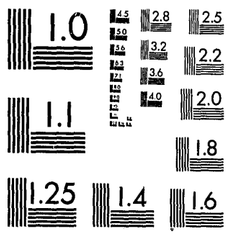

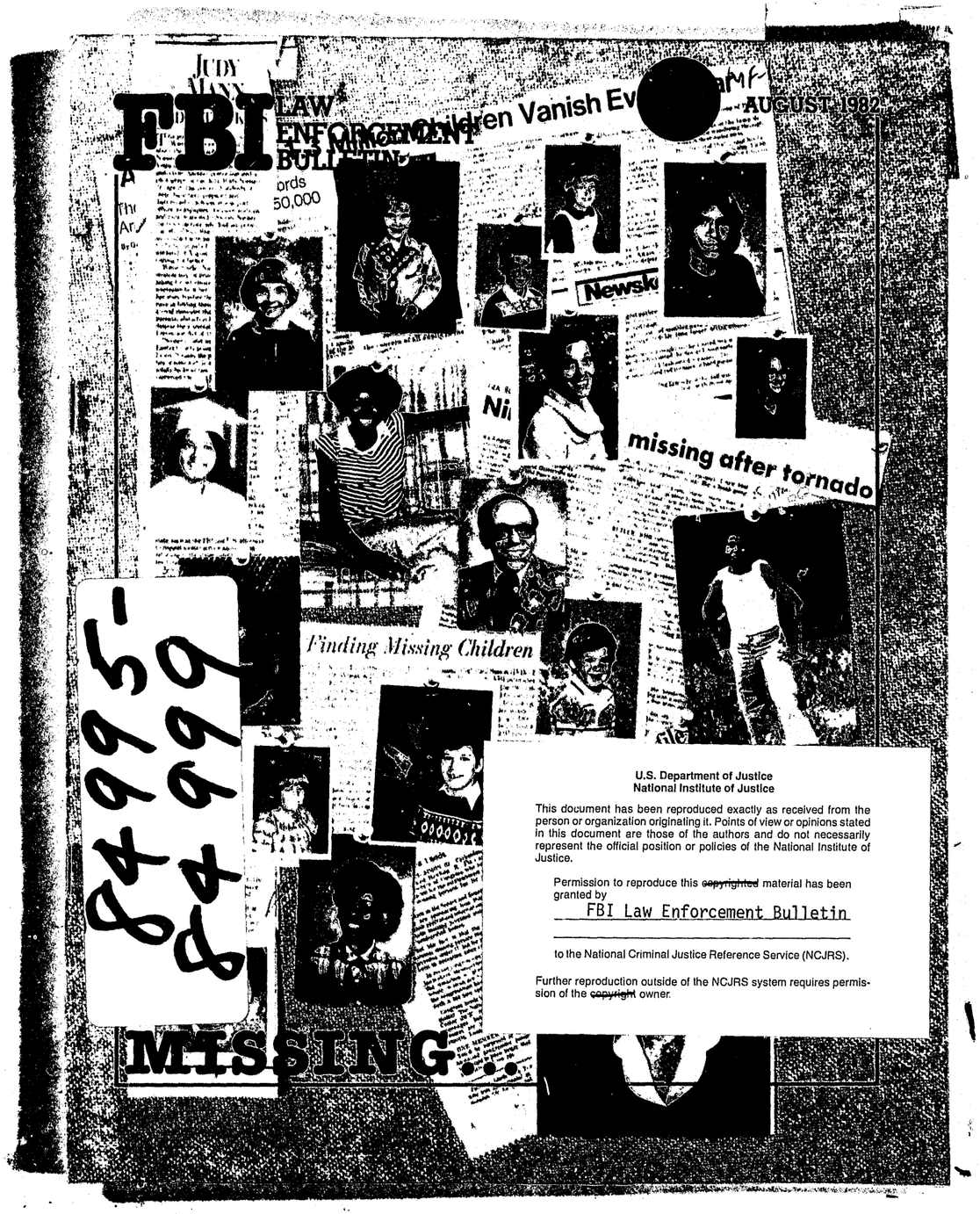

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The NCIC's Missing Person File can be an invaluable tool to investigators in solving missing person cases. See Story p. 20.

