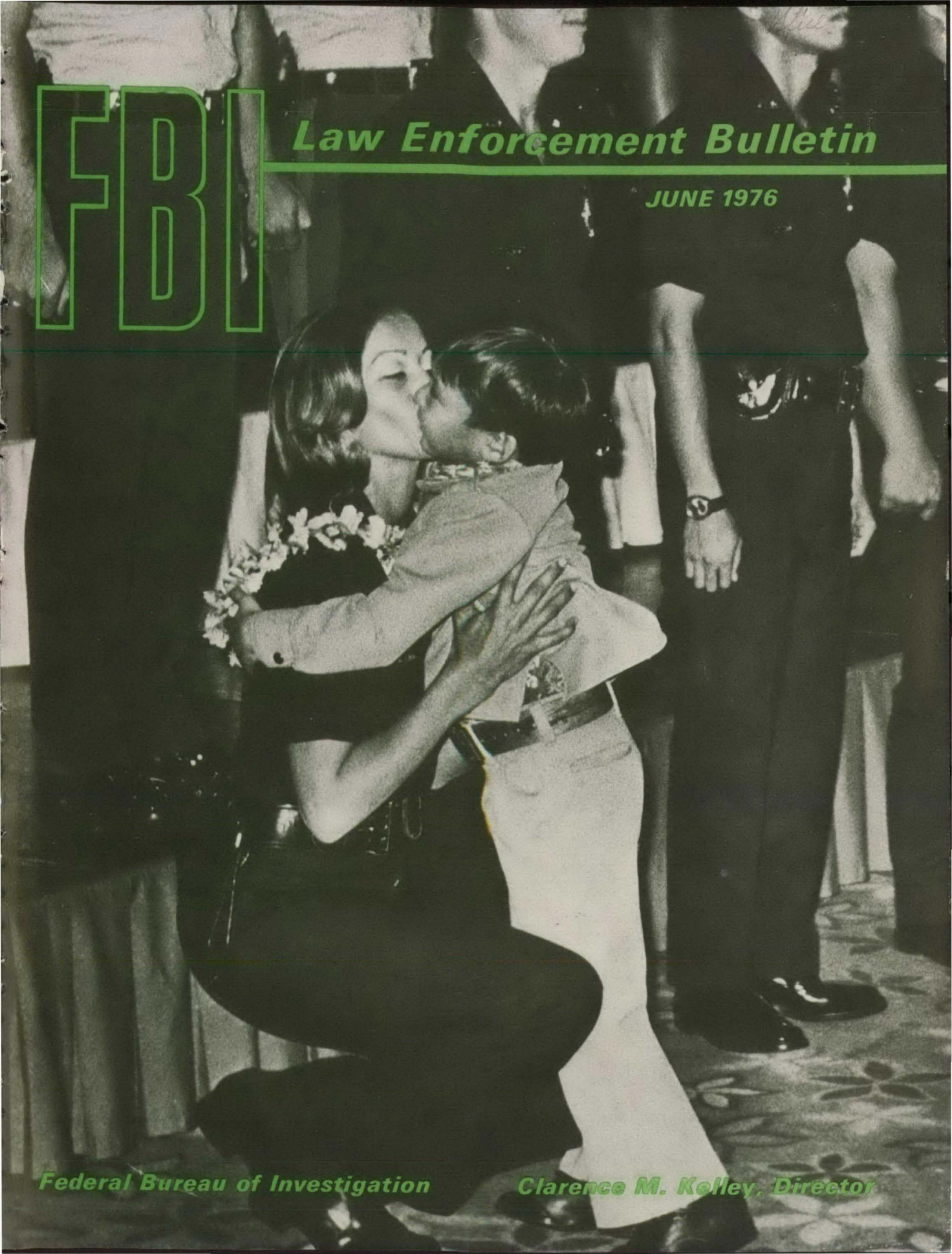


# FBI

## *Law Enforcement Bulletin*

*JUNE 1976*



*Federal Bureau of Investigation*

*Clarence M. Kelley, Director*



# FBI

## Law Enforcement Bulletin

JUNE 1976  
VOL. 45, NO. 6



Published by the  
FEDERAL BUREAU of INVESTIGATION  
UNITED STATES DEPARTMENT of JUSTICE  
Washington, D.C. 20535

### CONTENTS

#### MESSAGE FROM THE DIRECTOR

*"In a very fundamental sense, the policeman symbolizes constituted authority and, to most citizens, is the personification of the law at work."* 1

MANAGEMENT APTITUDE PROGRAM: THE FBI ASSESSMENT CENTER, by Robert C. Quigley, Special Agent, Federal Bureau of Investigation, Washington, D.C. 3

"PERSPECTIVES OF POWER," by Hon. Clarence M. Kelley, Director, Federal Bureau of Investigation, Washington, D.C. 12

POLICING A CITY HALL DEMONSTRATION, by Carl Ravens, Assistant Chief, Police Department, New York, N.Y. 16

"COMBINING RESPECT FOR THE LAW WITH CONCERN FOR OTHERS." Graduation of the 104th Session of the FBI National Academy. 24

PRESIDENTIAL AUTHORITY TO AUTHORIZE INVESTIGATIVE TECHNIQUES IN FOREIGN INTELLIGENCE INVESTIGATIONS, by Gary M. Laturno, Special Agent, Federal Bureau of Investigation, Washington, D.C. 27

WANTED BY THE FBI 32

#### THE COVER

A graduating recruit officer of the Honolulu Police Department receives an impromptu commendation from her young son. Photo by Arthur K. Colombres, free lance, "Honolulu Star-Bulletin."





## Message from the Director . . .



IN A VERY FUNDAMENTAL SENSE, THE POLICEMAN symbolizes constituted authority and, to most citizens, is the personification of the law at work. Thus, when a law enforcement officer is murdered in the performance of this role, the significance far transcends the tragic loss of a faithful public servant. In full measure, the murderous act strikes at the foundations of a lawful society with profound and far-reaching effects that touch the lives of every law-abiding citizen.

Last year, 129 local, county, State, and Federal law enforcement officers were feloniously slain in the line of duty. On the average, over 100 officers each year have met death at the hands of criminals, deranged persons, and extremists over the past decade. This toll is intolerable and presents a challenge of the most serious magnitude to our profession.

Police killers do not conform to any set pattern. They come in a broad range of identities and reside in inner cities, affluent suburbs, and rural areas throughout the country. Of 172 offenders identified in police slayings last year, 51 had no prior criminal record; 12 were juveniles; 2 were over 60 years of age; and 3 were women. The risk does not end with the tour of duty—18 officers were slain while in an off-duty status. Distressingly, the lethal weapon used in 19 instances was the victim officer's own.

Wearing a badge is inherently a hazardous calling. Although the very nature of police work demands that officers possess many qualities, two in particular are required in abundance—courage and compassion. To survive the perils of law enforcement, however, courage must be counter-

balanced with sound judgment and compassion must be tempered with due caution.

To prevail in dangerous encounters with potential adversaries—anticipated or spontaneous—the officer must possess the “edge.” This vitally important police advantage is not easily won. It comes from proper training and periodic retraining; utilization of adequate and fully operational equipment; development and strict adherence to sound “survival” procedures; consistent exercise of good judgment; a high state of physical fitness; and, especially, from constant mental alertness. Carelessness and complacency have exacted a high cost in police lives. A moment's inattention, preoccupation, or imprudence on an officer's part can—and often does—bring swift death.

Recent studies have emphasized and experience has amply confirmed that the observance of several fundamental principles contributes to an officer's self-preservation. Certainly prime among these principles must be a determination to consider no arrest, enforcement function or police response as routine, and this, of course, includes the careful handling of prisoners and suspects in accordance with proper procedures. Important, too, are the principles of calling for assistance when necessary and before a crisis materializes; never substituting convenience or ease for personal safety; and choosing adequate protective cover when gunplay erupts or is imminent. While basic, these are, nonetheless, indispensable precepts that may be ignored only at grave risk.

Currently, lightweight bullet-resistant protective apparel is being worn regularly throughout

## MESSAGE

---

the law enforcement community. I am gratified to learn that several instances have recently been reported where such equipment saved an officer's life or prevented serious injury. Although additional testing and evaluation remain to be conducted in regard to this equipment, developments in the field are encouraging and offer much promise—but no panacea.

Death patiently, but relentlessly, stalks the lawman as he carries out his many and complex responsibilities. Vigilance and professional competence are assuredly our greatest weapons of self-defense in countering this menace. Be alert—use good judgment—*practice* defensive law enforcement. Let us not give any would-be police killer a gratuitous opportunity to succeed.

JUNE 1, 1976

  
CLARENCE M. KELLEY  
Director



# Management Aptitude Program: The FBI Assessment Center

By

ROBERT C. QUIGLEY

Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

In the past 6 years, modern personnel management concepts have swept into law enforcement agencies on the airstream of legal pressure and humanistic philosophy. Action taken in recruitment, selection, and promotion matters can no longer be hidden in the recesses of an agency's personnel department. Judicial hearings have clearly established that an employee has a right to know about avenues of opportunity within the organization and to expect that decisions affecting his or her career will be based on a variety of sources and categories of information relating to the job being performed.

## The FBI Career Development Program

The Federal Bureau of Investigation recognized the need to improve selection and promotion procedures and, in June 1974, after considerable

research and study, Director Clarence M. Kelley approved the establishment of a comprehensive Career Development Program which would include an assessment center to be developed by the FBI Training Division. The program was initiated to provide FBI Special Agents with a gauge for individual career planning as well as to stimulate and support management development within the organization. Written guidelines outlining available career paths were published, and the principle of obtaining and considering the views and observations of several qualified managerial-level employees in making decisions bearing on promotions was incorporated into the personnel system through the establishment of Career Boards in each FBI field division. A central Career Board was also constituted at FBI Headquarters in Washington, D.C., to coordinate these activities. While final decisions in personnel matters remain at executive levels, a major avenue of

input into the decisionmaking process has been opened to the various supervisory and managerial officials, below the executive level, through this board concept.

During the process of forming guidelines for the Career Development Program, it became apparent that in the past the identification of managerial talent and related decisions on promotions were based heavily on one factor—evaluation of job performance. While current performance should be an integral part of any process of identifying individuals to be promoted, it should not become the sole criterion of the process. Other informational elements, it was felt, could be used to complement job performance data and provide more appropriate behavioral observations for predicting potential and assessing aptitude for performing well in higher level positions.

Recent court decisions ruled that assessment centers can be utilized as a



basis in measuring employee management potential. This development

***"Recent court decisions ruled that assessment centers can be utilized as a basis in measuring employee management potential."***

added impetus to the search for means of establishing an expanded informational system on which promotional decisions can be based.

### **The FBI Management Aptitude Program (MAP)**

Director Kelley authorized the establishment of two levels for the assessment of personnel in the FBI Career Development Program. Both were to be developed and implemented by the Management Science Unit of the FBI Training Division.

The first assessment level was designed to provide information for identifying personnel with supervisory potential and, thereafter, to create a reservoir of potential supervisors for management's consideration in meeting future needs. The second level would provide aptitude data on personnel already in management positions for use during executive selection proceedings. To date, the first assessment level, that relating to assessing potential supervisors, is operational; however, the executive-assessment level is presently still in the planning stage.

In selecting a name for the dual-level program, the broad title of Management Aptitude Program (MAP) was selected as most appropriate.

To develop the supervisory-level assessment center, competitive bids were sought, and a contract was subsequently awarded through such bidding to Dr. William C. Byham of Development Dimensions, Inc., of Pittsburgh, Pa. Dr. Byham conducted a job analysis of the FBI supervisory

position utilizing an approach relating to critical incidents which occur during functions of this position. Through a lengthy process of indepth interviews with individuals already serving in these supervisory positions, a list of specific examples of critical incidents encountered on the job was prepared, documenting both successful and unsuccessful managerial behavior in confronting them. These incidents were categorized as "dimensions of behavior," and in December 1974 all FBI supervisory and management personnel were asked to rank the dimensions according to their perceived importance and observability on the job. Dimensions of behavior are defined as attributes and skills

identified as necessary for successfully performing functions of a particular position or level of management. Those dimensions rated as most important to properly performing the position to be assessed in MAP, yet least observable during regular job performance, were selected as MAP dimensions. All told, 20 dimensions were identified, and 19 of them were selected as skills and attributes to be looked for in assessing MAP participants.

When the supervisory job analysis was completed, an internal analysis of FBI investigative positions was initiated and completed. The results of these job analyses are being utilized as a basis to restructure the entire

## **Police Use of Assessment Centers**

During recent years, the use of the assessment center method has gained increasing acceptance among police departments as a management tool.

