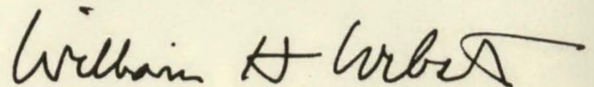
These most sensitive areas should be exempted from the Freedom of Information Act; as President Johnson said when he signed it into law, ". . . a democracy works best when the people have all the information that the security of the Nation permits." This would not affect the second category of all other records.

To further protect the confidentiality of sources, the present provision calling for release of data unless it ". . . would disclose the identity of a confidential source . . ." should be changed to ". . . would *tend* to disclose. . . ."

This adopts comments that courts have made in several cases and conforms to the intent of Congress. This modification, in combination with a proposed 7-year moratorium on investigative records, would serve the public's interest in effective law enforcement and reestablish a free flow of information from the public. The purpose of the proposed moratorium is to frustrate immediate attempts by newly prosecuted persons, most familiar with their cases, to identify confidential sources.

We also propose exempting from the act the mandatory furnishing of data to felons and foreign nationals—they are not part of the electorate Congress intended to be informed, but can use the act to further their criminal ends. Lastly, a more realistic time period for furnishing records, based on the volume of work involved, would enable agencies besieged with requests to comply fully with the law without diverting resources from priority investigations.

It is important to recognize that these proposed changes refine the Freedom of Information Act—they don't repeal it. Our proposals would protect legitimate law enforcement concerns while preserving the basic principles of the act.



William H. Webster
Director
March 1, 1980

FBI LAW ENFORCEMENT BULLETIN

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

William H. Webster, Director

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Crime Problems

Security in the Operation of a Bank Card System

By JOHN J. BUCKLEY
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Security has been defined as "the condition or feeling of being safe or sure; freedom from danger, fear, doubt, etc." Before relating this definition to the bank card field, one should first explore the field to determine how it has become responsible for an estimated one-half of all the retail/credit transactions in the country today.

In the 1960's, banking interests began to distribute plastic credit cards with several new aspects; that is, they were to be issued to customers to whom a line of credit had been extended. The banks would then contract with merchants who would honor these bank credit cards. The merchants deposited the credit card sales documents with the bank and received immediate credit. The banks then charged the cardholder's account and rendered him monthly statements.

By this time the computer had been developed to the point where it could process any credit card transaction within a fraction of a second and these transactions were designed to be handled in great volume. Computers are now capable of processing 9,000 to 10,000 sales documents per hour, around the clock.

Based upon bank credit card experience, banking interests began to explore additional methods by which they could extend new services to customers. Currently being developed are electronic fund-transfer systems, which transfer funds by electronic means from bank to bank. Automated teller facilities, which can be activated with a plastic account card to perform most of the functions in the banking system, are now available. Such plastic cards were initially referred to as "debit" cards for they did, indeed, perform debit instead of credit functions. Banks now refer to any plastics issued by banking interests as "bank cards." Therefore, in discussing the security aspects of a bank card system we will relate in general terms to the security considerations that should prevail when dealing with either debit cards or credit cards.

In the initial system/design phase of bank cards, serious consideration should be given to developing a security "image" or "posture." Banks are dealing with the funds and property of other persons and this requires that security be present and visible. This should, of course, involve a high resolve by top echelon in the bank to seek-out and prosecute those individuals who engage in fraudulent use of the accounts, including bank personnel themselves.

Creation of an Account or Cardholder Base

Why not send account cards to every customer of the bank? Simply, any bank has customers who are collection problems on loans, bad checks, and a host of other problems. To alleviate problems of this type, bank records of prospective cardholders should be evaluated, local credit bureau records should be assessed, and the results evaluated by knowledgeable credit personnel. Customers who have not had recent dealings with the bank should be contacted to ascertain whether the address on file is correct. Banks have, on occasion, issued cards to persons who were deceased.

Additionally, a method should be devised to record and index rejected applications so that future applications can be evaluated in light of prior rejections. One person in a midwestern city recently submitted some 37 applications for bank cards to several banks in the city. Inquiry into the matter revealed that the applications were mailed from various parts of the country within a 3- or 4-day period. The applicant claimed to be a professional man of some means with a local address that was later found to be a parking lot. U.S. Postal authorities took the man into custody at the airport as he was preparing to leave the city after having fraudulently used a credit card he had obtained by falsifying an application.

Development of the Merchant Base

Files of early bank card issuers contain tales of the rush that occurred to "sign up" merchants who would accept the bank card transactions. They found that some of these merchants were merely "fronts" set up for the purpose of fleecing banks. A visit to a prospective merchant by bank personnel can verify the validity of the merchant's request. Empty shelves covered with drapes and the vague statement that the merchandise is "on order" should alert bank personnel to postpone activating the card until visible business interests are present.

Once a merchant's account has been approved, arrangements should be made to code the account through the computer. This enables the bank to have some expectation of the volume of business likely to be generated by the merchant. When these criteria have been established, arrangements should be made to bring any exceptions to the attention of the bank for evaluation.

Security personnel should be trained to conduct seminars for merchants in specific shopping areas or zones. Local police and retail merchant organizations can be of great assistance in arranging these seminars, which are invaluable tools in educating merchant personnel in elementary security procedures at the store level.

Procurement and Distribution of Plastic Cards

Having reviewed some of the elementary security considerations in the initial development of the bank card system, we must consider the phase of the bank card operation that could, if improperly designed and implemented, subject the entire card operation to a series of intolerable security failures. We may have established the tightest cardholder and merchant controls imaginable in the confines of the bank or service center, but unless we pay meticulous attention to every security phase of the procurement, processing, and distribution of the plastic cards themselves, we could endanger the entire operation.

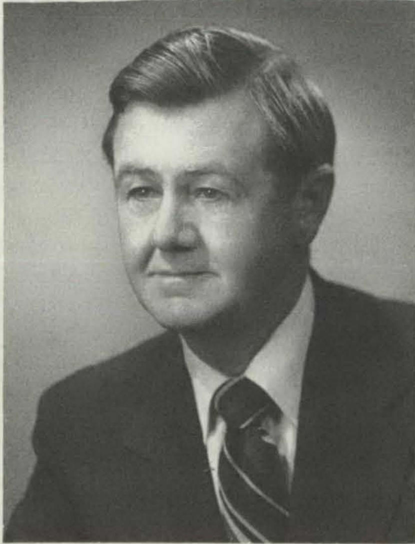
Most bank card issuers use established plastic card manufacturers as sources for their cards. These companies must adhere to strict manufacturing, processing, and shipping specifications in dealing with bank cards. The manufacturers are periodically inspected to insure that all specifications are being followed. Many such manufacturers handle every phase of the manufacturing and distribution of the plastics. Some bank interests will purchase the raw plastics, process them, and then mail them from their own facilities. It is imperative, though, that each step in the handling process be clearly defined and continually inspected to insure the safe handling of the plastics. Audit trails should be established so that any unaccounted plastics are quickly identified and the matter immediately resolved.

The department of the bank that handles both the operation of the accounts and returned cards should be located in a limited access area. One can forecast the danger of having cards returned to the unprotected environment of a bank reception area open to all customers. When bank card operations are handled by a service bureau, the processing area for the cards should be in a limited-access area.

Most cards are distributed through the U.S. Mail. During the initial phases of the system design, local postal authorities should be consulted for advice as to logical days to place the cards in the mail stream. They can also identify areas where mail thefts are prevalent and cards for these areas should be delivered by bank messengers, etc. Grouping mail by ZIP code number not only assists the Post Office in the prompt handling of the mail but financial credits can also be gained by mailers who presort their mail. Getting the plastic into the mail quickly with a minimum amount of handling after it leaves the bank's control minimizes the chances of the mail being improperly delivered.

Reporting and Recording Lost and Stolen Cards

At this juncture, presuming we have implemented every imaginable technique to validate that our cardholder and merchant bases are legitimate and have taken every known precaution in the distribution of the plastic cards, one might surmise that we have only to sit back and wait until



John J. Buckley

James P. Dowd
Executive Vice President & Treasurer
Credit Systems Inc.

something happens to require security to go into action. Inevitably, some plastics are going to be stolen or lost, and a system for reporting losses must be developed. When a plastic is reported lost, stolen, or otherwise in errant use, the initial process should be the completion of an approved form. This information should then be put into the computer so that an "exception report" will generate a printout of each transaction on the account. This printout should be evaluated by security personnel so that fraudulent sales can be identified and recorded, and the sales documents can be retrieved for the scrutiny of investigative personnel. At this point, the initial lost or stolen report is a significant element, since the investigator will, in most instances, desire to interview the cardholder regarding the circumstances of the card loss.

Between 70 and 80 percent of the plastics involved in fraud have been stolen from cardholders, making the theft of cards the greatest security threat. Cardholders should be encouraged to report promptly the loss or theft of their plastics to local law enforcement agencies. Many bank card frauds have been curtailed because a well-informed, local law enforcement agency has recovered errant cards from burglars, pickpockets, or purse snatchers during what would normally be a routine police matter.

Bank card security personnel should consider developing a program of regularly alerting cardholders to the danger of misplacing their cards. This could be accomplished by including a carefully worded message on the monthly account statements. A well-informed cardholder, continually reminded by such messages and by contacts with bank system personnel, can be a great asset in any bank card system. Security personnel investigating fraudulent practices probably have more day-to-day contact with cardholders than any other department in the bank. Security personnel should be encouraged to make good use of these contacts.

Many invalid plastics are retrieved by store clerks. Most bank card systems provide for rewards to be paid to merchant personnel when they succeed in retrieving these invalid cards.

In any event, a number of cards are returned to banks each day via returned mail, sometimes without prior notification. A system must be developed to handle such plastics under secure conditions. Most banks and service centers have secure mail boxes in which recovered cards can be deposited until later handled by security personnel. The bank is quick to recognize the danger of improperly handling returned "live" plastics, especially after one of its employees becomes involved in credit card fraud.

Detection of Fraud Usage

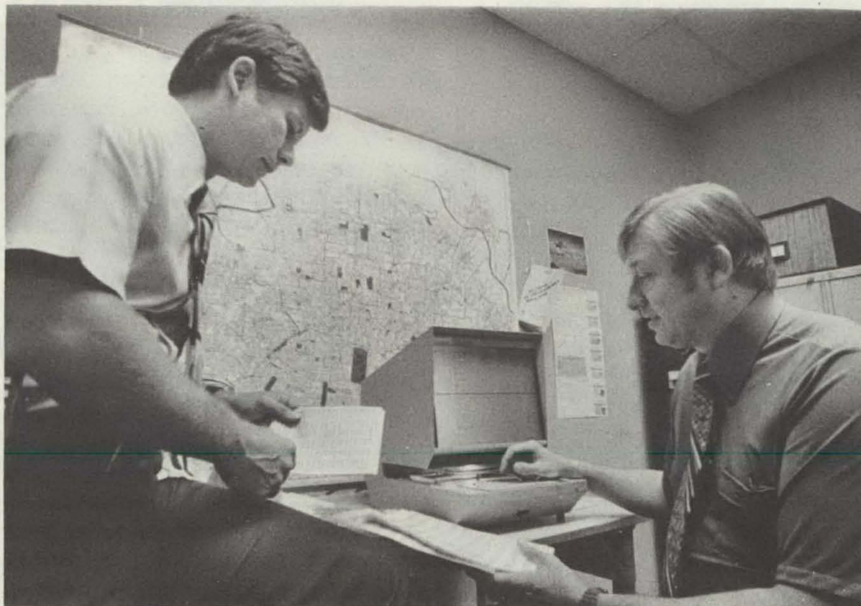
While we have discussed the most rudimentary phases of developing the bank card security system, we must now turn our attention to some of the more intricate aspects of the protection of the bank's accounts; that is, the detection, investigation, and prosecution of persons who are using accounts fraudulently.

Just as the system has, with the magic of the computer, been designed to handle a great number of financial transactions in a minimum amount of time, security personnel must use the magic of the computer to assist them in controlling fraud. We should be able to categorize and identify the types of merchants, geographical areas, and times and places such fraud is likely to occur. Computers can be programed to categorize fraud transactions in any imaginable manner for any given time.

We have discussed that the computer can be programed to monitor the merchant accounts and to report exceptions to recorded criteria in merchant activity. A program can also be designed to report any exceptions to data set forth on the cardholder file,

Information regarding cardholders who exceed the credit line, make purchases in excess of a given number within a certain time period, or make over-the-floor purchases exceeding a given limit should be furnished to account monitors for evaluation. Additionally, some systems are programed to mail to the cardholder a "first use notice," on a new account, ostensibly to thank the customer for using the card. However, this notice could also alert him to unauthorized usage of his card.

Fraud is sometimes detected after an alert cardholder has noticed that his card is missing, the account has been statused on the computer, and subsequent sales activity generates an exception report for evaluation. Once the fraud has been detected, immediate steps should be taken to place the account number on any available list of wanted cards, or arrangements should be made to notify promptly merchants of the illegal use of the card. Two major bank card systems have developed regular wide-spread listings of restricted or wanted account card numbers.



Investigators checking account numbers through microfiche.

Security control module.