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

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

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Director's Message

At the beginning of this year, Attorney General William French Smith assigned concurrent jurisdiction to investigate drug offenses to the FBI in cooperation with the Drug Enforcement Administration. This is part of an "overall effort to achieve more effective drug enforcement through coordinated efforts involving the Drug Enforcement Administration, the FBI, the United States Attorneys and other agencies in this and other Departments," according to the Attorney General.

The Attorney General praised the work of the Drug Enforcement Agency, saying that everyone at DEA "can be justly proud of their accomplishments." However, because of the magnitude of the drug problem today "for the first time since its establishment over 50 years ago, the full resources of the FBI will be added to our fight against the most serious crime problem facing our nation. . . ."

This move is part of the Justice Department's overall strategy to bring about more effective drug law enforcement through more coordinated efforts on the part of the DEA, the FBI, U.S. Attorneys, other agencies in the Justice Department, and other departments of the Federal Government. The DEA, according to the Attorney General, "will continue its fine work" and will be helped by this new cooperative effort.

The FBI's investigative effort in this area will be concentrated on major narcotics trafficking organizations, both those tied to traditional organized crime and not, and on high-level smugglers, distributors, manufacturers, financiers, and corrupt public officials who aid narcotics dealing. All the FBI's new authority will be exercised in close coordination with DEA.

We found that this close coordination could, and did, work in the 6 months before this new plan was announced. During that time, the number of joint investigations increased from 6 to 120 throughout the country. In that period, the FBI Executive Assistant Director for Investigations, Francis M. Mullen, Jr., acted as Administrator of DEA. From an administrative standpoint, this was a very good way of bridging the gaps that existed between the two agencies. We envision the continuation of this coordination, including cross-training of DEA and FBI Agents.

The resources of the FBI will be applied as they have been consistently in the past—that is, to do the work that State and local law enforcement cannot do, as defined by the Congress in its setting of Federal jurisdiction. Often, large interstate narcotics smuggling is beyond the budget, personnel, and monetary abilities of local departments. Adding FBI resources in manpower, geographic coverage, and newly gained experience in undercover and organized crime investigations to DEA's wealth of knowledge and experience in the drug field, we believe will have a substantial impact on the national drug problem.

William H. Webster
Director
August 1, 1982

REASONABLE EXPECTATION OF PRIVACY, THE EMPLOYEE-INFORMANT, AND DOCUMENT SEIZURES
(Part I)

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

"A" is the owner of a small construction business which has recently been awarded several government contracts. "B" is his secretary and bookkeeper, and her responsibilities include access to and control over company records. The records are kept in a locked safe in B's office, and both A and B have keys to the safe. B suspects that A is bribing public officials to obtain government contracts, and her suspicions are enhanced by certain records that she has handled in the course of her daily duties. B reports her suspicions to a law enforcement agency having jurisdiction over this type of offense. She informs an officer that certain records maintained at the business premises support her belief that A is violating the law. The officer tells her to return to the business, obtain the questionable records, and bring them to the police station for his review. B returns to the business during normal working hours and takes the suspicious files out to her car for delivery that evening to the officer. Does B's conduct constitute a search under the fourth amendment to the U.S. Constitution,[1] and if so, is such a search reasonable? These questions can only be answered by an analysis and application of the "reasonable expectation of privacy" doctrine, which was announced by the Supreme Court in the late 1960's, and of recent Federal court decisions interpreting the fourth amendment. This article discusses some of the important issues raised by the hypothetical case described above and reviews those decisions which offer some answers.