The use of these centers is not a new concept. The basic principles are believed to have originated at Harvard University, Cambridge, Mass., in the 1930's. An early version of the assessment center method, referred to as the "Extended Interview," was used by the British police service in the past. Police in the United Kingdom now use the assessment center method to select candidates for command schools.

In the United States, assessment centers are currently operative in police departments in Kansas City, Mo., and at Rochester and New York, N.Y. In the recent past, assessment centers were used as aids in selecting a police chief in Portland, Oreg., and a deputy police chief in Omaha, Nebr.

Assessment centers are also utilized today as part of the management selection process in several private industries. As the assessment center method's value becomes more widely known and accepted, its use is expected to correspondingly increase.



FBI performance appraisal system. Also, as a byproduct of these studies, our job classification criteria has moved from the previous one of merely describing a job and the duties it entails to a new one of identifying key personnel aptitudes required for success in various positions.

## MAP Exercises

The FBI assessment center became operational in February 1975, with all phases being conducted at the FBI Academy. The simulations utilized to elicit behavior from personnel participating in MAP supervisory-level assessments are based on the 19 personnel dimensions previously ascertained as desirable in filling supervisory positions satisfactorily. Although every dimension is not evaluated during each exercise, each series of individual and group exercises includes actions designed to produce observable data bearing on the various dimensions.

MAP utilized the following exercises:

1. *Background Interview*—A structured interview designed to elicit the personal history, current accomplishments, and future goals of the interviewee.

2. *Management Problems*—A leaderless group discussion with no assigned roles. Participants submit recommended solutions to assigned problems within a specified time.

3. *National Executive Council*—A leaderless group discussion with roles assigned to participants in a hypothetical "National Executive Council." Each must allocate funds and make other judgments on a variety of conflicting proposals within a specified time. This exercise is videotaped.

4. *Press Conference*—Each participant must make a formal presentation of a final recommendation of the "National Executive Council" and answer questions posed by simulated news

media representatives relating to the recommendation. This exercise is videotaped.

5. *Interview Simulation*—Each participant assumes a supervisory role in a planned interview of a "problem" employee.

6. *Analysis Problem*—Each participant, acting as a consultant, is requested to analyze data, make written recommendations and, thereafter, support them in an oral interview.

7. *In-Basket*—Each participant, playing the role of a State government executive, is asked to handle an accumulation of letters, notes, requests, et cetera, found in a simulated in-basket. There is a time limit on this exercise.

While the MAP exercises are closely related to functions of a supervisory position, they are not simulations relevant to actual FBI operations. MAP uses exercises simulative of functions and operations of supervisory positions in other public agencies in order to provide each participant with an equal opportunity, thereby eliminating any possible bias in evaluation which could occur if knowledge of FBI policy, rules, and procedures would be advantageous and/or necessary for reaching solutions. This is not to say that such knowledge is unimportant, but rather that it is more appropriately measured through actual job performance rather than by assessment center exercises. The exercises participants take part in do contain opportunities for expressing behavior characteristic of job-related performance. Also, no attempt is made to fool or outwit the participants. Participants have evidenced little difficulty in adapting to these nonlaw enforcement simulations.

## MAP Assessors

As a matter of policy, MAP assessors used in connection with supervisory-level assessment exercises must

be two grade levels above the highest grade of any participant. Most FBI assessors are in management-level positions of "Assistant Special Agents in Charge" of field divisions.

A 5-day training program is afforded to the selected assessors. This provides each with up-to-date executive-level training in key principles of management with emphasis on personnel management. Assessors participate in each MAP exercise, enhancing their own management techniques and perspective through the experience. They learn of the methodology employed in developing the MAP dimensions and the MAP exercises. Specific training is given in observing, eliciting, and recording management behavior, and each is briefed on the MAP evaluation and rating procedures. Assessment policy, with regard to the overall Career Development Program, is

***"The key element in successful assessor training is emphasizing the need to separate observations and evaluations in assessing participants."***

discussed and feedback procedures are outlined.

The key element in successful assessor training is emphasizing the need to separate observations and evaluations in assessing participants. It is pointed out that it is essential that the assessor immediately record his observations, postponing any evaluation of dimensions until the conclusion of the exercise. It is mentioned to them that these evaluations will be further screened during proceedings leading to the final assessor group evaluation.

It is the intention of MAP to provide these functional managers who serve as assessors with a new and exciting management experience while enlisting their assistance in preparing responsible evaluations of the



participants' managerial potential. The success of MAP is directly related to the level of commitment of the assessors as they provide the vital communication link as to whether implementation of the Career Development Program will be successful.

The following narrative statements were made by various assessors in response to the question, "What surprised you most about the program?"

- "how all assessors realized the responsibility and obligation to the assessees."
- "the intensity of the program."
- "the close correlation of ratings by individual assessors."
- "the exercises were able to extract as much information as they did concerning the assessees."

In response to the question, "How have you been changed by the experience?" the following answers were typically recorded:

- "increases one's capability to recognize a subordinate's abilities."
- "a more definitive approach to evaluation."
- "will probably now more consciously recognize dimensions on

the job."

—"provided insights into interviewing."

A total of 38 assessors were utilized during the first year of the MAP operation. Six were involved in each session's assessment phase.

## MAP Process

For the participant in the MAP program, the entire process consists of three distinct phases—assessment, supervisory training, and the feedback process.

The MAP is of 10 days duration for each participant. All MAP phases take place at the FBI Academy at Quantico, Va.

## Assessment

During the first 3 days, the participant is involved in the assessment phase. During this time, the assessee performs in the MAP exercises and is observed by the specially trained assessors. The assessors are alert to observe specific behavior in each exercise. A rotating schedule is utilized to insure that the assessee is observed by at least three assessors during as-

essment exercises. Although competition is a factor in some of the MAP exercises, the participants are cautioned that their behavior is not being rated on a competitive basis but rather on the degree to which the dimension of behavior is displayed during the exercise. The assessor utilizes highly structured rating forms when recording behavioral observations.

## Management Training

On the fourth day, the participant begins a 5-day management training program. This course includes instruction in the following management areas: nature and importance of management; management patterns; organizational behavior; motivational dynamics; leadership; administrative communications; and problem solving and decisionmaking.

While the participants attend the management training phase of MAP, the assessors meet to discuss each participant. It is important that the assessors discuss the participants one at a time at the completion of all exercises to avoid a "steamroll" bias toward certain participants. It is also essential that the assessors limit their discus-

## Management Assessment Program (MAP)

### Dimensions

(Attributes and skills identified as necessary for successfully performing functions of a particular position or level of government.)

#### *Personal attributes*

Motivation  
Initiative  
Work standards  
Stress tolerance  
Tenacity  
Independence  
Decisiveness  
Personal commitment

#### *Administrative skills*

Judgment  
Planning and  
Organizing  
Delegation  
Problem analysis  
Management control

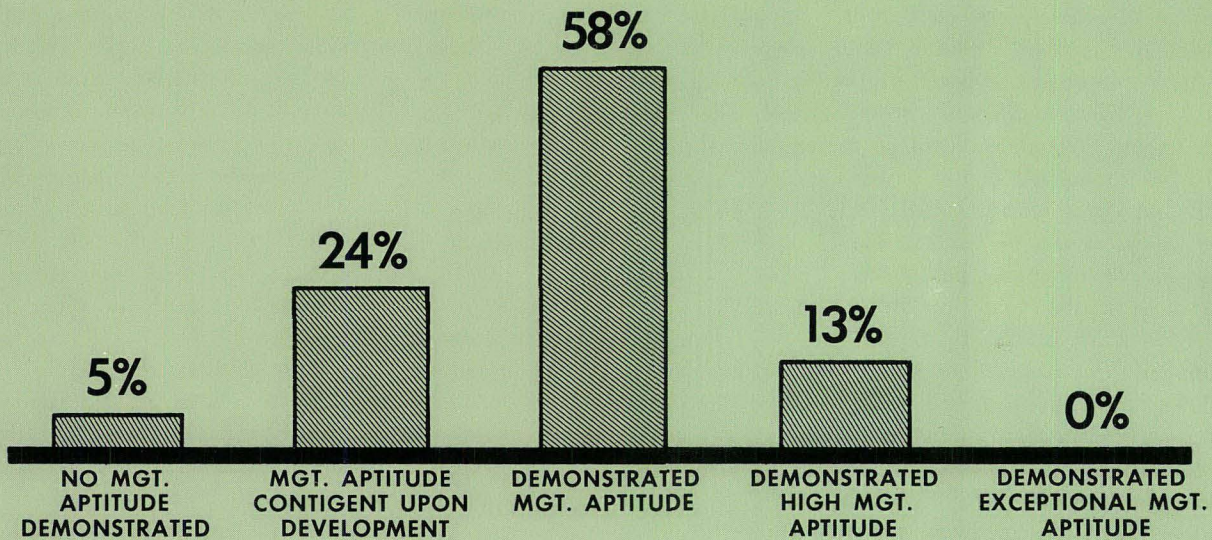
#### *Interpersonal skills*

Leadership  
Sensitivity  
Flexibility  
Oral presentation  
Oral communication  
Written communication  
Reading Speed and  
Accuracy\*

\*Not specifically assessed during present MAP assessment process.



# DISTRIBUTION OF MAP PARTICIPANTS BY CATEGORY DURING FIRST YEAR OF OPERATION



MAP managerial potential profiles differentiate participants by narrative categories while the numerical rating of each measured dimension provides finer discrimination within categories.

sions to observed behavior and not to the process which was observed.

In reviewing each individual's actions, only those assessors who observed the specific individual's behavior in the exercises participate in the group discussion. Each assessor, in turn, presents specific instances of behavior which he observed in the exercises, using the following numerical rating system:

- 5=A great amount of the dimension observed.
- 4=Quite a lot of the dimension shown.
- 3=A moderate amount of the dimension shown.
- 2=Only a small amount of the dimension shown.
- 1=Very little of the dimension shown.
- 0=No opportunity to observe the dimension.

Each assessor in the group can question the quantity or quality of the observed behavior. After all assessors have reported on behavior, each assessor gives a numerical rating to each of the 19 dimensions and communicates them to the group. This

***"To be selected for assessment, participants have to have evidenced high performance standards and expressed an interest in advancing to administrative management positions."***

interchange among assessors is specifically to insure that all elements of the final rating are based on factual observations. The validity of the assessment process is particularly dependent on the frank discussion of observed behavior by the assessors.

After a numerical rating profile has

been established, each assessor carefully reviews each dimension in an attempt to formulate a general profile of the participant. In this regard, two words become crucial—"aptitude" and "demonstration." Aptitude is the assessed potential to successfully perform the supervisory-level function, and demonstration is the participant's specific activity in conveying his aptitude. A final narrative rating of the participant is contained in the synopsis of the MAP report and it will conform to one category in the following series: demonstrated exceptional management aptitude; demonstrated high management aptitude; demonstrated management aptitude; demonstrated management aptitude contingent upon development; or did not demonstrate management aptitude.

The MAP report is *not* a measure of *current* performance but is rather a record of a participant's *demonstra-*



tion of aptitude for a supervisory position.

### Feedback Process

The final 2 days of the MAP process consist of activity relating to two forms of feedback. First, there is the participant's feedback interview with the MAP administrator based on the final report. Second, there is peer feedback gained through a videotape replay of a group discussion exercise.

The interview with the MAP administrator focuses on the assessors' consensus of the participant's managerial strengths and weaknesses. Suggestions for further personal development are discussed laying the basis for an individual drawing up his own development plan for the future.

Although the participant does not receive a copy of his MAP report, he has the opportunity to review the entire report and makes notes on its con-

tents during the feedback interview. In addition to initialing the report, the participant is afforded the opportunity to furnish his own personal observations and comments.

It is noteworthy that the FBI's MAP process fulfills the requirements considered basic to operating an effective assessment center. These include:

1. The dimensions assessed are established through analysis of relevant job behaviors.
2. Using simulations as exercises.
3. Using multiple assessment exercises.
4. Using multiple assessors.
5. Distinguishing behavior observation from behavior evaluation.
6. Pooling judgments as the final basis for evaluation.

### Selection for Assessment

Projected management-level needs

of the FBI, as a result of the provisions of Public Law 93-350, provided an impetus for the prompt development of criteria to select candidates to participate in MAP. This law, a 1974 amendment to the Law Enforcement Retirement System, requires that all investigative employees age 55 or older who have completed at least 20 years of service be retired as of January 1, 1978. Current forecasts indicate that more than 400 FBI managers will be in this category for mandatory retirement on or about this date. This prospective loss will create a large number of supervisory vacancies to be filled by other Special Agents who are qualified for supervisory positions.

