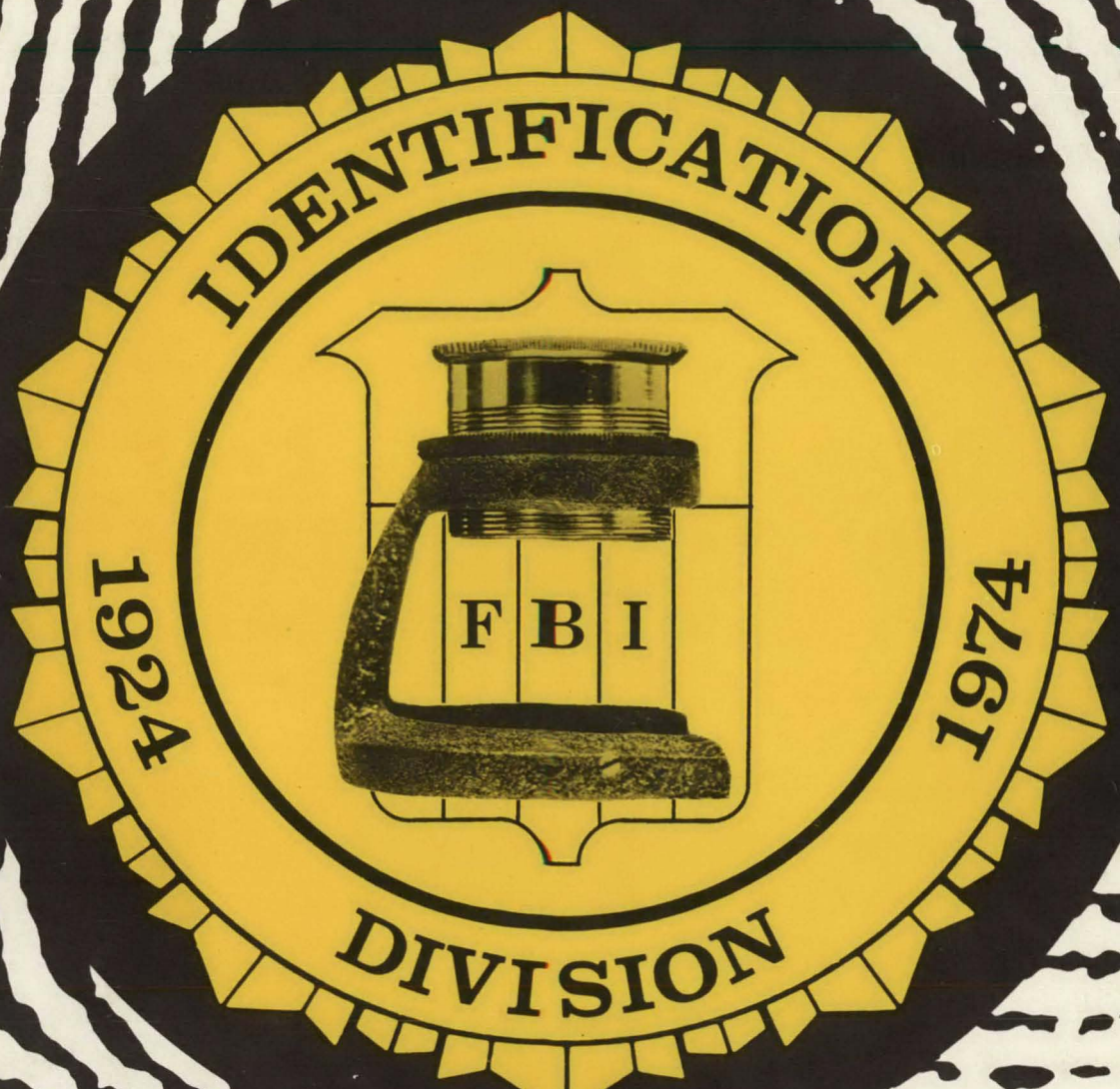
FBI Law Enforcement Bulletin

JULY 1974



Federal Bureau of Investigation Clarence M. Kelley, Director

FBI Law Enforcement Bulletin

JULY 1974
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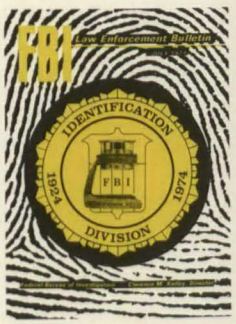
THE COVER

The FBI Identification Division, repository of the largest collection of fingerprints in the world, celebrates its 50th Anniversary. See Message by Mr. Kelley beginning on facing page and featured article beginning page 3.



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Message from the Director . . .

FIFTY YEARS AGO TODAY, the Identification Division of the FBI was established as a central repository for identification data. As I reflect on the significance of this Golden Anniversary, my thoughts focus on the countless ways the public has been served since 1924 because of the development and perfection of fingerprint identification techniques. During my more than 30 years of law enforcement service—both Federal and local—I have seen numerous incidents where positive fingerprint identification has been the determining factor in the resolution of an investigation. On behalf of the law enforcement profession, I should like to express appreciation to the pioneers in this vital technical field who surmounted awesome obstacles to eventually produce the highly efficient and effective identification system we know today.

The FBI is proud of the high quality of identification services we have been able to provide for the past five decades. At the same time, we gratefully acknowledge that our achievements are the result of excellent cooperation by many agencies. For these years of cooperation, we are indeed thankful.

The history of the Identification Division is filled with examples of decisive fingerprint examinations which have produced solutions to crimes. Just as noteworthy, but perhaps not as publicized, have been the heart-rending incidents of assistance provided at disaster scenes and to concerned relatives through identification services. In fact, the story of the Identification Division can be summarized by two words: certainty and service.

In fingerprint identification, there is no room for uncertainty. The system, used properly, is infallible. In 1973, through fingerprint identification, the FBI was able to positively identify more than 40,000 fugitives. The cause of justice was further served by Identification Division personnel who performed millions of latent fingerprint comparisons and made hundreds of court appearances to testify in criminal proceedings.

Of equal, if not more, importance is the correspondingly large number of persons in the past 50 years whose innocence has been upheld by the precise application of fingerprint identification. What greater assistance can there be for the accused person than to have his reputation and peace of mind restored through the infallibility of fingerprint examination. Such results speak well for the system—and for those who administer it.

In addition to proving guilt and establishing innocence in criminal investigations, the Identification Division renders service to the public in other ways. Through its Missing Persons Program, the FBI has aided in the location of numerous missing individuals throughout the years. Also much assistance has been given law enforcement agencies in identifying unknown deceased persons and amnesia victims through fingerprint comparisons. Since its formation in 1940 within the Identification Division, the FBI

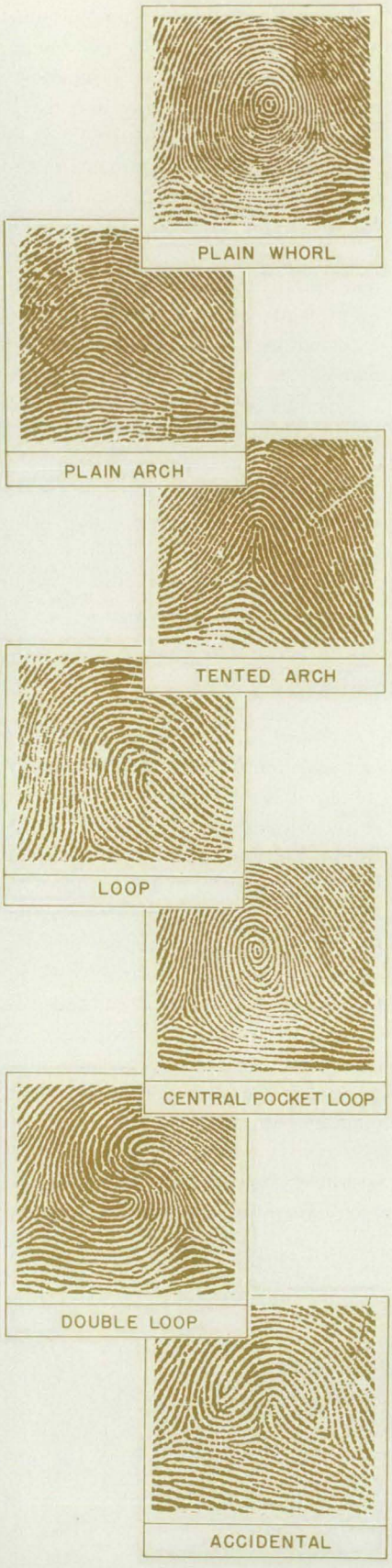
MESSAGE

Disaster Squad has been at the scene of over 100 major disasters assisting concerned organizations in the identification of victims. The Identification Division has welcomed the opportunity to serve where the need has existed by fully utilizing its resources.

As the FBI Identification Division enters its second half-century, it does so in the same spirit of cooperation that has brought it to this Golden Anniversary. It, likewise, does so ever mindful of its elements of success: certainty of identification and service to the public.

CLARENCE M. KELLEY
Director

JULY 1, 1974



GOLDEN ANNIVERSARY of FBI Identification Division

By
FLETCHER D. THOMPSON
Assistant Director
Identification Division
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On the morning of February 22, 1974, minutes before the scheduled departure of Delta Airlines Flight 523 from Baltimore-Washington International Airport, as passengers were proceeding through a security checkpoint, a lone male armed with a revolver suddenly appeared from behind a wall. He immediately shot a security guard in the back, killing him instantly. Clutching a suitcase, which concealed an incendiary device, the man ran onto the nearby aircraft. Once inside, he entered the cockpit and ordered the pilot and copilot to "fly this plane out of here." When the pilot protested that the plane's wheels were blocked and exit doors were open, the man fired into the cockpit, killing the copilot and wounding the pilot. Then, after being shot by a police officer through a porthole in the aircraft door, the would-be hijacker committed suicide by shooting himself in the head.

The man carried no identification. National news media afforded this matter nationwide coverage; however, he remained unidentified until his fingerprints were delivered to the FBI Identification Division where a technical search of these prints resulted in a positive fingerprint identification with those of Samuel Joseph Byck, who had been fingerprinted in 1954 when he entered military service.

"The role of the Identification Division . . . is unquestionably a factor in welding local, State, and Federal law enforcement agencies into a smoothly functioning cooperative unit."

This identification by fingerprints is illustrative and typical of the work performed around the clock in the FBI Identification Division. It can be matched hundreds of times in the division's records of the capture of fugitives from justice; military deserters caught; lost persons found and families reunited; individuals saved from suspicion; and the identification of victims in airplane crashes, explosions, ship accidents, and other disasters.

Major Achievements

July 1, 1974, marks the FBI Identification Division's 50th anniversary of service to law enforcement. This occasion serves to highlight the significance and value of a central clearinghouse of fingerprints available to authorities throughout the United States. The great forward strides made in professional law enforcement must be attributed to a combination of many important factors. These include the adoption of scientific methods, computer development, the growth of modern communications capabilities, the use of improved and new types of equipment, and the dedication of trained career police officers.

No one factor can be singled out as being individually responsible for the progress which has been achieved; however, to list them in the order of their impact, a prominent place would have to be given to the science of fingerprint identification.

Fingerprints have come to be closely associated in the minds of the American public with the problems of locating and identifying criminal offenders. Thousands of lawbreakers each year are made to face the consequences of their crimes because of fingerprints carelessly left behind. The fleeing fugitive is tied inescapably to his past by the ridge and valley detail on his fingertips.

"Thousands of lawbreakers each year are made to face the consequences of their crimes because of fingerprints carelessly left behind."

In addition to its effectiveness in criminal identification, the fingerprint has become increasingly helpful through it humanitarian uses. It reunites families with loved ones who have been long missing; it provides a name and past for the unfortunate tormented by amnesia; and in time of tragedy it resolves anguished uncertainty by establishing the identity of disaster victims.

Interesting Examples

There is a never-ending drama in the Identification Division's work of matching fingerprints with people. Each identification has its own story. No matter how impressive are the statistics recited or the splendid record of accomplishments by the teamwork efforts of the employees, nothing tells the story of success like cases actually solved by fingerprints.

Recently, the Galveston, Tex., Sheriff's Office sent to the FBI fingerprints of a deceased male found without identification in the Gulf of Mexico in the vicinity where a tanker had gone down in a violent storm. These fingerprints were identified with those of a seaman who was fingerprinted in 1944 as a member of the U.S. Navy Reserve.

In another recent instance, police authorities in Weiden, West Germany, recovered the body of an unknown adult male found floating in a creek. When local efforts to identify the body were unsuccessful, fingerprints of the deceased were forwarded to the FBI Identification Division. Although the finger impressions were of extremely poor quality, they were identified with fingerprints of an American serviceman stationed in Augsburg, West Germany.

The FBI Identification Division recently received the fingerprints of a tavern owner arrested in Chicago, Ill., charged with employing a minor. A search of these fingerprints revealed the owner was in fact a fugitive from justice, having escaped from a prison in Ohio over 25 years ago.

FINDER System

As the FBI Identification Division embarks on its second 50 years, it stands at the threshold of a new era in the science of fingerprint identification. For more than 40 years the division has pioneered for a means of applying advanced technology to the task of classifying, searching, storing, and retrieving positive fingerprint information. A giant step was taken in the fall of 1972, when the division accepted delivery of a prototype automatic fingerprint reader system which reads and records fingerprints through

Evidence undergoing carbon arc lamp examination for latent fingerprints.

Technician placing fingerprint card into initial stage of FINDER system.

the use of computerized optical scanning equipment. FINDER, a contraction of FINgerprint reaDER, was developed by Calspan Corp. (formerly Cornell Aeronautical Laboratory, Inc.) of Buffalo, N.Y., and represents years of research effort. It incorporates the latest advances in electronic technology and can scan and read a fingerprint in ½ second.

The National Bureau of Standards, in cooperation with the FBI Identification Division, has developed the highly complex computer logic required to automatically classify, search, and match computerized data generated by the FINDER system. Once FINDER is perfected and placed into production use, the FBI Identification Division can look forward to operating cost savings, while fingerprint contributors can anticipate expanded and faster fingerprint processing service.

