

## TRAFFIC

### Somebody Up There Watching

Not satisfied to snag speeders with only prowl cars and radar traps, the Florida highway patrol has a three-plane air force. At a couple of dozen locations, Florida highways are festooned with white stripes a quarter-mile apart. Orbiting at altitudes of 800 ft. to 1,500 ft., a trooper in a Piper Cub can clock cars whizzing by below. If his stop watch says a car has raced over the quarter-mile stretch too fast (less than 12.8 sec. in a 70-m.p.h. zone), the flying cop radios a cruiser on the ground to make the arrest. All of which goes

analysis in a ruling that suspended the use of radar and electronic timers as well as airplanes. Under current Florida law, said Faircloth, the information provided by all these gadgets is hearsay evidence and is therefore inadmissible. To restore electronic enforcement, Faircloth urged the state legislature to legalize such information by classifying it as prima-facie evidence. If the legislature agrees, Florida courts will be able to accept the evidence as conclusive whenever the defendant fails to rebut it.

The prima-facie technique has been adopted by legislatures or courts in many of the 45 states where police now use radar. Joining four other states,



FLYING TROOPER HUNTING SPEEDERS  
Shot down by legal flak.

a long way toward explaining why the highway patrol last year caught a record 3,500 speeders.

It is a record that is not likely to be broken soon. Just before the Labor Day traffic jam, Pinellas County Prosecutor Alan Williams fired a hail of legal flak at Florida's aerial constables by refusing to prosecute one John C. Winslow Jr., charged with speeding over a bridge-causeway between Tampa and St. Petersburg. The prosecutor declared that he had no other choice because a state statute limits arrests without warrant to offenses committed in the arresting officer's presence. "I'm not criticizing the use of an airplane," explained Williams, "but a police officer [on the ground] who hasn't observed a man committing a misdemeanor can't arrest him for it."

To the highway patrol's dismay, Florida's Attorney General Earl Faircloth last week went far beyond Williams'

Connecticut's top court recently went even further by ruling that all judges in that state can take "judicial notice" of the principle of radar, meaning that they can assume that the gadget works as claimed when properly set up and operated. A motorist caught speeding in Connecticut by radar has little chance of acquittal. The odds are that motorists in Florida and elsewhere may eventually have no better legal luck with aerial surveillance.

## FOREIGN LAW

### Until Proven Innocent

Ever since he drove across the border into Mexico, Dykes Simmons, 38, has had good reason to reflect upon the problems of American suspects abroad. For seven years, while he has sweated out a death sentence in his sun-baked prison cell in Monterrey, the Fort Worth crane operator, now a convicted mur-

derer, has pondered the harsh fact that whatever Mexican law says, an American defendant may well have to prove his innocence in the face of assumed guilt. In a U.S. court, a prosecutor would have had to prove Simmons' guilt beyond a reasonable doubt—a difficult, if not impossible, task.

**Illegal Line-Up.** Dykes Simmons is the first American ever to be sentenced to death by a Mexican court. The crime for which he was condemned to face a firing squad occurred on the night of Oct. 12, 1959, after Simmons entered Mexico from Laredo, Texas, about 45 minutes behind a Monterrey dentist named Raúl Pérez Villagómez. Roughly 43 miles south of Laredo, the dentist's car broke down. Leaving his younger brother and two sisters behind, Villagómez went for help. When he got back to his car, his brother and one sister were dead, riddled with .22-cal. bullets. Hilda Villagómez, 18, had been shot seven times, and was barely alive.

At the hospital, where she survived for 17 days, Hilda described the gunman as a tall, blond, 200-lb. American who had stopped in his southbound car, tried vainly to start the Villagómez car, and started shooting when the youngsters giggled at his failure. He wore a white shirt and dark trousers, she said, had two gold teeth, and drove a blue 1958 Chevrolet with Texas plates. Mexican police immediately began a massive man hunt for all Americans who had crossed the border at Laredo on Oct. 12. In a dusty village 130 miles northwest of the murder scene, they picked up Simmons—and immediately freed him as the wrong man.

**Sightseeing Mistake.** Not only was he 3 in. shorter and more than 35 lbs. lighter than the fugitive Hilda had described, but he had dark hair (now grey) and no gold teeth; he wore different clothes and drove a two-toned 1954 Oldsmobile. Told that it was all a mistake, Simmons spent the next day sightseeing and swimming only 50 miles from the border. He might better have headed for home. While he relaxed, the police learned that he had been convicted of burglary and auto theft in the U.S. Besides, he was technically a fugitive from a Texas mental hospital, and he had signed his tourist's card with his brother's name (because the car was registered in that name). Most important, Mexico was crying for an arrest.