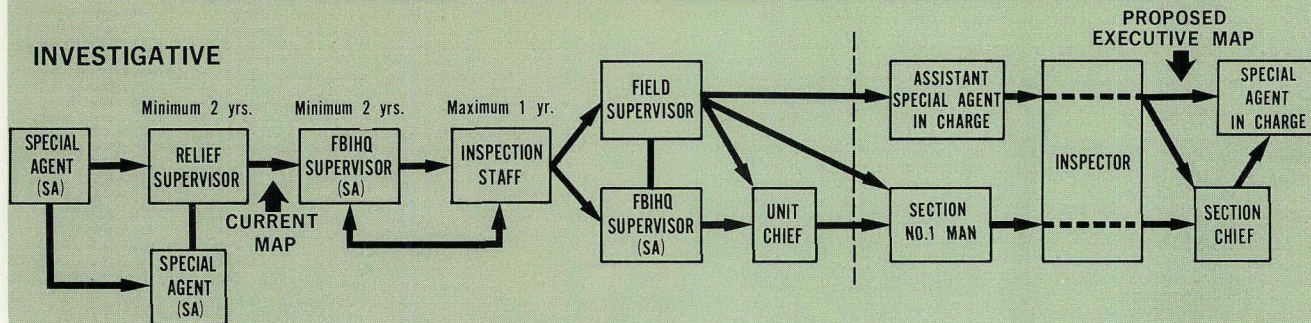
To be selected for assessment, participants have to have evidenced high performance standards and expressed an interest in advancing to administrative management positions. Once MAP participants have been favor-

Six assesseees are pictured participating in a live-group exercise which is being videotaped. The videotape is utilized during the management training segment to provide peer evaluation and feedback. Trained assessors are also present (but not pictured), and they observe behavior of participants during the exercise.





# SUPERVISORY AND EXECUTIVE CAREER PATH



The mainstream career path for FBI investigative personnel interested in administrative advancement. The supervisory level of the Management Aptitude Program (MAP) is operational while the executive-level assessment center is in the planning stage.

ably assessed as possessing management potential, they become a part of the management inventory from which supervisory vacancies will be filled in the future. It is anticipated that once the critical promotion needs of the FBI have been satisfied, and a substantial reservoir of personnel with management aptitude has been established, the MAP process will be utilized as a basis for developmental counseling for those who have an apparent need for such and request attendance at MAP.

## MAP Participants

During the first year of operation, 100 Special Agents completed the assessment process. Participants averaged 35 years of age with almost 7 years service in the FBI. While males representing minority elements have been assessed, no female Special Agents have yet participated in the MAP process. This is not unusual, as the senior female Special Agent in the FBI has less than 4 years of experience in that capacity.

Final MAP reports contain a narrative statement of overall management aptitude in addition to numerical ratings of each dimension. The follow-

ing distribution shows how the participants scored by percentage in final narrative ratings during the first year of MAP operations:

- 0 percent—Demonstrated exceptional management aptitude.
- 13 percent—Demonstrated high management aptitude.
- 58 percent—Demonstrated management aptitude.
- 24 percent—Demonstrated management aptitude contingent upon development.
- 5 percent—Did not demonstrate management aptitude.

Lack of participants in the top category has not been a cause of concern to the organization. It is not uncommon for an assessment program to function for a long period of time without a participant achieving results leading to his inclusion in this category. It is a goal capable of achievement and generally occurs when exceptional personnel are assessed and assessor skills reach full maturity.

When the assessors evaluate an individual as having "high management aptitude" (13 percent rated this evaluation), it reflects an excellent managerial profile with most employee management potential characteristics

rated substantially above the MAP norm. While these participants have shown superior aptitude, it is an evaluation of 3 days' performance in management simulations and should also be contrasted with the skills observed "on the job" for a true evaluation.

Slightly more than one half of the participants (58 percent) were scored in the category of "demonstrating management aptitude." Since this category evidences the norm of the program, a prediction of *successful* performance as a supervisor and not merely average performance, it is heartening to the organization to note the substantial proportion of the assesseses in the category.

Although 24 percent of the participants evidenced managerial deficiencies requiring development, the participants in this category generally accepted the MAP evaluation as an indication of the development they should attain prior to advancement within the organization. The vast majority of the participants in this category have undertaken aggressive development programs in concert with the recommendations of their superiors in order to prepare themselves properly for future advancements. Some of the areas needing de-



velopment can be self-corrected while others require organizational assistance. There is no doubt that an organizational responsibility exists to assist an individual insofar as possible to correct any shortcomings subsequent to a MAP evaluations pinpointing of managerial deficiencies. It also makes sound management sense for an organization to contribute to the development of those who are being considered for advancement and have demonstrated a basic management aptitude through assessment proceedings.

Those participants who did "not demonstrate management aptitude" (5 percent) present a unique challenge to the organization. Their managerial deficiencies are assessed as deep rooted and requiring substantial organizational resources to effect any behavioral modification. These participants were chosen primarily based

on their excellent investigative performance, and every effort is made to insure their continued high level of performance in this respect. Developmental activities are available to increase competence in investigative skills and particular areas of technical proficiency. Various incentives are under consideration to spur continual motivation for the career investigative Special Agent who is not interested in, or assessed as unqualified for, managerial advancement.

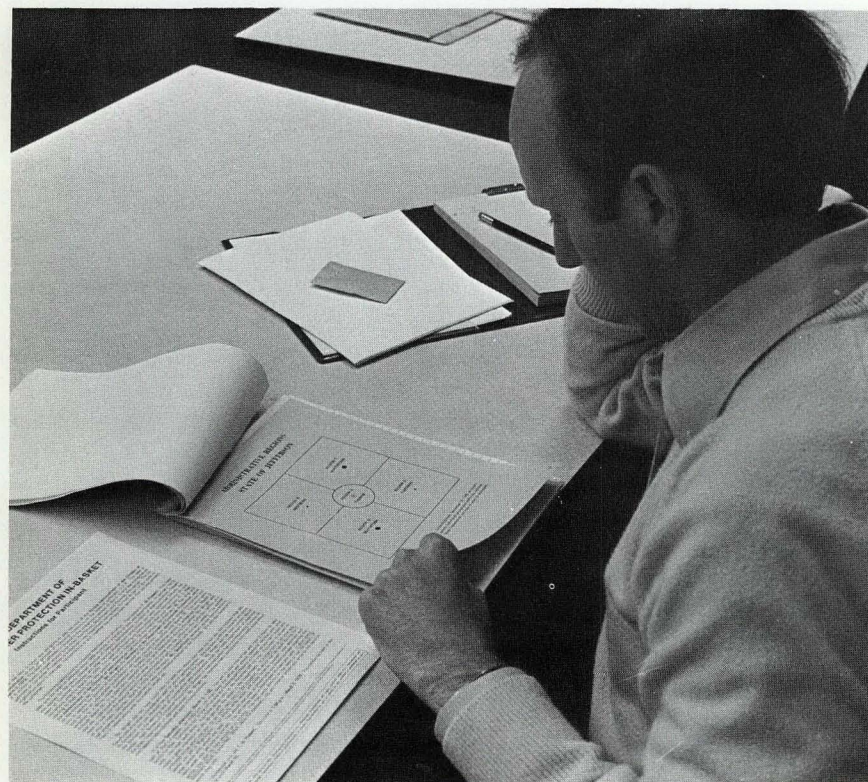
### Statements of Participants

The following narrative statements were made by a number of the participants in response to four important questions:

1. What surprised you about MAP?

—"did not coincide with any of my experiences in the FBI to date."

MAP participants engaged in managerial simulations during the 3-day assessment phase. Some exercises, such as the management in-basket, are individual projects while others measure interrelating skills in a group atmosphere.



—"more difficult than anticipated."  
—"the educational value. Found program to be difficult, challenging, but fair."  
—"that assessors were able to see me as well as they did in 3 days. I don't feel they missed much, an excellent job."

—"intensity of the evaluation phase of the program."  
—"expected more stress."

2. What kept you from performing better in the MAP exercises?

—"items not work related."  
—"some 'act' better than others."  
—"lack of background in management concepts."  
—"performance may have been different in real life situation, but that's not to say it would have been better."

3. What effect will MAP results have on your career over the long run?

—"through self-analysis of the evaluations, guidelines are furnished for self-improvement, thereby enhancing possibilities for advancement."  
—"helped me realize my capabilities and hopefully will aid me in future advancement."  
—"more equal comparison with others rather than 'chance' factor of being in right place at right time."  
—"expect to use the results as a guide to more fully develop myself. As a better rounded individual, should be more desirable as a manager."

4. What have you accomplished by participating in MAP?

—"learned a great deal as to what is expected in management. Have also determined what is needed to improve myself."  
—"took a chance when others would not, probably lost as a result. Have a better idea of what others think I need to be a successful manager."



—“achieved that needed boost or incentive to more fully develop myself. Now fully believe I can make it in management. Assessor evaluation has provided me with confidence needed.”

—“forced me to consider that my deficiencies regarding management aptitude are more substantial than I would have thought.”

—“constructed a written roadblock to my advancement which will have to be overcome by on-the-job performance.”

Participants have recommended that final MAP reports should not be valued as more than 40 percent of any final promotional decision. Others observe that, since assessment is an expensive and valuable process, it would be unrealistic to allow the MAP profile to amount to less than 20 percent of any final evaluation. Field division Special Agents in Charge currently have the prerogative of assigning a weight they feel is appropriate to the MAP profile when considering personnel for promotion, subject to review by the FBI Headquarters Selection Board.

## Summary

A proper selection and promotion process should encompass many considerations. These should include a measure of current job performance, a forecast of future anticipated performance, profiles obtained from assessment action, results of oral interviews, as well as other considerations such as knowledge and expertise, appearance, and other factors deemed pertinent to attaining a reasonably true evaluation of an individual.

Successful implementation and acceptance of the MAP process within the FBI's Career Development Program has enabled the FBI to furnish its decisionmakers with a profile of


supervisory-level managerial talent which, when used in conjunction with predictive evaluations based on job performance, can provide a sound basis for future promotional decisions. Not only have the informational elements of the FBI promotion process been improved, but they have been revealed to the employees. Special Agents are aware of the criteria for

***“Research indicates that there is no absolute correlation between investigative performance and supervisory performance.”***

successful performance at the next promotional level and can plan developmental activities accordingly.

Research indicates that there is no absolute correlation between investigative performance and supervisory performance. Allowing lower level performance appraisals to be the only element comprising a promotional system produces a weak system. Possession of necessary information is a prerequisite for good decisionmaking, and MAP reports not only furnish

well documented behavioral profiles but stimulate appropriate documentation of the management aptitude of employees by other elements of the decisionmaking process.

The effectiveness of a promotional program is best measured not so much by the number of highly qualified persons it ushers into the arena of managerial responsibility, but rather by the accuracy with which it excludes those who are performing in superior fashion in their current positions but who would become personifications of the so-called “Peter Principle” if promoted. Overall organization effectiveness must be paramount in making promotional decisions regarding personnel. A program such as MAP, with measurable and challenging job-related exercises and activities, as well as an opportunity for obtaining open and honest feedback comments on the results, meets the current supervisory promotional assessment needs of the FBI and provides the basis for later studies on whether employees assessed as possessing managerial aptitude measured up to expectation when promoted to management positions. 

## FBI National Academy— Significant Statistics

Total graduates.....	9,911
Graduates still active in law enforcement.....	6,207
Graduates who are currently heads of agencies...	1,118
Chief of police.....	838
Sheriffs .....	160
State police commanders.....	17
Other top executives.....	103
Graduates from U.S. territories and possessions...	98
Foreign graduates (representing 56 countries)---	397

(Figures are tabulated through the 104th Session graduation on March 18, 1976.)



# “Perspectives of Power”

*This is an address given by Hon. Clarence M. Kelley, Director, Federal Bureau of Investigation, in the John Findley Green Foundation Lecture Series, Westminster College, Fulton, Mo., on May 8, 1976.*

President Purcell, ladies and gentlemen, I am honored indeed to participate in the John Findley Green Foundation lectures. And your kind welcome is most appreciated.

Thirty years ago, Sir Winston Churchill stood before another Green Lecture audience here and delivered a stirring address we still remember and honor.

And although his historic message is best remembered because of his famous reference to the Iron Curtain that had descended across Europe, another theme was woven through his eloquent remarks.

The theme was *power*—power for good and power for evil.

He spoke generously of America's preeminence among the nations of the world and of the enormous power we possessed in the wake of World War II.

He spoke of the capacity such power gave us for achievement of good in the world.

And he spoke also of the power held by small, privileged Communist parties behind the Iron Curtain—of their power to suppress individual

liberties and to exercise totalitarian control over millions of lives.

And while acknowledging that the United States stood at the pinnacle of world power, he made a statement that is strikingly applicable to our free society today. He said that “with primacy in power is also joined an awe-inspiring accountability to the future.”