Reasonable Expectation of Privacy Standard—Origin and Development

The reasonable expectation of privacy concept has its roots in the U.S. Supreme Court's decision in *Katz* v. *United States*.[2] FBI Agents monitored incriminating gambling conversations of Katz by the warrantless use of a microphone on top of a public telephone booth used by Katz. Katz was convicted of Federal gambling violations and his conviction was affirmed by a Federal appellate court. The Supreme Court reversed, and in so doing, focused upon the question of whether the warrantless microphone surveillance constituted a search under the fourth amendment. The Court observed that Katz made an effort to preserve the privacy of his conversations by closing the door to the phone booth and concluded that the FBI's conduct violated the defendant's privacy expectation, upon which he justifiably relied. The Court concluded that such conduct amounted to a search which, in the absence of a warrant, was unreasonable under the fourth amendment.

A few years later, in *United States* v. *Miller*,[3] the Court applied the *Katz* formulation in a case in which Miller's bank was served with a defective grand jury subpena which called for the bank to produce copies of his checks, deposit slips, and financial statements. These records were admitted into evidence at his tax fraud trial, and he was convicted. A Federal appellate court reversed, holding that the fourth amendment was violated when the bank records were obtained pursuant to a defective subpena. The Supreme Court, however, set aside the appellate decision and held that Miller had no protectable fourth amendment interest in the incriminating records. Since the fourth amendment was not implicated, the validity of the subpena was immaterial. Miller argued that he had a reasonable expectation of privacy in the records, since they were copies of personal records furnished to the bank for a limited purpose. The Court rejected this claim and said that its decision would have been the same even if Miller's original records were involved

Special Agent Callahan

Instead of copies. The Court reasoned that Miller had no justifiable expectation of privacy in records which he voluntarily exposed to his bank. Further, he assumed the risk in revealing his private affairs in this manner that the bank might convey the information to the government. The Court noted:

> ". . . the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, *even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.*"[4] (emphasis added)

A 1978 Federal appeilate decision applied the *Katz* reasonable expectation of privacy rationale in a tax evasion case. In *United States* v. *Choate,*[5] the Court found that Choate, the addressee, had no justifiable expectation of privacy in information appearing on the face of mail addressed to him. The court held that the mail cover used in the investigation was valid, notwithstanding the absence of a warrant, because the sender of the mail knowingly exposed the outside of the letters to postal employees and others.

A more recent application of the privacy concept occurred in the Supreme Court's 1979 decision in *Smith* v. *Maryland.*[6] In *Smith,* local officers had reason to believe that the defendant was making threatening and obscene telephone calls to the victim. Without a warrant, they placed a device on the suspect's phone line designed to monitor numbers dialed from his telephone. The installation occurred at the central office of the telephone company. The device disclosed a call placed on the suspect's phone to the victim's home. Based in part on this fact, police obtained a search warrant for the suspect's home. The subsequent search revealed incriminating evidence. Smith was convicted, and his appeal was denied by the Court of Appeals of Maryland. Smith argued before the U.S. Supreme Court that he had a reasonable expectation of privacy in the numbers he dialed on his home phone, and therefore, when police obtained those numbers without a warrant, an unreasonable search occurred. The Court rejected this contention and held that Smith had no reasonable expectation of privacy in these circumstances. The Court observed:

> "When he used his phone petitioner voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment. . . . In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed."[7]

Since Smith had no reasonable expectation of privacy, the fourth amendment was inapplicable, and the use of the monitoring device did not constitute a search.

The foregoing cases stand for the proposition that when an individual chooses to reveal his private affairs voluntarily to third parties, whether that revelation be in the form of written records, mail, or telephone numbers dialed, the person has no reasonable expectation of privacy in that which he voluntarily exposes. In such circumstances, the individual is held to have assumed the risk that the party to whom such voluntary revelations are made might turn the information over to the police. If no reasonable expectation of privacy is intruded upon, no search takes place, and the fourth amendment is inapplicable. Applying this reasoning to the hypothetical case described above, it can be argued that when A voluntarily exposes criminal wrongdoing to B in the form of records to which she has access and over which she has control, he has no expectation of privacy with respect to B in those records.