Prosecution for Fraudulent Use of Accounts and Cards

Prosecution for fraudulent use of bank cards lies with local city, county and/or State prosecuting officials and/or with the offices of the U.S. attorneys where Federal laws have been violated. Federal prosecution is usually handled by U.S. postal inspectors and is usually confined to large-scale fraud operations between several States or to matters that involve the theft or misuse of the U.S. Mail. Postal inspectors are very capable contacts for implementation of security efforts in exercising fraud control.

The greater majority of prosecutions for fraudulent use of bank cards is handled by local city, county, and State prosecuting authorities, who will usually require a written police report. Many prosecutors will accept well-prepared reports of experience bank card security investigators, along with reports of investigating police officers.

Once the fraudulent tickets have been accumulated by the security investigator, he should consider an in-depth interview of the cardholder to obtain details concerning the loss of the card and any pertinent information that might lead to establishing the identity of the unauthorized card user. Cardholders should be advised to report their losses to local police agencies. Any hesitancy to do this should give rise to the suspicion that there is no actual errant card involved in the alleged fraud transactions.

The most logical sources for information concerning the fraud user are the clerks who actually handled the questioned sales. Interviewing clerical personnel in large volume outlets in an effort to determine who purchased items described on a sales ticket as "mdse" several weeks prior to the interview is usually nonproductive, while interviewing low-volume merchants regarding the sale of an item that is well-described in the sales document could be more productive. An experienced bank card investigator will become familiar with the sales and merchants from whom he can hope to develop information relating to the sale. Merchants should not be interviewed by telephone; nothing in the business can take the place of a well-planned and executed personal interview. At the conclusion of the interview, the investigator's notes should be reviewed in order to discern whether there are other logical things that the merchant personnel can recall about the transaction.

Plant Protection

The bank card operation should be subject to very tight access control. In the event the bank operates its own bank card department, the department should be apart from other sections of the bank and be in an area where the access is limited to those who have a legitimate need to be there. The area where the plastics are processed should be an area where access is limited to management personnel and those actually performing card-handling duties. A facility being used to house the bank card operation should be subject to 24-hour guard protection, and access to the facility should be limited to those employed at the plant and those having legitimate business interests there.

It is strongly recommended that the card storage area, the card processing area, and the computer room be a limited access area within the facility. Access should be limited to management personnel, maintenance personnel accompanied by employees, and to employees actually working in those areas. A sign-in and sign-out book will limit those going into the area.

In any type of operation it is most necessary that the information put into the system be under the strictest controls. Most computer entries in the systems today can be accomplished by hardcopy, computer tape, and/or by terminals with typewriter keyboards. Sign-in codes that limit access to the system are a must, and these codes must be revised on a regular basis to guard against compromise. The output of the system must also be subject to strict controls. Printouts that show account and financial data should be shredded, as should the carbon paper used in the printout process. Computer programs should be indexed and stored in a limited-access file or library, and a record of persons using these files should be maintained. Backup tapes for emergency use should also be stored at an offsite library.

There are many documents which set forth security guidelines in connection with computer installations. Security personnel should insure that these documents are reviewed periodically, that plant protection measures are followed, and that audit trails are maintained. Security personnel should follow these trails in the event of a breech in the security of an installation.

Every well-designed bank card security operation should have a published emergency plan disseminated to management employees so that every employee knows what is expected in the event of an emergency. Security representatives are responsible for the design and implementation of such an emergency plan.

Conclusion

Bank card security is a challenge to the security professional. The field is as modern as the computer, and there are new developments each day. The professionals in the field today were, for the most part, in another field 10 to 15 years ago. There will always be a need for trained, professional security personnel in the bank card field.

Security personnel now in the field and those interested in such positions should consult with local bankers regarding courses in bank card security being offered by the American Bankers Association, the Bank Administration Institute, and by colleges and universities in the country.

Membership in the International Association of Credit Card Investigators, which includes members from many parts of the world, has greatly enhanced the performance of many bank card security professionals. Seminars conducted at the various regional and national meetings are invaluable tools for the individual engaged in the investigation of fraudulent bank card practices.

The banking industry has been greatly influenced by developments in the bank card field and by the experience it has gained in the field. Bank card security personnel have made major contributions to the field by the measured application of sensible security procedures. **FBI**

Police and Social Worker Cooperation

A Key in Child Sexual Assault Cases

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Until recently, relationships between police officers and social workers have been characterized by mutual distrust and suspicion. The causes for this antagonism are complex, but appear to be based on assumptions held by both groups that their roles are fundamentally different and are incapable of working together.

Many police officers have the opinion that social workers are "do gooders" who lack an understanding of the problems faced by the police. They see social workers regarding crime as a social disease that requires "treatment" without involvement in the criminal justice system. At the same time, many social workers look upon the police as being insensitive to the offender and victim. They frequently believe that involvement with the criminal justice system produces negative consequences for the offender, as well as victim, which outweigh the effects of the original crime.

In different situations, both perceptions may be partially accurate. However, these perceptions need not hold true. Indeed, the roles of police and social workers can be made compatible.

In 1978, a study of sex crimes perpetrated against children in the first 6 months of that year was conducted by the Sexual Assault Center of the Harborview Medical Center in Seattle, Wash. The purpose of the project, which was funded by a grant from the Law Enforcement Assistance Administration, was to develop new procedures to be used by criminal justice personnel when dealing with these child victims.

Table 1

Victim Characteristics

Sex of Victim			Age of Victim*			Race of Victim		
Male	(8)	13.6%	1–5	(7)	12.1%	Caucasian	(57)	96.6%
Female	(51)	86.4%	6–12	(30)	51.7%	Other	(2)	3.4%
Total	(59)		13–17	(21)	36.2%	Total	(59)	
			Total	(58)				
			*1 missing					

Note: All percentages are based on individual table totals.

County police records and a series of semi-structured interviews with criminal justice personnel provided the information needed to conduct the study. The detective logs of the county sex unit were searched by a police detective in order to compile a list of sex crimes against children by month and county police case number. Specific files were then pulled from the central filing system and data collected from the narrative reports contained in these files. Interviews with a sample of police officers and prosecuting attorneys who had been involved with the center during the course of the project were conducted telephonically, ranging in length from 1–2 hours.[1]

Child Victims of Sex Crimes

Between January and June 1978, the county police investigated a total of 59 cases of sex crimes perpetrated against children.[2] Of the victims, 86.4 percent were female and predominately Caucasian (96.6 percent). Although the age of the victims varied, the majority (51.7 percent) ranged between the ages of 6 and 12 years. (See table 1.)

Suspects in these cases were almost exclusively male (93.2 percent) and Caucasian (91.1 percent), with 57.6 percent being adult and 30.5 percent juveniles. The data reflect the majority of the cases involved a family member or a person known to the victim. Family members accounted for 32.2 percent of the perpetrators, and 49.2 percent were known to the child, but were not related. Only 18.7 percent of the suspects were strangers to the child. (See table 2.)

In terms of assault characteristics, 45.8 percent of the assaults involved intercourse and 54.2 percent were child molestations. The assaults took place in the victim's home in 47.5 percent of the cases, in the suspect's home 32.2 percent, and 20.3 percent occurred in a public place. The frequency of the crime varied from a single offense (57.6 percent) to several offenses occurring over a period of more than 1 year (16.9 percent). Table 3 presents a summary of the assault characteristics.

It was also learned that most of the cases were reported within 48 hours of the last assault (46.5 percent). In only 10.3 percent of the cases was the crime reported more than 6 months after the last assault. Family members of the victim reported the crime in 55.2 percent of the cases. The remainder were made by the victim (10.3 percent) or by someone other than the victim or family member (34.4 percent).

Police/Social Worker Cooperation

Social workers from the Sexual Assault Center, police officers, and members of the county prosecuting attorney's office worked together over a 2-year period in order to establish new procedures for dealing with the child victim of a sexual assault. Individual police officers and social workers would meet informally to discuss cases shared in common. Joint meetings between all involved would take place weekly. In addition, social work personnel participated in police and prosecuting attorney training sessions.

Both the formalized training sessions and informal meetings served as mediums for the exchange of information. In this way, social workers were able to increase their understanding of police procedures, rules of evidence, and the process of developing a case. Police personnel became more aware of offender psychology and the needs of sexually abused children and their families. These interactions aided police in improving their interviewing skills, especially those necessary to interview the very young or developmentally disabled child.

Both groups began to look upon each other as a source for consulation and referral. Social workers would frequently ask police officers if there was sufficient evidence in a case to pursue prosecution. Police would seek the advice of the social workers on how to handle a difficult case, for example, a young child who would not talk. Brochures describing typical child reaction to sex abuse and the criminal justice system's response to a police report were made available to police and social work personnel to be distributed to the parents of the victim.[3]

Social work personnel see their role with child victims and their families as having two major components—counseling and advocacy. Counseling includes immediate crisis counseling to help the child and his/her family overcome the immediate crisis reaction to the abuse and/or reporting the abuse. Advocacy efforts are directed toward working with the child and family to understand the criminal justice system and its procedures, in order that the victim(s) may make an informed decision about reporting and prosecution.

Table 2

Suspect Characteristics

Suspect Sex*			Suspect Age in Years**						Victim/Suspect Relationship			Suspect Race*		
Male	(55)	98.2%	12–16	(17)	32.1%	32–37	(4)	7.5%	Stranger	(11)	18.7%	Caucasian	(51)	91.1%
Female	(1)	1.7%	17–21	(6)	11.3%	38–42	(7)	13.2%	Family Member	(19)	32.2%	Other	(5)	8.9%
			22–26	(6)	11.3%	43–47	(5)	9.4%	Nonfamily but known to victim	(29)	49.2%			
			27–31	(5)	9.4%	48+	(3)	5.7%						
Total	(56)		Total	(53)					Total	(59)		Total	(56)	

*3 missing

**6 missing

Table 3

Assault Characteristics

How Reported to Police*			Time Lapse Between Last Assault and Report*			Location of Assault			Frequency of Offense		
Child Protective Service	(14)	24.1%	Less than 48 hours	(27)	46.5%	Victim's Home	(28)	47.5%	Single Offense	(34)	57.6%
Victim's Family	(32)	55.2%	2 days–2 weeks	(11)	19.0%	Suspect's Home	(19)	32.2%	Several, less than 1 year	(15)	25.4%
Victim	(6)	10.3%	2 weeks–6 months	(14)	24.1%	Public Place	(12)	20.3%	Several, more than 1 year	(10)	16.9%
Other	(6)	10.3%	6 months or more	(6)	10.3%						
Total	(58)		Total	(58)		Total	(59)		Total	(59)	

*1 missing

Police personnel would frequently inform victims and their families about the supportive counseling/advocacy available from social workers at the Sexual Assault Center. They reported that the availability of counseling and support services relieved them of the worry about emotional reactions and freed them to concentrate on the legal aspects of the cases.

Although formal training efforts appear to have been an important development in the close cooperative relationship between social work and police personnel, another important result is the close interpersonal relationship which developed over the 2 years of the project. This relationship is characterized by a sense of trust and mutual respect.

This relationship was formed, in part, by the social worker's emphasis on prosecution of the offender. Hence, a commonality of purpose between the police officer and social worker developed. Social workers became more knowledgeable of the legal process and increased their efforts to help the victims and their families understand this process.

On the part of social workers, the development of this relationship was facilitated by their view that involvement with the criminal justice system, when undertaken with the understanding of the child and his/her family, could be an important component of the treatment process. Such involvement communicates to the child and the nonoffending parent that the child will be protected from reabuse. This involvement also assists the offender in accepting responsibility for his behavior and to remain in treatment.

For the police, this close working relationship with social workers was based on the confidence that social workers now better understand the working of the criminal justice system and the realities and frustrations of the police role and responsibilities. Police voiced the opinion that they could rely on social workers to present accurately the problems and requirements of family involvement in the criminal justice system. In addition, they indicated that the availability of social workers to deal with the emotional reactions of sexually abused children and their families freed the police to pursue their investigative and reporting responsibilities.

Table 4

Outcome of Criminal Investigation

Unsolved	(5)	8.5%
Insufficient Evidence	(2)	3.4%
Family Not Prosecute	(16)	27.1%
Felony Charged	(36)	61.0%
Total	(59)	

Table 5

Last Assault and Outcome of Investigation by Time Lapse Between Last Incident and Report To Police*

	Unsolved	Insufficient Evidence	Family not Prosecute	Felony Charged	Total
Less 48 Hrs.	(5) 8.6%	(1) 1.7%	(7) 12.1%	(14) 24.1%	(27) 46.6%
2 Days–2 Weeks	—	—	(4) 6.9%	(7) 12.1%	(11) 19.0%
2 Weeks–6 Mos.	—	—	(3) 5.2%	(11) 19.0%	(14) 24.2%
6 Mos. or More	—	(1) 1.7%	(2) 3.4%	(3) 5.2%	(6) 10.3%
Total	(5) 8.6%	(2) 3.4%	(16) 27.6%	(35) 60.3%	(58) 99.9%

**1 missing*

Outcome of the Investigation

Police officers reported not liking to investigate cases of sexual assault against children. Their reasons included personal feelings of horror and shock at the abuse of small children and being uncomfortable when dealing with the emotional reactions of children and their parents. Many officers report a sense of relief when social workers are available to assist them in interviewing small children and in dealing with the emotional reactions of both victims and their parents.