Historical Highlights

Man's consciousness of the patterned ridges on his fingers and palms predates the Christian era by many centuries and has been evidenced in varying degrees by successive civilizations. On the face of a cliff in Nova Scotia has been found prehistoric picture writing of a hand with ridge patterns. Scholars refer to fingerprints and thumbprints on seals of ancient Chinese legal and business documents. In 14th-century Persia, official government documents were impressed with fingerprints, and a government official observed that the fingerprints of no two persons were alike.

The first authenticated record of official use of fingerprints in the United States occurred in 1882, when Gilbert Thompson of the U.S. Geological Survey, while in charge of a field project in New Mexico, used his own fingerprints on commissary orders to prevent their forgery.

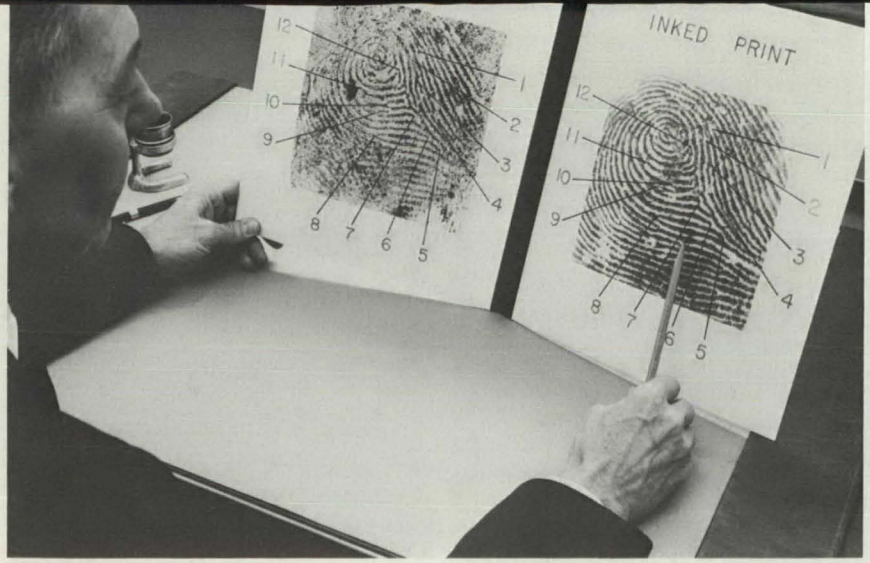
An interesting fictional sidelight which had possible effect on the introduction of fingerprint identification in the United States occurred in 1883 with the publication of Mark Twain's "Life on the Mississippi." An episode in this book relates the identification of a murderer by his thumbprint. Ten years later, with the publication of "Pudd'nhead Wilson," a novel plotted around a dramatic fingerprint identification, Mark Twain, through the fictional Pudd'nhead Wilson, proved the infallibility of fingerprints in a dramatic courtroom scene.

The first known systematic use of fingerprints in the United States began in 1902, with the practice of fingerprinting applicants by the New York Civil Service Commission. Shortly thereafter, with the substantial acceptance of fingerprints as the logical method of identification for police purposes, many law enforcement agencies established their own fingerprint record bureaus. As their number increased, it became obvious that a central repository of fingerprints, available to authorities throughout the Nation, was needed.

Initial attempts to meet this problem were made by Leavenworth Penitentiary authorities and by the International Association of Chiefs of Police (IACP). The fingerprint bureau at Leavenworth, originally established in 1904 for Federal prisoners only, soon expanded its operations into a free exchange service, circularizing criminal records among a growing list of contributing peace officers. In 1896 the IACP established in Chicago, Ill., and later moved to Washington, D.C., the National Bureau of Criminal Identification for the compilation and exchange of criminal identification data.

Still there was a growing demand by police officials for one cooperative system on a national scale, available to all authorized law enforcement agencies. The obvious need by police officials led to an Act of Congress, establishing on July 1, 1924, the Identification Division of the FBI, consolidating the fingerprint files of Leavenworth Penitentiary and the National Bureau of Criminal Identification.

Through the years, a steadily increasing rate of receipts brought the number of fingerprint cards in FBI files to 10 million in 1939. It was World War II that brought the most



Latent fingerprint expert prepares for court testimony.

phenomenal period of the Identification Division's growth. During the years just before and during the war, the number of civil fingerprints, including those of aliens, military personnel, and civilian employees in defense industries, far outstripped the number of arrest receipts. Both types added to the swelling total, and on January 31, 1946, the 100 millionth fingerprint card was received. As the FBI Identification Division, the world's largest repository of fingerprints, completes its 50th year of uninterrupted service to citizen and law enforcement officer alike, the total fingerprint records on file has surpassed 159 million. Imagine a stack of fingerprint cards piled as high as the Empire State Building in New York City. Imagine another stack, just as tall. Imagine another, and another, until there are 107 such stacks in your mental picture. These 107 stacks represent the over 159 million fingerprint cards on file.

Service and Cooperation

The role of the Identification Division as a cost-free service agency is unquestionably a factor in welding local, State, and Federal law enforcement agencies into a smoothly functioning cooperative unit. With some 3,000 employees providing identification service to 8,000 contributing agencies, the division in the past year processed over 6 million fingerprint cards, identified over 40,000 fugitives, handled over 4 million pieces of correspondence, and made over 2 million fingerprint identifications. Not even the most optimistic visionary could have foreseen the growth of the FBI Identification Division over the past 50 years.

Let's look more closely at the internal components of the division:

Latent Fingerprint Section

Fingerprints found at the scene of a crime are generally described as "latent" fingerprints because they are almost always invisible or difficult to see. In perspiring through the pores of the ridges of the fingers, most of us leave numerous fingerprints each day on objects which we touch, but they are of no consequence. When left at a crime scene, however, fingerprints become of the utmost importance.

With more than 100 senior technical fingerprint specialists, the section performs latent print examinations for the FBI and other law enforcement agencies. Upon completion of the examinations, the FBI will send its examiner to testify at the trial. The Latent Fingerprint Section has shown a rapid growth over the years due to greater awareness on the part of investigators of the value of fingerprint evidence.

Criminal offenders sometimes take special precautions to prevent leaving their prints at the scene of a crime. In a recent bank robbery, five subjects, wearing plastic gloves, entered a bank, forced all the customers to lie down on the floor, and proceeded to help themselves to the bank's assets. Their getaway car was located later, and fingerprints were found on a number of plastic gloves discarded either in the car or nearby. Latent prints found on the inside of the glove fingers identified the members of the gang.

Latent prints are sometimes found on unusual surfaces, including small control buttons and seat control levers in automobiles, in the adhesive surface of both transparent and electrical tape, on cigarette butts, and even in a melted fragment of plastic panty hose. A fingerprint found on a cigarette butt from the ashtray of a stolen car in California was identified as that of a man who hijacked a plane in New York City.

Although many of the impressions that are found in criminal investigative work are fingerprints, palm prints are found almost as routinely, as well as occasional footprints. Palm prints and footprints have the same technical and legal validity as fingerprints. Several latent foot impressions have been identified with criminal subjects, and in some instances the deceased victims of crime have been so identified.

Among the valuable but lesser known functions of the Latent Fingerprint Section is the examination of the hands and fingers of unknown deceased individuals which are forwarded by law enforcement agencies to assist in the identification of a body. In many of these cases, the bodies are not found for weeks or months after

death. Expert processing and visual examination of the fingers frequently make possible the derivation of a classification formula which enables a search to be conducted in the 10-finger file. Even when no file search is possible, a fragmentary print from the skin of a single finger may be adequate to positively identify the person through comparison with prints of persons the authorities indicate the victim might be.

The Latent Fingerprint Section maintains a single fingerprint file in which individual impressions found at a crime scene can be searched. Also maintained is a general appearance file of confidence men and swindlers, based on the physical characteristics of the individual.

When the recovery of evidence is too large for submission or when the presence of FBI technical fingerprint personnel is required in a major investigation, fingerprint examiners are dispatched to the scene of major investigations to supervise and perform latent print examinations. This insures indepth coordination of the fingerprint operation and may provide vital information.

FBI Disaster Squad

The reputation of the FBI Disaster Squad, which has assisted in the identification of victims in over 100 major catastrophies since 1940, is well known. The Latent Fingerprint Section's examiners form the nucleus of the Disaster Squad and provide the technical expertise so necessary in identifying mutilated or charred victims in air crashes, explosions, fires, and other major disasters.

It was 12:45 p.m., on a busy workday in 1973, in the FBI Identification Division, when an urgent telephone call was received from the Boston Office of the FBI reporting a large jet aircraft had just crashed into a concrete seawall adjacent to Logan International Airport. Initial sketchy information indicated 84 passengers and a crew of 5 were aboard the aircraft. Eyewitnesses to the crash believed there were no survivors. The Commissioner of Public Safety, as well as the airline, had requested the services of the FBI Disaster Squad to assist in the identification of deceased victims.

The activities of various division personnel to assist in the preparation of the Disaster Squad's departure and their subsequent work effort at the disaster scene were set in motion. The complete passenger manifest of the flight was submitted by facsimile equipment to the FBI Identification Division. As passenger and crew names began to arrive within the hour, searches of the massive criminal and civil name files commenced in an attempt to locate fingerprint cards identical with the victims. The updating of the passenger manifest with additional descriptive data concerning the victims generated further searches to locate fingerprint cards.

In the meantime, members of the Disaster Squad who were to depart to the scene of the crash had already been alerted; airline reservations had been made; the disaster equipment had been checked; and the squad was ready for an early departure. The squad consisted of one FBI Identification Division Special Agent, who was in charge, and three fingerprint specialists from the Latent Fingerprint Section who are experts in fragmentary fingerprint identifications.

The foregoing details the initial preparations made in just one of the disasters participated in by the FBI Disaster Squad. However, the events that follow these initial steps are never the same. Each disaster poses its own particular requirements and problems. An airline crash, for example, in an inaccessible mountainous area may require mountain rescue teams or helicopters and the use of a highway department garage as a temporary morgue, whereas a crash at an urban airport will only require normal recovery teams and a city morgue may be available for identification processing. In addition to activity in the United States and Puerto Rico, the squad has also traveled to Canada, British West Indies, Belgium, France, Italy, Venezuela, and even to faraway Tahiti and Bali in the remote South Pacific, to identify American citizens who have perished in foreign disasters.

Automation and Research Section

This section is responsible for all matters relating to the research and development of ways to automate the work functions of the Identification Division. Section personnel prepare personal description and arrest data

Portion of equipment used by FBI Disaster Squad.

"There is a never-ending drama . . . of matching fingerprints with people."

appearing on fingerprint cards and other forms for computer processing, storage, and retrieval. They also insure that copies of arrest fingerprint cards, disposition reports, and related identification records involving arrests of Federal offenders, arrestees of the Metropolitan Police Department, District of Columbia, and other qualifying arrestees are forwarded for entry in the Computerized Criminal History file.

Future plans call for the establishment of other automated units throughout the division, with the ultimate objective of developing a fully Automated Identification Division System (AIDS).

Posting Section

Approximately 21 million individuals are currently represented in the criminal fingerprint file of the Identification Division. Of this number, 121,720 are wanted by various law enforcement agencies and their location and apprehension is sought. Should any one of these latter individuals be arrested and have his fingerprints submitted to the division, he would immediately be identified as a person wanted by appropriate authorities who would be promptly advised. Implementation of the procedures to "flag" these wanted persons in file to prevent their early release following an arrest when they are sought by another agency is one of the responsibilities of the Posting Section. In fact, the posting of wanted notices and the cancellation of such notices when the person is apprehended, both for local law enforcement agencies and all Federal agencies, including the FBI, is the major phase of the work in the section.

Searching of names on current fingerprint cards to identify with prior submissions.

Recording and International Exchange Section

All incoming mail designated for the FBI Identification Division is received, recorded, screened, assigned priorities, and routed for further processing within the division by this section. Correspondence from contributors, citizens, other government agencies, and foreign countries concerning matters ranging from records of individuals to policy questions and instructional guidance are researched and answered. Overall, the section serves as the focal point of Identification Division operations and maintains liaison with the users of identification services in effecting the cooperative working relationship necessary to a successful nationwide criminal records keeping system.

Card Index Section

Located in this section are the alphabetical indices for the Identification Division, broken down into criminal and civil as well as male and female files. Here the name and aliases reported for each person for whom a record is on file will appear on separate index cards with certain descriptive data. In order to expedite location of any previous record under the same name as that appearing on the current print, the name is first searched in the card index files. Any cards which appear to refer to possible identical fingerprint records are attached to the incoming print to facilitate the location of such records within the division. At the present time, approximately 60 percent of the criminal fingerprint submissions obtain a tentative identification in the Card Index Section.

Current fingerprint cards being searched in main fingerprint files.

Technical Section

The Technical Section is truly the heart of the FBI Identification Division. The bulk of work performed entails identification in the purest sense—comparing and matching one fingerprint card against another.

The section consists of two main 10-finger card files, the criminal fingerprint file and the civil fingerprint file. The criminal file contains master fingerprint cards representing more than 21 million persons on whom arrest submissions have been received from law enforcement agencies throughout the world. More than 88 million fingerprint cards representing approximately 39 million individuals fingerprinted in connection with a variety of civil purposes—job applications, alien registration, Civil Service, personal identification, and military duty—are contained in the civil file. These two master fingerprint card files utilize the Henry System of fingerprint classification which, in addition to the basic formula, contains superextensions and modifications in those areas of the classification which otherwise would not provide the finite division required for the most efficient handling of the work. Technical Section personnel perform one of the most demanding and highly technical functions in the whole fingerprint identification process—the classifying and searching of 22,000 arrest and civil fingerprint submissions daily.