Privacy and the Employer-Employee Relationship

In the hypothetical case, if the police were to appear at A's business office to conduct a warrantless search for records, such conduct would likely be viewed by the courts as an unwarranted intrusion into A's reasonable expectation of privacy. *Mancusi* v. *DeForte*[8] illustrates the point. In *DeForte,* State officers conducted a warrantless search of a room in a union hall that the defendant union official shared with other union officers. They seized union records which incriminated DeForte. The Supreme Court reversed his State conviction, holding that he had a reasonable expectation of privacy in the room he used with other union officers. This reasonable privacy expectation was unreasonably invaded by the warrantless action of the police. However, in reversing DeForte's conviction, the Court observed:

> ". . . DeForte shared an office with other union officers. DeForte still *could reasonably have expected that only those persons* . . . would enter the office and that records would not be touched except with their permission . . . ."[9] (emphasis added)

An inference can be drawn here that although DeForte had a reasonable expectation of privacy in the union office vis-a-vis outside governmental intrusion, such did not exist with respect to other union officials with whom he shared the office space. The existence of such a distinction finds further support in a recent U.S. Supreme Court decision in *Marshal* v. *Barlow's, Inc.*[10] In *Marshal,* an inspector representing the U.S. Department of Labor appeared at the business premises of Barlow to conduct a safety inspection pursuant to Federal statute. Barlow determined that the inspector had no warrant and refused to allow the inspection. A court order was obtained authorizing the inspection. Barlow again refused admission and sought injunctive relief. A three-judge district court ruled in Barlow's favor and issued an injunction which barred the Government from conducting a warrantless search of the business. The Secretary of Labor appealed, and the Supreme Court held the Federal statute unconstitutional insofar as it purported to authorize warrantless safety inspections of covered businesses. The Court rejected the Government's claim that since Barlow had exposed safety violations to the observation of his employees in the nonpublic area of the business space, he forfeited as well his expectation of privacy regarding warrantless safety inspections. The court explained that things which employees observe in their daily functions are beyond the employer's reasonable expectation of privacy. However, the Court distinguished Government inspectors from employees as follows:

> "The government inspector, however, is not an employee. Without a warrant he stands in no better position than a member of the public. . . . The owner of a business has not, by the necessary utilization of employees in his operation, thrown open the areas where employees alone are permitted to the warrantless scrutiny of government agents."[11]

In 1979, the Third Circuit Court of Appeals decided *In the Matter of Grand Jury Empanelled February 14, 1978.*[12] In this case, the Government served a subpena duces tecum upon the office manager of Dominick Colucci's construction company (a sole proprietorship) for the business records of the company. The U.S. district court quashed the subpena, holding that the fifth amendment shielded Colucci from the compelled disclosure of his business records. The Government appealed, claiming that Colucci was not compelled to provide testimonial evidence against himself since the subpena for the records was directed to the office manager and not Colucci. Colucci countered that argument by claiming that as the office manager's employer, he had constructive possession of the disputed records. The court of appeals rejected this argument and noted that the office manager's duties involved the preparation, custody, and use of these documents. The court added:

". . . the Government cannot insulate itself from the operation of the fourth amendment by recruiting an informant to do that which would violate a citizen's justifiable expectation of privacy if done by the police directly."

> "At the least, it can be said that Colucci had no expectation of privacy vis-a-vis DeMato (office manager) an individual who was under no enforceable obligation of confidentiality."[13]

The court held that this absence of an expectation of privacy precluded a conclusion that Colucci had constructive possession of the records. The district court's order quashing the subpena was reversed. While the court's decision was grounded on the fifth amendment, it sheds light on the meaning of the privacy concept growing out of the fourth amendment.