Criminal cases involving the sexual abuse of children can be successfully investigated. Of the 59 cases studied, only 11.9 percent went unsolved or lacked sufficient evidence to file charges. A felony charge was filed in 61 percent of the cases, and in only 27.1 percent did the victim's family refuse to prosecute. (See table 4.)

Data are not available at this time on the reasons for refusal to prosecute. However, based on the experiences of police and social workers, ignorance about and fear of the consequences of involvement with the criminal justice system, pressure from the offender on the victim and family, or feelings that participation with the criminal justice system will have a traumatic effect can be motives for refusing to prosecute the offender.

One of the factors police frequently mentioned as the reason for their dislike of child sexual assault cases is that they received the report some time after the incident and this made processing the case difficult. Interestingly enough, although 46.6 percent of the cases in this sample were reported to police within 48 hours of the last assault, only one of the remaining cases, reported 6 months after the last incident, lacked sufficient evidence to prosecute. As can be seen in table 5, cases can be successfully investigated and charges filed even though some time had elapsed since the last incident.

Both the police and social workers involved believe that a cooperative handling of these cases was helpful to both the victim and family and resulted in a significant number of successful investigations. The efforts of these police and social work professionals suggest that their roles can be complementary and work toward the end that society and children are protected.

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Footnotes

[1] This sample of the criminal justice system was not selected to be representative of all personnel either nationally or locally. No attempt was made to interview police from jurisdictions other than the county. Information obtained from these interviews may or may not reflect opinions of other police personnel. However, this information is presented to illustrate what is possible in terms of police and social worker cooperation.

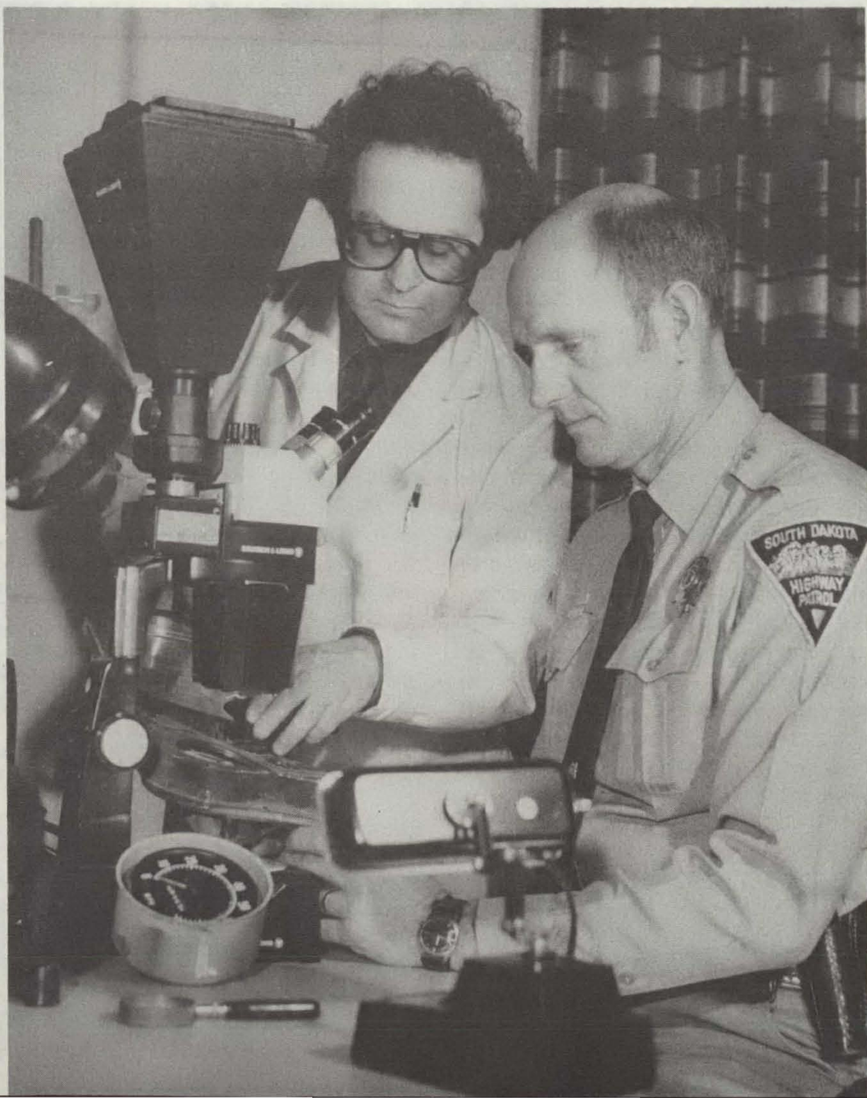
[2] It should be pointed out that no other data either from a different or longer time period are available against which to compare the data reported here. County crime statistics and information reported similar to that which was generated for this report does not exist elsewhere. As a consequence, it is impossible to make any statements about the representativeness of these data. No conclusions will be made which are intended to reflect any population of child victims or offenders except the 59 cases for which data were collected.

[3] Copies of brochures and interview guidelines are available from the Sexual Assault Center, Harborview Medical Center, Seattle, Wash. 98104.

SPEEDOMETER EXAMINATION
AN AID IN ACCIDENT INVESTIGATION

By TROOPER DALE STONER
Accident Reconstruction Specialist
South Dakota Highway Patrol

and DR. ILYA ZELDES
Supervisor
Crime Laboratory
South Dakota Division of Criminal Investigation
Pierre, S. Dak.



A very important factor to be determined in any accident investigation is the speed of the vehicle at impact. Law enforcement agencies employ various methods to determine this factor, the most common of which is skidmark analysis. Although this is a good method to use, there are many accidents in which skid marks are not left at the scene. Another way is to examine the vehicle and estimate the damages it sustained from the collision. In practice, these estimates are made by comparing the damages with those observed in other accidents in which vehicles collided with fixed objects at known speeds. However, in such cases, estimations depend more on guess and the officer's experience and familiarity with the results of similar collisions than on objective calculations.

Many times, especially in head-on or fixed-object accidents, there is little evidence found at the scene which can be used to determine vehicle speed. In head-on collisions, the damages may

Photo 1—Needle jammed during collision indicates vehicle's speed at time of impact.

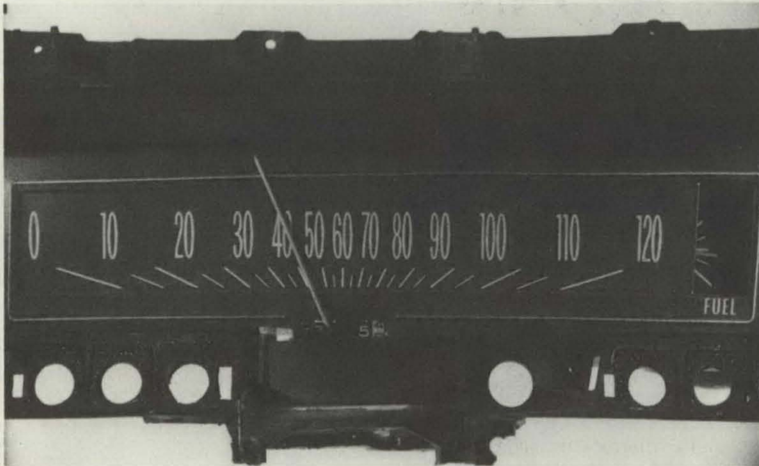


Photo 2—Although speedometer reads near zero after collision, other evidence indicates that vehicle was moving at time of impact; therefore, zero mph reading is not valid.

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be so severe and the approach and departure angles so critical that conservation of momentum equations are almost impossible to use unless the speed of one of the vehicles is known at the time of impact. Collisions into fixed barriers can also present problems when making speed calculations.

One of the other methods to determine vehicle speed at impact is to examine the speedometer, tachometer, and tachograph.

All passenger vehicles sold in the United States are required to be equipped with a device that indicates speed in either miles per hour (mph) or kilometers per hour (kmh) and is easily viewed by the driver. A vehicle may also have a tachometer to indicate the revolutions per minute (rpm) of the engine. Both instruments consist of a numbered dial and a needle or indicator. Usually, the scale and numbers on the dial's background are white, but they can also be multicolored, particularly on the newer models designed to indicate both mph and kmh. The needle is coated usually with an orange or red luminous paint.

The above-mentioned instruments have been installed in vehicles in one form or another since their origin, yet they are seldom used to determine the speed of vehicles involved in accidents. By examining the speedometer, the speed of the vehicle at the time of impact may be determined, but it should be remembered that a direct speedometer reading of a stuck needle after an accident may or may not be the impact speed of the vehicle. Many times, the indicator becomes jammed or stuck indicating a speed (see photo 1), but it is usually at or near zero. The amount of damage to the speedometer and the vehicle may suggest that the direct reading is or is not valid. (See photo 2.)

In some instances, head-on or fixed-object collisions may be so severe that the speedometer needle makes a mark (stamp) on the dial as it pushes against the face of the speedometer during impact. This stamp or mark can sometimes be seen with the naked eye. (See photo 3.)

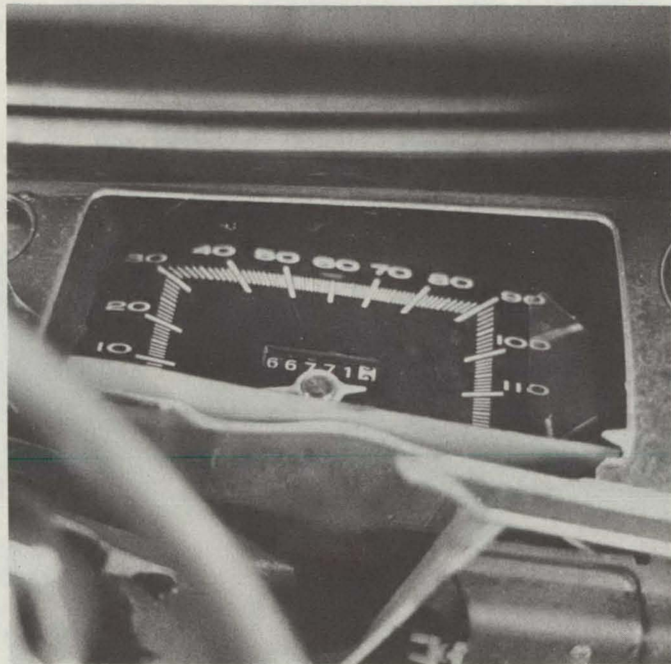


Photo 3—Closer examination of this speedometer revealed a mark near the 50 mph reading, even though the needle returned to zero.

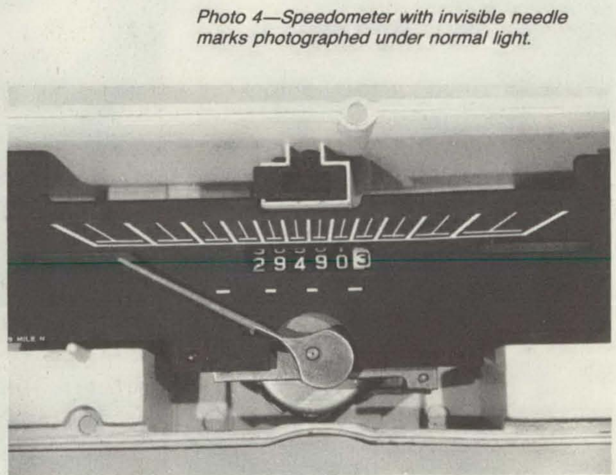


Photo 4—Speedometer with invisible needle marks photographed under normal light.

At other times, some part of the driver's body or other objects within the vehicle will come in contact with the speedometer during collision, bending the needle and causing it to push against the dial. The needle may stick in this position or it may not. If it sticks and all damage is relatively straight from front to rear, the location of the needle can very likely indicate the vehicle's speed at the time of impact. Again, damage and other evidence may substantiate if this speed is probable.

Examining speedometers of vehicles involved in accidents may not be feasible when the force of impact was from the rear. A rear-end collision will most likely move the needle away from the dial than toward it. If there are substantial skid marks prior to collision, the speedometer of the vehicle making the skid marks will probably register zero (or near zero) at the time of impact. And whenever the gear mechanism of the speedometer cable becomes inoperable, the needle will return to zero even though the vehicle is still moving.

When a passenger vehicle is struck from the side and has very little forward speed at the time of impact, chances are that no marks will be made on the speedometer dial by the needle. If the vehicle has a high rate of speed and is involved in a collision from the side, it is possible that there will be enough forward momentum to make marks on the dial.