Assembly Section

The overall responsibility for the collection, maintenance, storage, and control of approximately 13,500,000 fingerprint jackets, which are filed in sequence by FBI number, is that of this section. A fingerprint jacket is an assemblage of identification data on one individual and includes fingerprint cards, photographs, dispositions, wanted notices, related correspondence, and identification record listing the arrest and disposition data. All fingerprint cards are maintained in the jacket except the master fingerprint card, which is filed in the master searching file of the Technical Section. This section supports all other sections of the division and is responsible for the withdrawing and the refiling of all records withdrawn from file.

Fingerprint Correspondence Section

This is the "response section" of the manual system. At present Fingerprint Correspondence is assisting in a conversion program with the Automation and Research Section in the handling of automated responses in cases where no prior arrest record is located. This dual operation, manual and automated, will continue for some time until full conversion takes place from a manual to a fully automated system.

While the primary function of the section is the updating of existing criminal identification records, thousands of civil fingerprint cards received from Government agencies and branches of the military service, as well as non-Federal applicant prints received from State licensing and employing agencies, are processed.

Accuracy and integrity of all of the criminal histories data are paramount and are the bywords of the Fingerprint Correspondence Section and the Identification Division as a whole.

Missing Persons Program

The FBI's Missing Persons Program is a cost-free service offered to assist families in locating a next of kin who has disappeared. If the person has been missing less than 7 years and is not the subject of a domestic matter and a request emanates from a member of the family or agency acting in behalf of the family, a search will be made of our fingerprint records for any information as to the whereabouts of the missing person. If no current information is located, a missing person notice will be placed in file to insure prompt notification of the family should such information subsequently be received. In many instances our assistance is a last resort to the family and heartwarming letters are received regularly from families expressing sincere appreciation for the assistance.

"... it is difficult to conceive of a system which can improve upon the facility, practicality, and infallibility ... of fingerprint identification."

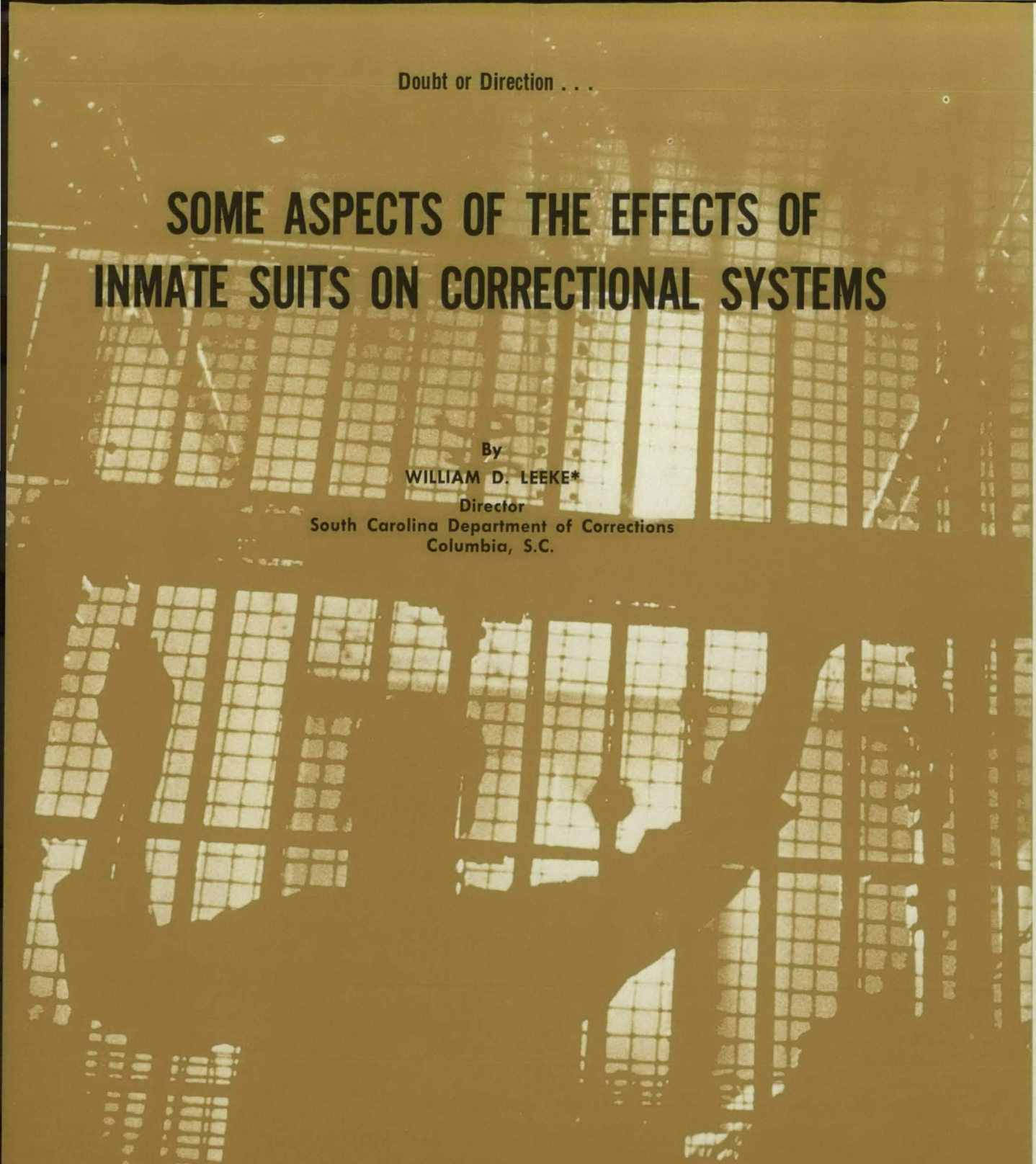
Conclusion

Although new methods of personal identification are constantly being suggested, it is difficult to conceive of a system which can improve upon the facility, practicality, and infallibility which are characteristic of fingerprint identification.

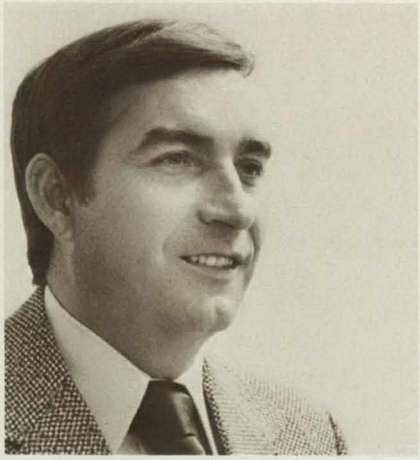
From a meager beginning in 1924, the FBI Identification Division has risen to a preeminent position in the identification field. Ahead, as the division celebrates its Golden Anniversary and commences its second 50 years, lies its greatest challenge—the successful development of a fully automated fingerprint processing system, not only to process 10-finger fingerprint cards, but one that will also have the capability of searching a single latent fingerprint found at the scene of a crime. Success in this project will constitute the most significant advance in law enforcement since the adoption of fingerprints as a means of identification. To this goal and the continued improvement in identification services, the dedicated personnel of the FBI Identification Division pledge themselves.

SOME ASPECTS OF THE EFFECTS OF INMATE SUITS ON CORRECTIONAL SYSTEMS

By
WILLIAM D. LEEKE*
Director
South Carolina Department of Corrections
Columbia, S.C.



"The correctional process is a vast, complex system which has recently begun to suffer from definite growing pains."



Mr. Leeke

Like other facets of the criminal justice process in recent years, correctional agencies, too, have often altered longstanding practices, as results of court-ordered changes or in attempts to avoid litigation. A decade ago, many prison administrators may have questioned whether inmates had any rights at all. Today, that question has been amended to ask what individual rights may be restricted or limited for the purposes of incarceration.

The route to the present position of corrections has not always been smooth. Time-honored practices are not voluntarily halted or modified easily. Perhaps the reluctance of correctional administrators to change contributed to the many State and Federal suits which resulted in decisions requiring changes. Nevertheless, as the judiciary began to abandon its former "hands-off" approach to inmate suits which had been observed with respect to the operation of prisons, correctional administrators became more cognizant of the law being reaped from formerly barren ground. Some read such results in orders concerning their own systems, others through court watching and exchanges.

Regardless of the means of information gathering, most American prison officials have become extremely aware of what is going on in our Nation's courts. Moreover, many are not only observing but also acting. Of course, progressive prison reform is as old as the country—from the early Philadelphia prison and the Philadelphia Society for Alleviating the Miseries of Public Prisons [1] to the myriad modern day societies and organizations for prisoner aid and legal assistance as well as the work of competent correctional officials. Yet, the notoriety of a successful inmate suit always seems to focus attention on those aspects of a system which have not met the court's tests or which have not been updated fast enough.

Although most correctional administrators have always attempted to operate their systems to the benefit of the inmates, there have been exceptions, which perhaps still exist. These extreme cases, whether concerning punitive lockup, food, access to courts, or mail, for example, may have brought the resulting judicial sanctions on themselves. Evident abuses should not be tolerated, and in such cases, the courts have been constructive in their decisions. Through a greater concern for human rights, some prison officials might have anticipated the rising level of social concern and made the necessary changes. Traditions, though, are well rooted in this profession and have not always been easily altered. A general response by correctional officials, however, that there are deficiencies in the judicial system is unrealistic and avoids the real issue—that many inmate suits are probably well founded.

At present, whether by judicial mandate or through voluntary actions, the vast majority of the correctional systems in this country provide programs and services aimed at aiding inmates in their return to society. Moreover, inmates are hindered less and less by restrictive regulations on communication, are afforded due process hearings as required, and are experiencing more open environments. Naturally, as long as incarceration is practiced, some restrictions and rules will be necessary, and there will always be a practice or procedure that will be offensive to some inmate. However, so long as correctional authorities insure that rights are not violated, complaints should be baseless.

Correctional litigation has arisen in nearly every jurisdiction and has touched upon almost every aspect of prison life and administration. Yet, in spite of the fact that correctional officials across the country are making continual progress, some decisions have affected the correctional process more than others.

Civil Rights Actions

Although the writ of habeas corpus has been used in some jurisdictions to challenge the conditions of confinement,[2] actions against State prison officials under the Civil Rights Act of 1871 (42 U.S.C. 1983) seem to have been more prevalent. In addition, since the Supreme Court ruled in *Preiser* v. *Rodriguez* [3] that habeas corpus must be utilized by State prisoners when challenging the fact or duration of a sentence and seeking speedy release, Federal habeas corpus petitions should decrease but the civil rights actions may increase. Inasmuch as adequate State remedies must be exhausted before a Federal court may entertain a petition for a

"Although the writ of habeas corpus has been used in some jurisdictions to challenge the conditions of confinement, actions against State prison officials under the Civil Rights Act of 1871 (42 U.S.C. 1983) seem to have been more prevalent."

*Mr. Leeke wishes to acknowledge the assistance of William C. Lucius, legal adviser, South Carolina Department of Corrections, in the preparation of this article.

writ of habeas corpus,[4] artful drafters will surely phrase their pleadings to skirt duration of sentence questions, thus avoiding the exhaustion question which is not required under the Civil Rights Act of 1871.[5] Moreover, because of the act's liberal remedies—injunctive and declaratory relief and damages [6]—the correctional administrator as a defendant is naturally more interested in this form of action and its results.

After the Court of Appeals for the Second Circuit rendered its decision in *Sostre* v. *McGinnis* [7] in 1971, many State correctional authorities reexamined their disciplinary practices. In *Sostre*, the court of appeals found, among other things, that a due process hearing was necessary before an inmate could be punished for violating prison rules.[8] Further, the court held that through the Civil Rights Act of 1871, under which this case was brought, the plaintiff was entitled to $9,300 in compensatory damages.[9] However, because the warden defendant against whom the judgment would have been issued had died, neither his successor nor the State was liable.[10]

In spite of the fact that no money was paid, the *Sostre* decision influenced many systems beyond the Second Circuit to modify their disciplinary procedures. Of course, there were other cases,[11] and the due process requirements varied with each; but, as a result an inmate right had been delineated, and correctional officials were made aware of the possible consequences of knowingly abusing that right.

Perhaps the best known of these cases and certainly the one which has influenced correctional officials as much as any is *Landman* v. *Royster*.[12] As a result of this civil rights class action concerning prison discipline, several Virginia Division of Corrections officials were found in contempt of court and fined $25,000. In addition, the director of the division was found to be personally liable, and three of the plaintiffs were awarded $21,265.45 in compensatory damages.[13]

Although the fines were suspended [14] and the damage award was later removed after settlement,[15] the effect of *Landman* has been nearly universal. Correctional officials in States which do not provide indemnification for their employees have been seeking remedies for this situation either individually or in concert.[16]

This is a very real concern, for most administrators are not wealthy, and a sizable judgment could spell financial ruin. Moreover, the apprehension of just such a result is a definite consideration in day-to-day decisionmaking. Despite the fact that most officials' actions and decisions are not aimed at violating inmate rights, there is always the possibility of adverse results, and meanwhile the suits are continually filed.

Another result of *Sostre*, *Landman*, and related cases was a host of suits alleging violation of due process rights. It is very possible that many of these suits have merit, and if so, the problems should be corrected. However, because of the volume, certainly some of the actions must be baseless, especially when previously adjudicated issues are raised again and again. It is quite natural for an inmate who feels that he has been unjustly treated by a disciplinary board to seek redress. Yet, when such a board and procedure have been scrutinized by an objective judge and found to have met all the constitutional requirements, subsequent suits on identical matters seem burdensome.

Since an individual is not bound by the results of a previous case unless the identical issue was tried as a proper class action, an inmate is not precluded from seeking judicial relief on a similar issue previously decided.[17] Still, upon filing, work is created for the court, its staff, the attorneys involved, and the correctional authorities who must investigate the allegations. Thus, a great deal of time and effort goes into a case that may never reach the hearing stage; many hours are expended, and money is spent. The inmate who thought his complaint had merit probably feels cheated and will undoubtedly begrudge the system, and the inmate who knowingly files spuriously probably starts to work on another *pro se* complaint. Both situations create problems with which correctional officials must cope.