The above-described decisions support the view that an employer has a reasonable expectation of privacy in his business affairs sufficient to protect his records against direct, warrantless seizure by police. However, he may have no such expectation in business records where he has voluntarily relinquished access and control over them to an employee.

Privacy and Informant Seizures—General Rule

It is a well-established principle of law that the Government cannot insulate itself from the operation of the fourth amendment by recruiting an informant to do that which would violate a citizen's justifiable expectation of privacy if done by the police directly.[14]

The principle was established in *Gouled* v. *United States*,[15] a 1918 Supreme Court decision in which a business acquaintance of the defendant, on behalf of and under direction of the Federal Government, seized without warrant certain documentary evidence from the defendant's office while there on a friendly visit. The Court reversed a conviction based on the use of this evidence.

The issue was whether the secret taking of evidentiary papers from a suspect's business office by a Government agent lawfully present offended the fourth amendment. The Court held that the fourth amendment prohibition against unreasonable searches and seizures operates to bar evidence taken by a governmental agent who gains entry to a suspect's home or office by stealth, social acquaintance, or under guise of a business call, and who thereafter secretly seizes the incriminating materials, whether the suspect is present or not. Subsequent decisions have engrafted exceptions onto the basic rule.

Exceptions to General Rule Privacy and Nonemployee Informant Seizures

It is now a settled principle of fourth amendment law that when a criminal suspect voluntarily invites a police informant into an area where he reasonably expects privacy and chooses to expose criminal conduct to the informant, the suspect gives up any reasonable privacy expectation by misplacing his trust in the informant. The suspect is held to have assumed the risk that the person with whom he is dealing might be an informant or police agent. Support for this principle can be found in *Hoffa* v. *United States*.[16]

Hoffa, a well-known labor official, was awaiting trial after being indicted for alleged criminal violations of the Taft-Hartley Act. The Government suspected that Hoffa would attempt to tamper with the jury at his upcoming trial. Partin, a labor official and friend of Hoffa, agreed to assist the Government in substantiating its belief that Hoffa would attempt to improperly influence the jury. At Hoffa's invitation, Partin was present in Hoffa's hotel suite on several occasions during his Taft-Hartley trial. While there, he was privy to or overheard several incriminating conversations engaged in by Hoffa and others regarding a plot to bribe jurors. Hoffa was ultimately convicted of obstruction of justice, based in part upon testimony furnished by Partin regarding the above conversations. The conviction was affirmed by a Federal appellate court and the Supreme Court accepted the case for review. Hoffa argued that the informant's presence in his hotel suite violated the fourth amendment, in that his failure to disclose his role as a Government operative vitiated the consent to enter, and that by listening to Hoffa's conversations, the informant conducted an illegal search for verbal evidence. The Court, although not specifically using the reasonable expectation of privacy terminology (*Hoffa* predated *Katz* by 1 year), rejected Hoffa's claim. The Court held that when Hoffa invited the informant into his private premises and voluntarily exposed planned wrongdoing, he relied not on the security of the hotel room but rather upon his misplaced confidence in the informant. The Court observed that when Hoffa misplaced his trust in the informant, he necessarily assumed the risk that this trust might be betrayed, that the informant might reveal his words to the Government and ultimately testify against him in a criminal trial.

The Supreme Court's 1971 decision in *United States* v. *White*[17] marked the convergence of the principles of reasonable expectation of privacy and misplaced confidence—assumption of the risk. In *White*, a Government informant was fitted with a radio transmitter which operated to allow law enforcement officers to monitor an incriminating conversation that White had with the informant in White's home. At White's Federal narcotics trial, the monitoring officers testified to what they overheard, and White was convicted. A Federal appellate court reversed the conviction, holding that such warrantless monitoring violated the defendant's reasonable expectation of privacy as explicated in *Katz*. The Supreme Court reversed and observed that the *Katz* decision did not in any way disturb or negate its decision in *Hoffa*. The Court used language which is significant in support of the idea that the principles of reasonable expectation of privacy and misplaced confidence—assumption of the risk—were joined in the *White* decision. The Court stated:

> "If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's *constitutionally justifiable expectations of privacy,* neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and *whose trustworthiness* the defendant *necessarily risks*." [18] (emphasis added)

A similar result was reached in *United States* v. *Coven*.[19] A business associate of the defendant agreed to plead guilty to one count of mail fraud and to cooperate with the Government in its investigation regarding Coven and others. Wilt, the cooperating business associate, was invited into the private offices of the defendant and surreptitiously recorded conversations of the defendant. The conversations were conducted in Wilt's presence, although he was not a party to them. Additionally, while in the private office of the defendant, Wilt read into a tape recorder the contents of documents which were furnished to him by Coven. The defendant was convicted of wire and mail fraud, based in part upon evidence gleaned from the efforts of Wilt on behalf of the Government. On appeal, the appellate court rejected Coven's fourth amendment arguments, holding that he had no reasonable expectation of privacy in a conversation conducted in the presence of a third party who was lawfully present, even when the third party was not a party to the conversation. Furthermore, the court found no expectation of privacy regarding Wilt's reading into a tape recorder the contents of documents given to him by Coven. The court reasoned that since Wilt could have testified to the contents of the documents, he could read their contents into a recorder without violating the fourth amendment. Thus, a person has no reasonable expectation of privacy in wrongdoing which he voluntarily reveals to a third party. If the third party turns out to be a Government agent, the wrongdoer is held to have misplaced his trust in the third party and to have assumed the risk that the third party might deceive him. In such circumstances, the fourth amendment is inapplicable and no search takes place.

In the hypothetical case, A (the employer) voluntarily exposed to B, his employee, evidence of criminal wrongdoing in the form of written records. B was given access and control over those records by A. Many similarities exist between the facts of the hypothetical and those of cases like *Hoffa, White,* and *Coven*. In all of the cases, including the hypothetical, the informant is lawfully present. Likewise, in all, the defendant voluntarily exposes to the informant, or in his presence, incriminating evidence.

In *Coven*, part of the incriminating evidence involved written material, the contents of which were read into a tape recorder by the informant. The legal principles found in cases like *Hoffa* and *White*, when considered in light of the similarities noted above, suggest that A, with respect to B, has no reasonable expectation of privacy in the incriminating records. Thus, there is no search when B turns over to the police records which she has access to and control over by virtue of her employment status. The fourth amendment seems inapplicable to the hypothetical case.

The only apparent factual distinctions between cases like *Hoffa* and the hypothetical are that in the latter, the informant is an employee and the evidence is contained in records which are physically taken. The remaining question is whether these factual differences are distinctions of constitutional dimension.

Privacy and Employee-Informant Seizures

In *United States* v. *Billingsley*,[20] one Gander, the secretary-treasurer of a corporation, removed incriminating documents from the corporate president's office without his knowledge. These records were turned over to the Government and admitted into evidence against several individuals on trial for mail fraud. The corporate president, from whose office the records were removed, and other defendants were convicted. Prior to the secretary-treasurer's removal of the documents, he

". . . when a criminal suspect voluntarily invites a police informant into an area where he reasonably expects privacy and chooses to expose criminal conduct to the informant, the suspect gives up any reasonable privacy expectation. . . ."