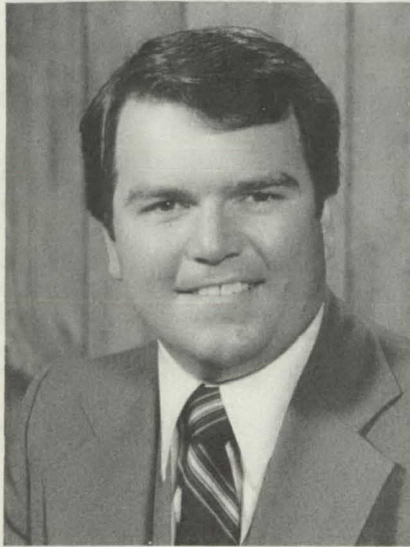
There are also other marks which could be used for speed determination, even though the needle does not stay at the point that it struck the dial. These marks are the paint smears on the dial which the needle may have left at the time of impact. If the vehicle is being driven at a high speed and is involved in a collision from the front, side, or even rear, there may be enough forward momentum to cause these paint smears. However, these paint smears are not usually detected by the naked eye or a magnifying glass; laboratory examination is necessary.

The speedometer of a heavy truck that has collided with a standard-sized vehicle will very seldom receive enough force to cause paint smears. However, the truck may be equipped with a tachograph, which should be examined by the investigator. The disc of the tachograph should indicate any change in the truck's speed and the time of change.

Tachometers give the rpm of an engine and not the mph of the vehicle. Therefore, whenever any speed calculations are to be made from a tachometer, it is necessary to know the gear in which the vehicle was being driven and what speed will be obtained from the given rpm for that gear. For instance, if a truck has an accident while descending a grade, comparison of the tachometer findings with those found on the speedometer of the same vehicle may help determine the gear in which the vehicle was operating.

The success of any speedometer examination in the laboratory and its use as evidence is going to be valid only if the speedometer is properly removed from the damaged vehicle by the investigating officer. Occasionally, speedometers and tachometers can be cut out of the wreckage easily so

Jerry Baum, Director
South Dakota Highway Patrol



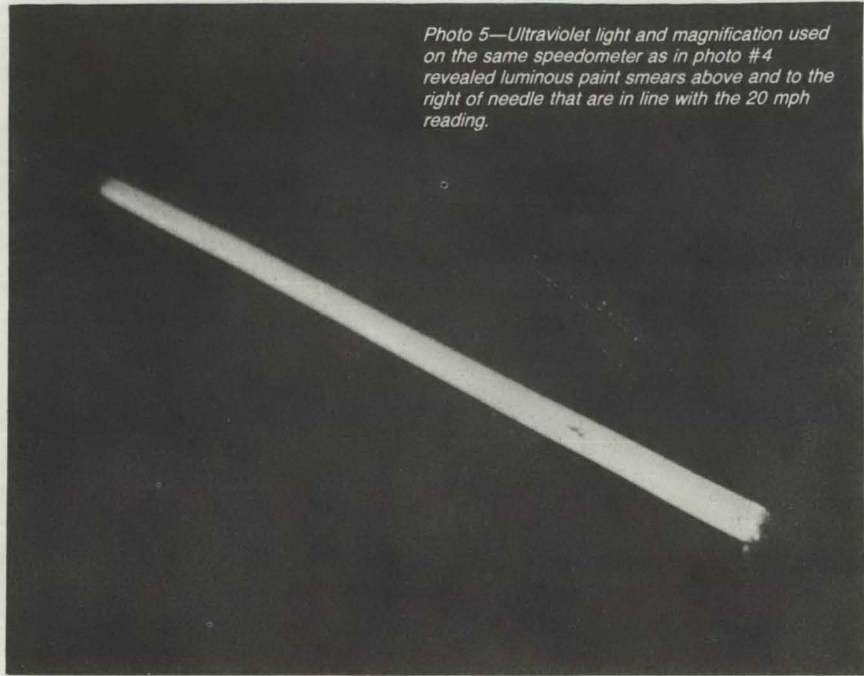


Photo 5—Ultraviolet light and magnification used on the same speedometer as in photo #4 revealed luminous paint smears above and to the right of needle that are in line with the 20 mph reading.

that they can be taken to a laboratory for examination. The following are guidelines for the removal of speedometers:

1) Photograph the speedometer, whenever possible, before it is removed from the wreckage.

2) Remove the complete instrument panel, if possible. On motorcycles, this would also include the tachometer.

3) Handle the speedometer gently. Try to remove the instrument panel without using a cutting torch. If a torch has to be used, cover the speedometer to protect it from heat and sparks, especially the dial and needle. When removing the speedometer with levers or pry bars, etc., be especially careful not to jar or further damage the speedometer needle or face. Often, it is better to cut the speedometer cable with a bolt or wire cutter several inches back from the speedometer head rather than trying to disconnect it. This will help prevent further damage to the interior of the speedometer.

4) Do not touch or wipe the needle or dial.

5) Do not rotate the needle or cable to see if the speedometer still works.

6) Do not shake or jar the speedometer.

7) Do not remove the cover glass. If the glass is broken, do not disturb the pieces, if possible.

8) Do not disassemble the speedometer.

As soon as possible after removing the speedometer or instrument panel, cover or wrap it with a plastic wrapping material or place it in a plastic evidence bag, paper sack, or any other clean and dry container to prevent further damage or contamination. This container should then be sealed, labeled, and identified by the investigating officer.

The removal of the speedometer can only be done within the legal procedures of gathering evidence. The investigating officer should maintain and keep short the chain of custody of such evidence, as with any other evidence. Therefore, delivery to the crime lab should be done as soon as possible, preferably by the investigating officer.

A request for examination should be submitted with the speedometer when it is delivered to the lab. This request or letter of transmittal should contain a short narrative of the accident, any speed calculations, other pertinent data, and the usual required information. This will help confirm the findings of the laboratory examination.

The laboratory examination consists of observation, microscopical analysis, and photomicrography under normal lighting conditions and ultraviolet light. During the laboratory examination, the speedometer or tachometer is initially observed and photographed under normal light. Examination under binocular stereoscopical microscope, in some instances, could reveal some indentations or scratches on the dial of the speedometer. Usually, no superimposition of foreign paint can be seen on the dial during this observation. (See photo 4.) The next step is examination under ultraviolet light. Any ultraviolet light source could be used, but high-intensity UV light is preferable.

Photo 6—Closeup of a small portion of the dial. The minute luminous particle of paint from the needle can be seen and easily distinguished from all other particles by its red color.

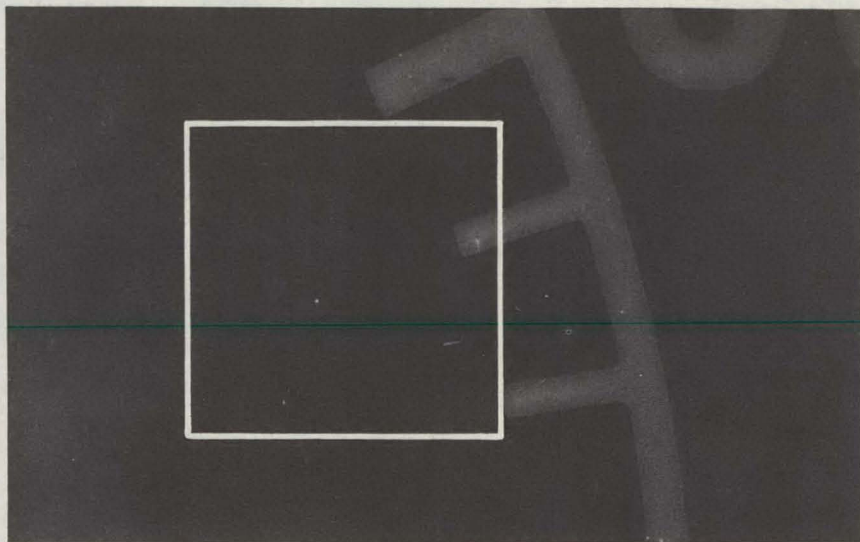
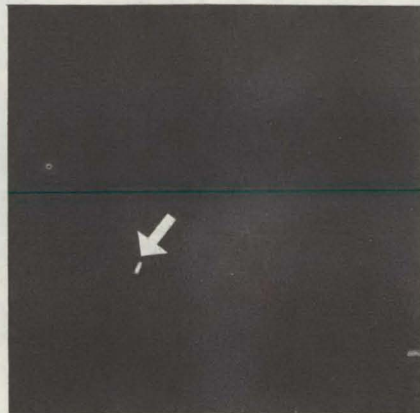


Photo 7—Ultraviolet photomicrograph of circled area in photo #6 shows the minute luminous needle mark at 62 mph.



The "Blak-Ray" Longwave UV Lamp, model B-100A, which is used in the crime laboratories for many other examinations, has worked successfully for the speedometer examination. If there are any transfers of luminous paint particles from the needle to the speedometer dial, they can usually be seen quite easily when observed under ultraviolet light through the stereoscopical microscope. (See photo 5.)

It is more difficult to take a photograph of these small particles under UV light than it is to observe them. In the South Dakota Division of Criminal Investigation Crime Laboratory, we are using a Nikon Multiphot camera with a Polaroid 4 x 5 Land film holder model 545, Polaroid 4 x 5 Land film Polacolor 2 Type 58, lens f=65mm, two UV lamps and a Wratten filter #15 (yellow) between lens and film. Under conditions listed above, the exposure varied from 30 seconds to 5 minutes, depending on intensity of luminescence, magnification, diaphragm (aperture of lens), and size of particles. (See photos 6 & 7.)

In some cases, a heavy smear may be found at the speed mark the needle was indicating at the time of collision. This smear may then go either toward a higher or lower reading. In such cases, when paint particles are spread on the large part of the dial, it is more difficult to determine the position of the needle and speed at the time of impact. In many other cases, when the paint particles are distributed on the dial as a straight line or as a row of dots from the pivot point of the needle outward to the edge of the dial, it is easy to determine the place of needle-dial contact, and consequently, the reading of the speedometer or the speed of vehicle at the time of impact.

FBI

Donald C. Licht, Director
Division of Criminal Investigation

Youth court in session.

A witness testifies during a court session.

Youth Court
One Way of Dealing With Delinquents

By JESSE SWACKHAMMER
Chief of Police (Retired)
Village of Horseheads, N.Y.

and CURTIS ROBERTS
Patrolman
Village of Horseheads, N.Y.

A defendant receives sentencing from judge.

—A recidivism rate of less than 10 percent.

—Only two youths institutionalized out of 400 processed over a 3½-year period.

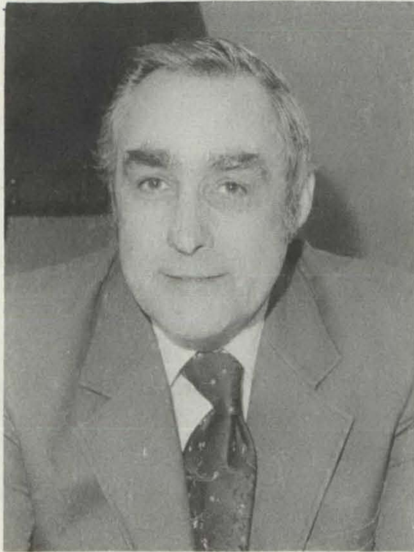
—A respect for and participation in the criminal justice system by the youth of the community.

And all of the above at an annual cost of less than $20,000. Sounds impossible? Not really. A viable program has been developed in our community. It took a great deal of volunteer time and enlightened community leadership to make the program successful. It uses volunteers and peer pressure, but most importantly, it works.

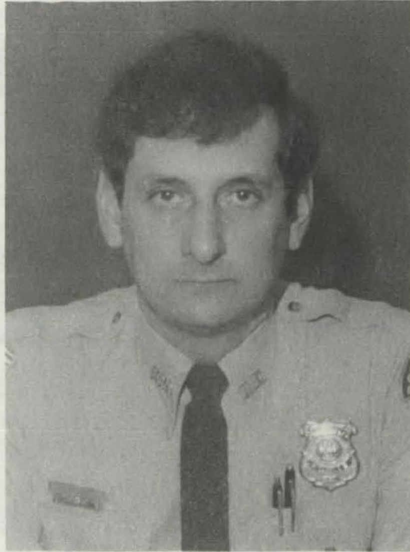
What Is Youth Court?

Youth court is a delinquency prevention and control program patterned after the family court process. It has young people between the ages of 10 and 19 serving as judges, law guardians (public defenders), facts attorneys (prosecutors), and clerks in court cases of their peers. It derives its jurisdiction from local legal authorities who have given their support to this program.

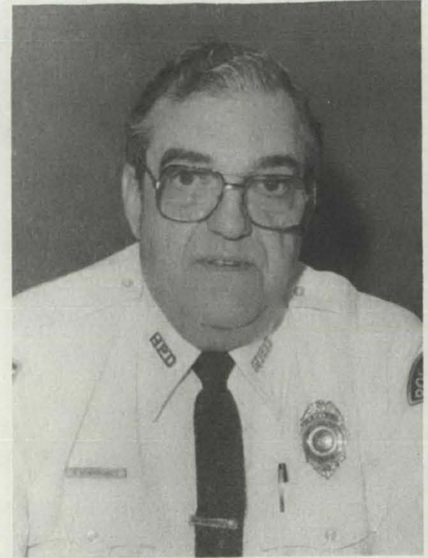
The court usually convenes on Wednesday evenings. Offenders are brought to the court and are given an opportunity to plead their cases. The proceedings are held in strict confidence, with only the offender, the juvenile aid officer, the youth court, and the offender's parents present. The sessions are directed at attempting to show the first-time offender that not only was his act a crime but it was also wrong, at obtaining the reasons behind the offender's actions in committing the act, and at assigning a meaningful sentence, if the offender is convicted.