*“... with primacy in power is also joined an awe-inspiring accountability to the future.”*

Certainly one of the great sources of the power we Americans possess is our democratic form of government. Our national policies, in the final analysis, evolve from the will of the people—through public debate, referendum and mandate. Each citizen has the opportunity to make his or her wishes known. And our freedom has long been an inspiration for people throughout the world who believe in the dignity and worth of the individual. The constitutionally guaranteed rights of the individual have provided vitality to our democratic form of government and have enabled us not only to survive but to grow and to flourish as a nation through two centuries.

Sir Winston was an unabashed admirer of the American people. And, indeed, the feeling was mutual. I am sure he would have some appropriate remarks regarding our Bicentennial, were he alive today.

But I am moved to wonder how he would assess the use we Americans have made of our great democratic power during the three decades since he spoke here.

And I wonder also how he would judge our prospects among the world powers as American democracy prepares to enter the third century of its existence.

The 1960's and the 1970's have been far from serene for Americans. The decade of the sixties was scarred by civil violence. And the decade of the seventies may well become distinguished primarily by investigations of Government and a tendency to engage in self-criticism.

In both decades, the issue of civil liberties has figured prominently in the discord, despite the fact the flame of liberty has never burned more brightly in the United States of America.



Nevertheless, there has been indisputable basis for critical examination of Government intrusion into the lives of Americans.

The fact is, there *were* abuses of power by individuals within our Government; but such is the efficacy of our democracy that these abuses were exposed, well publicized and vigorously attacked.

And still, tempests of exposure, condemnation and recrimination—perhaps spawned by the Watergate scandal but having no direct relation to it—continue to swirl around certain vital functions of Government.

Many voices continue to demand that governmental powers they consider intrusive of individual privacy be purged or stringently controlled.

And for many months the most popular, and perhaps most vulnerable, targets of those who express such concern have been agencies within the executive branch charged with national security responsibilities—including, of course, the FBI.

During most of my tenure as Director of the FBI, I have been compelled to devote much of my time attempting to reconstruct and then to explain activities that occurred years ago.

Some of those activities were clearly wrong and quite indefensible. We most certainly must never allow them to be repeated. It is true that many of the activities being condemned were, considering the times in which they occurred—the violent sixties—good faith efforts to prevent bloodshed and wanton destruction of property. Nevertheless, there were wrongful uses of power.

My 36 years of public service has taught me at least one important fact about power. Power abused perhaps can be explained and possibly even be excused; but only when the explanation is truthful, contrite and is accompanied by well-defined plans to

prevent a recurrence. The explanation cannot be contrived; it cannot be based on either stupidity or ineptness; and it must certainly not be tainted by coverup implications.

The mistakes must be acknowledged if they are to be avoided in the future. I sincerely believe power becomes more potent, in a constructive sense, when it is seasoned by experience and conditioned by mistakes. Progress is, indeed, the child of history, and our gait in the future is made more certain by the missteps of the past. We cannot pretend there were no missteps if we are to progress.

It will avail the FBI, or the people we serve, nothing if we lash back at our critics. Recrimination soothes only the offender and gives little comfort to the offended.

We are truly sorry we were responsible for instances which now are subject to such criticism. I could provide some reasons why we took certain actions; but more important than giving explanations is the fact we need to make it clearly understood that we recognize errors and have learned from them. In mitigation, I truly believe the mistakes to have been errors of the mind and not of the heart.

But I think it is time to permit the FBI to get on with its vital work, lest its credibility and effectiveness as an essential peace-keeper and guardian of liberties be permanently damaged.

We do not hold that the FBI is the last and only bulwark of democracy; but we do believe liberty will lose an effective and diligent defender if the FBI is destroyed. We are anxious to join with the President, the Attorney General and Congress in assuring that such power as is entrusted to us is exercised with utmost regard for Americans' precious heritage of rights.

Guidelines drafted by the Department of Justice and the FBI, as well

as rejuvenated congressional interest in the FBI, surely will substantially assure the propriety of the FBI's operations now and in the future.

We welcome meaningful congressional oversight and it is comforting to know Congress will remain at our side if ever again the FBI must cope with nationwide violence as it was compelled to do in the 1960's.

But there is a circumstance more basic that minimizes any possibility that the FBI will again stray beyond the bounds of propriety. And that is the fact the FBI never again will occupy a unique position that permitted improper activity without accountability.

There is no question that the FBI occupied such a position until a few years ago.

It achieved that position primarily through genuine investigative successes; but around these successes was built an almost superhuman image—an image greatly influenced by the news media and, perhaps, by the perception we Americans have of ourselves as an exceptionally able and moral people—a people according to Michael Novak, possessed by a "passion for innocence."

A New York newspaper in May 1938, described J. Edgar Hoover as "a civilian general in a war without truce or armistice—the war against antisocial forces of the United States of America." That editorial concluded by proclaiming J. Edgar Hoover as "*Public Hero Number One.*"

It has been suggested that this image-building was premeditated on the part of Mr. Hoover; but if that were true, then he was enthusiastically abetted by the news media, willingly indulged by Congress and warmly embraced by a grateful public.

Those were the days when the FBI was disposing of gangsters of worldwide notoriety such as Dillinger, Karpis, Barker, and Machine Gun Kelly.



The moral values of our society were perhaps less complex in those days. There wasn't any question in people's minds when it came to distinguishing the good guys from the bad guys—although some of both types achieved an aura of glamour. Today, it often seems some elements of our society are pursuing the posse while the outlaws are shooting up the saloon.

But back then Director Hoover's FBI was considered an invincible force for good against the forces of evil. Mr. Hoover was considered integrity and efficiency personified.

The FBI's arrest of Nazi saboteurs during World War II and its successes against espionage agents such as Rudolf Abel brought upon it more laurels. If there ever was a suggestion that constraints be placed upon the FBI, then it was lost in the clamor of public acclaim. In fact, Congress from time to time added to the FBI's investigative jurisdiction through enactment of new laws, sometimes *over Mr. Hoover's protests*. After all, its efficiency and effectiveness had been demonstrated beyond question.

And so the image of the FBI grew taller and taller.

With such enormous public esteem and prestige, of course, come power and influence. There is no question in my mind that such power and prestige enabled the FBI to accomplish even more in its criminal and security investigations, if only through the willingness of the news media and public to cooperate with the legendary G-men of J. Edgar Hoover. But the FBI's power was a benign power most surely benefiting the citizens of this country through its impact on crime and enhancement of law enforcement throughout the Nation.

Nevertheless, some abuses of that power occurred. The abuses assailed occurred chiefly during the twilight

of Mr. Hoover's administration. I believe no man should again serve as Director for more than 10 years. No Director of the FBI should abide incursions upon the liberties of the people. I can assure you, I do not. I have and will continue to insist on performance by our Agents in the spirit of the law and will not seek sanctuary in sophistry available in the letter. Yet I feel we should not utterly disregard Mr. Hoover's unparalleled contributions to peace-keeping in the United States.

Today, the superhuman image of the FBI, and the power and glory that accompanied it, has greatly diminished. Though its investigative efficiency is greater than ever, the image and the power have somewhat faded under withering criticism and scrutiny by congressional committees and by the news media.

The fact is, the FBI today is an organization of skilled, dedicated people; it is an organization today operating with a greater degree of professional sophistication than ever in its history. With a great many more jurisdictional responsibilities than it had in the thirties, its successes in arrests, convictions, and prevention of violence are unprecedented.

Nevertheless, amid the thunder and lightning of criticism, the FBI has descended from Mount Olympus. And, as it turns out, we are mere mortals, with human imperfections, and we always *have* been.

But so great and pure was the image of J. Edgar Hoover's FBI that every jot of wrongdoing—whether real, imagined, or grossly exaggerated—now commands an extraordinary amount of attention from the news media. There would be no news, I suppose, in a gang of reprobates discovered in wrongdoing. But any flaw discovered in a highly acclaimed organization is worthy of public notice.

It has been said that "no man is

wise enough, nor good enough, to be trusted with unlimited power." I know of no man in our society today with unlimited power; and if there is an institution in our society with power that approaches unlimited power, that institution is the news media. A national magazine not too long ago carried an article stating:

"These are the glory days of the American press. Never before has it exercised so much *power* so independently or found itself vested with such prestige and glamour."

But, as Sir Winston said here three decades ago, "with primacy in power is also joined an awe-inspiring accountability to the future."

I know responsible journalists realize that the use the news media makes of its vast power today, in reporting and evaluating transactions within our Government, has vital implications regarding this Nation's future.

The news media draws its power from the very fact of our democracy, and its freedom is specifically protected in the Bill of Rights.

Today our democracy is full of vitality and possesses great strength—but is it indestructible? Does it not need a viable Government to assure order and to defend against foreign and domestic powers that would destroy democracy?

And does our Government not need an effective investigative arm to protect civil liberties against the destroyers in our society? Is there any question that crime of unparalleled magnitude is exerting a powerful, erosive influence on the lives of Americans today?

There is a power struggle within our society that has not drawn nearly the attention from the news media and the public that it warrants. And that power struggle is between the peacekeepers and the destroyers of peace and tranquility.



Should the news media, in its position of power and influence, be only a disinterested observer of that struggle? Is it truly too much to ask for investigative reporting of what is good about this country?

Indeed, the struggle against the destroyers is not confined to our society. Throughout many parts of the world, terrorist violence is rampant. And we are by no means immune from the terrorist's power to generate fear and to destroy the quality of our lives.

In his book, "Power and Innocence," Rollo May says that "the support of our fellows is not gained through abdication of our powers, but by cooperative use of them."

I certainly agree. The FBI *could* retire a bit from the battlefield, *abdicate* some of its investigative powers, and thereby escape the barbs of its critics. But certainly neither the American people nor the cause of civil liberty would derive benefit from that.

But I am sure that cooperative use of the FBI's powers, through interaction with all the peace-keeping agencies, all the institutions of Government and our society, cannot only benefit the people, but is essential to their well-being.

For only through such cooperation can the FBI hope to survive as an effective power against the enemies of democracy and our democratic institutions.

A characteristic of power is that it is, almost certainly, *impermanent*.

Although there are certain powerful influences that have survived down through man's history—such as nationalism, religion, love, patriotism, family, and law—other embodiments of power are fleeting.

The power of individuals, innovations, institutions, and nations may shape history and influence entire civilizations, but there is no guarantee such power will endure.

Henry Adams, in his autobiography, "The Education of Henry Adams," told of standing in awe before the huge dynamos on exhibit at the Paris Exposition of 1900—overwhelmed by their power and the implications they held for man's future.

But how would Adams have compared the power of the dynamo to that incredible power that burst upon the world at Hiroshima and Nagasaki?

Are there even greater manifestations of power in man's future? How will such power affect democracy as we Americans know and practice it? How do we assure that the power of American democracy will continue to exert its benign influence throughout the free world?

Whatever lies ahead of us in our Nation's third century, is there any question of the need for effective government? Are not the peace-keepers in need of sufficient credibility and power to deal with the destroyers in our society?

I can assure you that Clarence M. Kelley does not aspire to ascend Mount Olympus and sit upon any divine throne.

The men and women of the FBI knew all along that the FBI never was an organization of immortals with infallible judgment; but we are just as certain that neither is the FBI an organization of demons obsessed with grinding up American rights and sweeping them into the gutter.

Yet the brilliant spotlight of publicity has been relentlessly focused upon the warts and blemishes of the FBI's past to the exclusion of anything commendable the FBI has accomplished in the past or present—to the exclusion of any progress we have made to insure the FBI operates in the manner the people desire.

We have answered all of the questions regarding the FBI's past activities, some of them repeatedly. We are still answering them. We have re-

sponded to demands to amend or discontinue techniques considered improper in today's climate of opinion. In that regard, we have, and are, cooperating fully in drawing up guidelines for the FBI's investigations.

I have no desire for my grandchildren to grow up in a totalitarian police state. And neither do I want them to grow up in a defenseless and vulnerable society—a society whose principal Federal peace-keeping agency is so discredited that it is impotent against foreign and domestic enemies of democracy.

I say it is time for the FBI's critics to concentrate on the FBI present and the FBI future. Yes, there have been errors, but I say it is time to permit the FBI and all peace-keeping agencies to get on with their mission of trying to assure the continuance of orderly, constituted government with peace and tranquility for the American people.

I say such investigative prerogatives as the FBI has remaining must remain intact if it is to serve the people effectively. I say we can exercise those prerogatives without affront to human dignity and without infringement on individual rights. I pledge that we will do so. The FBI looks forward to fulfilling its mission in a manner consistent with the great and lasting tenets of our democracy.

I know the American people are anxious to truly believe that, for the security of their country is at issue, and can be protected only by diligence tempered by reason and vigilance tempered by understanding of human dignity.

And lastly, I think all of us in the public service must rededicate ourselves to the highest standards of responsibility and professionalism in recognition and support of the ultimate power of this Nation—the power of a free people.