Monetary Considerations

In addition to concern for their own pocketbooks, correctional administrators also have had their budgets affected. This interest began for many with a 1969 decision of the U.S. Supreme Court. *Johnson* v. *Avery* [18] held that unless a State could provide a reasonable alternative, it could not prohibit one inmate from assisting another in the preparation of writs. The High Court's recognition of the "jailhouse lawyer" or "writ writers" was of itself only an acknowledgment of a longstanding practice without which many inmates, especially indigents, may never have gained access to court at all.[19]

"Long a concern of correctional authorities, medical care for inmates has recently become the subject of judicial scrutiny."

"Those practices and procedures existing in modern corrections that have gone unchallenged are rare. The law that has been decided with respect to inmates' rights in recent years is voluminous. . . ."

However, within a year of the *Johnson* decision a three-judge district court in California had ruled that a State department of corrections regulation limiting the law books in a prison library amounted to a denial of a prisoner's access to the courts.[20] And although the court also suggested that alternatives were open to the State, when the Supreme Court affirmed the decision [21] prison law libraries became necessities overnight.

With lists and guidelines promulgated by legal authorities,[22] correctional officials have begun the task of finding the means of providing such resources. Some States have applied for and received Law Enforcement Assistance Administration (LEAA) grants for such purchases,[23] while others have sought State appropriations. Some States are still studying the problem, uncertain whether to totally provide libraries or lawyers or combinations.[24] Regardless of the alternative, the cost to a State correctional system will be considerable.

Long a concern of correctional authorities, medical care for inmates has recently become the subject of judicial scrutiny. This involvement has deepened beyond the point of early cases in which damages were sought for injuries resulting essentially from the absence of medical care.[25]

It has never been the intent of the vast majority of prison officials to deprive inmates of medical treatment, but rather to increase it. But, as is so often the case, monetary considerations have been the greatest hindrance. Nevertheless, actions have arisen, and the results have, in some cases, aided administrators in receiving the backing necessary for fiscal support.

Framed in terms of constitutional deprivations, suits alleging lack of or improper medical care have been brought under the civil rights laws.[26] Some have cited medical practices as ancillary claims against overall prison practices.[27] However, a recent case aimed solely at medical, dental, and psychiatric care proved successful.

The judge in *Newman* v. *State of Alabama* [28] appears to have examined the entire scope of that correctional system's medical service program. The court concluded that the insufficiency of medical staff and facilities was "shocking to the conscience" by its violation of inmates' rights, thereby constituting cruel and unusual punishment.[29] Moreover, it seems that the court used a standard of negligence [30] to impose liability rather than one of intentional action which apparently had been the previous rule.[31]

In addition to its findings, the comprehensive order of the court supplied standards that were to be followed touching upon specific aspects of the services to be rendered. Also required were a series of reports including one concerning the means of financing the ordered changes.

Most correctional administrators received *Newman* with mixed reaction. On the one hand, a court has established a legal standard which must be studied, understood, and applied where applicable. On the other, though, officials are faced with the possibility of having the framework in which they have operated in good faith completely revised overnight. Further, even though such a development generally opens the door to needed funds, it is not always the most diplomatic approach with respect to legislation and taxpayers and could very well adversely affect existing programs. In addition to such consequences, the possibilities of securing professional medical services are not enhanced by the possibility of constant suit.

Notwithstanding, then, a legitimate concern for institutional health situations, the correctional administrator may also have to contend with attacks upon existing operations in hope that planning and execution of developing programs for improvement will not be jeopardized. It is not inconceivable that such a result could lead to defending an existing operation which should not be defended.

Those practices and procedures existing in modern corrections that have gone unchallenged are rare. The law that has been decided with respect to inmates' rights in recent years is voluminous and often varied from jurisdiction to jurisdiction. The cases have dealt with the subjects of religion,[32] access to the media,[33] censorship of mail,[34] and many more—discussions of the effects of which could be endless. However, those specific cases dealt with previously were chosen only because of the extent of their more recent influence. In conjunction with court watching, modern corrections is involved in many forms of study aimed at planning for the future, in many ways designed to make litigation unnecessary rather than to avoid it.

As noted earlier, it has become apparent that some cases have revealed that legitimate inmate complaints have existed and were cured only by judicial decree. Very often in these situations, the practices deemed unconstitutional have been vestiges of prison procedure from many years

past. Many administrators with "time in the trade" would probably admit that during the formative stages of their training in corrections, they rarely questioned the reason or necessity of a practice that was being learned. In addition, in the past, many systems had neither the personnel nor the budget to do much more than provide custodial services. Of course, today's correctional policies are generally well planned with reasonable foundation.

With changing attitudes in society, former theories on the operations of correctional systems, as well as the limitations of tight budgets, have become more liberal. Obviously the actions of courts have had a definite effect, but quite often progress and innovation occur without judicial mandate and notoriety, the results of serious study and careful planning.

Many correctional systems are creating and enlarging planning sections which, in addition to preparing future programs, budgets, and operations, examine the present agency structure, policies, allocations, and practices. This constant review of existing situations often reveals the need for revision of outmoded practices. In the search for the "better way," LEAA of the U.S. Department of Justice has been a bulwark of resources, both monetary and technical. Through its help, many systems have accomplished goals that otherwise may have been only designs.

In addition to the work of individual agencies, national organizations are aiding corrections generally in research and planning. The American Correctional Association has long acted as a promulgator for developing situations in all fields of corrections. Through periodic publications and national meetings, the association has established itself as a leader in correctional organizations.

By a measure intended to "provide the administrator with a basis for promulgating rules and the courts with the underlying principles for rules and regulations," [35] another national body, the Association of State Correctional Administrators, has sought to insure a national position on some issues. A set of principles entitled "Uniform Correctional Policies and Procedures" was established as a guide for basic policies in eight specific areas of concern. It does not attempt to formulate rules and regulations, but only to insure that those that are promulgated by the individual systems have a sound basis.

"With the abundance of scholarship and experience that has evolved as a result of the contemporary concern for improved corrections, exciting innovations have been made. . . . At least two of these proposals [the use of a correctional ombudsman and the creation of effective inmate grievance procedures] have been directed, at least in part, at making the filing of suits unnecessary."

The American Bar Association (ABA) has added its prestige to correctional development through several organizations. Through its Commission on Correctional Facilities and Services and associated projects, such as the Resource Center on Correctional Law and Legal Services and the National Clearinghouse on Offender Employment Restrictions among others, the ABA is becoming deeply involved in aiding correctional administrators and inmates. The various publications and actions of members of the respective programs have proven invaluable. For example, the Prison Law Reporter, which is cosponsored by the ABA's Young Lawyers Section and the commission, has come to be an indispensable tool for both plaintiffs and defendants. It should be required reading for all correctional officials.

Many other organizations and groups, too numerous to name, provide all types of assistance, through publications and directly, to the correctional systems of this country. Some contribute general guidance or information, while others deal in specific specialties. Assistance abounds; all the correctional official must do is ask for it.

Innovations

With the abundance of scholarship and experience that has evolved as a result of the contemporary concern for improved corrections, exciting innovations have been made. As noted earlier, at least two of these proposals have been directed, at least in part, at making the filing of suits unnecessary.

The theory of a correctional ombudsman has received greater emphasis in recent years. Although ombudsmen have operated for some time, especially in Scandinavian countries, the practical application of this concept in American prisons is relatively new.

Several State systems utilize the services of ombudsmen. They exist in Minnesota, Ohio, and South Carolina.[36] The duties of each vary, but they all are required to receive inmate complaints. In Minnesota, the ombudsman is accountable to the Governor only;[37] reporting in Ohio is rendered to the department head and the Governor; and to the director of the corrections department in South Carolina.[38]

Not all jurisdictions, however, have accepted the ombudsman as readily. In California, the Governor vetoed a bill which would have created an ombudsman outside the system.[39] In Philadelphia, the city's prison board refused to continue negotiations with the Pennsylvania Prison Society over the placement of the latter's private ombudsman.[40]

The arguments on the ombudsman seem to center around whether or not

there is a necessity for absolute independence from the correctional system. However, until the existing programs have operated long enough for meaningful studies to be made on this point, the ombudsman ideal will remain a viable alternative to court actions with respect to some inmate complaints.

Another proposed alternative to litigation, for inmates and officials, has been the creation of effective inmate grievance procedures. All systems produce grievances, and there are procedures for handling them. Often, it may be an informal question by an inmate of an official. Just as often, however, the answer may not be correct or in response to the question, thereby leaving the inmate without a solution for his grievance. For a procedure to operate, then, it must be effective. As Chief Justice Burger noted, the procedure must embody "the means of having complaints reach decision-making sources through established channels so that the valid grievances can be remedied and spurious grievances exposed." [41] The advantage of such a procedure to the inmate would be a speedier response to his complaint. To the official, it could mean less litigation. It is still common for an administrator never to hear or know of a grievance until he is served with a summons and complaint.

Like the ombudsman, formal grievance procedures have been adopted in only a few States (Maryland, Wisconsin, and Illinois, for example). Moreover, the procedures vary from State to State. They range from an Inmate Grievance Commission in Maryland to Wisconsin's "chain of command," a process of individual staff member decisionmaking with appeals.[42] Also like the ombudsman experience, at this juncture, there is no way to assess the effect of such a process adequately, whether on litigation or on inmate treatment.

It is quite possible that neither concept will produce desirable results, but they must be tried. Furthermore, they, among other innovations, must be afforded acceptance—by inmates, administration, and public—in order that negativism will not hamper initial institution. Improvements will require more than adequate planning and execution; they will require cooperation, which can be had.

The correctional process is a vast, complex system which has recently begun to suffer from definite growing pains. Certainly some of these pains may be attributable to court decisions which often have seemed most adverse to correctional administrators. Yet, it must be acknowledged also that many of the adverse decisions have aided corrections in stepping up needed reforms. Each case, of course, must be judged on its own merit, and although a judgment may momentarily create problems, as long as correctional administrators continue to progress, ever mindful of the rights of inmates, catastrophic decisions will not be forthcoming.

It is evident that as long as the criminal justice system as a whole contemplates incarceration as an end, there will always be abuses. Courts exist to check such mistakes. However, it could be said that when corrections does not mean punitive retribution, criminal justice as we know it today surely also will have been transformed.

FOOTNOTES

[1] J. Furnas, The Americans—A Social History of the United States 483 (1969).

[2] South Carolina Department of Corrections, The Emerging Rights of the Confined 32 (1972). (A research project supported by a grant (#NI–70–048) from the National Institute of Law Enforcement and Criminal Justice to the South Carolina Department of Corrections.)

[3] 411 U.S. 475 (1973).

[4] R. Sokol, Federal Habeas Corpus, § 22 (2d ed. 1969).

[5] *Wilwording* v. *Swenson*, 404 U.S. 249 (1971).

[6] See National Association of Attorneys General—Committee on the Office of the Attorney General, Special Report—Prison Officials' Liability for Damages in Inmate Suits (May 25, 1973).

[7] 442 F. 2d 178 (2d Cir. 1971).

[8] Ibid. at 196.

[9] Ibid. at 205.

[10] Ibid.

[11] See, for example, *Clutchette* v. *Procunier*, 328 F. Supp. 767 (N.D. Cal. 1971); *Landman* v. *Royster*, 333 F. Supp. 621 (E.D. Va. 1971); *Bundy* v. *Cannon*, 328 F. Supp. 165 (D. Md. 1971); *Lathrop* v. *Brewer*, 340 F. Supp. 873 (S.D. Iowa 1972).

[12] 333 F. Supp. 621 (E.D. Va. 1971).

[13] National Association of Attorneys General, *supra* footnote 6 at 9.

[14] Ibid.

[15] Richmond Times-Dispatch, November 24, 1973, § A at 1.

[16] Letter Memorandum from E. Preston Sharp, executive director, American Correctional Association, to members, July 20, 1973.

[17] C. Wright, Federal Courts, § 72 (2d ed. 1970).

[18] 393 U.S. 483 (1969).

[19] Ibid. at 487.

[20] *Gilmore* v. *Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970) (three-judge court), *aff'd. per curiam*, *Younger* v. *Gilmore*, 404 U.S. 15 (1971).

[21] *Younger* v. *Gilmore*, 404 U.S. 15 (1971).

[22] ABA Commission on Correctional Facilities and Services—Resource Center on Correctional Law and Legal Services, Providing Legal Services to Prisoners (May 1973).

[23] Law Enforcement Assistance Administration grant for Legal Resource Material Additions to South Carolina Department of Corrections, Apr. 26, 1973.

[24] Information from James Smith of North Carolina Department of Correction during visit to South Carolina Department of Corrections, Oct. 1, 1973.

[25] South Carolina Department of Corrections, *supra* footnote 2 at 146.

[26] Ibid. at 147.

[27] See, for example, *Holt* v. *Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd.*, 442 F. 2d 304 (8th Cir. 1971); *Gates* v. *Collier*, 349 F. Supp. 881 (N.D. Miss. 1972).

[28] 349 F. Supp. 278 (M.D. Ala. 1972).

[29] Ibid. at 286.

[30] Ibid. at 281.

[31] South Carolina Department of Corrections, *supra* footnote 2 at 146–157.

[32] *Cooper* v. *Pate*, 382 F. 2d 518 (7th Cir. 1967); *Theriault* v. *Carlson*, 339 F. Supp. 375 (N.D. Ga. 1972), among many.

[33] Compare *Burnham* v. *Oswald*, 342 F. Supp. 880 (W.D.N.Y. 1972); *Washington Post Co.* v. *Kleindeinst*, 477 F. 2d 1168 (D.C. Cir. 1972).

[34] *Palmigiano* v. *Travisono*, 317 F. Supp. 776 (D.R.I. 1970); *Burns* v. *Swenson*, 430 F. 2d 771 (8th Cir. 1970).