Picked up once more, Simmons was threatened with a cocked gun in a vain effort to make him confess, then hauled to Hilda's hospital room, where the dying girl had already identified the killer as everyone from her own doctor to one of the FBI's ten top fugitives. In such cases, the penal code of the State of Nuevo León specifies that the suspect be placed in a line-up with similar persons in similar dress. Simmons was ordered to wear a white shirt and dark trousers and brought into the room with white-coated doctors. Hilda by then could hardly speak; a bullet had de-

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stroked her tongue and upper teeth. The prosecutor leaned close and only he heard her alleged words: "Yes, it is he. May God forgive me if I am wrong."

Present at the time was a U.S. consular official with only one duty: the standard consular task of seeking for arrested Americans the same justice enjoyed by the arresting country's own citizens. In Simmons' case, however, the U.S. official failed to protest the patent violation of Mexican line-up law. He had never heard of it.

A "Confession." Simmons is convinced that U.S. consular officials dealt him an even worse blow three weeks later after Mexican newspapers headlined a "confession" by another man—a psychotic Texas physician who had been arrested near Múzquiz for running around naked while shooting up an Indian village with a .22 rifle. Not only did the doctor roughly answer Hilda's description, but on the day of the murder he had been seen carrying a .22 pistol only six miles from where the shooting occurred. According to newsmen and the Múzquiz police chief, the doctor repeatedly stated that he had killed "three children" on the Monterrey highway because "they laughed at me."

With the permission of a Mexican judge, U.S. officials drove the demented doctor across the border (after putting him in a straitjacket) and deposited him in a Waco mental hospital. Since released, he is now practicing in Houston. Bullets from his assorted weapons have never been matched against those used in the Villagómez murder, and no solid evidence links him to the Villagómez crime. Nor has any American in living memory ever been extradited to Mexico.

Simmons, who was left behind to try to prove his innocence, had two Mexican lawyers, neither of whom spoke enough English to communicate with their bewildered client, one of whom is now a fugitive facing embezzlement charges. Though the defendant voluntarily took two lie-detector tests, which are sometimes admissible in Mexican courts, the inconclusive results were ignored. The murder gun was never found; a clear tire mark at the scene did not match Simmons' tires; hundreds of curiosity seekers obliterated all fingerprints on the death car before police thought of checking it for fingerprints.

Adopting innocence, Simmons' lawyers argued that he should be returned to Texas as a mental patient who had no criminal responsibility under Nuevo León law. Nevertheless, without a jury, Simmons was found guilty in March of 1961, largely on the strength of Hilda's alleged identification. Although an appellate court tossed out that key evidence as illegal in 1962, the original trial judge simply pronounced Simmons guilty once more on the basis of disputed facts and such other items as his falsified tourist card and "penal antecedents." In 1964 the Mexican Supreme Court upheld that verdict; last month Simmons' bid

can be done for him.

McHenry Tichenor, board chairman of TV Station KGBT in Harlingen, Texas, has devoted much of his time and money for the past two years investigating the case; he, among others, is satisfied that the once psychotic doctor is the real killer. A young Beverly Hills lawyer named Dennis Fredrickson, who tried to aid Simmons in Mexico, is also convinced that top-level U.S. diplomacy sparked early next year when the Senate Subcommittee on American Republics Affairs holds its scheduled hearings on the Simmons affair.

ment officials insist that nothing more can be done for him.

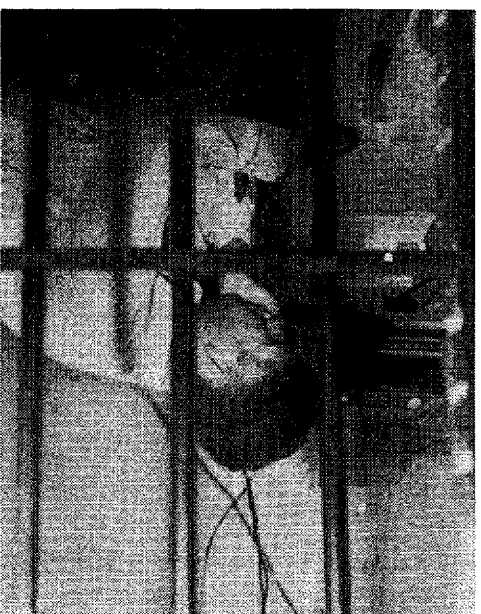
U.S. officials vigorously protested his treatment. Simmons is now permitted such amenities as a TV set, a stereo phonograph, a typewriter and daily visits from his wife, Beatrice, a U.S. nurse whom he married in prison when she visited him there in 1964. Beatrice, though, is about to leave Mexico for lack of money. Because her husband rejects any face-saving deal, State Department officials insist that nothing more can be done for him.

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PRISONER SIMMONS  
He should have headed for home.



MRS. DYKES A. SIMMONS JR.