Thank you. (R)



# Policing a City Hall Demonstration

*"... it is a wise administrator who plans for an orderly gathering of petitioners rather than waste time and effort trying to prevent demonstrations."*



By  
**CARL RAVENS**  
Assistant Chief  
Police Department  
New York, N.Y.



The Constitution of the United States guarantees to the people the right of public assembly and to petition their government for a redress of grievances. Over the years, Federal, State, and municipal courts have interpreted the first amendment literally. Today, it is a wise administrator who plans for an orderly gathering of petitioners rather than waste time and effort trying to prevent demonstrations.

The focal point for demonstrating against controversial policy, procedures, decisions, and nondecisions, whether involving public or private

institutions, is the seat of municipal government—city hall.

To most people, New York City is a skyline—high towers rising above a metropolis. Or it is the center of a swarming population of endless traffic, countless streets, enormous sums of money, and gigantic enterprises. Bigness is the overwhelming note, and yet, at the center of it all is the special pride of New Yorkers, the modest City Hall.

The first story of City Hall belongs to the executive arm of the municipality, with the mayor's office in the west wing and the city council president's





shopping center and attracts office workers from the skyscrapers on Broadway to the west and the Municipal Building to the east. The southern tip of City Hall Park abuts Barclay Street where southbound traffic from Centre Street and the exit ramps of the Brooklyn Bridge and F.D.R. Drive converge on Broadway. Centre Street is the main southbound artery, feeding commuter traffic from the bridge and drive to the Financial District.

The Manhattan South Area police command is not large compared to the other areas of the city but is certainly the most active. The territory it comprises stretches from the Battery to Central Park and is bounded east and west by the two rivers. Within the command are the largest entertainment center in the country, the United Nations, the financial capital of the world, the Madison Square Garden sports complex, the Government Center, Greenwich Village, the lower East Side, Chinatown, and other places of historical and cultural interest that attract millions of tourists annually.

Within the 10 precincts making up Manhattan South Area, the normal and extraordinary police problems are evident. Street crime is high—criminals are attracted to where the action is. The Times Square section presents enormous problems in public morals enforcement. Although the residential population is not high compared to other areas, the density is. Tenements and luxury apartments are separated by only a few blocks. The exclusive high-priced Fifth Avenue shops are within walking distance of the wineshops and cutrate stores of the slums.

To cope with these problems, the 10 precincts in the area have approximately 2,500 police officers. The 1st Precinct where the hall is located is allotted approximately 200. The precinct begins at the Battery and covers all streets and avenues river to river, north to Dover—Frankfort Streets. It then extends further north from a centerline of Broadway west to the Hudson River and uptown to Houston Street. It is shaped like a thumb.

The complement of the 1st Precinct is divided into three shifts for patrol. The men must give attention to a high burglary and auto-larceny rate on the late tour (1 a.m. to 8 a.m.), to larceny and robbery problems on the day and evening tours, and to traffic congestion between 7 a.m. and 7 p.m. In addition, patrol must be provided for the shopping areas of Nassau, Chambers, and Canal Streets for the peddler conditions engendering complaints from the storekeepers.

By far the busiest part of the 1st Precinct's day is between 7 a.m. and 7 p.m. This is when the area is alive with people, the vast majority of them transients who work, shop, and visit the area to view the cultural and historical monuments and places of interest. This is the peak traffic time, where assignments of police officers must be made to the major intersections to speed traffic on its way. This is when the financial district, the stock exchanges, the large banks, and insurance companies are open and attracting hordes of employees and customers. Battery Park must be policed year around to service the tourists attracted to historic Fort Clinton and the Statue of Liberty. It is a busy precinct, and the men work hard to

in the east wing. The legislative arm is on the second story, with the Board of Estimate on the west, and the city council on the east. The steps and Ionic columns provide an impressive entrance to the rotunda. It is on these steps that the mayor receives and honors distinguished guests and where celebrities who have been welcomed by the great New York tickertape parade are greeted.

The park surrounding City Hall is open to the public. Thousands pass through daily on their way to work, to shop, or to relax on their lunch hour. Chambers Street to the north is a busy



provide service for such diverse activities.

Out of its total complement, the 1st Precinct provides a detail of police officers for around-the-clock coverage of City Hall. The day detail can handle most of the ordinary events at City Hall—small gatherings of distinguished guests, award ceremonies, etc. If the ordinary, peaceful events are too large for the City Hall detail to handle, the Manhattan South Area Task Force is assigned as a backup unit. This organization was started in 1972 to provide a mobile arm to cover police operations. With a complement close to 90 men assigned to a 10 a.m. to 6 p.m. tour, the Manhattan South Area Task Force is specifically used to respond to spontaneous events that would tax the manpower of local precincts. Also, the task force is used at all major demonstrations, parades, disturbances, etc. The personnel are trained to handle these events.

### **Demonstrations**

The Operations Office is the nerve center of the Manhattan South Area Command. Here the first notification of a demonstration is received, usually by telephone from police headquarters or by application from a group wishing to demonstrate or protest some action. The majority of the

***"When the demonstration involves City Hall, orderliness must extend to the function of government itself. . . ."***

groups that demonstrate notify the police of their intention so that they can be provided with an orderly setting for their march. When the Operations Office receives word of an event, they verify its accuracy through department and outside channels.

The reasons for demonstrations are of little interest to the command. When the demonstration involves City Hall, orderliness must extend to the function of government itself—municipal officials must be allowed free access to their quarters and must be allowed to continue their work. Therefore, all plans center around these concerns and are drawn so that demonstrators adhere to prescribed lines of march, with as little disruption of government and private activities as possible.

Once notified that a demonstration is to occur at City Hall, the operations Office devises a plan. The details of the plan are contingent upon the size of the group, nature of the event, known facts as to attitude of protestors (militant or peaceful), the time of day or week, etc.

One of the most recent large demonstrations at City Hall involved the Chinese community protesting the proposed closing of the 5th Precinct. On first hearing of the demonstration, Manhattan South Area community affairs specialists contacted community leaders to find out the size of the demonstration and whether it would be peaceful. Then, the Intelligence Division was consulted about militant groups who might join the community members and try to create disturbances in violation of the law. Through all sources of information, it was determined that the demonstration would start in Chinatown at 9 a.m. (on a weekday) and about 15,000 marchers would walk to City Hall to voice their displeasure with the proposed closing of their precinct.

Before the eventful day, a conference of police officials and community leaders was held at Manhattan South Area, where guidelines for the demonstration were discussed. These conferences are important. They set the tone for the demonstration because it is here the public officials explain the rights of the demonstrators, the rights



**Commissioner Michael J. Codd**

of the public, and the peace-keeping role of the police. Manhattan South Area civilian legal advisers assist the commanding officer in preparing the agenda for this conference and participate in the conference itself by offering suggestions on legal matters. These advisers also help the staff prepare instructions for the police detail on the law of arrest and are present during the demonstration as aides to the area commander.

The community leaders appreciate the concern shown by city government at this level, and they usually cooperate in maintaining order during the demonstration. Also, this conference fleshes out the police plan, the community leaders appoint marshals and, in this instance, because of the language barrier, interpreters to work directly with police commanders.

When the size and demeanor of the group of protestors is known, the Operations Office sets a detailed plan in motion. In planning for the massive march of the Chinese community on City Hall, the known factor was size. There was also a possibility of militants infiltrating the march and causing trouble. This was of considerable influence in formulating the detail.

### **Manpower and Equipment**

Before developing the plan further,



the Operations Office recommends to the commanding officer the number of men needed for the detail. The commanding officer then confers with other members of his staff, the executive officer, and the field control inspectors, particularly, to get their input. This is important because they will be his field commanders on the day of the event. He may also confer with the chief of operations, chief of field services, and chief of Inspectional Services Bureau (parent bureau for the Intelligence Division) regarding any last minute information received at headquarters that might change the complexion of the demonstration. When the area commander is satisfied that all available factors have been considered, then his decision as to the size of the detail is made, and the Operations Office is given the green light to proceed with the plan.

The first reservoir of manpower tapped is Manhattan South Area. The task force available force figures show close to 50 men for a weekday tour, and they are assigned to the demonstration. More men are selected from the 10 precincts in the area, but none are stripped below the minimum manning level.

The minimum manning level formula is used so that each precinct can maintain staff and operational capability to resolve local problems. Approximately 400 police officers are scheduled for 8 a.m. to 4 p.m. hours in the 10 precincts on a weekday. For Manhattan South Area to supply 300 men for a City Hall detail would deplete the precincts to the extent that essential police service could not be provided. Therefore, minimum manning levels have been set for each precinct based on size, the volume of work, total complement, crime, call for services, etc. As an example, the 1st Precinct has about 20 men available for a day tour. The minimum manning level is 1 ranking officer and

12 police officers. Of the 20 available men, 8 police officers can be assigned to the demonstration.

By this process, the area commands can generally provide 100 police officers to cover the demonstration. The balance will be requested from the chief of operations who selects police officers from other boroughs to fill the requirements.

Because there is also a need for specialized personnel and equipment not under the control of Manhattan South Area, a request is made to the chief of operations for: mounted, motorcycle, traffic, and emergency service personnel; photographers with equipment; trucks with barriers; tow wagons; and patrol wagons for prisoners.

Requests are also made to other agencies—transit authority to provide transit police personnel at subway stations in the area and to advise of traffic problems along bus routes; hospitals to have ambulances available for sick or injured; fire department to alert them of traffic congestion in the area; mayor's office so that an official, or the mayor himself, will be prepared to confer with the groups; and the Communications Division to have the headquarters truck and portable radios in place for the police commanders.

The Operations Office deals in many special problems in setting up the detail. Labor contracts have stringent provisions limiting the administrator's prerogatives in changing tours, working overlapping tours, and paying portal-to-portal and overtime wages. Usually, Operations Office personnel remain on alert waiting for approval of detail requests forwarded to the chief of operations. If requests come back with numerous changes, these officers must work beyond their scheduled tours to make the corrections, notify those concerned affected by the changes, and prepare the completed package for the field com-

manders.

The staff of the Operations Office must be experienced in determining manpower needs, in knowing the intricacies of labor contracts, in knowing what additional manpower and equipment is needed. The request sent to the chief of operations must qualify as completed staff work for it is on this request that the command will stand or fall. They cannot underestimate, even during a period of fiscal crisis, because the police detail could then be overwhelmed. They cannot overestimate, because the top command looks askance at wasteful practices and judges the state of command accordingly. So they must plan well, knowing that there is little margin for error.

The plan itself is designed to allow a peaceful march around the perimeter of City Hall. The marchers are organized at Chambers and Centre Streets and proceed south on Centre Street past City Hall Plaza to Barclay Street. Here, they loop northwest up Broadway to Chambers Street, then east on Chambers Street to Centre Street. Depending upon their reception by public officials and their own energy, they may make several circuits of the hall. When requested, police officials set aside Murray Street, between Broadway and Church Street, for a mass rally. Sound trucks are set up for speeches by community leaders and invited guests.

### ***The Plan in Operation***

Two hours before a demonstration is to begin, the police command group gathers in the headquarters truck parked at the east end of City Hall. Detail rosters are assigned to ranking officers after they are recorded in the headquarter's log. Once the sector and zone commanders have their assignments, they check out portable radios and survey the area to make sure the barriers are in place. A dou-





City Hall locale.

ble line of barriers completely circles the perimeter of the park at mass demonstrations, and additional barriers are placed at strategic walkways inside the park. This reduces considera-

***"Standard procedures and nomenclature are used at all police operations to avoid confusion."***

bly the manpower needed to police the demonstration adequately.

Standard procedures and nomenclature are used at all police operations to avoid confusion. The commanding officer of the area concerned, in this case Manhattan South, is in charge. The total area to be policed is divided into zones, each zone under the command of a ranking officer, usually an

inspector. The zones are further divided into sectors, commanded by deputy inspectors or captains, and the sectors are subdivided into posts under the supervision of sergeants.

The plan is flexible within the limits of zones and sectors. The Manhattan South Area Task Force is deployed as a group, under their own supervisors, with adequate transportation and communication facilities. Although assigned to a specific sector, they are on standby alert as a mobile reserve ready to move into any trouble spot on signal from the commanding officer.

Priority coverage is designated for City Hall itself. About 200 officers and supervisors are assigned in a ring around the park and at the entrances and walkways inside the park. A force of 20 officers guards the plaza and the steps leading to the hall. In addition,

part of the mounted detail is assigned to the rear and sides of the building. As long as the demonstration is in progress, this assignment remains fixed. Only the commanding officer's order can change it in any way.