[35] Association of State Correctional Administrators, Uniform Correctional Policies and Procedures 1 (1972). (Supported by a grant (#71–DF–1123) from the Law Enforcement Assistance Administration to the South Carolina Department of Corrections.)

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[37] Ibid. at 59.

[38] Ibid. at 14.

[39] Ibid. at 12.

[40] 3 Criminal Justice Newsletter 195 (Dec. 18, 1972).

[41] National Association of Attorneys General—Committee on the Office of the Attorney General, Special Report 2 (Feb. 16, 1973), citing Address by Chief Justice Warren E. Burger to the National Conference of Christians and Jews, Philadelphia, Nov. 15, 1972.

[42] Ibid. at 6–10.

A Lawman's PERSPECTIVE *of* SENTENCING*

". . . man perfected by society is the best of all animals; and he is the most terrible only when he lives without law *and without* justice."

I am most honored by this opportunity to participate in your sentencing institute, and I greatly appreciate your invitation to do so.

In over three decades of law enforcement endeavor involving many appearances in court, I cannot recall ever having been invited to approach the bench and express my views on sentencing a defendant.

However, many years ago a judge indicated he considered me his advisor on sentencing. He told me that when he wanted my advice he would ask me for it.

He never did.

Now, as I stand before this distinguished and knowledgeable gathering of jurists, I have no illusions about my being qualified to enlighten you on technical, theoretical, or philosophical aspects of the sentencing process.

Nor need I exhaustively analyze for you the perennial issues regarding the sentencing process—issues such as public safety versus individual re-

**This is an address given by Hon. Clarence M. Kelley, Director, Federal Bureau of Investigation, at the Joint Sentencing Institute for the Eighth and Tenth Circuits, Springfield, Mo., April 22, 1974.*

habilitation, court administration, judge shopping, backed-up dockets, plea bargaining, treatment versus punishment, disparities in sentencing, criticisms of the corrections system, or problems of overburdened probation and parole personnel.

I appear here with no compendium of solutions for these issues. They have been discussed in the public forum by others more qualified than I.

As a career lawman, I can but offer you the lawman's point of view.

And my message today is based on the belief that we who bear the lawman's badge and you who wear judicial robes share at least two basic objectives—justice and reduction in crime.

Though we strive for these objectives in separate spheres of authority, we are members of the same family—the criminal justice family.

And as members of the criminal justice family seeking similar goals, we need to stay in touch with one another, even though philosophically and professionally we may dwell and toil in different neighborhoods.

We of the FBI welcome judicial comment regarding our work. Often we have benefited from such comment—whether it be criticism when we are remiss, or praise confirming that our actions were proper and effective.

It is a regrettable fact that FBI Agents and other law enforcement professionals rarely have an opportunity to communicate with a judge unless the lawman is under oath and seated in a witness chair.

And his comments, of course, are restricted to proper testimony in the matter before the court.

". . . we who bear the lawman's badge and you who wear judicial robes share at least two basic objectives—justice and reduction in crime."

"Studies show much of his [the judge's] time and exercise of authority involve passing sentence, since 90 percent of persons convicted of felonies plead guilty."

That is one of the reasons I welcomed your gracious invitation to appear here.

Now, it would be presumptuous of me to offer myself as a spokesman for all of the law enforcement profession. But it will surely come as no surprise to you that in 33 years of law enforcement service I have heard lawmen remark from time to time regarding various jurists' sentencing policies.

And I would be less than candid if I said I hold no opinions regarding the sentencing process.

I have mentioned that we toil for justice and reduction of crime in different neighborhoods.

The jurist discharges his responsibilities in the traditionally formal decorum of the courtroom. His office is respected and in his court *he* rules.

Into this detached and dignified atmosphere the convicted defendant comes, far removed from the criminal act that resulted in his being there.

A solemn moment in the judicial process arrives.

The defendant has been afforded all the rights and protections of the Constitution and rules of criminal procedure. He has been found guilty beyond a reasonable doubt of the crime or crimes with which he is charged.

And now he stands before the judge for sentencing.

The defendant usually is contrite, penitent.

His attorney, at his side, speaks eloquently in his behalf. The attorney may point out his client's family responsibilities, mentioning his children by name and age. While acknowledging the defendant's errata, he will emphasize his redeeming virtues.

He may mention the employment the defendant engaged in, or had lined up, before he became enmeshed in a tangled web of unfortunate circumstances leading to his crime. He may make mention of his client's potential for becoming a productive member of our society, if allowed to return to it.

The defendant may say a few pathetic words in his own behalf, his voice quavering with emotion.

I do not envy the judge's task.

Studies show much of his time and exercise of authority involve passing sentence, since 90 percent of persons convicted of felonies plead guilty.

What shall this judge do with this person standing before him? His decision will profoundly affect this human being's remaining time on earth.

What are his alternatives under the law?

Is this defendant a likely candidate for probation? Will he be rehabilitated by confinement? Should society be protected from him?

Surely the defendant is contrite now, but will he smirk as he walks out of the courtroom with a suspended sentence? Or will he be grateful for leniency and earnestly strive to improve his life?

We live in a society that cherishes human dignity and worth. We live in a society that places great value on the individual and his right to pursue happiness and success with all the freedoms which are our Nation's proud heritage.

So shall this living, breathing creature of God now be taken from the sunshine of these freedoms and placed in some austere place of confinement to brood darkly over his fate? To perhaps emerge, not rehabilitated, but embittered, cynical, and more skilled in criminal endeavor?

The judge is aware of those who hold that sure and prompt punishment is the best and most effective deterrent to crime.

But he has heard also the strident charges that our corrections system does not correct.

He has listened to arguments for and against indeterminate sentences.

He has considered the "barter system," or mandatory sentencing, debates.

He has read the latest FBI report showing a 5-percent increase in serious crime in 1973.

He knows that the National Institute of Law Enforcement and Criminal Justice found significant disparity among judicial districts in both type and length of sentences imposed for a given crime.

But he must rely primarily on his experience and wisdom, for the information and studies available to him are conflicting.

The occasional barrages of criticism directed at our judicial system have been targeted as much against leniency as against toughness in sentencing.

The presentence report on the defendant may be before him, and though helpful it obviously cannot be the sole basis for sentencing.

But the judge *must* make a decision, and does so.

And though he be knowledgeable of the law and experienced in meting out sentences, he is mortal, and as such can he ever be absolutely certain he has made the *best* of all possible decisions.

Has his judgment served justice and the obligation to society inherent in his office? Only time will tell.

Now let us 'assume that the Agent who arrested this defendant is sitting in the courtroom observing his sentencing.

What might *he* be thinking?

Well, he might be thinking he is certainly glad he isn't in the judge's shoes.

On the other hand, he might welcome an opportunity to contribute to arriving at just sentences in such cases.

Having handled this case from the initial complaint through its investigative stages to prosecution, he may feel he is the only person intimately acquainted with all its details and nuances.

And he may feel that this knowledge could be helpful to anyone charged with the responsibility of sentencing this subject.

The Agent or police officer may be reflecting back to that moment he first arrived at the crime scene—let's say a bank robbery. Perhaps shots were fired, and a teller wounded.

Physical descriptions of the bandit provided by distraught employees and customers were disparate, but there was a concealed camera and it caught the robber in action.

In the neighborhood investigation and subsequent inquiries the Agent and his colleagues were met both with hostility and cooperation.

There is little sanctity attached to the lawman's office.

He does business on the street, where there is no formality, no decorum. And there is no guarantee that he will be treated with respect or even humaneness when he knocks on a door seeking information.

He must exercise diplomacy and ingenuity, for without public cooperation his chances of solving a case are vastly diminished.

If he is too aggressive he may be accused of harassment, brutality, or infringement of civil rights. If he is too cautious, he may be criticized for failure to do his job.

He confronts not only occasional hostility toward law enforcement, but also, from time to time, reluctance by people to "become involved." But fortunately for law enforcement, fortunately for the public and justice, the majority of Americans *do* cooperate.

And from hundreds of interviews, record checks, and endless legwork, a suspect emerges.

As the Agent observes the sentencing procedure, he may then recall the business of presenting his evidence to a prosecutor and perhaps a grand jury.

And there was the secondary investigation, perhaps also extensive and time-consuming, to locate and apprehend the accused once process was issued.

He may reflect on the subject's arrest, the perilously uncertain moment when the lawman places his life on the line, not knowing whether the subject will submit without resistance, or shoot it out.

The lawman is aware that last year 134 law enforcement officers were killed through criminal action—establishing a tragic record.

He has read the FBI's latest report on Crime in the United States, showing that during the 10-year period ending with 1972, more than three-fourths of the persons identified in the killing of police officers had prior arrest records.

He has read the disturbing reports on recidivism. He has had professional dealings with many recidivists.

The crime he knows is not the abstract crime we find analyzed in statistical reports and scholarly studies.

He has met crime at the street level and it is his constant, challenging adversary.

He has seen the misery and destruction created by crime. He has seen the lives laid waste by crime. He has seen the victims bleed and their families suffering.

". . . without public cooperation his [the lawman's] chances of solving a case are vastly diminished."

"The lawman does not demand retribution, nor does he favor unrealistically long and unjustified mandatory sentences."

". . . rather than condemn our species as unsalvageable, we devised laws and appropriate sanctions for those violating these laws, assuming that human behavior can be modified by such sanctions."

And their cries of grief and anguish still echo in his mind as he observes the defendant receiving his sentence.

What, then, is the lawman's attitude toward sentencing?

I speak from 33 years of association with lawmen and from my own personal convictions.

The lawman does not demand retribution, nor does he favor unrealistically long and unjustified mandatory sentences.

He has met and knows well both the arrogant career criminal and the frightened first offender.

He feels the alternatives available to sentencing jurists are useful and should be used. He believes that it is not the length or the type sentence that is important, but rather its effectiveness with regard to rehabilitation and progressing toward our common goals—justice and reduction of crime.

From firsthand experience he knows that there are persons in our society who are morally crippled just as there are persons who are physically crippled—some permanently, others with rehabilitative potential.

But he believes that sure and just punishment is an effective means of controlling crime that cannot be cast aside.

Though an individual offender may not be deterred by punishment, just penalties and incarceration surely serve the larger purpose of general deterrence.

The law enforcement officer, as I have indicated, does not seek vengeance.

Rather than see the criminal suffer, he would much prefer that the offender learn and be improved by appropriate penalties and incarceration. He would be delighted to see the offender emerge from incarceration reformed, more responsible and more self-disciplined.

And he believes that we in the criminal justice family must make use of all the resources and data available to us to arrive at justice—justice for the individual offender and for society.

More and more, our family is using computerized systems to store data and make it instantly available, to expedite the handling of cases and to insure all the information is on hand when judgments are to be made.

While I was police chief in Kansas City, Mo., we launched the Automated Law Enforcement Response Team, now known as ALERT II.

This is a computerized data system designed to serve prosecutors, courts, parole and probation offices, corrections systems as well as law enforcement agencies, in western Missouri and eastern Kansas.

Among its many uses are computerization of court dockets and disposition of cases, and admissions and releases from correctional facilities.

ALERT II is linked with the FBI's National Crime Information Center. I commend it to you as an example of modern resources available to the courts to assist them in discharging difficult responsibilities.

These responsibilities, particularly that of sentencing, would be much simpler if people were all cast in the same mold. But each of us is unique, each the end product of a singular combination of birth, environment, and transactions with others on this earth.

The sentence, the lawman is convinced, as you probably are, must be tailored to fit not only the crime, but also the character of the defendant standing before you.

You might rightfully ask, "And how shall we truly know his character? How do we gain access to his heart and mind? Through what computerized or psychological avenue do we travel into his thinking processes?

We cannot, obviously.

We can only evaluate his behavioral history, and try to understand the reasons behind his actions.

To categorize human beings, to try to assign them to convenient cubbyholes of morality or social acceptability is risky business. We are far too complex.

I have never met a perfect human being. I'm not certain I would recognize one. But to condemn and abandon one of us because his imperfection becomes manifest would hardly be ennobling to our society.

Man's path from Eden to the 20th century has been far from straight and narrow. But rather than condemn our species as unsalvageable, we devised laws and appropriate sanctions for those violating these laws, assuming that human behavior can be modified by such sanctions.

In his later, more cynical years, Mark Twain once asserted that man "is the most detestable of all creatures," that he is malicious, and that he is "the only creature that inflicts pain for sport knowing it to be pain."

But the Mark Twain who created Tom Sawyer and Huck Finn held a higher opinion of man.

And as members of the criminal justice family, we must hold that man is redeemable through law and justice.

We must believe, as Aristotle did, that man perfected by society is the best of all animals; and he is the most terrible only when he lives without *law* and without *justice.*

Thank you.

*Implications of Collaboration Between Law Enforcement and the Social Sciences**

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New York, N.Y.

There is hardly a question these days of the commonality of interest between law enforcement and the social sciences. For the former, compassionate and competent regulation of social behavior requires understanding of what people are all about; for the latter, testing theories and building knowledge requires access to people for study. It would seem to be an ideal basis for a symbiotic arrangement, that is, a coming together of dissimilar species for some mutual advantage. And yet, considerable question can be raised about how well the two systems have fared in achieving functional commonality, that is, working together. Notwithstanding apparent progress, perhaps it would be best to acknowledge that a considerable gap still exists between the two systems.

Before proceeding with this discussion, let us consider the term functional commonality. As it is used here, it implies mutuality of purpose, joint decisionmaking, shared commitment, interchangeability of some functions, and coaccountability as to outcome. In essence, an active participatory process—a process that for me is represented best by the word *collaboration*. Consider for a moment how the word can be compared with the word *cooperation* as it applies to the relations between law enforcement and social science. The outstanding characteristic of *cooperation*, as used here, is passivity. Typically, a law enforcement agency enters into an association with a social science group as a temporary "marriage of convenience." Each system in such an arrangement tolerates the other for some short-term gain, be it political or otherwise. Usually the law enforcement agency assumes a passive posture and

*This article is based on a presentation by the author at a symposium on "Law Enforcement in a Changing Society" sponsored by the National Conference of Christians and Jews and Regional Criminal Justice Planning Board in Palo Alto, Calif., on February 20, 1974. Dr. Bard has long been interested in human crises and has directed a number of innovative programs and originated the first Family Crisis Intervention program within the New York City Police Department. He is currently focused on crisis intervention and interpersonal conflict management in the police function.

cooperates, that is, it allows itself to be "done to," while the social scientists content themselves with "getting the data" and "getting out." This characterization may seem harsh, but is probably an accurate reflection of the nature of most interactions between the two systems.

