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## Unmasking the Criminal: A Proposal to Prevent the Accessibility of False Identification, 18 J. Marshall L. Rev. 789 (1985)

Gerard Ring

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## UNMASKING THE CRIMINAL: A PROPOSAL TO PREVENT THE ACCESSIBILITY OF FALSE IDENTIFICATION

False identification represents a growing national problem that costs taxpayers over ten billion dollars each year.<sup>1</sup> The criminal use of false identification can range from the unauthorized entry of illegal aliens,<sup>2</sup> to drug smuggling,<sup>3</sup> to sophisticated bank and credit fraud schemes.<sup>4</sup> Access to false identification is simple and inexpensive, yet no comprehensive plan exists to reduce the problem.

The term "false identification" primarily describes two types of identification fraud. The first area of false identification is counterfeit documents. Counterfeit identification involves the physical manufacturing of fraudulent identification designed to resemble official identification documents. The second area of concern is the fraudulently obtained, bona fide identification document. Unlike counterfeit identification, fraudulently obtained identification is issued by official government agencies. These official documents may consist of birth certificates, social security cards, driver's licenses, unemployment cards, passports, and other state identification cards. This article focuses on the second type of false identification because fraudulently obtained identification undermines the integrity of government-issued identification and casts suspicion on the validity of each person's identification.

False identities, like true identities, begin with a birth certificate. Birth certificates have the capacity to operate as "breeder documents"<sup>5</sup> because of their role in assisting criminals to obtain additional identification documents. The criminal can use the birth certificate of a deceased person to further establish his pseudo-identity. The criminal can parlay a birth certificate into a portfolio of false identification for use in various kinds of criminal activity.

The most common scheme used to establish a false identity is

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1. *False Identification: Hearings on H.R. 352, H.R. 6105, H.R. 6936, and S. 2043 Before the Subcomm. on Crime of the House Comm. on the Judiciary, 97th Cong., 2d Sess. 52 (1982)* (prepared statement of Representative Henry J. Hyde) [hereinafter cited as *Hearings*].

2. *See Games Illegals Play*, NEWSWEEK, June 25, 1984, at 24, col. 2.

3. *See, e.g., United States v. Mejias*, 552 F.2d 435 (2d Cir.), *cert. denied*, 434 U.S. 847 (1977).

4. *See, e.g., United States v. Adamo*, 534 F.2d 31 (3d Cir.), *cert. denied*, 429 U.S. 841 (1976).

5. *Hearings, supra* note 1, at 21 (testimony of Gordon J. Humphrey, U.S. Senator from New Hampshire).

known as the Infant Death Identity (IDI) method.<sup>6</sup> Under the IDI method, the criminal simply conducts a search of obituary notices for the name of a person who would have been relatively the same age as the criminal, but who died as a child. The criminal then adopts the deceased child's name, gathers other general data about the deceased child, and ultimately requests a copy of "his" birth certificate at a state or county registration office. Because most states do not cross-index birth and death certificates, the majority of birth certificates give no indication that the person listed on the certificate is deceased. Consequently, the criminal can use the deceased child's birth certificate to apply for additional government-issued identification documents.

Each year, over 10,000,000 copies of birth certificates are requested by the public.<sup>7</sup> While most states require that a person have a "legitimate interest" in the birth certificate to receive a copy,<sup>8</sup> access to copies of birth certificates is rarely denied.<sup>9</sup> The sheer volume of birth certificate requests alone makes enforcement of the "legitimate interest" restriction impracticable. Therefore, the IDI method of false identification has become the most attractive way to establish a false identity. One member of the underground weathermen organization, for instance, used the IDI method to create over one hundred and fifty identities to support himself while eluding the Federal Bureau of Investigation.<sup>10</sup>

While the criminal use of the IDI method of false identification is widespread, most states have established no comprehensive program to combat the problem. The majority of states invoke criminal penalties only for the fraudulent use of false identification, not for mere possession. Only twenty-one states make possession of false identification illegal.<sup>11</sup> Statutes prohibiting the possession of

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6. THE CRIMINAL USE OF FALSE IDENTIFICATION, THE REPORT OF THE FEDERAL ADVISORY COMMITTEE ON FALSE IDENTIFICATION, U.S. DEP'T OF JUSTICE 106 (1976) [hereinafter cited as REPORT].

7. *Hearings, supra* note 1, at 85 (prepared statement of Russell E. Booker, Jr., Virginia Bureau of Vital Records, State Health Department).

8. *See, e.g.*, IND. CODE ANN. § 16-1-16-18 (Burns 1983).

9. In 1983, the Cook County (Illinois) Vital Statistics Department received over 157,000 requests for birth certificates. The only requests not completed resulted from the department's inability to find the certificates in their records. Telephone interviews with Michael Fish, Director of Cook County Vital Statistics (June 22, 1984).