Outbursts of violence on perimeter streets have been used in the past by militant groups as diversionary tactics to draw away from this primary coverage but without success. If the mobile reserve (Manhattan South Area Task Force) cannot contain these disturbances, special police radio code signals are transmitted for additional help. Within a short time, this message brings adequate reinforcements, not only from Manhattan, but from Brooklyn, Queens, and the Bronx. If the disturbance is not under control, the operations officer in the temporary headquarters vehicle requests the Cur-



rent Situations Desk, Office of Chief of Operations, for additional manpower. The Current Situations Desk is the coordinating unit of the police department for personnel deployment in emergencies. All area commands report their availability of personnel daily to this unit. In addition, the Current Situations Desk can draw on the facilities of police academy training sites and the outdoor range, where there usually are large groups of officers attending classes or range instructions.

In the past year, the Brooklyn Bridge has gained priority status for police coverage. A favorite tactic of militants is the sitdown or liedown on roadways and ramps, tying up traffic to the consternation of hornblowing motorists. So in the City Hall area this is a fixed detail, changeable only on the commanding officer's order.

Generally, an appropriate number of officers and supervisors are stationed along the roadways and walkways of the bridge proper and at the exit and entrance ramps. Part of the mounted and motorcycle details are held in reserve at the foot of the bridge, and tow wagons are parked strategically to remove stalled vehicles used as a ploy by the demonstrators. Hundreds of barriers are also strategically placed so that traffic can be cut off or diverted to bypass any demonstrators who succeed in getting on the bridge. A patrol wagon sits in waiting for the demonstrators arrested for blocking traffic.

The remainder of the police detail is assigned to any special demonstration or rally area. Some groups mass in Murray Street to listen to speeches by their leaders. More militant factions splinter off to specific targets of their ire. Although the main body may continue to picket the seat of power—City Hall—wildcat groups may converge on the Municipal Building, the Federal Office Building, the Hospitals Corp., the Human Resources Develop-

ment Agency, or other government agencies in the area. They are all close to City Hall, and the mobile reserve unit and/or Sector 5 (assigned to the rally area) personnel can be moved quickly by bus, patrol wagon, or radio cars and scooters, to contend with the troublemakers.

The temporary headquarters vehicle is the command post for the demonstration. It is equipped with telephones, radio receiving and transmitting gear, portable radios for ranking officers assigned in the field, bull horns, record books, stationery, etc. The Manhattan South Area operations lieutenant is in charge of the headquarters and, with his staff, coordinates all phases of the police operations for the commanding officer. This entails maintaining communications with the Current Situations Desk, other area commands affected, Traffic Division personnel, mounted detail, photo unit, and intelligence unit. Regardless of what unit a member is permanently assigned to, during this operation he is under the command of Manhattan South Area. His radio must be tuned to this frequency, and he must remain in touch with the command post.

On reporting to the command post, each zone and sector commander is given a package containing post location lists with maps, detail roster sheets, recapitulation sheet (indicates the number of men assigned from specific precincts), instruction sheet, and overtime slips. He then signs for a portable radio, tests it, and goes to a predetermined location to assemble his detail. This is approximately 1½ hours before the demonstration is scheduled to begin.

After assembling the detail, the sector commander calls the roll, instructs the men on their duties, and assigns them to posts under the supervision of a sergeant. The sector commander immediately reports any absentees to the command posts so that notifica-

tions can be sent to the commands concerned.

The instruction period is devoted to the special problems expected at the demonstrations. The detail is briefed on the purpose of the protest, the anticipated reaction of the group (whether peaceful or militant), laws applicable to demonstrations, and department and area policy on mass arrests, illegal acts, warnings before arrests, removal procedures, arrest teams, arrest processing locations, etc.

### *Arrest Situations*

Special mention must be made of department and area policy and enforcement of law at demonstrations. In normal police operations officers must, by the nature of their assignment, be allowed some discretion in handling incidents. They are trained to use judgment and commonsense in dealing with the public and to use tact and diplomacy in settling street disputes, family fights, and the like. Furthermore, they are given a measure of freedom to act on their own. Because of the distance they work from a headquarters base and because of the extended territory they must cover by radio motor patrol assignment, supervision, although not loose, cannot be provided in all instances.

At demonstrations, the opposite is true. Span of control is tight not only in personnel supervised, but also, in area covered. The sergeant must be with his men (not more than 10—often less than 5) at all times. Arrest situations are dictated and supervised by the sector commander, who must be present at the time. This policy has evolved from experience. The 1960's provided this city with a multitude of mass demonstrations protesting the Vietnam War. Court rulings placed strict limitations on police action and clearly delineated guidelines and procedures before arrests could be made. For example, the assumption that a





City Hall Park.

person knows or should know the law is not sufficient for an arrest of a group sitting in a roadway blocking

*"The law must be explained to the protestors, and they must be given time to move after they have been warned that they will be arrested."*

traffic. The law must be explained to the protestors, and they must be given time to move after they have been warned that they will be arrested. Experienced police commanders understand these guidelines, but they must be repeated during the instruction period so that every officer knows what is expected of him. When arrest situations develop on the street, the sector commanders have access to the exper-

tise of the Manhattan South Area civilian legal advisers, as mentioned earlier in this paper. They are present at all demonstrations to advise the commanding officer and his staff on legal matters.

These instructions include the basic purpose in policing the demonstration; i.e., that the use of force or violence will not be tolerated, the paramount right of all individuals to use the streets will be fully protected, the police will remain neutral and enforce the law impartially and will prevent violations of law.

The specific sections of law spelled out for the protestors and police are the criminal trespass, criminal mischief, reckless endangerment, disorderly conduct, harassment, resisting arrest, riot, and unlawful assembly statutes of the New York State Penal

Law.

Police officers are also reminded to be courteous and use tact and diplomacy in correcting minor incidents. They are briefed on their assignments regarding the necessity to keep pedestrian and vehicle traffic fluid, the location and telephone number of the command post, the designated precinct for processing arrests, the availability of arrest teams upon request of the sector commander and to give attention to fire boxes to prevent false alarms of fire.

Police authority, generally delegated downward from the police commissioner to the officer on post, is more restricted at a demonstration. The commanding officer retains certain prerogatives which are not delegated unless he specifically and directly makes the delegation. Hence the



requirement that the sector commander must direct mass arrests. Only the commanding officer can give the order to use mounted patrol against a crowd. It is also his option to use arrest teams. In most cases, arrest teams are used because of the saving in manpower effected and the expertise of the officers designated. These men are a select group of specially trained task force personnel who have had vast experience in handling arrest situations. And, although the entire detail is instructed in the importance of recording the names and addresses of witnesses for presentation of evidence in court, the arrest team members are more likely to remember this important point during the heat of an incident.

### ***Deployment of Manpower***

It is the first-line supervisor's job, i.e., the sergeant, to escort his detail to their assigned posts. For the City Hall perimeter, this is a simple task, as not more than 50 paces separate one man from the next. The sergeant checks his area for any unusual conditions or problems, and then, he and his men await the arrival of the demonstrators. Some kindhearted sergeants have been known to give their men coffee breaks in the interval, but it behooves him to know where they are and to have them in place one-half hour before the start of the march.

All demonstrations have unique qualities; none develop or progress with a sameness that would allow for an inflexible scenario. Some offer physical violence, some verbal assaults to goad the police to action, others are relatively quiet. Many use civil disobedience—blocking roadways, bridges, tunnels, etc., to bring the officials to their knees. The plan must be flexible to cope with changing conditions, and the police commanders must be flexible and stable to insure maximum public safety and security.

Communications equipment pro-

vides a valuable tool to maintain this flexibility and stability. All ranking officers have direct access to the commanding officer through portable radios. They constantly keep the command post advised of the movement of marchers, surfacing problems, overcrowding, sitdowns, disturbances, splinter group diversions, etc. The commanding officer must make prompt and correct decisions in these field situations, and it is through this medium—the walkie-talkie—that he is supplied with current information to help him shape his decision.

Based on field reports, the commanding officer knows where to send reinforcements, which sectors to tap or bolster, when code signals should be transmitted for immediate help, when Current Situations should be called for outside manpower, etc.

At a recent demonstration, a splinter group of about 2,000 construction men stormed the ramps to the Brooklyn Bridge. Rapid communication from a sector commander alerted the command post so that mounted, motorcycle, and foot reinforcements were rushed to the scene. This was done without drawing from primary coverage around City Hall, and the situation was contained. Without the rapid and far-reaching communication equipment, all our plans could go awry, either by supervisors and their men abandoning fixed locations to do battle on the bridge or by inordinate delays in getting the mobile reserve into position.

The commanding officer at the scene of a demonstration must be more than just a field leader. The demonstrators are there for a purpose—usually to display their displeasure at an act of government. As the visible representative of this government, the commanding officer listens carefully to their complaint. If possible and within his purview of knowledge, he answers questions and grievances. Here he becomes a kind of mediator in the dis-

pute, especially if it involves a police matter, as the Chinese community march did.

Previously, the commanding officer conferred with higher authority for an overview of the problem. He learned that there was no definite closing date for the 5th Precinct Station House. The leaders, of course, wanted a firmer commitment, which the commanding officer could not give. But the request for this commitment was conveyed to the mayor's office. An official from the mayor's office met with leaders from the group to explain the city's financial plight. Although this did not solve the community's problem, it assuaged their feeling somewhat and beyond this the police commander could not go.

This particular protest lasted about 3 hours and broke up peacefully when the marchers returned to Chinatown.

### ***Wrap-Up Procedures***

At the conclusion of the protest, the commanding officer called his sector commanders to headquarters, gave them the dismissal order to relay to their men, and ordered part of the mobile reserve to patrol City Hall Park and vicinity until 5 p.m.

The wrap-up procedures were performed by the operations staff assigned to temporary headquarters vehicle. Current Situations Desk and the area were notified of the time of dismissal, the number of men returned to commands, and the provisions for continued patrol in the area.

The operations staff also controls the portal-to-portal and overtime requests by collecting the slips, verifying that the requests are correct, that they are signed by a ranking officer, and by forwarding the slips to the proper command.

When the commanding officer is satisfied that the situation is normal, he returns to his command, happy in the knowledge that all is right with the area at least until tomorrow. (M)



The seal of the FBI National Academy is a large, circular emblem with a serrated outer edge. At the top, the letters "NA" are prominently displayed. Below this, the words "FEDERAL BUREAU OF INVESTIGATION" and "NATIONAL ACADEMY" are written in a circular path. In the center of the seal is an eagle with its wings spread, perched on a shield. Below the eagle, the words "KNOWLEDGE", "COURAGE", and "INTEGRITY" are arranged in a semi-circle. Three stars are positioned at the bottom of the seal.

## "COMBINING RESPECT FOR THE LAW WITH CONCERN FOR OTHERS"

On March 18, 1976, FBI Director Clarence M. Kelley awarded diplomas to 249 select law enforcement officers in recognition of their completion of 11 weeks of intense, executive-level training at the FBI National Academy. Friends and relatives of the graduates and a number of distinguished guests gathered in the auditorium of the FBI's extensive training complex at Quantico, Va., to attend the commencement proceedings of the 104th Session of the National Academy.

Law enforcement officers compris-

ing this Session represented 49 States, the District of Columbia, Puerto Rico, and the nations of Royal Brunei, Canada, Egypt, the Philippines, and Singapore. These graduates raised to 9,911 the total number of officers who have successfully completed this training since the National Academy first began in 1935. More than half this number are still actively engaged in law enforcement work, and of these, many hold executive positions in their respective agencies.

Following a musical introduction

by the U.S. Marine Band, the proceedings were called to order by Assistant Director William M. Mooney of the FBI's Training Division. Thereafter, the invocation was delivered by Lt. Comdr. Daniel F. De Pascale, Chaplain Corps., U.S. Navy.

Lt. John R. Wilbanks of the Los Angeles, Calif., Police Department was then introduced as the class spokesman, having been selected by his peers. In his remarks, Lieutenant Wilbanks compared crime to the deadly and costly disease of cancer



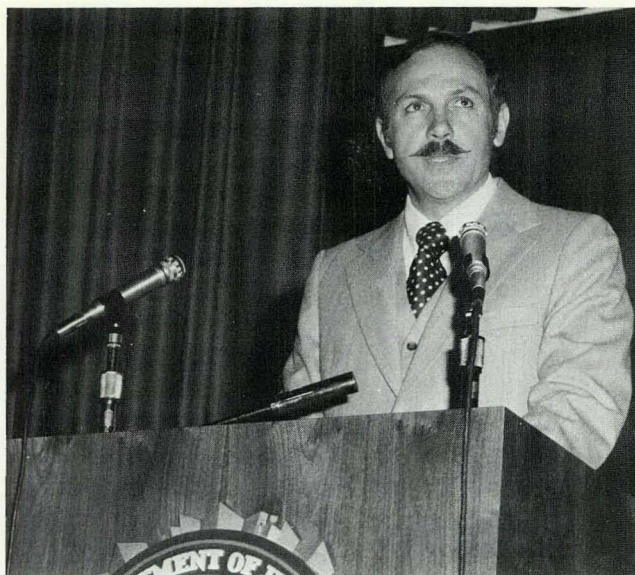
and stated that "the role of the law enforcement officer is somewhat analogous to that of the surgeon helping a cancer victim. We have the responsibility to identify, isolate, and remove the malignancy, in our case the criminal, that has infected our social system." He observed that officers of the 104th Session who represented nearly 4,000 years of collective law enforcement experience, have "long ago accepted the challenge of crime in a free society and . . . are committed to oppose this crime with all the vigor and resources at their disposal. Their presence here today is further evidence of their commitment to take a firm stand against this social affliction."