True collaboration, however, can have profound implications for both systems and for society as well. But before discussing these implications, allow me to digress for a moment to consider a rational model that can serve as one model for collaboration between the two systems. Indeed, it is a model that has considerable precedent in professions such as medicine, teaching, law, psychology, and others. That is, the development of a mechanism for coupling the practitioner and the researcher. For the individual in law enforcement is, after all, an individual practitioner operating within prescribed limits but always, in the last analysis, modifying his or her performance as a matter of discretion. For the practitioner, the researcher serves the critical function of helping to discover the new knowledge so crucial in enhancing discretionary practice. For the researcher, the practitioner enhances the ability to develop new knowledge and otherwise fulfill the self-satisfying process of discovery.

A viable method for this kind of knowledge building has no history in law enforcement. If it has existed at all, it has been in the hardware technology parts of the system, certainly not in relation to "people knowledge," which, after all, is what much of social science is all about.

Can a practitioner-social science researcher coupling be accomplished in law enforcement? An early effort to get at the answer to that question is currently underway in the Norwalk, Conn., Police Department. A City University of New York team of social psychologists is almost half way into a 1-year program that has the development of a practitioner-researcher coupling mechanism as one of its objectives.[1] That program is concerned with the identification of third-party intervention approaches employed by police officers when dealing with interpersonal conflicts. It further intends to isolate those approaches judged to be most effective and then to determine if the effective approaches can be taught to and learned by other police officers. These objectives are at the same time both quite simple and inordinately complex. But the recent effort is the logical extension of earlier stages in the development of a collaborative model: The first was a demonstration in family crisis intervention; the second, a quasi-experimental test of some of the demonstration's findings.

Most significantly, perhaps, the responsibility and accountability for every aspect of the current project is being coequally shared by the police department (and some of its members) and the university and some of its social scientists. Police practitioners actively participate in every stage of the process, including research design, data collection procedures, and data analysis. The police officers involved in the project regard themselves and are regarded as field research panelists. Final decisions with respect to the research objectives are shared by those field research panelists democratically elected to function in the capacity of panel representatives.

In this early and perhaps primitive effort to create a practitioner-researcher coupling, one thing has already become clear: Police practitioners, no less than the practitioners of other professions where individual discretion is necessarily paramount, collaborate in research with ease when their participation is toward an end that practitioners can identify as being consistent with the improvement of their functional capability. After initial skepticism and cynicism, the process has generated a sense of involvement, but even more important, a sense of wonder at the complexity of even the most prosaic aspects of policing. In effect, the collaborative research effort is fulfilling to both practitioners and researchers.

Now let me return to considering, more broadly, the question of the implications of collaboration between law enforcement and social science.

Implications for Social Science

The kind of collaboration to which I refer has a number of distinct advantages.

1. *To learn and yet contribute.* The characteristic of "knowledge for its own sake" is not acceptable to many in the social sciences whose basic motivations lie in the direction of promoting human welfare. Often rankled by the essential exploitiveness of studies that mess with people's lives and give nothing in return, such social scientists appear ready to embrace the collaborative approach. They see in that model an opportunity to understand human behavior in its natural-

". . . a considerable gap still exists between [law enforcement and the social sciences]."

"Programs in police family crisis intervention are a good example of the benefits that may be derived from the . . . [social sciences]."

istic context, and yet, at the same time, to make a direct contribution by enhancing the lives of those participating in the study process.

Programs in police family crisis intervention are a good example of the benefits that may be derived from the kind of action research described. In providing police officers with training and organizational flexibility to enhance third-party intervention skillfullness, officers experience greater effectiveness, increased job satisfaction, and greater personal safety. Community residents are the recipients of a more competently delivered human service. The social scientist acquires access to otherwise unavailable data on human behavior. For example, in a recent analysis of 1,288 family interventions, alcohol and violence were found to be less significant as factors in police-managed family disputes than had been hypothesized.[2] Of course, the hypotheses had been constructed on data derived from laboratory studies and the conventional wisdom of both law enforcement officers and social scientists. There is the suggestion that there may be a considerable payoff in testing theories about the behavior of people (whether born of practical experience or laboratory research) in the crucible of the real world. Improvement of the collaborative model and of action research methodology would seem to imply at least that much.

2. *Enlarging methodology.* Strict adherence to the physically modeled experimental methods of the laboratory may, in the last analysis, be of very limited usefulness in social science. And yet how enamoured the system is with those methods! Among other things, it is undoubtedly reassuring to the obsessive proclivities of those who pursue new knowledge. But social scientists have yet to learn the most elemental lessons already learned by the zoologists and ethologists: Behavior cannot be understood only by its study in artificial and contained environments. Life is with people and ultimately our knowledge will have to be derived from our observations in the world of people.

The question is, however, can methods be developed that meet the most rudimentary criteria of scientific rigor and yet provide the flexibility necessary for naturalistic study? The current climate of research funding availability in relation to law enforcement provides an opportunity to achieve refinements in the kind of methodology outlined. Under the reality press of significant changes in research funding priorities, law enforcement is not the low status system for social science that it was in the past. Will social science use this unprecedented opportunity to enlarge its research methodology to its own advantage and to the advantage of the practitioners of the collaborating system? Or will social science continue its obsessive adherence to "safe" methodologies in Johnny-one-note fashion? The collaborative model has clear implications for the enlargement of research methodology.

3. *Training for collaboration.* The kind of collaboration to which I refer presents an enormous challenge to the most cherished conceptions of education for research scholarship. As one deeply involved in the process of doctoral education, I recognize the critical importance of the Ph. D. as a credential. But the process is tailored to provide significant experiences in acquiring discipline for the future conduct of independently conceived and conducted research. How important, therefore, that the earliest experiences in the process of identity formation contain elements directly related to the model described if that model is to become more broadly viable.

The keystone of the doctoral process is the dissertation. That experience can imprison or it can liberate; it can lock the novitiate in to an endless ritual of safely doing and redoing the initial rite, or it can provide the basis for imaginative and disciplined risk taking so essential to discovery. The collaborative model could serve as a vehicle for encouraging the kind of original research that struggles with the methodologic complexities of action research.

Also, for the social scientist, detached objectivity and the laboratory paradigm have caused losing touch with the realities of the world and real people. How frustrating, but how rewarding and enriching, can it be to operate in that milieu. Ongoing exposure to the world out there serves as a continuous corrective to the distortions and arrogance that are the inevitable consequences of isolation.

Course work must prepare for collaboration as well—course work that comes to grips with the dynamics of collaboration, not only in theory but

in practice as well. For the past several years, I have experimented with a seminar that attempts to achieve this objective for doctoral students in social pyschology. This seminar is part of a training program in urban psychology[3] that seeks to expose students to course work and field placements intended to enhance collaborative involvement with other systems. Law enforcement has continued to occupy an important place in the program.

The seminar has addressed the following problems. During 1 academic year the seminar had an enrollment of 10 doctoral students. The New York City Police Department assigned an equivalent number of personnel to attend each meeting of the seminar. These individuals were in virtually every rank from police officer to deputy inspector and represented the Planning Division, the Patrol Bureau, and the Training Division. The objective: To design a comprehensive training strategy in support of a department decision to institute neighborhood team policing. The policy represented a radical departure from traditional organizational structure and had profound implications for organizational stress, among other things. My role was that of consultant; the structure of the experience, policies governing the work of collaboration, assignments of tasks, etc., all were decisions to be made by the participants.

The early period was devoted to systems familiarization and the achievement of a common language. As the work proceeded, it was clear that the product was going to be something very different than either the psychologists or the police officers could have done alone. And indeed, it was. The final document was a plan for intensive training of team commanders with a view to their conduct of ongoing field training for team members according to a schema that that was quite specific as to content, rationale, and method. In fact, the plan developed was subsequently adopted, with some modification, and put into effect by the police department.

In a subsequent year, the same model was applied to a seminar that undertook to develop an organizational alternative to the existing method of dealing with youth. Police officers and psychologists organized themselves into collaborative task forces for such functions as: A historical analysis of police youth strategies in New York City over a time; a careful review of State and local laws pertaining to police and youth; political and social influences on public policy with respect to the issue; and finally, a review of existing organizational models in other jurisdictions. The resulting document is now serving as a basis for contemplated organizational changes with respect to the delivery of police services where youths are concerned.

Implications for Law Enforcement

The collaborative model has some important implications for institutional law enforcement just as it does for institutional social science. Some cherished myths will have to be confronted and risks taken if collaboration is to become a reality.

1. *Natural antipathy to "them."* Most practitioners of any profession hold the secret conviction that nobody can possibly understand the loneliness of the individual decisionmaking process in human service delivery. It is a conviction that is used, among other things, in the service of group cohesion or solidarity. Unfortunately, it can, and often does, lead to the same kind of isolation and arrogance that it obtains from the detached and objective stance of the social scientist. Most police practitioners are convinced that nobody can fully understand the complexity of the police role except another police officer. To some extent that feeling is justified—but only minimally. The tragedy is that it serves as the basis for a pervasive certainty that never having had the experience excludes any possibility of understanding by others, however they are motivated. Even where collaborative intent by social scientists is clear and unequivocal, the tendency to broadly paint them with a brush as "do-gooders" and impractical dreamers can be an ultimately self-destructive barrier to communication. In the absence of communication there can be no collaboration.

2. *Recognition of the need for an abstract body of knowledge.* There is an ancient Chinese saying to the effect that "wisdom begins with the respect for complexity." Law enforcement is increasingly a system beset by complexity—and yet its most characteristic posture is to deny that complexity. Social, legal, and public policy changes increasingly require an accumulation of wisdom that must suffuse the institution so thoroughly that

"In the absence of communication there can be no collaboration."

the skills and competence of its individual practitioner is affected.

The collaborative model suggested is a step toward building that body of knowledge. The individual medical practitioner might still be barbering as his most significant function if the medical profession had not developed and finely honed a knowledge-building mechanism between the practitioner and the chemist, biologist, physicist, physiologist, and a host of other researchers. Medicine has progressed because of the individual practitioner's recognition (as well as the recognition by the institution) that knowledge building is essential to practice.

It is equally essential to law enforcement and must be recognized as such.

3. *Knowledge increases job satisfaction and self-esteem.* This is a particularly important element in practitioner performance. I can think of no greater blow to self-esteem or source of dissatisfaction than to feel inadequate and incompetent when faced with a highly complex interaction in which you are regarded as the authority who is expected to *know*. And yet, increasingly is the police officer in that position. Without the necessary knowledge, he is forced to resort to spontaneous actions which may only make matters worse regardless of how well intentioned they may be.

There is a further circular effect that is self-destructive. As the institution raises its educational standards, improves economic rewards, and thereby raises the quality of its practitioners, traditional disregard of knowledge-building needs becomes even less tenable. Better educated practitioners will not be content to compensate for incompetence in the ways of the past. For them, involvement in collaborative research for self-improvement has the character of an essential antidote to the kind of boredom and institutional sabotage to which disgruntled better educated and more highly motivated practitioners are given.

A recent experience has highlighted the salience of knowledge building in the collaborative context. One of our urban psychology trainees was assigned to a placement in the New York City Police Department's Rape Analysis and Investigation Unit. She was to bring those social psychological skills to bear that would be helpful in understanding the epidemiology of forcible rape and in designing strategies for its prevention and control. After a number of months, detectives in the unit asked if she could arrange a series of seminars that dealt specifically with the handling by investigators of victims of rape. It was the direct expression of the need for "people knowledge" by a group of practitioners. The seminars were held initially with the members of the rape unit and subsequently with all detective supervisors in the city and finally with all sex crime specialists in the city. In the conduct of those seminars, we concentrated on conveying a sense of crisis theory and on those specific crisis intervention techniques that would not only benefit the victim and victim's family, but also on those that would enhance the investigating officer's successful resolution of the case.[4]

The important thing to recognize is that the involvement of the officers in a collaborative relationship with a social scientist led to the search for new knowledge which had direct implications for the practice of their profession. The social scientists, too, were confronted with the necessity of synthesizing existing theory, conducting research, and otherwise employing skills directly bearing upon the research related to a practical law enforcement function.

Implications for Society

An important question to raise at this juncture is: What possible implications can collaboration between law enforcement and social science have for society at large? Perhaps some of the answer lies in the phrase "a changing society." If anything has increasingly affected "change" over the past two decades, it is the virtual explosion of information. Communications technology has pierced the most remote places and affected the most isolated individuals with a profusion of information. The result: People know, and people who know are both sophisticated and discerning. Further, people who know are less likely to be "taken in" or, alternatively, are more likely to be made cynical by these disparities between myth and perceived reality.

I think it safe to say that people know more about both law enforcement and social science than they did in the past. This change has brought about an increasing disinclination to accept the myths of each and a growing insistence on more substance from each. The fictional characterizations of the police role as projected on television, in the films, or in community relations programs fool no one. I suspect that the public is now sophisticated enough to be able to tolerate entertainment as long as it isn't at the expense of reality. By the same token, the public is very edgy these days about a social science establishment that uses tax dollars exclusively for the self-glorification of an elite ivory tower. People have acquired a sense that the work of social science can be directly useful in improving the lives of people. And they want that.

I have long believed that both law enforcement and social science are engaged in operations that have a direct bearing on public security. Both systems can be legitimately characterized as being concerned with people; the one in the study of behavior, the other in the regulation of behavior. How secure or insecure a society is often is

"... 'wisdom begins with respect for complexity.'"

a direct expression of how well those functions are being performed. Crime, for example, ranks first as a topic of concern for most Americans. But is it crime to which that concern refers? Is it not possible that in an increasingly complex and depersonalized society, crime is used as a convenient symbol for the expression of a more pervasive and psychological sense of insecurity?