Jesse Swackhammer



Curtis Roberts



Chief Hendershott

No felony charges are handled by youth court. The primary offenses tried are petty larceny (shoplifting), criminal mischief, criminal trespass, and disorderly conduct.

It should be noted that in certain circumstances, the arresting officer has a great deal of latitude in determining whether a particular offense will be tried in youth court or family court. A youth caught inside a building could conceivably be charged with either burglary (a felony) or criminal trespass (a misdemeanor). If the charge is burglary, the youth automatically goes to family court. If, however, the charge is criminal trespass, the officer has the option of requiring the youth to appear in family court, or if he feels the youth should be given a second chance, of offering him and his parents the option of youth court. Most cases are first-time offenders for minor violations which, without youth court, would receive no attention.

The youth court is actually composed of four separate courts, each totaling 10 members. Each court consists of a head judge, two assistant judges, two law guardians, two facts attorneys, and two alternates.

To qualify for membership on the court, a youth must be between the ages of 10 and 19 and must volunteer for the program. He or she then goes through a 10-week, 20-hour training course, which is taught at least once a year by local qualified attorneys, judges, and teachers. The training is designed to give the youth a basic understanding of penal law, probation, family court, and the roles played by individuals within the criminal justice system. The course covers such topics as jurisdiction of the youth court, its advantages and disadvantages, ethics, courtroom procedures, and rules of evidence. An extensive part of the training involves participation in simulated hearings and role playing in mock cases.

At the end of the course, a comprehensive examination is given. Those who pass the examination are eligible to serve on the youth court. Selection of participating individuals is based strictly on grade achieved on the examination.

The minimum age is 16 years for judges and 14 years for attorneys. This avoids having a situation where a youth is given an assignment that he is incapable of handling.

Each of the four courts convenes monthly, so there is not an inordinate demand on the time of the volunteers. Having two alternates allows the court to convene in full session in the event one of the principal officers is unable to attend.

How it Works

The court has jurisdiction over youths, age 7 through 15. Referrals are made to the court only by police agencies. In our area, four separate police agencies—the N.Y. State Police, Chemung County Sheriff's Office, Elmira Heights, N.Y., Police Department, and the Village of Horseheads Police Department—make referrals to the court.

The following is a typical case from inception to conclusion. A youth commits an offense and is apprehended by an officer of a participating law enforcement agency. He is taken to police headquarters, where his parents are contacted and required to pick him up. The arresting officer has the option of sending the youth to family court, or if he feels the offender should have a second chance, he may offer the option of youth court. If he decides on this course of action, he will explain the function of youth court, and the parents and youth decide in which court they want to appear. The function of both family court and youth court is fully explained.

In the event the parents and the offender choose to go to youth court, they are given a court date. At least one of the parents must appear in court with the offender.

The case is referred to a juvenile aid officer to insure that the offender meets the eligibility requirements for youth court handling. At the court appearance, the offender is asked to plead guilty or not guilty before his peers. If the plea is guilty, the offender is questioned by the factfinding attorney in an effort to determine circumstances surrounding his act. The judge can also ask questions if he so desires. After hearing the facts, the court has several options. The disposition of the case can be:

1) Dismissed;

2) Suspended judgment (suspended work hours);

3) Can be sentenced to up to 50 work hours;

4) Conditional discharge and/or work hours;

5) Essay papers to be returned to the youth court, the juvenile aid officer, or the program coordinator; or

6) Mandatory attendance at traffic and/or criminal court.

Most offenders are given work hours that are performed under the supervision of the youth court coordinator.

An attempt is made to make the punishment fit the crime. If, for example, a youth has been convicted of vandalism for spray-painting the school halls, he might be sentenced to perform 20 hours of painting to correct the damage he has done. In other cases, an attempt is made to fit the punishment to some long-range career goal of the offender. A female who expresses an interest in nursing as a career might be sentenced to a specific number of work hours at a home for the aged. In virtually all cases the work sentence involves nonprofit agencies and/or community activities.

"A youth arrested . . . and referred to youth court has no criminal or juvenile delinquency record."

If the youth pleads not guilty, a factfinding hearing (trial) is held. Depositions obtained from the original complainant and the arresting officer are presented to the court. The offender may testify and may call witnesses. Very few factfinding hearings are held.

The requirement that at least one parent be present in the court at the time of the trial is both for the protection of the youth and for the enlightenment of the parents. On many occasions, parents have reported that the first time they became aware of the circumstances surrounding the offense was in court. They had previously attempted to talk to their children, but obtained only one- or two-word responses. Yet, when the youth was questioned by his peers in front of his peers, the same questions elicited much more complete and apparently honest answers. For some reason it is easier for a youth to answer questions from his peers than from an adult, particularly a parent.

Effectiveness

Our community, like all communities, has the problem of dealing with the criminal element. Because of money and manpower constraints, minor offenses, particularly minor first offenses, have gone unpunished and even unnoticed. There is no point in issuing an appearance ticket to family court for a bicycle violation if the court will be unable to consider the case for a year or two.

Children learn by experience. They quickly learn that they can "get away" with things. In some cases, the incidents get progressively more serious, and when a juvenile is ultimately caught and punished for a serious violation, he tends to feel resentful and blame the system. In one way, he has a point—the system has told him he will be punished for doing certain things, and yet when he does these things, he is not punished. Why, then, is punishment being meted out this time? One obvious answer which occurs to the youth is that the system is unfair.

One of the big advantages of the youth court is that it provides a juvenile justice system which can and does deal with minor matters that would never be considered by family court, such as bicycle violations, snowball throwing, and truancy. By applying the laws consistently and fairly, we hope to instill in our youth an understanding and respect for the law and the criminal justice system. Our experience to date seems to indicate that it has been working. Out of 400 youths processed over a 3½-year period, only two have been institutionalized, and the overall rate of recidivism is less than 10 percent.

The overall rate might well have been much lower than 10 percent except for one factor. At one point during the functioning of this court, there was some laxity in providing supervision for the required work hours and in finding appropriate work to be performed. A relatively large number of youths who went through the procedure at that time later reappeared in the court. Be-

/ /			
Date of Birth	Sex	Race	Age
Last Name		First	Initial
Address			Phone
City		State	Zip
School			Grade
Parents Name (s)			
Parents Address			
Youth Signature:			
Parent Signature:			

YOUTH COURT, TOWN OF HORSEHEADS
JUVENILE AID OFFICER
202 South Main Street
Horseheads, New York 14845

Facts of the alleged offense:

Date of Offense:
/ / , at M

Location:

Violation:

Crime/Infraction:

Police Department:

Officer's Signature: ID #:

We hereby voluntarily agree to partake in the Youth Court Process and understand we may withdraw at any time.

YOUTH COURT SUMMONS

A sample youth court summons.

cause of this, procedures were tightened and supervision afforded during the work periods. It appears that a very significant part of the court's success is due not only to the trial procedure but also to the fact that the sentence must be carried out. Certainty of punishment, then, is identified as a significant factor in getting respect for the criminal justice system.

Because of the quasi-legal structure of the court and the voluntary nature of the procedures, one might expect some problems in compliance with the procedures and/or performance of the sentence. Strangely enough, this has been an almost nonexistent problem. As long as there is supervision in the assignment and performance of work hours, compliance is excellent.

Problems

Youth court was conceived by a number of public officials who were concerned about a lack of respect for the criminal justice system. In many cases, youths would commit petty offenses, and because of case load, nature of offense, etc., the family court and/or probation proceedings did not serve as a deterrent to future offenses. In order to stem the apparently growing disrespect for law on the part of youth, it was felt that it was necessary to create a system whereby they could be taught the functions of the criminal justice system and the relationship between crime and punishment.

Town officials were aware of a youth court in Oneida County and Tompkins County, N.Y., and a juvenile officer, as well as a member of the town's youth bureau, were detailed to research this project. They selected certain facets of these projects and attempted to apply them in this area.

The first step was a visit to the county probation officers in an attempt to elicit their support for such a project. This support was quickly obtained. The next step was a visit to family court, where the judge's support was solicited. A resolution by the town board gave the youth court quasi-legal status. This, combined with the support of the family court judge, provided the impetus needed to create the youth court.

There are two school districts encompassed in our court—the Town of Horseheads and the Village of Elmira. Officers of the court are drawn from these school districts. The concepts of the court and training sessions are explained to the students in law and society and civics classes. There were over 100 volunteers for the first 10-week training session, many of whom came more from curiosity than interest. After the first training session was completed, there were 40 qualified court members (four courts composed of 10 members each) and an additional waiting list.

As the first case was to be tried in youth court officials were extremely apprehensive concerning the proceedings. Interestingly enough, the youths comprising the court did an amazing job. The first case was an unlawful use of a motor vehicle (UUAV) and resulted in a relatively stiff sentence of work hours. The participants in the court took their roles seriously.

At the outset, an executive board composed of police, teachers, attorneys, probation officers, and concerned youth and adults from the community was created. We were concerned about the effect these proceedings would have not only on the offenders but also on those who were participating. Perhaps because the participants were volunteers the sessions went extremely well. Although the executive board still exists and the juvenile aid officer is present in the courtroom, no supervision is required.

A jurisdictional problem arose because our village is located within the Town of Horseheads and our population is largely bussed in from other localities. It was decided that youth court would handle only offenses committed within the Town of Horseheads (even if the violators lived outside the town limits). This required close coordination between the school authorities, the town board, the involved police agencies, the Probation Department, and the family court. Although the jurisdictional problem appeared insurmountable, it was easily solved by the cooperation of those involved. Additionally, a private high school within the public school district participates in the program and furnishes candidates for the court.

One might think that having youths appear before their peers would result in a "rumor mill" going through the schools concerning those who appear before the court. During the training sessions, however, prospective court officers are firmly informed of the need for confidentiality and it is explained to them that no court proceedings may be discussed outside the court. If such discussions should occur, the responsible court officer would be dismissed. Since the first session, July 1, 1976, there has been no breach of confidentiality.

The use of the youth court was not immediately accepted by the police agencies involved. Acceptance of this program by older officers was not easily obtained and not all officers support it now.

The Village of Horseheads Police Department furnished the first defendants to the youth court. After a few months of successful operation and a great deal of public relations work, the other police agencies in the area began using the court as a method of dealing with juvenile offenders.

"The greatest advantage . . . has been the creation of an awareness for and appreciation of the criminal justice system. . . ."

Advantages

A youth arrested and referred to youth court has no criminal or juvenile delinquency record. Summonses are not numbered. Of three copies, the first is given to the offender, the second to the court, and the third is maintained by the coordinator. The court keeps no records, so the first two are destroyed after completion of the proceedings. The third is maintained until the youth turns 16, at which time it is destroyed.

Many youths who appeared before the court subsequently underwent the training course and became members of the court. This had a positive effect on the student community, making them aware that the court was not composed of "goody two-shoes types." Additionally, those youths now serving on the court understand the pressures that affect the offenders standing before them. Many times they are able to use knowledge of these pressures to good advantage.

The annual budget for this court is well under $20,000. If one calculates the cost of institutionalizing even one offender, the court has paid its way many times over. Paid personnel for this system include a youth coordinator, who supervises the work hours and counsels youths, and a part-time juvenile aid officer, who is paid for his appearance in court during his off-duty time. Secretarial work is done by town secretaries on an availability basis. There have been minor expenditures for training aids, but in the beginning these aids were obtained on a voluntary basis by concerned citizens. Subsequently, a $26,000 Law Enforcement Assistance Administration grant was obtained to cover the initial operating budget. After the grant expired, the youth court was institutionalized by the town and funded through the town board.