Lieutenant Wilbanks continued: "We of the 104th Session, as well as past National Academy graduates across the country, feel strongly that the FBI National Academy has made a significant contribution to local law enforcement; not only in the area of training, for it has also fostered a cohesion of law enforcement administrators and officers across the Nation. But, who are the ultimate benefactors of this fine training? The people we serve are, and I personally don't think the citizens of this country deserve any less than our very best efforts in this area."

Following Lieutenant Wilbanks' remarks, Mr. Mooney introduced Director Kelley who offered his heartiest congratulations to the Session members, greeting them as the first class "to be graduated during the anniversary year of our great Republic . . . and will be labeled as the first of the Bicentennial Sessions."

Director Kelley assured the graduates of the Bureau's firm commitment to the FBI National Academy and Academy-supported police training. These programs have, in Mr. Kelley's words, "fulfilled vital roles in the progress of the law enforcement community in the past and have

**Lt. John R. Wilbanks, Los Angeles Police Department, Los Angeles, Calif., addresses the graduating class of the 104th Session of the FBI National Academy.**



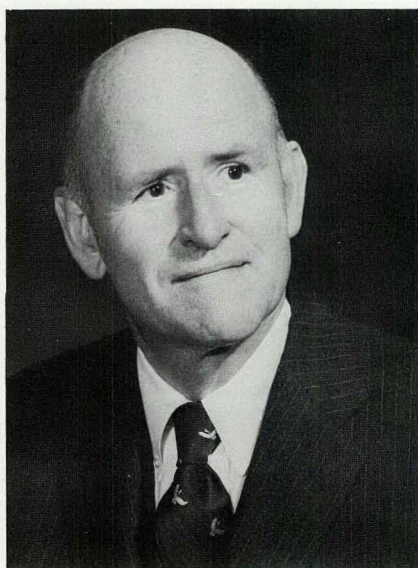
equally vital roles to fulfill in the future."

After his comments, Mr. Kelley introduced the principal speaker, the Deputy Attorney General of the United States Harold R. Tyler, Jr., who discussed recent public concern over "abuses of power by the government" and the resultant "close scrutiny of past actions of certain police agencies." While acknowledging that there have been "very real and serious past abuses in the law en-

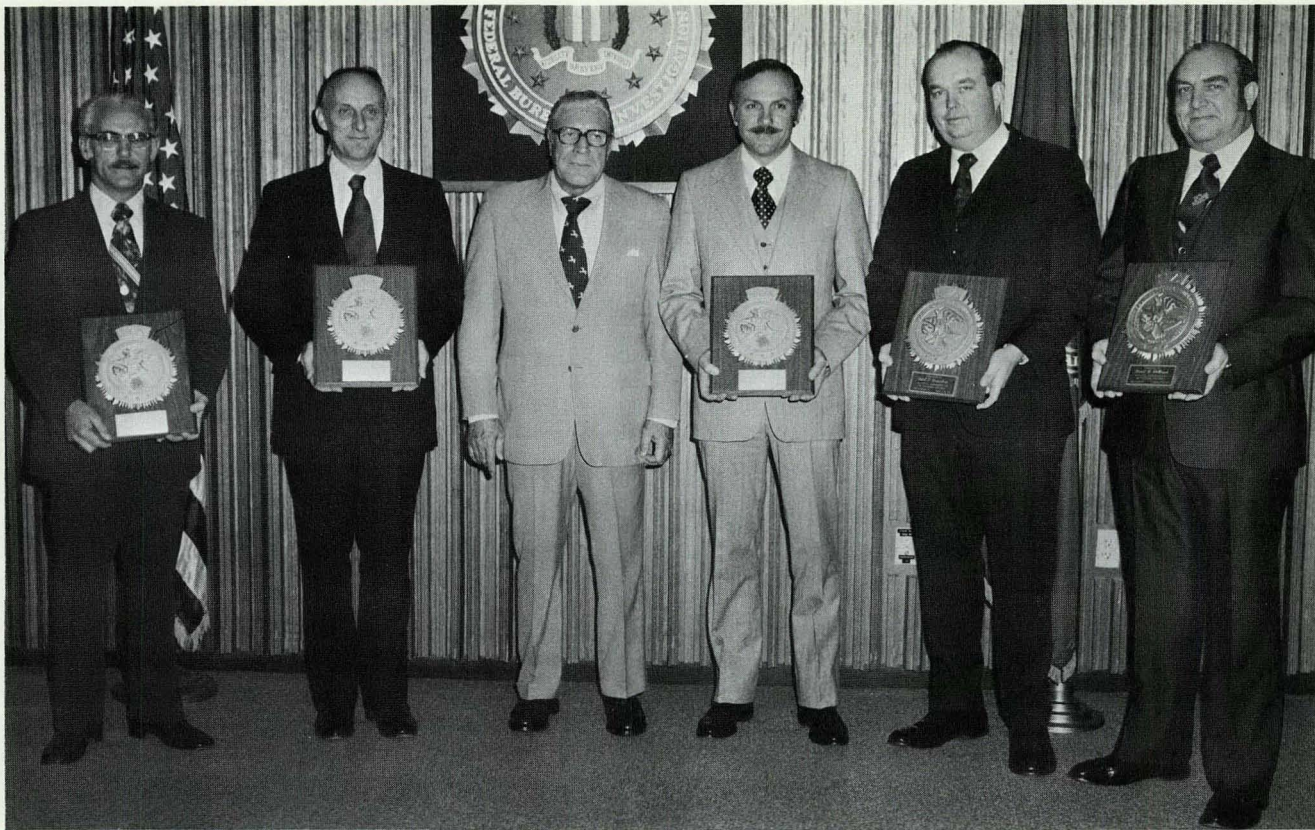
forcement family," Deputy Attorney General Tyler pointed out that "current evaluations, studies and pronouncements about these past abuses have been unfair in significant ways. They have failed to take into account the circumstances which prompted the actions, for example, and the different standards of behavior which attended those events and those law enforcement actions at the time they occurred." Also in this regard, he stated: "There has been frequent failure to give credit for the many, many instances of dedicated, highly professional efforts by the same police agencies which are now under scrutiny. . . ."

The Deputy Attorney General observed that "disapproval at the moment of some past police and law enforcement actions has led quite frankly to an overreaction by some of our politicians, the media and the other parts of our society." He voiced criticism of the legal profession which had, in his opinion, done little "either to explain the police role to the public or to help the police agencies adapt their roles to the changing demands of the times." He continued, "In order to regain public confidence in law enforcement, your agencies must

**Deputy Attorney General Tyler**







Pictured with FBI Director Clarence M. Kelley are the section leaders of the 104th Session. Shown, left to right are: Lt. Stanley Henry Meyers, California Highway Patrol, Sacramento, Calif.; Chief Insp. Ferdinand J. Spiewak, Philadelphia Police Department, Philadelphia, Pa.; Mr. Kelley; Lt. John R. Wilbanks, Los Angeles Police Department, Los Angeles, Calif.; Chief of Police Eskil S. Danielson, Byram Township Police Department, Byram Township, N.J.; and Det. Sgt. David Blair Williams, Tallmadge Police Department, Tallmadge, Ohio.

adapt to these changed social attitudes, which focus more than ever before on the process by which the law is enforced as well as the result."

Mr. Tyler noted that "the legal profession should do a better job than it has ever done to support and help law enforcement in making the difficult changes in the method and nature of their operations . . . prosecutors, defense attorneys, and even lawyers who do not participate in criminal law work, should become more informed about what you do, what we do, in law enforcement, and the Department of Justice, and elsewhere, and take an interest in helping define and interpret that function to the public."

In subsequent remarks, Mr. Tyler emphasized that "Your professional conduct, combining respect for the law with concern for others, can

strongly and beneficially influence the public's attitude toward law enforcement work."

In concluding his address, Mr. Tyler mentioned a recent storefront "fencing" operation conducted jointly by several law enforcement agencies in Washington, D.C., which was quite successful. He observed that the press in even cynical Washington "thought it was a very good show and I think this is a salute to law enforcement and a harbinger of better things to come."

Following Deputy Attorney General Tyler's address, Mr. Kelley introduced several distinguished guests in attendance. These included: Col. Vincent Blaz, Inspector, Marine Corps Development and Education Command, Quantico, Va.; Col. George L. Halverson, director of the

Michigan State Police and president of the FBI National Academy Graduates Association; and Mr. Charles Smith, the Academy's on-campus representative of the University of Virginia of which the Academy is an affiliate.

The graduating class was thereafter presented by Insp. James V. Cotter of the FBI Training Division to Mr. Kelley for the individual awarding of diplomas.

Following this proceeding, appreciation was expressed to Lt. John R. Bourgeois and members of the U.S. Marine Band for their excellent performance on this occasion.

The program was concluded with a benediction, led by Chaplain De Pascale, and the rendering of the National Anthem by the U.S. Marine Band.



# Presidential Authority to Authorize Investigative Techniques in Foreign Intelligence Investigations

By

GARY M. LATURNO

Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

*"Numerous decisions of the U.S. Supreme Court . . . have indicated that the President, as Chief Executive, possesses powers in foreign and military affairs which are not dependent on a specific legislative grant but derive from the Constitution itself."*

eral Government to utilize investigative techniques such as wiretaps, microphones, and surreptitious entries without a court order. The resolution of this question requires consideration of the relationship between Presiden-

tial power and national security on the one hand and the warrant requirement of the fourth amendment on the other.

## National Security and Presidential Power

Alexander Hamilton wrote that men could differ regarding the creation of a Federal Government but that once such a Government was created and made responsible for the defense of the Nation it must be given the authority necessary to discharge that responsibility. Hamilton recognized that "the circumstances that endanger the safety of nations are infinite," and for this reason, he wrote, no limits should be placed on the Government's authority in this area.<sup>1</sup>

Numerous decisions of the U.S. Supreme Court, moreover, have indicated that the President, as Chief Executive, possesses powers in foreign and military affairs which are not dependent on a specific legislative grant but derive from the Constitution itself. These decisions have also indicated

**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.**

The Federal Government has a responsibility to protect the territorial and institutional integrity of the United States, and to this end it must acquire information to exercise informed judgments in foreign affairs as well as information concerning the activities of foreign powers and their agents in the United States. In an effort to obtain this information, we should inquire whether the President, acting through the Attorney General, may authorize an agency of the Fed-



that the Court holds great respect for these powers and that only with extreme care will it interfere with them.

In *Marbury v. Madison*,<sup>2</sup> the Court commented: "By the Constitution . . . the President is invested with certain political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience."<sup>3</sup> In 1863, the Supreme Court in the *Prize Cases*<sup>4</sup> went on to uphold the President's authority to blockade insurrectionary Southern ports without congressional authorization. In 1915, the Supreme Court in *Mackenzie v. Hare*<sup>5</sup> explained that the Federal judiciary should be slow to curtail such powers.