There is some evidence in some of my research that even where crime rates remain constant, people feel less insecure if the delivery of a wide range of police services is marked by compassion and competence. It is perfectly reasonable to conclude that as the most immediate and most visible extension of governmental authority, the police are in a unique position to engender a sense of public security through the skilled and caring performance of their functions. Nothing induces a sense of security more than the fact that the realistically and symbolically powerful authority cares and is competent. No manner of manipulation of crime statistics can generate that kind of public security.

So the implications for society may be quite great. The real hope for security in an unsettled, changing society lies in conceptualizing law enforcement as a unique human service delivery system primarily concerned with the regulation of human behavior and whose functional competence is rooted in collaboration with a social science research apparatus committed, at least in part, to the study of behavior for its usefulness.

As mentioned earlier, "wisdom begins with respect for complexity." When will our wisdom begin?

FOOTNOTES

[1] "The Police and Interpersonal Conflict: Third Party Intervention Approaches" supported, in part, by a grant from The Police Foundation, Washington, D.C.

[2] Bard, M., and Zacker, J., "Assaultive Behavior and Alcohol Use in Family Disputes," (in preparation).

[3] Supported by Training Grant #5T01 MH12896-02, National Institute of Mental Health.

[4] A paper describing the content of those seminars appears in Bard, M., and Ellison, K., "Crisis Intervention and Investigation of Forcible Rape," The Police Chief, vol. 41, 1974, pp. 68-73.

National Crime Information Center Newsletter, May 1974

NCIC

As of May 1, 1974, there were 4,495,345 active records in the National Crime Information Center (NCIC), with the breakdown showing records pertaining to 141,300 wanted persons; 843,046 vehicles; 255,050 license plates; 822,761 articles; 719,717 guns; 1,251,194 securities; 9,051 boats; and 453,226 criminal histories. In April 1974, NCIC network transactions totaled 4,419,586, averaging 147,320 daily.

NCIC operating performance figures for April 1974 revealed that of the 720 hours in the month, NCIC was operational 697.1 hours (96.9 percent). This figure is broken down to show 653.4 hours (90.8 percent) unrestricted operational time and 43.7 (6.1 percent) restricted operational time, i.e., NCIC on the air but accepting only certain types of messages because of concurrent file maintenance.

FBI file No. 91-43983 I.I.

TRANSCEIVER TRANSMITS TELLTALE PRINT

While he ordered another bank official to fill a pillowcase with money, a lone gunman held the president of an Oklahoma bank at gunpoint. The gunman also had in his possession a transceiver and stated that he was monitoring the police radio and would shoot the president if any alarm were sounded.

After receiving more than $70,000, the robber started from the bank, taking two bank officers as hostages. At the doorway, the officers broke away from the robber, and he ran out the door. As he ran around a corner, he was struck by a vehicle and knocked to the ground; however, he was able to continue his getaway by commandeering a vehicle.

During his fall, the bank robber dropped the transceiver, which was recovered by a bank teller. Although the bandit was wearing a clear plastic glove on his *right* hand, a latent finger impression was developed in the FBI Identification Division and identified as the *left* middle fingerprint of a prime suspect.

The suspect was subsequently arrested and pleaded guilty to a total of nine bank robberies. He was sentenced to serve concurrent sentences totaling 25 years in prison.

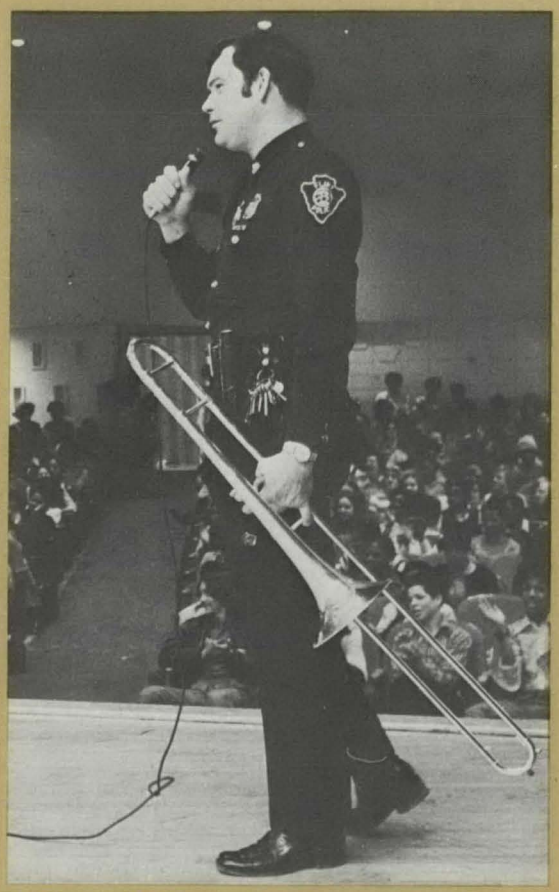
FROM: Detroit 4/8/74 on Human Interest

COP ON THE BEAT

General police-community relations, safety education, and musical appreciation are the ways the Flint, Mich., Police Department describes the benefits of a program called "An Afternoon in Dixieland," which it has presented before assemblies of students in the Flint public schools since the program's inception in 1970.

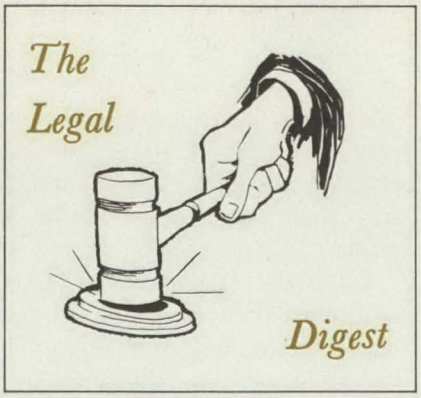
The seven-piece band, the Flint "All Star" Dixieland Jazz Band, led by Patrolman Keith DeWitt, dramatizes the history of jazz music from its birthplace in New Orleans, La. Included in the musical program are spirituals, blues, hymns, and the happy upbeat tempo of modern Dixieland selections.

All seven members of the band are experienced musicians and hold responsible jobs—accountant, vocational music teacher, grocery store operator, musical instrument repairman, maintenance engineer, new car preparation specialist, and police officer—within the Flint community. This cooperative venture is stressed to the students during the program in an effort to promote mutual understanding between the police department and the student community.



Patrolman DeWitt gives a short talk on aspects of self-respect and police-community relations.

The Flint "All Star" Dixieland Jazz Band.



(This the conclusion of a three-part article. Parts I and II appeared in the May and June issues, respectively.)

An Increase in Interest

By
INSP. CHARLES A. DONELAN
Federal Bureau of Investigation
Washington, D.C.

PART III

". . . the problem involving the admissibility of declarations against penal interest is difficult. On the one hand, there is the need to ensure that innocent persons accused of crime are not denied the use of true evidence that may exonerate them. . . . On the other hand, there is the need to ensure that guilty men are not acquitted by false evidence. . . ."

V. *The* Chambers *Case*

In *Chambers* v. *Mississippi*,[28] Leon Chambers was convicted of murder by a jury in a Mississippi trial court. After the Mississippi Supreme Court affirmed his conviction, he successfully petitioned the Supreme Court of the United States to consider whether his trial was conducted in accord with principles of due process. The Court found that the trial judge had erred in excluding under the State's hearsay rule three oral confessions to the murder made by a third party named Gable McDonald, and held that this error, in combination with another, denied Chambers a fair trial.

The victim was a policeman who was slain while he and other lawmen attempted to make an arrest in the midst of a hostile mob. During the commotion, the officer was hit in the back by gunshot coming from an alley where a crowd had gathered. Before he fell he managed to turn around and fire his riot gun twice. His first shot, wild and high, scattered the crowd; the second shot, more deliberately aimed and assumed to be meant for his attacker, struck Chambers while he was running down the alley. The other officers, who believed that Chambers had been killed, went to the aid of the wounded policeman and took him to a hospital where he was declared dead on arrival. A later autopsy showed he was killed by bullets from a .22 caliber revolver. The

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

officers made no search for the murder weapon and did not examine Chambers when they found him; but friends of Chambers, including McDonald, later discovered he was alive and brought him to the hospital where a guard was placed outside his room.

Chambers was subsequently charged with the murder, but over a year passed before he was tried. In the interim, shortly after the crime, McDonald left town. He returned about 5 months later when his wife advised him that an acquaintance wanted to see him. After talking to this acquaintance, McDonald agreed to confess to Chambers' attorneys that he was the killer and gave them a voluntary sworn, written statement that he shot the officer, that he had already told a friend he had done so, and that he had used his own .22 revolver which he discarded shortly thereafter. McDonald was then turned over to the local authorities and placed in jail. When he later appeared before a justice of the peace for a preliminary hearing, he repudiated his confession, explaining that he had been persuaded by his acquaintance to confess on the promise that he would not go to jail and would share in the proceeds of a tort suit which Chambers would bring against the town. He denied he was on the murder scene, advanced an alibi, stated he did not learn about the shooting until the next day, and said that he had owned a .22 revolver but lost it many months before the shooting. His repudiation of the confession was accepted by the magistrate and he was released. No further investigation of his possible involvement was undertaken.

The trial of Chambers was marked by conflicting evidence. For example, one officer testified for the prosecution that he actually saw Chambers shoot the policeman; while a defense witness testified that he was looking at Chambers when the shooting began and was sure Chambers did not fire the shots.

Chambers tried to develop two grounds of defense: first, that he did not shoot the officer; and second, that it was McDonald who did so. In putting in his second ground of defense, he called a witness who testified that he saw McDonald shoot the officer and a second witness who testified that he saw McDonald immediately after the shooting with a pistol in his hand. He adduced evidence disputing McDonald's alibi as to where he was at the time of the murder. He called a gun dealer who testified that according to his business records McDonald purchased a .22 caliber revolver about a year prior to the murder and bought another .22 revolver 3 weeks after the officer's death.

Chambers also endeavored to show that McDonald had confessed on four occasions that he had killed the officer: once when he gave the written confession to Chambers' lawyers, and three times prior to that occasion when he confessed orally to three of his friends. In his effort to get the confessions into evidence, Chambers had sought a pretrial ruling that if the State chose not to call McDonald, he be allowed to treat him as an adverse witness, and thus subject him to cross-examination. When the State failed to call McDonald at the trial, Chambers put him on the stand. On direct examination he had McDonald's written confession admitted into evidence, but on cross-examination the State elicited from McDonald that he had repudiated this confession and brought out his explanation that he had confessed only on the promise of his acquaintance that he would not go to jail and would share in the tort suit. McDonald also testified that he did not shoot the officer and furnished his alibi.

Chambers moved to cross-examine McDonald, but his motion was denied by the trial judge on the basis of the State's "voucher" rule providing that a party is bound by anything his own witness says and may not impeach him. He again argued that McDonald was an "adverse" witness subject to cross-examination, but his contention was not accepted by the trial judge because McDonald's testimony did not directly incriminate Chambers, a ruling later supported by the Mississippi Supreme Court which noted that McDonald did not "point the finger at Chambers" in his testimony.

Chambers then attempted to introduce the evidence of McDonald's three friends who would have testified that McDonald had told each of them on separate occasions shortly after the crime that he was the murderer. The trial judge excluded these three oral confessions, sustaining the State's objection that such testimony was hearsay.

When the case reached the Supreme Court of the United States, the Court ruled that the trial court's application of the State's "voucher" rule prevented Chambers, through cross-examination of McDonald, from challenging McDonald's renunciation of the written confession and his alibi and also from exploring the circumstances of his three oral confessions, thus depriving Chambers of his right to defend himself against the State's charge by contradicting testimony that was clearly "adverse." The Court

mentioned that here, as in the *Donnelly* case, the State's proof excluded the theory that more than one person participated in the shooting of the police officer. Thus, to the extent that McDonald's written confession tended to incriminate McDonald, it tended also to exculpate Chambers; and his retraction inculpated Chambers to the same extent that it exculpated McDonald.

The Supreme Court also ruled that the trial court erred in excluding McDonald's three oral confessions by its application of the State's hearsay rule. The Court opened its discussion on this issue by noting that the declaration against interest is among the most prevalent of the exceptions to the hearsay rule allowing the admission of hearsay statements made under circumstances that tend to assure reliability. It said that Mississippi recognized this exception but applied it only to declarations against pecuniary interest and did not recognize any such exception for declarations like McDonald's in this case that were against the penal interest of the declarant. The Court acknowledged that the materialistic limitation followed by Mississippi appears to be accepted by most States, although a number of States have discarded it. It acknowledged, too, that declarations against penal interest have also been excluded in Federal courts under the authority of the *Donnelly* case, although exclusion would not be required under the newly proposed Federal Rules of Evidence.

Where the materialistic limitation to the declaration-against-interest exception prevails, the Court stated, exclusion is usually premised on the view that admission of declarations against penal interest would lead to the frequent presentation of perjured testimony to the jury. It is believed that confessions of criminal activity are often motivated by extraneous considerations and, therefore, are not as inherently reliable as statements against pecuniary or proprietary interest. The Court noted that the latter rationale has been the subject of considerable scholarly criticism, but it said it did not have to decide in this case whether, under other circumstances, it might serve some valid State purpose by excluding untrustworthy testimony.