The greatest advantage in the youth court has been the creation of an awareness for and appreciation of the criminal justice system by the youth of the community. They have an opportunity to become a part of the system and see how it functions. Indeed, as members of the court they make it function; they can appreciate the problems and the complexities that besiege our adult community. In some cases, they are made aware that there are no answers to problems which exist; however, they also become aware of the need to continue attempting to find solutions. **FBI**

Anyone interested in obtaining more detailed information on the Town of Horseheads Youth Court Project can obtain it by writing to:

Town of Horseheads Youth Bureau
408 South Main St.
Horseheads, N.Y. 14845
Telephone: 607-739-0797

A Psychological Assessment of Crime PROFILING

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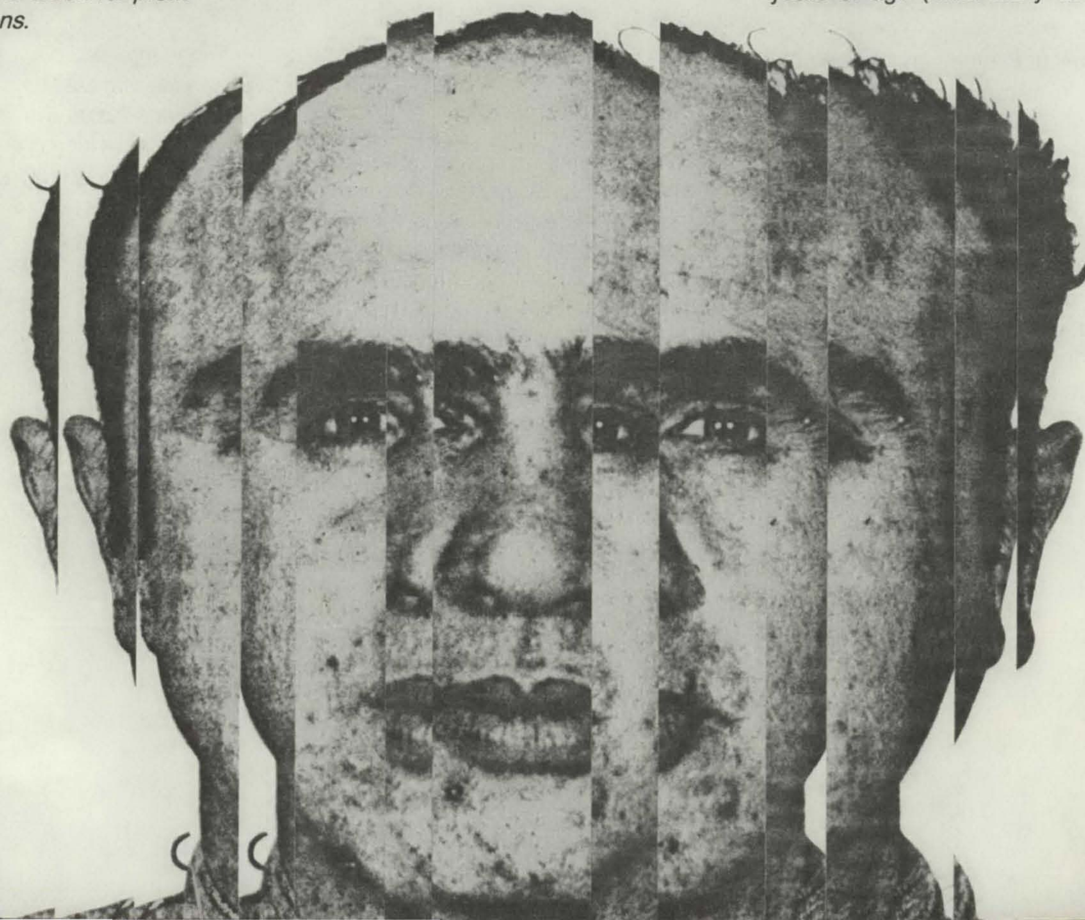
Editor's Note: As an adjunct to its instructional programs in abnormal psychology, the Behavioral Science Unit, FBI Academy, Quantico, Va., has attempted to assist the law enforcement community in the preparation of psychological profiles in selected unsolved criminal cases. "A Psychological Assessment of Crime: Profiling" is the introductory article in a three-part series of reports on the use of psychological criminal analysis as an investigative technique. Subsequent articles will feature the specific application of this technique to lust murderer and arson-for-profit investigations.

During the summer of 1979, a woman in a suburban city on the east coast reported to the police that she had been raped. After learning the facts of this case, the investigating officer realized that this was the seventh rape within the past 2 years wherein the same *modus operandi* was used. There were no investigative leads remaining in any of these incidents. The investigation conducted thus far had yielded no suspect.

The incident reports, together with transcripts of interviews with the victims, were forwarded to the FBI Training Division with a request from the police department that a psychological profile of the suspect or suspects be provided. After careful examination of the submitted materials by the FBI Academy's Behavioral Science Unit, a psychological profile was constructed and provided to the requesting agency. The Behavioral Science Unit advised that these rapes were probably committed by the same person and described him as a white male, 25 to 35 years of age (most likely late 20's or



early 30's), divorced or separated, working at marginal employment (laborer, etc.), high school education, poor self-image, living in the immediate area of the rapes, and being involved in crimes of voyeurism (peeping tom). It was likely that the police had talked to the rapist in the past due to his being on the streets in the neighborhood in the early morning hours.

Three days after receiving the profile provided to them, the requesting agency developed approximately 40 suspects in the neighborhood who met the age criteria. Using additional information in the profile, they narrowed their investigation to one individual and focused their investigation on him. He was arrested within a week. This case demonstrates how psychological profiling can be of assistance.

The role of the police officer in American society has never been accurately defined. Daily, it seems, police are burdened with new responsibilities and are required to be experts in responsibilities already assigned to them.[1] There has, in recent years, been an increase in the public's awareness of the nature of police work. This additional insight has been provided primarily through the use of the media (TV, books, newspapers); however, this awareness is largely focused upon the police function of investigating crimes. Studies have indicated that criminal investigations actually occupy less than 15 percent of the police department's time.[2] The irony of this is that the function of investigating and solving crimes is extremely important to the public at large and is a major gage by which departments are rated by city officials who provide funding. This is especially true when a crime is committed which is so bizarre and shocking to the community that the public demands swift and positive action.

As the crime rate grows in this country and the criminals become more sophisticated, the investigative tools of the police officer must also become more sophisticated. One such sophisticated tool does exist and may help answer the question commonly voiced by police and others at the scene of a violent crime, "Who would do a thing like this?" This tool is the psychological assessment of crime—profiling.

The solution of crimes is the most difficult task for the police. The officer must arrive at the scene of a crime, work backward in an effort to reconstruct that crime, formulate a hypothesis of what occurred, and then launch an orderly and logical investigation to determine the identity of the criminal. During this process, items of evidence are carefully collected, identified, initialed, logged, and packaged for later examination, perhaps under laboratory conditions.

The purpose of this article is to acquaint the police officer with the fact that there are certain clues at a crime scene which, by their very nature, do not lend themselves to being collected or examined, and to familiarize the officer with the concepts of profiling. Clues left at a crime scene may be of inestimable value in leading to the solution of the crime; however, they are not necessarily items of physical evidence. For example, how does a police officer collect rage, hatred, fear, love, irrationality, or other intangibles? These aspects may be present at the crime scene but the untrained officer will miss them. Nothing can take the place of a well-executed investigation; however, the use of psychology to assist in the assessment of a crime is an additional tool which the police officer should use in solving crimes.

The purpose of the psychological assessment of a crime scene is to produce a profile; that is, to identify and interpret certain items of evidence at the crime scene which would be indicative of the personality type of the individual or individuals committing the crime. The term "profile" is defined in *Webster's Dictionary of the American Language* (1968)[3] as "a short, vivid biography briefly outlining the most outstanding characteristics of the subject." The goal of the profiler is to provide enough information to investigators to enable them to limit or better direct their investigations. For example, in one case, a profile provided enough information that officers recalled an individual whom they had already questioned that fit the profile description. When they returned to the individual, he confessed.

The officer must bear in mind that the profile is not an exact science and a suspect who fits the description is not automatically guilty. The use of profiling does not replace sound investigative procedures.

Profiling is not a new concept. During World War II, the Office of Strategic Services (OSS) employed a psychiatrist, William Langer, to profile Adolf Hitler. Langer assembled all that was known about Hitler at the time, and based upon the information he received, attempted a long-range "diagnosis," as well as some predictions about how Hitler would react to defeat.[4]

Police officers are often carefully trained in the techniques of crime scene searches. Forensic scientists constantly provide law enforcement personnel with the results of research which enable officers to maintain and update skills in gathering physical evidence. The concept of profiling works in harmony with the search for physical evidence. Behavioral scientists are busy in their attempts to research and catalog nonphysical items of evidence, such as rage, hatred, fear, and love. However, these attempts are usually oriented toward therapy rather than forensic applications.[5] Nonetheless, the results may be applied to teach police officers to recognize the existence of these emotions and other personality traits in a crime scene. Once recognized, police may then construct a profile of the type of person who might possess these emotions and/or personality traits.

The basis for profiling is nothing more than the understanding of current principles of behavioral sciences, such as psychology, sociology, criminology, and political science.

Behaviorial science is, at best, an inclusive science. It is often referred to as an "art form."[6] However, its use does have validity in law enforcement. Human behavior is much too complex to classify, yet attempts are often made to do so with the hope that such a vastly complicated system can be brought into some control. The Diagnostic and Statistic Manual of Mental Disorders (DSM II), used by mental health professionals, is one example of this attempt.[7] While attempts to neatly classify behavior are mostly unsuccessful, one must remember why these attempts are made. There are many types of "normal" and "abnormal" behavior.[8] Many of these behaviors may have a label attached to them by behavioral scientists. It is most important to bear in mind that such a label is merely an abbreviated way to describe a behavior pattern. It is nothing more than a convenience by which professionals communicate. The important aspect is the specific characteristics or symptoms of each person. The symptoms are revealed in the way the individual "acts out" and in the responses which the individual may make to the professional. The labels may differ from doctor to doctor because they are simply each doctor's interpretation of the symptom.

A symptom, then, is the "visible evidence of a disease or disturbance,"[9] and a crime, particularly a bizarre crime, is as much a symptom as any other type of acting out by an individual. A crime may reflect the personality characteristics of the perpetrator in much the same fashion as the way we keep and decorate our homes reflects something about our personality.[10]

A crime scene is usually confined to the area in which the crime was committed. For the purposes of this article, the term crime scene includes the following: The scene of the crime; the victim of the crime, as in the case of rape; and all other locations involved in the crime, including such areas as the recovery site when a homicide is committed in one location and the body deposited in another.

The victim is one of the most important aspects of the psychological profile. In cases involving a surviving victim, particularly a rape victim, the perpetrator's exact conversation with the victim is of utmost importance and can play a very large role in the construction of an accurate profile.

The profile is not all inclusive and does not always provide the same information from one profile to another. It is based on what was or was not left at the crime scene. Since the amount of psychological evidence varies, as does physical evidence, the profile may also vary. The profile information may include:

1) The perpetrator's race,

2) Sex,

3) Age range,

4) Marital status,

5) General employment,

6) Reaction to questioning by police,

7) Degree of sexual maturity,

8) Whether the individual might strike again,

9) The possibility that he/she has committed a similar offense in the past, and

10) Possible police record.

These profiles are not the result of magical incantations and are not always accurate. It is the application of behavioral science theory and research to the profiler's knowledge of patterns which may be present at various crime scenes.[11] It is important that the profiler have wide exposure to crime scenes so that he may see that these patterns may exist. It is also important that the individual attempting to profile crime scenes have some exposure to those criminals who have committed similar crimes.

The entire basis for a good profile is a good crime scene examination and adequate interviews of victims and witnesses. When officers find individuals who are willing to attempt psychological evaluations of crime scenes, they often ask the profiler what materials should be sent to him. Necessary items for a psychological profile include:

1) Complete photographs of the crime scene, including photographs of the victim if it is a homicide. Also helpful is some means of determining the angle from which the photographs were taken and a general description of the immediate area. One enterprising police officer developed the excellent technique of photocopying his crime scene sketch, attaching one copy to each photo, and then outlining in red the area which was included in the photograph.

2) The completed autopsy protocol including, if possible, any results of lab tests which were done on the victim.

3) A complete report of the incident to include such standard details as date and time of offense, location (by town as well as by actual site of incident), weapon used (if known), investigative officers' reconstruction of the sequence of events (if any), and a detailed interview of any surviving victims or witnesses. These items are usually a part of all investigations and do not generally require extra report writing or extra written material. Also included in most investigative reports is background information on the victim(s). Yet, this seems to be the area where the least amount of information is available to the profiler. Usually, this is because the investigative officer cannot possibly write down all of the many details concerning the victim which he collects while investigating the crime.

When the investigator provides information concerning a victim to a profiler, some items which the officer should include are:

1) Occupation (former and present),

2) Residence (former and present),

3) Reputation, at work and in his neighborhood,

4) Physical description, including dress at the time of the incident,

5) Marital status, including children and close family members,

6) Educational level,

7) Financial status, past and present,

8) Information and background of victim's family and parents, including victim's relationship with parent,

9) Medical history, both physical and mental,

10) Fears,

11) Personal habits,

12) Social habits,

13) Use of alcohol and drugs,

14) Hobbies,

15) Friends and enemies,

16) Recent changes in lifestyle, and

17) Recent court action.

The primary psychological evidence which the profiler is looking for is motive. After a survey of the evidence, the profiler applies an age-old rule known as "ockhams razor" which, originally stated, is "what can be done with fewer assumptions is done in vain with more."[12] This 14th century philosophy has, in investigative circles, generally come to mean that given a problem with several alternative solutions, the most obvious answer is usually correct. An aid to the application of ockhams razor is the intangible evidence that the observer gathers from the crime scene to tell him such things as whether the crime appears to be planned or whether it is the result of an irrational thought process.

Profiling is a valuable investigative tool but is not a magical process. Police officers do a great deal of profiling during the course of their work days. They constantly build mental images or profiles based upon crime scenes and then use these profiles in an attempt to limit the scope of their investigations. These profiles are based upon the officer's extensive knowledge of the type of crime he is investigating. When a crime so bizarre that it is out of the scope of the officer's experience occurs, there are behavioral scientists available who can assist by providing these types of profiles. The FBI provides limited service in the area of profiling and these limitations are based on the amount of time and manpower available to conduct such profiles.