10. REPORT, *supra* note 9, at 55.

11. ALA. CODE § 13A-9-7 (1982); CAL. VEH. CODE § 40000 (1982); FLA. STAT. ANN. §§ 322.24, 322.29 (West 1982); GA. CODE ANN. § 88-1731 (1982); HAWAII REV. STAT. § 286-131 (1976); ILL. ANN. STAT. ch. 95-1/2, § 6-301 (Smith-Hurd 1982); IND. CODE ANN. § 9-5 - 3.1-6 (Burns 1984); IOWA CODE ANN. § 321.216 (West 1978); KAN. STAT. ANN. § 8-260 (1982); KY. REV. STAT. ANN. § 186.610 (Bobbs-Merrill 1975); MICH. COMP. LAWS ANN. § 257.901 (West 1982); NEB. REV. STAT. § 60-417 (1978); N.Y. VEH. & TRAF. §§ 392, 501 (McKinney 1982); OHIO REV. CODE ANN. § 4507.30 (Page 1982); OKLA. STAT. ANN. tit. 47, § 6-301 (1984);

false identification, however, are difficult to enforce. Unless a person is caught with more than one set of identification in his possession, a presumption exists that his identification is legitimate.

This dilemma had led California, Georgia, Louisiana, Oregon, Texas, Virginia, and the District of Columbia to enact preventative legislation designed to eliminate the accessibility of deceased children's birth certificates in false identification schemes.<sup>12</sup> These jurisdictions have recently established systems to cross-match birth and death certificates prior to issuing certified copies. When the registrant named on the birth certificate dies, the state or county simply stamps "deceased" on the birth certificate in bold letters next to the registrant's name. The "deceased" notation puts the world on notice that the registrant is dead and it precludes a potential imposter from obtaining additional identification documents.

These jurisdictions have reasoned that cross-matching birth and death certificates operates to effectively eliminate the IDI method of obtaining false identification. Preventative legislation designed to counteract the IDI method, however, has been frustrated by two factors. First, because only seven jurisdictions presently match birth and death records, criminals can use the IDI method in states which do not cross-match records. Second, state cross-matching systems are frustrated because a state is unable to match the records of registrants who die outside of the jurisdiction in which they were born. It is apparent, therefore, that inherent flaws exist when only a few states independently attempt to prevent the IDI method of false identification.

Consequently, a comprehensive nationwide program to combat the fraudulent use of birth certificates should be created and enforced, with the legislation based on the spending power of the United States Constitution.<sup>13</sup> Specifically, Congress should condition certain federal grants upon the adoption of birth and death cross-matching systems. The United States Supreme Court has held that congressional conditions on federal grants are valid so long as the conditions are reasonably related to a legitimate national purpose.<sup>14</sup> Because the Supreme Court has shown "little receptivity to challenges to federal spending conditions,"<sup>15</sup> the

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CONS. STAT. ANN. § 1571 (Purdon 1982); TEX. REV. CIV. STAT. ANN. art. 4477c (Vernon 1982); UTAH CODE ANN. § 32-9-6 (1982); VT. STAT. ANN. tit. 7 § 669 (1976); VA. CODE § 46.1-384 (1982); WYO. STAT. § 31-8-105 (1977).

12. CAL. HEALTH & SAFETY CODE § 10575.5 (West 1983); D.C. CODE ANN. § 6-224 (1983); GA. CODE ANN. § 88-1730 (1984); LA. REV. STAT. ANN. § 40.60(f) (West 1983); OR. REV. STAT. § 432.122 (1983); TEX. REV. CIV. STAT. ANN. art. 4477(55a) (Vernon 1983); VA. CODE § 32.1-275.1 (1984).

13. U.S. CONST. art. I, § 8, cl. 1.

14. *Massachusetts v. United States*, 435 U.S. 444, 461 (1978).

15. G. GUNTHER, CONSTITUTIONAL LAW 237 (1980).

requirement of a rational relationship between the government's purpose and the means adopted has proven to be easily satisfied by the courts.<sup>16</sup>

The federal government provides grants to the states to assist them in the administration of their unemployment compensation programs.<sup>17</sup> Unemployment compensation benefits obtained through false identification schemes decrease the pool of benefit money available to needy recipients. The former Attorney General of Illinois estimated that the Illinois Bureau of Employment Security loses over \$66 million each year due to unemployment benefits obtained through the use of false identification.<sup>18</sup> Therefore, Congress could legitimately condition unemployment compensation grants on the state's adoption of birth and death cross-matching systems.

Because unemployment compensation is solely a matter of state concern, the federal government is not obligated to provide the states with that form of assistance.<sup>19</sup> Placing conditions on unemployment compensation grants does not operate to coerce the state's authority by the federal government. Because the states have the choice of accepting or rejecting those federal grants for their unemployment compensation programs, such legislation does not coerce the states into compliance.

Federal legislation designed to induce each state to match their own birth and death records is the most practical and efficient way to prevent the IDI method of false identification. Cross-matching birth and death records at the state level not only is feasible, it is working, with some limitations, in seven jurisdictions. Congressional action, therefore, is needed not only to establish cross-matching for each state, but to require states to forward death certificates to the registrant's state of birth for cross-matching.

*Gerard Ring*

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16. See Kaden, *Politics, Money, and State Sovereignty: The Judicial Role*, 79 COLUM. L. REV. 847, 883 (1979).

17. 42 U.S.C.A. § 502 (West 1983).

18. Chicago Tribune, Apr. 9, 1982, at 1 (Chicagoland), col. 2.

19. See *Gillum v. Johnson*, 7 Cal. 2d 744, 62 P.2d 1037 (1936).