had notified the FBI by telephone of his suspicions regarding criminal misrepresentations that the defendants had made to investors. He told the FBI at that time that he already was in possession of corporate records which confirmed his suspicions. Approximately 1 week after alerting the FBI to the existence of certain incriminating records in his possession, Agents arrived to collect them. It was between the first telephone call to the FBI and the time Agents arrived to pick up the first group of documents that Gander removed a second group of records from the president's office. At the time the Agents appeared to pick up the first group of records, Gander turned over to them the second group as well. The defendants argued that this second group of records should have been declared inadmissible since Gander had clearly been in contact with the FBI prior to obtaining them and was acting at their direction and under their control when he went to the office and removed them. The appellate court rejected this contention, holding that Gander, by virtue of his position in the corporation, had a clear right to custody of the records. The court noted that the trial record was devoid of any indication that the removal of the records from the president's office was illegal. The court finally concluded that Gander was not acting as an agent of the FBI at the time he removed the second group of records. It is submitted that since Gander had a right to custody of the records because of his job and did not remove them illegally from the president's office, the result would have been the same even if the court had found Gander to be an agent of the Government.

In *OKC Corporation* v. *Williams*,[21] the corporation filed suit, seeking to enjoin the Securities Exchange Commission (SEC) from investigating certain alleged questionable oil pricing practices. The corporation argued that the SEC investigation began as a result of a fourth amendment violation, and therefore, should be ordered discontinued. At a board of directors' meeting, a decision was made to distribute copies of a report to each of the board members. One member turned his copy over to an OKC employee, who copied it and made the copy available to another corporate employee. The latter turned over his copy of the report to the SEC.

The district court judge granted the SEC's motion for summary judgment on alternative grounds. First, the court determined that when the corporate board member voluntarily handed over his copy of the report to another corporate employee, he took the risk that the latter individual, or anyone to whom the latter person would make the report available, would reveal the report or its contents to the Government. The court observed that the fact that the board member turned the report over to the corporate employee for a limited purpose of performing a tax analysis was of no consequence. The court found that the board member had no reasonable expectation of privacy in the report he voluntarily revealed to his associate. Second, the court concluded that the SEC had no involvement whatsoever in obtaining the report. The district judge subsequently reconsidered and withdrew the portion of his opinion relating to expectation of privacy and assumption of risk. He reasoned that the constitutional issue was difficult and unnecessary to decide, since the case could be decided upon less complex grounds, namely, that the Government played no part in the report coming into its hands. Notwithstanding this withdrawal, the district judge's analysis is highly persuasive.

In *United States* v. *Williams*,[22] the defendant, a former president of a federally insured bank, was convicted of misapplication of bank funds and obtaining extensions of credit from the bank by fraudulent means. After the defendant's scheme was uncovered, he resigned as bank president but remained a member of the bank's board of directors. The defendant's successor to the position of bank president was contacted by an FBI Agent and asked to produce any records in possession of the bank which might prove useful to the investigation of Williams' activities. The new president, in response to this request, gathered up five unsealed envelopes containing monthly checking statements, cancelled checks, and deposit slips belonging to Williams. These items had been held by the bank for Williams to pick up, apparently at his request. The new president voluntarily turned these records over to the FBI Agent when he appeared at the bank. Some of the items were introduced into evidence at Williams' trial.

Following his conviction, Williams argued on appeal that the Government obtained the documents in violation of the fourth amendment. The appellate court held that the new president was acting as an agent of the FBI when he gathered up the questioned documents. Notwithstanding, the court concluded that Williams could entertain no legitimate expectation of privacy in the contents of original checks and other documents which he placed in the control of the bank. The court further held that he could not reasonably expect that the bank would not deliver these records to the FBI for their perusal. Williams' fourth amendment claim was rejected.

United States v. *Ziperstein* [23] presented a factual situation strikingly similar to the hypothetical case set forth in this analysis. Ziperstein was the owner of several medical clinics located in Chicago, Ill. Eisentraut was a pharmacist in Ziperstein's employ. Eisentraut contacted the FBI and told an Agent that he had knowledge and documentary evidence that Ziperstein was involved in a large-scale Medicare fraud. He informed the Agent that the records were located in a storage room at one of the clinics, and the Agent expressed an interest in them. The documents included prescriptions filled by Eisentraut, as well as other incriminating papers. Two days later, Eisentraut took the records to the FBI. Some of the documents were admitted into evidence at Ziperstein's trial, and he was convicted. On appeal, Ziperstein argued that Eisentraut stole the records and that this theft, in view of the FBI's expressed interest in the material, violated the fourth amendment. In rejecting the defendant's contention, the court observed:

> "We are not concerned with determining whether these documents are properly characterized as 'stolen.' The Fourth Amendment clearly countenances numerous seizures where the items seized are taken without the express consent of the owner. Instead, the Fourth Amendment inquiry focuses on whether the owner had a reasonable expectation of privacy with respect to the seized items." [24]

The court explained that the prescriptions came within the daily observation and control of Eisentraut, and thus, Ziperstein had no expectation of privacy in such records.

The foregoing cases provide support for the idea that there is no constitutional significance to informant seizures simply because the informant is an employee. Furthermore, there should be no constitutional distinction between an informant seizing verbal evidence, such as was the case in *Hoffa*, and an informant-employee seizing tangible evidence in the form of incriminating records when access and control exist. In these situations, a common thread appears throughout. A person involved in crime has voluntarily exposed criminal wrongdoing to a third party. He is thus held to give up any reasonable expectation of privacy he had with respect to the information so revealed. He is held to have misplaced his trust in the third party and to have assumed the risk that the third party might be an informant. The fact that the informant is an employee and turns over tangible rather than verbal evidence is of no constitutional consequence.

In the hypothetical case, A voluntarily exposed evidence of criminal wrongdoing to B, his employee. A voluntarily gave her access and control over the incriminating records. Therefore, A has no reasonable expectation of privacy in the records with respect to B. B's taking them at the suggestion of the police makes her a police agent; however, this taking involves no search and the fourth amendment is inapplicable. The evidence will be admissible against A at his trial.

The conclusion of this article will examine: (1) Other legal justifications for the seizure of documents by employees, (2) potential criminal liability of both employee and officers growing out of document seizures, and (3) statutory impediments to the taking and use of certain documents. **FBI**

Footnotes

[1] U.S. Const. amend. IV provides in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."
[2] 389 U.S. 347 (1967).
[3] 425 U.S. 435 (1976).
[4] *Id.* at 443.
[5] 576 F.2d 165 (9th Cir. 1978), *cert. denied*, 439 U.S. 953 (1978). A mail cover is defined by the U.S. Postal Service (USPS) as the process by which a record is made of any data appearing on the outside cover of any class of mail. It does not involve opening mail or checking the contents of any class of mail. USPS regulations governing mail covers are codified in 39 C.F.R. § 233.2 and designate the chief postal inspector to administer all matters governing mail cover requests by law enforcement agencies.
[6] 442 U.S. 736.
[7] *Id.* at 744.
[8] 392 U.S. 364 (1968).
[9] *Id.* at 369.
[10] 436 U.S. 307 (1978).
[11] *Id.* at 315.
[12] 597 F.2d 851 (3d Cir. 1979).
[13] *Id.* at 865.
[14] Annot., 36 A.L.R.3d 553 at 559 (1971).
[15] 255 U.S. 298 (1918).
[16] 385 U.S. 293 (1966). For other Supreme Court decisions with similar holdings, see *Lopez* v. *United States*, 373 U.S. 427 (1963) and *Lewis* v. *United States*, 385 U.S. 206 (1966).
[17] 401 U.S. 745 (1971).
[18] *Id.* at 751.
[19] 662 F.2d 162 (2d Cir. 1981).
[20] 440 F.2d 823 (7th Cir. 1971), *cert. denied*, 403 U.S. 909 (1971).
[21] 490 F. Supp. 560 (N.D. Tex. 1979).
[22] 639 F.2d 1311 (5th Cir. 1981), *cert. denied*, 70 L.Ed.2d 473 (1981).
[23] 601 F.2d 281 (7th Cir. 1979), *cert. denied*, 444 U.S. 1031 (1980).
[24] *Id.* at 289.

END