Instruction is the primary purpose of the Behavioral Science Unit of the FBI Training Division. Courses in applied criminology, abnormal psychology, sociology, hostage negotiations, interpersonal violence, and other behavioral science-related areas are taught at the Academy to FBI Agents and police officers. In the past, as an adjunct to its instructional programs, the Training Division has attempted to assist law enforcement agencies with the preparation of psychological profiles. During the initial stages of the FBI's involvement in profiling, these profiles were limited to students attending the FBI National Academy. During the past year, however, over 100 unsolved cases have been received by the Training Division from law enforcement officers nationwide. Due to increased instructional and research commitments, it was necessary to implement guidelines and control measures to manage and monitor effectively this investigative technique.

It is most important that this investigative technique be confined chiefly to crimes against the person where the motive is lacking and where there is sufficient data to recognize the presence of psychopathology at the crime scene. Psychological analysis is not a substitute for basic investigative principles, and all logical leads must be exhausted before requesting this service. This technique is usually confined to homicides, rapes, etc., in which available evidence indicates possible mental deficiency or aberration on the part of the perpetrator. Cases will be profiled on a "time available" basis, with the more severe cases being given priority. It should also be understood that analysis is for lead value only, and clinical opinions will not be offered. Cases which, in the opinion of the Training Division, fail to meet these criteria will be returned to the requesting agency. Under no circumstances should physical evidence be transmitted to the Federal Bureau of Investigation, since the possibility exists that information received may not be returned to the agency.

An agency requesting a psychological profile should contact the Federal Bureau of Investigation field office located within the territory of the department and provide to them the information as requested herein. The agency should make it known to the field office that they are requesting a psychological profile from the Behavioral Science Unit, Training Division.

FBI

Footnotes

[1] James Q. Wilson, *Varieties of Police Behavior* (Cambridge, Mass.: Harvard University Press, 1968), p. 30.
[2] George G. Killinger and Paul F. Cromwell, *Issues in Law Enforcement* (Boston: Holbrook Press, 1975), p. 212.
[3] *Webster's New World Dictionary of the American Language* (New York: The World Publishing Company, 1978), p. 1163.
[4] Walter C. Langer, *The Mind of Adolph Hitler* (New York: Basic Books, Inc., 1972).
[5] James C. Coleman, *Abnormal Psychology and Modern Life* (Glenview, Ill.: Scott, Foresman and Company, 1980).
[6] "Son of Sam: Implications for Psychiatry" (letter), American Journal of Psychiatry, 135 (1): 131, Jan. 1978.
[7] *Diagnostic and Statistical Manual of Mental Disorders,* 2d ed., (Washington, D.C.: American Psychiatric Association, 1968).
[8] Coleman, pp. 3-23.
[9] J. V. McConnell, *Understanding Human Behavior* (New York: Holt, Rinehart, and Wilson, Inc., 1974), p. 25.
[10] Sherrill Whiton, *Elements of Interior Design and Decoration* (New York: J.B. Lippincott Company, 1963), p. 751.
[11] R. Brittain, *The Sadistic Murderer,* Medical Science and the Law, Vol. 10, 1970, pp. 198-204; Donald Lunde, *Murder and Madness* (San Francisco: San Francisco Book Company, Inc., 1976).
[12] *The Encyclopedia of Philosophy* (New York: Macmillan Company, 1967), Vol. 8, p. 307.

Interview of Public Employees Regarding Criminal Misconduct Allegations

Constitutional Considerations

(Part 1)

By JOSEPH R. DAVIS
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Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

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

Consider the following vignette:

Inspector: "Good afternoon Sergeant Wilson, I'm Inspector Johnson with Internal Affairs Division."

Sergeant: "Good afternoon, Inspector, what can I do for you?"

Inspector: "Well, as you may know, Internal Affairs is conducting an investigation into allegations that some officers of the department have received 'kick-backs' or 'payoffs' from certain individuals operating houses of prostitution under the guise of massage parlors. The allegations are rather specific, and frankly, some involve places of business within your precinct that you have investigated and reported on as being legitimate massage parlors. I would like to ask you a few questions regarding this matter. However, before I ask you any questions, since the matter does involve allegations of bribery, I want you to understand your rights." (The inspector then proceeds to read from a card the standard *Miranda* [1] warnings.) "Do you understand those rights I have just read?"

Sergeant: "Sure I understand, I've given those a thousand times myself . . . but does this mean I'm a suspect in the investigation?"

". . . 'after proper proceedings' a public employee can be compelled to answer his employer's work-related questions. . . ."

Inspector: "Well, as you probably know the purpose of our inquiry is *primarily* disciplinary. But, since it does involve possible criminal violations, I thought it best to give *Miranda* warnings. Sergeant Wilson, I also want to remind you of Police Department Reg. 20.5. This regulation reads as follows: 'All officers must, when requested by their superior officers or other employees authorized to inquire into any official matter, respond fully and truthfully to all questions regarding the performance of their official duties. Any failure to respond completely and candidly to such inquiries may be punished by appropriate disciplinary action, including dismissal'."
"Sergeant, do you understand that regulation?"

Sergeant: "Yes, I'm familiar with the requirement that officers account for their official action."

Inspector: "Good. Sergeant, are you familar with the Kitty Kat Massage Parlor, operated by a Louis Carson, also known as 'Lucky Louis'?"

Sergeant: "I don't think I should answer that question . . . at least without talking to an attorney first."

Inspector: "Are you refusing to respond to my question?"

Sergeant: "Well, you told me I could refuse to talk, didn't you?"

Inspector: "I also informed you of a departmental regulation that authorizes your dismissal for failure to answer my questions regarding your official duties."

Sergeant: "Well, I'm not answering any questions. If you want to talk to me about this further, contact my attorney."

Inspector: "Do you have his name?"

Sergeant: "No, I don't, but I'll call your office and leave it for you."
(at this point the officer exits)

How would you assess the above dialog? Was the sergeant justified in refusing to answer? Doesn't a police officer, like any other citizen, have a right under the fifth amendment not to answer questions that may subject him to criminal prosecution?

On the other hand, doesn't a police department, like other employers, have a right to ask an employee to explain his conduct in regard to his assigned duties? Must a police department continue to employ an officer who refuses to account for the performance of his official duties? More specifically, if the sergeant is disciplined or fired for his failure to answer, will such action be supportable if challenged in a legal proceeding?

Assume that the sergeant, after the second warning by the inspector, decided to answer the question posed and related questions, and the answers implicated him in a criminal conspiracy. Could these answers be used in a subsequent criminal prosecution of the sergeant or in a subsequent disciplinary proceeding to determine his fitness for continued employment?

This article will address and attempt to resolve these and other related questions that often arise when a public employee is called upon to respond to allegations that may involve criminal misconduct.

At the outset, it should be recognized that the scope of this discussion is limited to the rights provided and obligations imposed by broadly applicable U.S. constitutional provisions, although occasional reference will be made to statutory provisions common to many jurisdictions.

Additional restrictions or requirements may be placed on such interviews by State or local statutes or regulations, such as "Police Officers' Bills of Rights," "privacy acts," Civil Service regulations, or by collective bargaining agreements.

When allegations of criminal misconduct are made against a police officer or any other public employee, there is a strong need to resolve them fully and fairly. The investigation must be seen by both the members of the community and by employees of the department as diligent and impartial.

An error in the conduct of the investigation may result in valuable evidence being inadmissible in a later proceeding or in administrative action being undertaken that cannot be sustained under challenge. Any failure to resolve adequately the allegations and to follow through with appropriate criminal prosecution or administrative action, if warranted, will result inevitably in erosion of public confidence in the agency, and indeed, in Government generally.

". . . a public employee may not be fired for asserting his fifth amendment right when no immunity for use of his answers has been given. . . ."

One of the most frequently used investigative techniques for resolving allegations of criminal misconduct is to question the employee involved.

Whenever a public employee is being interviewed about a matter where there is a substantial risk that the employee may be subject to criminal prosecution for his actions, there are two competing and sometimes conflicting interests. The first interest is the need of Government to require its employees to account fully for their actions in the course of official duties. The second interest is the right of a public employee, guaranteed by the 5th and 14th amendments of the Constitution, not to be *compelled* to answer questions or make a statement which could be used against the employee in a subsequent criminal proceeding.[2]

The Supreme Court and other Federal courts, as well as State courts, have established certain legal principles to accommodate the legitimate interests of both the Government and the employee.

Part I of this article will examine three major principles that are well-established in this area of the law and explain the reasoning that forms the foundation for these principles.

The conclusion of the article (Part II), which will be published in the next issue of the *FBI Law Enforcement Bulletin,* will suggest, in more concrete terms, the procedures that may be used in such employee interviews to avoid violation of these principles.

Coerced Statements Will Be Inadmissible in a Criminal Prosecution

The Supreme Court has consistently held that a statement given by a public employee under an express threat of dismissal for failure to answer cannot constitutionally be used against the employee in a subsequent criminal proceeding. This principle was first announced by the Supreme Court in *Garrity* v. *New Jersey,* decided in 1967.[3] Garrity and other defendants in the case were police officers in certain New Jersey boroughs. A State deputy attorney general questioned the officers concerning allegations that they had been involved in the fixing of traffic tickets in their jurisdictions. Prior to the questioning, each officer was warned: (1) Anything he said could be used against him in any State criminal proceeding; (2) he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) if he refused to answer he would be subject to removal from office. The warning concerning removal from office was based upon a New Jersey statute which provided, in effect, that anyone who held a public office or employment and who refused to answer any material question regarding the performance of his official duties when asked by a proper official would forfeit such job.[4]

After receiving the above warnings, the officers answered the questions. Some of the answers given were used against the officers, over their objections, in later criminal prosecutions for conspiracy to obstruct the administration of the traffic laws.

The Supreme Court reversed the convictions because, in the opinion of the Court, the statements obtained from the officers were coerced by the threat of loss of their jobs, and the use of the "involuntary" statements in a criminal proceeding violated the Due Process Clause of the 14th amendment. The Court stated that "policemen . . . are not relegated to a watered-down version of constitutional rights," and that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office. . . ."[5]

The *Garrity* prohibition against use of statements obtained after an *express* threat of dismissal for failure to answer has been consistently adhered to by Federal and State courts.[6] It should be recognized that when an officer is being interviewed by a superior officer or an internal affairs officer, there will be some inherent coercion, particularly if the department has a regulation that appears to require an officer to respond to inquiries as to his official duties. The Supreme Court has not ruled on whether an *implied* threat of dismissal may make such a statement inadmissible. Some Federal courts have indicated that an *implied* threat of termination may make such a statement inadmissible.[7] Several courts have taken the view that if no reference at all is made to adverse administrative action prior to the employee making a statement, then the statement will be considered "voluntary" and hence admissible.[8] A few courts have adhered to this view even when a job forfeiture statute was on the books and it appeared likely the employee was aware of it, when no reference was made to the provision in the course of the employee's interview.[9]

It seems fair to say that if there is no direct or clearly implied threat of dismissal, the courts will generally look to all the surrounding circumstances to determine, on a case-by-case basis, whether or not the employee's statement is voluntary. This approach is consistent with that taken by the Supreme Court in the ordinary confession case when the issue is the voluntariness of the statement.[10]

A Public Employee May Not Be Fired Solely For Asserting His Constitutional Rights

The next major principle laid down in this area by the Supreme Court also arose from an investigation into allegations of criminal misconduct on the part of a police officer. In *Gardner* v. *Broderick,*[11] a New York City officer was subpenaed before a county grand jury that was investigating alleged bribery and corruption of police officers in connection with unlawful gambling operations. He was informed of the purpose of the investigation and that he was to be questioned regarding his official duties. He was advised that he had the right, under the U.S. and New York State Constitutions, to refuse to testify against himself or to answer any questions that would tend to incriminate him. He was then requested to sign a "waiver of immunity," which would have acknowledged that any statements he made could be used against him in a later criminal proceeding. He was also told that pursuant to a New York State constitutional provision and the New York City Charter, he would be fired if he refused to sign the waiver of immunity. These provisions required public officers and employees to answer any questions put to them by a proper authority or a grand jury regarding the performance of their official duties and stated that failure to answer or to sign a waiver of immunity would result in forfeiture of employment.[12]

The officer refused to sign the waiver, and he was discharged *solely* for this refusal. The Court ordered the officer reinstated, declaring the job forfeiture provision, as applied, was violative of the officer's fifth amendment guarantee against compelled self-incrimination.[13]

The Supreme Court has reiterated this principle in several later cases,[14] and it has been followed and applied by numerous Federal and State courts to invalidate statutes or regulations that provide for forfeiture of Government employment as a penalty for the employee's assertion of the fifth amendment privilege or for failure to sign a "waiver of immunity" form.[15]

Although the Supreme Court has made it clear in *Gardner* and subsequent cases that a public employee may not be fired for asserting his fifth amendment right when no immunity for use of his answers has been given, the Court has been careful to note that these cases do *not* hold that a public officer may never be required to account to the Government for the performance of his official duties. In *Gardner* the Court stated:

> "If appellant, a policeman, had refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, the privilege against self-incrimination would not have been a bar to his dismissal."[16]

In *Uniformed Sanitation Men Association* v. *Commissioner,*[17] a case decided the same day as *Gardner,* which also involved public employees who were fired for refusing to testify concerning their official duties based upon the same New York City Charter job forfeiture provision, the Supreme Court again explained this distinction:

> "(I)f New York had demanded that petitioners answer questions specifically, directly, and narrowly relating to the performance of their official duties on pain of dismissal from public employment without requiring relinquishment of the benefits of the constitutional privilege, and if they had refused to do so, this case would be entirely different. In such a case, the employee's right to immunity as a result of his compelled testimony would not be at stake. But here the precise and plain impact of the proceedings against petitioners as well as of § 1123 of the New York Charter was to present them with a choice between surrendering their constitutional rights or their jobs. Petitioners as public employees are entitled, like all other persons, to the benefit of the Constitution, including the privilege against self-incrimination. . . . At the same time, petitioners, being public employees, subject themselves to dismissal if they refuse to account for their performance of their public trust, *after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights.*" (Emphasis added)[18]

". . . [this] 'immunity' . . . is simply protection against the use of compelled statements and their fruits in a criminal prosecution."