The Court explained that the hearsay statements by McDonald in this case were originally made and subsequently offered at trial under circumstances that provided considerable assurance of their reliability. This was so because each of the three oral confessions was made spontaneously by McDonald to a close acquaintance shortly after the murder had occurred. Each of these independent confessions was corroborated by some other evidence in the case and their sheer number provided additional corroboration for each. Each confession was in a very real sense self-incriminatory and unquestionably against interest. McDonald stood to benefit nothing by disclosing his role in the shooting to any of his three friends, and he must have been aware of the possibility that disclosure would lead to criminal prosecution. Furthermore, the Court declared, if there was any question about the truthfulness of these extrajudicial statements, McDonald was present in the courtroom and had been under oath. He could have been cross-examined by the State, and his demeanor and responses weighed by the jury. The Court stressed that this availability of McDonald significantly distinguished this case from the prior Mississippi precedent upon which the prosecutor relied and from the "Donnelly-type situation," since in both the latter cases the declarant was unavailable at the time of trial.

The Court said that the testimony critical to Chambers' defense rejected by the trial court bore persuasive assurances of trustworthiness and thus was well within the basic rationale of the exception for declarations against interest. It also said that the hearsay rule may not be applied mechanistically to defeat the ends of justice in circumstances where constitutional rights directly affecting the ascertainment of guilt are implicated.

Finding that the cumulative impact of the trial court's evidentiary rulings on the State's voucher rule and the State's hearsay rule had frustrated Chambers' efforts to develop an exculpatory defense, the Supreme Court held that under the facts and circumstances of this case Chambers was denied a fair trial in violation of the due process clause of the 14th amendment. In so holding, the Court said:

> "In reaching this judgment, we establish no new principles of constitutional law. Nor does our holding signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures."

In the recent case of *Commonwealth* v. *Hackett* decided by the Superior Court of Pennsylvania, the court held in light of *Chambers* that the exclusion of statements tending to exculpate the defendant made by a third party who refused to testify as a witness at his trial denied the defendant due process of law.[29]

The defendant was convicted of possession of heroin and operating an automobile under the influence of a narcotic drug. He was discovered unconscious at the wheel of his car by a police officer who found an empty vial, a tourniquet, and an empty syringe with fresh blood on the front seat. No needle marks were found on his body, but a chemical test established the presence of heroin.

At his trial, the defendant offered the defense that he had been involun-

tarily drugged when he drank an unfinished soda left in a bottle by one Keyser at the gas station where he was working. He denied injecting himself, maintained that the soda contained the heroin which he had consumed ignorant of its contents, and sought to have Keyser testify as a defense witness. When the trial judge ascertained at a hearing that Keyser would refuse to testify on the basis of his privilege against self-incrimination, he refused to allow Keyser to be called to the stand. The trial judge also refused to allow into evidence certain statements made by Keyser to the defendant and his attorney out of court. In these statements, one oral and one written, Keyser admitted "fixing" the defendant by putting the heroin in the soda bottle, described the circumstances of the defendant's drinking the soda, and gave his motive for "fixing" the defendant. Thus the evidence contained in this offer of proof was critical to the accused's defense that he had been "framed." The trial judge refused, however, to admit the two Keyser "confessions" on the ground that they were hearsay not falling within an exception to the hearsay rule.

On appeal, the Superior Court noted that although few Pennsylvania decisions have ever referred directly to the declaration-against-penal-interest exception, dissents in two recent cases in that State had called for the admission of such declarations in exculpation of the accused.

The court stated that the statements made by Keyser against his penal interest in this case were highly relevant and trustworthy. The oral statement was made to a member of the bar of the Commonwealth who was representing the defendant, and the signed written statement was sent to the defendant himself. Each of the statements was made prior to trial and would have corroborated the defense. If believed, they would not only have exculpated the defendant entirely, but inculpated Keyser as "framing" the defendant.

The court said that it believed in light of *Chambers* that the defendant was denied due process by the exclusion of trustworthy exculpatory declarations against penal interest. The absence of a fair opportunity to defend against the Commonwealth's accusation in a criminal trial, it said, constitutes a denial of due process of law under the 14th amendment. It declared:

> "Public policy, the fundamental principles of fairness and due process of law require the admission of declarations against penal interest where it can be determined that those statements: (1) exculpate the defendant from the crime for which he is charged; (2) are inherently trustworthy in that they are written or orally made to reliable persons of authority or those having adverse interests to the declarant; and, that they are made pre-trial or during the trial itself. Under these circumstances, an exception to the hearsay rule, in our view, is mandatory. The protection of innocent defendants must override any technical adherence to a policy that excludes evidence on the grounds of hearsay." [30]

VI. Conclusion

We have seen, historically, that in its early stage of development the declaration-against-interest exception to the hearsay rule was deemed to be sufficiently broad in scope to include a statement against penal interest; that in the course of time this wide scope was narrowed to admit only statements against a pecuniary or proprietary interest; and that in relatively recent years its scope has been expanded in a growing number of jurisdictions to include once again statements exposing the declarant to criminal liability.

The decision of the Supreme Court of the United States in *Chambers* v. *Mississippi* appears to have added support to the expanded scope of the exception even though it is a due process case holding only that the evidentiary rulings of the State trial court deprived the accused of a fair trial under its peculiar facts and circumstances. Yet, although the Court took pains to make it clear in this 8 to 1 decision that its rulings did not signal any diminution of the respect accorded State criminal trial rules, it also stressed that the offered testimony rejected by the trial court with respect to the third-party confessions which bore persuasive assurances of trustworthiness was "well within the basic rationale of the exception for declarations against interest." Furthermore, the Court emphasized that in a case where constitutional rights directly affecting the ascertainment of guilt are implicated "the hearsay rule may not be applied mechanistically to defeat the ends of justice." It seems fair to say, therefore, that whatever the view of the Court may be so far as any flat rule of evidence admitting all declarations against penal interest is concerned, this case does put in a favorable light the admissibility of such declarations when their trustworthiness is enhanced by corroborative evidence and the ends of justice are at stake.

In theory, a declaration against penal interest is as trustworthy as a declaration against materialistic interest. Both are interests of a substantial nature, and a sane man would not be presumed to tell a falsehood to his own detriment in regard to either. Indeed, a statement exposing the declarant to criminal liability would appear to be even more trustworthy than one against his pecuniary or proprietary interest since men, by their nature, value their personal liberty more than their possessions. Thus, in the ab-

stract, if a declaration against materialistic interest is reliable enough to be admitted as an exception to the hearsay rule, so should a declaration against penal interest be admissible.

In practice, however, the case for the admissibility of a declaration against penal interest, as such and without more, is not so simple. The very fact that men treasure their liberty so greatly may work to induce a guilty man charged with crime to stop at nothing in his desperate situation in order to prevent the loss of his liberty by conviction. Furthermore, persons close or beholden to him may be willing, or may be forced, to aid him by any means—including the fabrication of a confession to the crime charged against him by an unavailable third party. In short, as Professor McCormick says, the motivation for the exclusion in criminal cases of a declaration against penal interest is certainly not on the ground that an acknowledgment of facts rendering one liable to criminal punishment is less trustworthy than an acknowledgment of a debt, but is probably a different one, "namely, the fear of opening a door to a flood of perjured witnesses falsely testifying to confessions that were never made." [31]

Thus, the problem involving the admissibility of declarations against penal interest is difficult. On the one hand, there is the need to ensure that innocent persons accused of crime are not denied the use of true evidence that may exonerate them. All decent men are haunted by the ghost of the innocent man convicted. On the other hand, there is the need to ensure that guilty men are not acquitted by false evidence that can be readily made to order out of court and delivered in court with "little or no danger of successful prosecution for perjury." [32] Justice cannot be done when truth is gone.

Perhaps a practical solution to this problem lies in a rule falling midway between absolute exclusion and absolute admission of declarations against penal interest such as that in the proposed Federal Rules of Evidence, noted above, which provides: "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible *unless corroborated.*" [Emphasis added.] The importance of such corroboration was impliedly noted both by Professor Wigmore in his treatise and by Mr. Justice Holmes in his dissent in the *Donnelly* case. Professor Wigmore said that the doctrine excluding declarations against penal interest is shocking to the sense of justice because it requires in a criminal case the rejection of a confession of an unavailable person "however well authenticated," and because it would refuse to let an innocent accused vindicate himself by producing to the tribunal "a perfectly authenticated written confession" made by the true culprit. Mr. Justice Holmes said in *Donnelly* that the third-party confession excluded under the limitation in that case was "coupled with circumstances pointing to its truth," and he indicated that he favored its admissibility on the supposition that "it should be proved that the confession really was made, and that there was no ground for connecting Donnelly with Dick." Finally, the Supreme Court in *Chambers* highlighted the evidence corroborating the oral confessions involved in that case.

The scope of the declaration-against-interest exception to the hearsay rule is, of course, a matter to be settled by the courts and legislatures in forums where the law enforcement officer has no voice. But although the officer has no part in making the law, it is his professional responsibility to be familiar with every rule of evidence in his jurisdiction that may affect the use at trial of the facts he gathers in the course of an investigation.

When an officer begins his investigation to establish the fact of crime and the identity of the criminal, he generally starts from scratch with little information in hand and picks up items of evidence piece by piece as he proceeds. Since the actual probative value of the evidence collected can seldom be accurately gaged until his investigation is over and the trial is on, he is interested in every fact that may possess even remote logical relevancy to the case. His sole concern is to discover the truth, and he seeks the facts that spell in favor of any possible suspect as well as those which spell against him. Consequently, if his investigation reached that point where a probably guilty person had been isolated from the mass of possible suspects, and he received information that some other party had confessed to the crime involved, no development in the case would match this allegation in relevancy and importance.

Needless to say in such event, the officer would press hard to discover what truth lay in the report concerning the alleged confession, and he would do so no matter what might be the limits of the controlling, technical rule of evidence. Bearing in mind that the worth of a declaration against penal interest depends upon the credibility of two persons—the one who allegedly made it and the one who allegedly heard or saw it made—he would exhaust every investigative lead in order to determine if the confession was in fact made and, if so, whether its contents are true. The results of such a thorough inquiry may ensure the end desired—the exoneration of the innocent and the conviction of the guilty.

FOOTNOTES

[28] 410 U.S. 284 (1973).

[29] 307 A. 2d 334 (1973).

[30] Ibid. at 338.

[31] McCormick, *Evidence* § 255 at 549–550 (1st ed. 1954).

[32] *Donnelly* v. *United States*, 228 U.S. 243 at 273 (1913).

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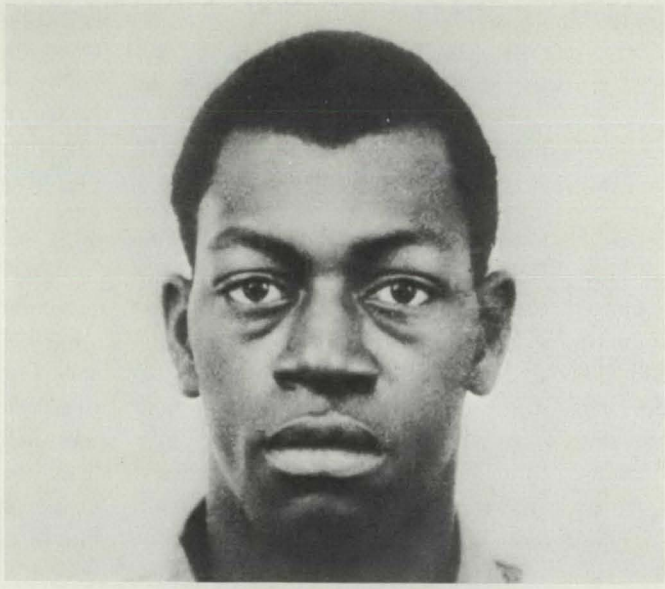

WILLIAM MARK LOTT III, also known as Billy Lott

Interstate Flight—Murder

William Mark Lott III is being sought by the FBI for unlawful interstate flight to avoid prosecution for murder. A Federal warrant for his arrest was issued on January 22, 1971, at Philadelphia, Pa.

The Crime

Lott reportedly is 1 of 12 men in a now defunct extremist group which operated in Philadelphia, Pa., and 1 of 4 individuals charged in the November 22, 1970, murder of 2 members of the group who reputedly tried to break away from the organization.

Description

Age	25, born June 29, 1949, Philadelphia, Pa.
Height	5 feet 11 inches.
Weight	170 pounds.
Build	Medium.
Hair	Black, may be worn Afro style.
Eyes	Brown.
Complexion	Dark.
Race	Negro.
Nationality	American.
Scars and marks	Tattoos on arm and left side of chest.
FBI No.	995,207 H.

Right ring fingerprint.

Fingerprint classification: 9 O 5 U III 12
I 17 T OO

Caution

Lott is being sought in connection with a murder in which the victim was shot. He reportedly is proficient in handling firearms and should be considered armed and very dangerous.

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.

U.S. GOVERNMENT PRINTING OFFICE : 1974 O - 547-923

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WASHINGTON, D.C. 20535

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CITY STATE ZIP CODE

Letter from Lieutenant T.D. Coolidge, Sr. Clayton County Sheriff's Department, Clayton County Board of Identification Bureau

Courthouse Square, Jonesboro, Georgia 30236

ob 4/5/74.

PHONE-A-PRINT

During the early morning hours, a lieutenant in the Clayton County, Ga., Sheriff's Department telephoned the Identification Division of the FBI and requested assistance in identifying a suspect in custody who claimed that he was being detained illegally. The lieutenant believed that the suspect was identical with a person wanted in two States, but available identification conflicted in some instances with that known for the fugitive.

The lieutenant requested that a check be made on the fingerprint record of the person he believed to be in their custody. An FBI fingerprint technician pulled the file in question and, by discussion over the phone with the lieutenant, compared the identifying features of the fingerprints in file against those taken from the suspect at the sheriff's department. The technician and the lieutenant came to the conclusion that the fingerprints were identical, and a fugitive warrant was obtained for the suspect.

The telephone comparison and identification were positively confirmed afterwards when the Clayton County Sheriff's Department received fingerprints from the two States from which the suspect was a fugitive.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

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INTERESTING PATTERN

The unusual impression shown at left is found to consist of a loop over a whorl with three deltas. Consequently, this pattern is classified as an accidental whorl with a meeting tracing. A reference search would be conducted as an outer tracing.