A Public Employee Can Be Compelled to Answer Work-Related Questions

Although the principle that "after proper proceedings" a public employee can be compelled to answer his employer's work-related questions was first stated by the Supreme Court in the above-mentioned cases, the task of establishing precisely what constitutes "proper proceedings" has been left largely to lower Federal and State courts.

A case which illustrates the approach that most courts have taken and which appears consistent with the Supreme Court's view on the issue was decided by the U.S. Court of Appeals for the Second Circuit in 1970, *Uniformed Sanitation Men Association* v. *Commissioner* (hereafter cited as Uniformed Sanitation Men II).[19] This case involved the same parties and arose from the same factual background as the Supreme Court case, *Uniformed Sanitation Men Association* v. *Commissioner* (hereafter, Uniformed Sanitation Men I), mentioned previously. After the Supreme Court held their firings improper, the employees were reinstated. On the same day, one of the employees was called before an inquiry being conducted by a high-ranking official of his department. The employee was advised that (1) he had a right to remain silent, although he could be subject to disciplinary action by the department for failure to answer material and relevant questions relating to the performance of his official duties, and (2) the answers he might give, or any information or evidence gained by reason of those answers, could not be used against him in a criminal proceeding, except for any false answer that could constitute a violation of applicable law.

Following this warning, the employee failed to answer several questions directly relating to the performance of his duties. It was stipulated that each of the other employees, if called, would follow the same course of action. Later, the employees were charged with misconduct for refusing to answer the questions, and after continuing their refusals to answer the relevant questions, were fired.

The court of appeals, in upholding the dismissals, reasoned that once an employee is assured that neither his answers nor their fruits may be used against him in a criminal prosecution, the employee is no longer faced with a choice between self-incrimination or job forfeiture. The court noted that:

> "In a case like this the state is asserting not its interest in the enforcement of the criminal law but its 'legitimate interest as an employer.' (citation omitted) To require a public body to continue to keep an officer or employee who refuses to answer pertinent questions concerning his official conduct, although assured of protection against use of his answers or their fruits in any criminal prosecution, would push the constitutional protection beyond its language, its history or any conceivable purpose of the framers of the Bill of Rights." [20]

Federal and State courts have generally adopted the approach and reasoning of the court of appeals in *Uniformed Sanitation Men II.*[21]

It should be recognized that the type of "immunity" referred to in these cases is simply protection against the use of the compelled statements and their fruits in a criminal prosecution. This immunity arises directly from the fifth amendment protection against the use of compelled statements in a criminal proceeding. No statutory immunity procedure is necessary for an employer to grant such immunity, because when the employer compels a statement upon threat of firing, the "immunity" arises by operation of law.[22] It should also be recognized that the protection is very similar to "use" immunity as opposed to "transactional" immunity. That is, the employee enjoys no protection against criminal prosecution based upon the same actions for which he is required to account to his employer, but only the *use* of his answers, or information gained by use of them (often referred to as the fruits), in the prosecution.[23] The Supreme Court has ruled that "use" immunity is sufficient to satisfy fully a witness' fifth amendment privilege against compelled self-incrimination and the broader "transactional" immunity, which protects against any prosecution arising from the offense to which the compelled testimony relates, is not constitutionally required.[24]

The three principles discussed may briefly be summarized as follows:

1) As a matter of constitutional law, any statement given by a public employee based upon a threat of dismissal from his job if he fails to respond will be inadmissible against the employee in a subsequent criminal proceeding.

2) An employee who is being questioned in any proceeding about a matter which could result in a criminal prosecution of him may not be discharged solely for invoking his fifth amendment privilege and refusing to answer or for refusing to sign a waiver of immunity.

3) A public employee does have an obligation to answer his employer's work-related inquiries. Therefore, if an employee is assured that his answers or information obtained as a result of those answers cannot be used against him in a criminal proceeding and that he may be disciplined or discharged for failure to respond, then he may properly be disciplined or discharged for any refusal to answer such questions.

FBI

(Continued Next Month)

Footnotes

[1] In *Miranda* v. *Arizona,* 384 U.S. 436 (1966), the Supreme Court held that when an individual is in police custody or otherwise deprived of his freedom of action in any significant way, and police desire to question him, he must first be advised of certain rights set forth in the *Miranda* opinion. These rights consist primarily of the right to remain slient and the right to assistance of an attorney.

[2] U.S. Const. amends. V and XIV. The fifth amendment states in part: "No person shall . . . be compelled in any criminal case to be a witness against himself. . . ."

The 5th and 14th amendments provide that Federal and State governments may not deprive any person of "life, liberty, or property, without due process of law. . . ." These provisions are often referred to as the Due Process Clauses.

[3] 385 U.S. 493 (1967).

[4] N.J. Rev. Stat. § 2A:81-17.1 (Supp. 1965). The statute is set out in *Garrity* v. *New Jersey, supra* note 3 at 495.

[5] *Garrity* v. *New Jersey, supra* note 3, at 500.

[6] *Commonwealth* v. *Triplett,* 341 A.2d 62 (Pa. 1975).

[7] *Womer* v. *Hampton,* 496 F.2d 99, 107-108 (5th Cir. 1974).

[8] *People* v. *Wenstrom,* 356 N.E.2d 1165 (Ill. Ct. App. 1976); *Commonwealth* v. *Kelly,* 369 A.2d 438 (Pa. Super. 1976).

[9] *Commonwealth* v. *Kelly, supra* note 8; *DiCiacco* v. *Civil Service Commission,* 389 A.2d 703 (Pa. Comwlth. Ct. 1978) (dictum).

[10] *Brady* v. *United States,* 397 U.S. 742 (1970); *Davis* v. *North Carolina,* 384 U.S. 737, 741 (1966).

[11] 392 U.S. 273 (1968).

[12] The provisions, section 1123 of the New York City Charter and section 6 of article I of the New York Constitution, are set out in the *Gardner* v. *Broderick* opinion, *supra* note 11 at 275.

[13] *Gardner* v. *Broderick, supra* note 11, at 279.

[14] In *Lefkowitz* v. *Turley,* 414 U.S. 70 (1973), the Supreme Court invalidated certain New York statutes which provided that any public contractor who refused to testify before a grand jury or refused to waive his immunity from prosecution would suffer cancellation of current State contracts and be barred for 5 years from other State contracts. In *Lefkowitz* v. *Cunningham,* 431 U.S. 801 (1977), the Court enjoined enforcement of a similar New York statute providing for automatic forfeiture of a political party office for refusal to answer questions or waive immunity before a grand jury inquiring as to the conduct of the office.

[15] *Confederation of Police* v. *Conlisk,* 489 F.2d 891 (7th Cir. 1973), *cert. denied,* 416 U.S. 956 (1974); *Dwyer* v. *Police Board of City of Chicago,* 334 N.E.2d 239 (Ill. Ct. App. 1975); *Luman* v. *Tanzler,* 411 F.2d 164 (5th Cir. 1969), *cert. denied,* 396 U.S. 929.

[16] *Gardner* v. *Broderick, supra* note 11, at 278.

[17] 392 U.S. 280 (1968).

[18] *Id.* at 284-85.

[19] 426 F.2d 619 (2d Cir. 1970), *cert. denied,* 406 U.S. 961 (1972).

[20] *Id.* at 626.

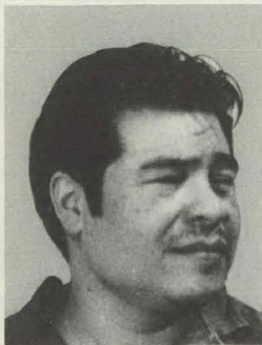
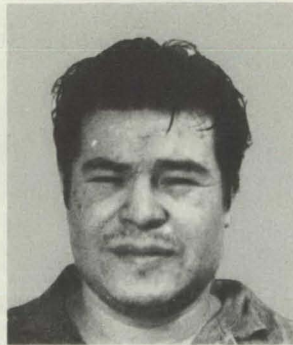
[21] *Hank* v. *Codd,* 424 F.Supp. 1086 (S.D.N.Y. 1975); *McLean* v. *Rochford,* 404 F.Supp. 191 (N.D. Ill. 1975); *Seattle Police Officer's Guild* v. *City of Seattle,* 494 P.2d 485, 491 (Wash. 1972); *Eshelman* v. *Blubaum,* 560 P.2d 1283 (Ariz. Ct. App. 1977).

[22] *Uniformed Sanitation Men II, supra* note 19, at 627; *Hank* v. *Codd, supra* note 21, at 1087.

[23] *Uniformed Sanitation Men II, supra* note 19, 627-28.

[24] *Kastigar* v. *United States,* 406 U.S. 441 (1972); also see the Supreme Court's discussion of the sufficiency of "use" immunity in the context of compelled statements from public officers and employees in *Lefkowitz* v. *Cunningham, supra* note 14, at 808-809.

WANTED BY THE FBI

Photographs taken 1978.

Gilbert Juarez

Gilbert Juarez, also known as Bilbert Gardea Juarez, Gil Juarez, Gilbert Chino Juarez, "Batman," "Chino."

Wanted for:

Interstate flight—Murder, Escape.

The Crime

Juarez, a convicted murderer and avowed member of a west coast prison gang, is wanted as an escapee from custody and for an additional gang-related homicide. He reportedly has threatened prosecution witnesses in the past and has been convicted of assaulting police officers.

A Federal warrant was issued for his arrest on January 8, 1979, at Bakersfield, Calif.

Criminal Record

Juarez has been convicted of driving while drunk, possession of a weapon, assault with a deadly weapon on a peace officer, murder, armed robbery, and conspiracy to murder.

Description

Age ....28, born May 20, 1951, at El Paso, Tex. (not supported by birth records).
Height ....5'4".
Weight ....180 pounds.
Build ....Heavy.
Hair ....Brown.
Eyes ....Brown.
Complexion ....Medium.
Race ....White.
Nationality ....American.
Occupation ....Welder.
Scars and Marks ....Tattoos: Spider on chest; two hearts with "VIRGINIA" and "GILBERT" on chest; heart with "BECKY" and large scroll on upper right arm; "SPOOK" in hat on lower right arm; cross on outer left arm; spider web left arm; spider left wrist; two roses inner left leg; large scroll with name blacked out on lower inner right leg.
Remarks ....Reportedly an excessive drinker of alcoholic beverages.
Social Security Nos. Used ....557-80-4986 555-84-2986.
FBI No. ....290 798 H.

Caution

Juarez should be considered armed, dangerous, and an escape risk.

Notify the FBI

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

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Fingerprint Classification:
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I 1 U III

Left ring fingerprint.

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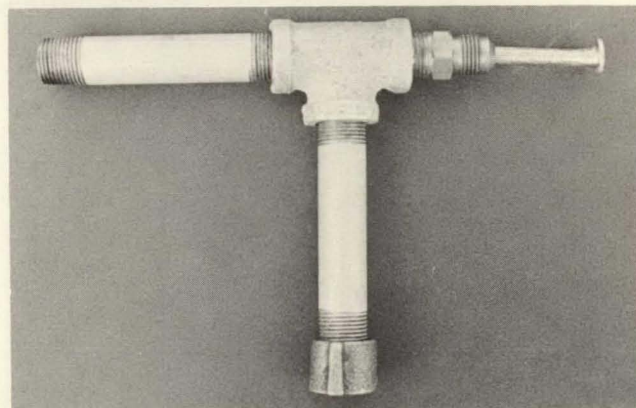
Pipe Pistol

A .410-gage pistol made from plumbing supplies (see photographs) was recently confiscated by the Muncie, Ind., Police Department. The necessary parts are available in almost any hardware store, and when assembled, can create an effective weapon. A large spike nail is used to fire the device, and the grip with a pipe cap provides storage for an extra round of ammunition.



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Interesting Pattern

This impression has the general appearance of a loop-type pattern. However, close scrutiny of the center of the impression reveals a single ridge making a complete circuit. The pattern possesses the minimum requirements of a whorl; two deltas and a recurve in front of each. It is, therefore, classified as a central pocket loop-type whorl with an outer tracing.