In *United States v. Curtiss-Wright Export Corp.*,<sup>6</sup> decided by the Supreme Court in 1936, the Court again commented upon the President's powers in the area of foreign affairs. It explained that there is a significant difference between the conduct of domestic, as opposed to foreign affairs, and stated that the Government's powers in the area of internal affairs are limited to those specifically enumerated in the Constitution. In the area of foreign affairs, however, the powers of the Government are not limited to those set forth in the Constitution. If not expressly set forth in that document, the Court wrote, the Government, as an attribute of sovereignty, would still have the power "to declare and wage war" and "to maintain diplomatic relations."<sup>7</sup>

The Court in *Curtiss-Wright*, discussing the sensitive nature of foreign diplomacy and the need for secrecy, wrote that, if the Nation is to be successful in its foreign relations, the executive branch must be afforded greater flexibility than it is permitted in the area of domestic affairs. The President, not Congress, the Court reasoned is in a better position to be knowledgeable regarding conditions

in foreign countries. "Secrecy in respect of information gathered by [Presidential sources and agents] may be highly necessary, and the premature disclosure of it productive of harmful results."<sup>8</sup>

The Supreme Court in *Hirabayashi v. United States*<sup>9</sup> went on to state that the President, in his capacity as Commander in Chief, has "the power to wage war successfully" and held that the power extended "to every matter and activity so related to war as substantially to affect its credit and progress." The Court went on to say that the Constitution has given to the President great latitude in determining the nature and extent of the danger to the Nation and the means to resist it. Regarding the judiciary's role in this area, the Court again emphasized that it would interfere with the President's power in this area only with extreme care.<sup>10</sup>

In 1948, the Supreme Court in *Chicago and Southern Airlines, Inc. v. Waterman Corp.*<sup>11</sup> reaffirmed and elaborated on its earlier holding in *Curtiss-Wright, supra*. The Court in *Waterman* again held that the President is empowered to act with broad

**"The fourth amendment governs not only the seizure of tangible items, but [also] extends . . . to the recording of oral statements overheard without trespass."**

freedom and secrecy in the conduct of foreign relations and that the judiciary should not interfere with Presidential power in this area. Commenting on the sensitive nature of foreign affairs and the judiciary's role in this area, the Court said:

"The President . . . has available intelligence services whose reports are not and ought not to be

published to the world. It would be intolerable that courts without the relevant information should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit *in camera* in order to be taken into executive confidences. But even if courts could acquire full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political department. . . . They are delicate, complex and involve large elements of prophecy. . . . They are decisions of a kind for which the judiciary has neither aptitude, facilities, nor responsibilities and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. . . ."<sup>12</sup>

The Congress has also recognized that the President has certain powers in the area of foreign affairs. Title III of the Omnibus Crime Control and Safe Streets Act<sup>13</sup> authorizes the use of electronic surveillance for certain crimes. Along with the surveillance provisions in the act, there is the following proviso:

"Nothing contained in this chapter . . . shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities."<sup>14</sup>

(In *United States v. United States District Court*,<sup>15</sup> the Supreme Court



stated that this language does not "limit or disturb such power as the President may have under the Constitution . . . Congress simply left the presidential powers where it found them.")

## The Warrant Requirement

But the question is raised: Does the fourth amendment's warrant requirement<sup>16</sup> prohibit the President, acting without a court order, from authorizing an agency of the Federal Government to utilize physical entries directed against foreign powers and their agents?

Recent wiretap cases shed light on this issue. Prior to 1967, the Supreme Court decided the legality of electronic surveillance by determining whether or not a trespass was involved; the fourth amendment was violated only if at the time of the installation there was a trespass on the premises. In the *Katz*<sup>17</sup> case in 1967, however, the Court held that oral communications were protected from unreasonable surveillance by the fourth amendment and that the mandate of this amendment required adherence to judicial process. The fourth amendment "governs not only the seizure of tangible items, but [also] extends . . . to the recording of oral statements overheard without" trespass.<sup>18</sup>

Intentionally left open in *Katz*, *supra*, was the question of whether safeguards other than prior authorization by a magistrate would satisfy the fourth amendment in a situation involving national security. The issue unresolved in *Katz* was partially faced by the Supreme Court in *United States v. United States District Court*.<sup>19</sup> There the Supreme Court held that electronic surveillance in the domestic security area conducted solely within the discretion of the Executive violated the warrant requirement of the fourth amendment. The Court, however, emphasized the case involved only the domestic aspects of

national security. "We have not addressed, and express no opinion as to, the issues which may be involved with respect to activities of foreign powers or their agents."<sup>20</sup>

Thus, the Supreme Court has reserved judgment relative to the question of whether a warrantless electronic surveillance directed against foreign powers or their agents violates the fourth amendment. Every lower Federal court that has faced the question, however, has held the President may constitutionally authorize warrantless wiretaps when directed against foreign powers or their agents.<sup>21</sup> (Note, however, that on June 23, 1975, in *Zweibon v. Mitchell*,<sup>22</sup> Circuit Judge J. Skelly Wright expressed the view, by dictum, that the President, except possibly in emergency situations, may not legally authorize the installation of warrantless electronic surveillance even when directed against foreign powers or their agents.)

In *United States v. Brown*,<sup>23</sup> the court commented:

"Restrictions upon the President's power which are appropriate in cases of domestic security become artificial in the context of the international sphere . . . [A] thread . . . runs through the Federalist Papers: that the President must take care to safeguard the nation from possible foreign encroachment, whether in its existence as a nation or in its intercourse with other nations."<sup>24</sup>

In *United States v. Butenko*,<sup>25</sup> the court commented:

"The expansive language of *United States v. Curtiss-Wright Export Corp.* provides support for the contention that the President is authorized to act unencumbered by the Fourth Amendment requirement of prior judicial approval and probable cause

when he is dealing with national security matters."<sup>26</sup>

In *United States v. Hoffman*,<sup>27</sup> the court found that while there is no express constitutional provision authorizing the President to conduct warrantless surveillances, such authorization impliedly exists where the search is necessary in the conduct of foreign affairs.

We may then ask whether the President has the authority to authorize a warrantless physical entry directed against foreign powers. In *United States v. Ehrlichman*,<sup>28</sup> a criminal prosecution for conspiring to violate Title 18, United States Code, Section 241, and thus injure a citizen in the enjoyment of fourth amendment rights, the Special Prosecutor asserted that the President, acting through the Attorney General, does not have the authority to authorize a warrantless physical entry in the foreign area.<sup>29</sup> The Court agreed. It reasoned that the President does not have the authority to suspend the requirement of the fourth amendment and stated that the Government must comply with the warrant requirement even when known foreign agents are involved.<sup>30</sup>

But these comments, while they should be given consideration, do not declare a conclusion of law; they are dictum, that is, an opinion on an issue

**"Every lower Federal court that has faced the question . . . has held the President may . . . authorize warrantless wiretaps when directed against foreign powers or their agents."**

not necessary to the resolution of the case. In fact, no court has held that the President may not authorize a surreptitious entry directed against foreign powers. Thus, it can be argued that the question is an open one.



The fourth amendment is concerned with searches and seizures, not trespasses *per se*; both the interception of oral communications and a surreptitious entry constitute significant intrusions upon interests protected by the fourth amendment. Thus, if the President has the authority to authorize a warrantless electronic surveillance against foreign powers, it would appear that he could constitutionally authorize a surreptitious entry against foreign powers. Of course, the court in *United States v. Ehrlichman*, *supra*, commenting on recent lower Federal court cases which stated the President

***"[I]f the President has the authority to authorize a warrantless electronic surveillance against foreign powers, it would appear that he could . . . authorize a surreptitious entry against foreign powers."***

may constitutionally authorize warrantless electronic surveillance against foreign powers, characterized wiretapping as a "relatively nonobtrusive search."<sup>31</sup> But wiretapping is an intrusion that can last for an indefinite period and is pervasive, while the intrusion connected with a physical entry is of relatively short duration and is usually directed toward a specific objective. Thus, it would appear that where the objective of an entry is simply to create the circumstances for monitoring it is actually less intrusive than wiretapping. Where the objective of the entry is to conduct a physical search, the disparity between wiretapping and a physical entry may be narrower and depending on the circumstances, a physical entry may approach wiretapping in intrusiveness.

On appeal in the *Ehrlichman* case, the Department of Justice filed a memorandum for the United States as *amicus curiae* [friend of the court],

commenting on the legality of the different forms of warrantless surveillance involving foreign espionage or intelligence. The document specifies:

"It is the position of the Department of Justice that such activities must be very carefully controlled. There must be solid reason to believe that foreign espionage or intelligence is involved. In addition, the intrusion into any zone of expected privacy must be kept to the minimum and there must be personal authorization by the President or the Attorney General. The United States believes that activities so controlled are lawful under the Fourth Amendment.

"In regard to warrantless searches related to foreign espionage or intelligence, the Department does not believe there is a constitutional difference between searches conducted by wiretapping and those involving physical entries into private premises. One form of search is no less serious than another. It is and has long been the Department's view that warrantless searches involving physical entries into private premises are justified under the proper circumstances when related to foreign espionage or intelligence. . . ."<sup>32</sup>

#### **National Security Wiretap Legislation**

On March 23, 1976, Senator Edward M. Kennedy (Massachusetts), and House Judiciary Committee Chairman Representative Peter W. Rodino, Jr. (New Jersey), introduced a bill, cited as the "Foreign Intelligence Surveillance Act of 1976," (S. 3197 and H.R. 12750) to amend Title 18, United States Code, to authorize applications for a court order approv-

ing the use of electronic surveillance to obtain foreign intelligence information.<sup>33</sup> Under the bill, the Chief Justice of the United States is required to designate seven district court judges, and each would have jurisdiction to hear applications for and grant orders approving electronic surveillance in the United States. Applications for a court order would be authorized if the President empowered the judges having jurisdiction, and a judge may grant an order authorizing electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information. Each such application must be approved by the Attorney General and shall contain certain information, including: a statement of the facts and circumstances relied upon by the applicant to justify his belief that the target of the surveillance is a foreign power or an agent of a foreign power; a description of the type information sought and a certification by an executive branch officer designated by the President that such information is foreign intelligence information that cannot feasibly be obtained by normal investigative techniques. Along with the surveillance provisions in the Act, there is the following proviso:

"Nothing contained in this chapter shall limit the constitutional power of the President to order electronic surveillance for the reasons stated in Section 2511 (3) of Title 18, United States Code, if the facts and circumstances giving rise to such order are beyond the scope of this chapter."<sup>34</sup>

The bill defines "Agent of a foreign power" as a person who is not a permanent resident alien or U.S. citizen or who is an official or employee of a foreign power, or a person who, pursuant to the direction of a foreign power, is engaged in clan-



destine intelligence activities, sabotage, or terrorist activities or who conspires with, assists or aids and abets such a person in engaging in such activities. "Foreign power" includes foreign governments, factions, parties, military forces, or agencies or instrumentalities of such entities, whether or not recognized by the United States, or foreign based terrorist groups. "Foreign intelligence information" means information relating to the ability of the United States to protect itself against hostile acts of a foreign power or its agents.

On March 23, 1976, President Ford urged the early adoption of the proposed legislation and described briefly the purpose and reasons for the bill:

"On February 18, 1976, in a Message to the Congress on the activities of our intelligence agencies, I stated that the administration would work with the appropriate leaders of Congress to develop legislation to deal with a critical problem involving personal privacy—electronic surveillance. . . . The enactment of this bill will ensure that the Government will be able to collect necessary foreign intelligence. At the same time, it will provide major assurance to the public that electronic surveillances for foreign intelligence purposes can and will occur only when reasonably justified in circumstances demonstrating an overriding national interest, and that they will be conducted according to standards and procedures that protect against possibilities of abuse."<sup>35</sup>

Attorney General Levi, in describing the bill, said its limited provisions "follow what already is being done" and "would have little impact on current surveillance practices." He indicated the bill was needed to "give

assurance to American citizens of the care and standards to be observed" in the use of wiretaps.<sup>36</sup> He also explained:

"The standards and procedures that the proposed bill establishes are not a response to any presumed constitutional requirement of a judicial warrant as a condition of the legality of a surveillance undertaken for foreign intelligence purposes. Such a requirement has not been the holding of the courts, which in general have either found the employment of electronic surveillance without a warrant in the foreign intelligence area to be lawful. . . . or have left the decision open. . . .

"The proposed bill's standards and procedures respond, then, not to a constitutional warrant requirement, but to considerations of public policy. It is founded on the necessity that the branches of Government work together to overcome the fragmentation of the present law among the areas of legislation, judicial decisions, and administrative action, and to achieve the coherence, stability and clarity in the law and practice that alone can assure necessary protection of the Nation's safety and of individual's rights."<sup>37</sup>

## Conclusion

Numerous decisions of the U.S. Supreme Court have recognized that the President, as Chief Executive, possesses powers in foreign and military affairs which are not dependent on a specific legislative grant but derive from the Constitution itself and that the Constitution has given the President great latitude in determin-

ing the nature and extent of the danger to the Nation and the means to resist it. Concerning the judiciary's role in this area, the Court has emphasized that it would interfere with the President's powers only with extreme care. It is yet to be seen whether the Supreme Court will interpret the Constitution as imposing specific limitations on the President's powers in this area.

## FOOTNOTES

<sup>1</sup> Hamilton, "The Federalist," No. 23 (H. Lodge ed. 1888) 123.

<sup>2</sup> 1 Cranch (5 U.S.) 137 (1803).

<sup>3</sup> *Id.* at 165-166.

<sup>4</sup> 2 Black (67 U.S.) 635 (1863).

<sup>5</sup> 239 U.S. 299 (1915).

<sup>6</sup> 299 U.S. 304 (1936).

<sup>7</sup> *Id.* at 318.

<sup>8</sup> *Id.* at 320.

<sup>9</sup> 320 U.S. 81 (1943).

<sup>10</sup> *Id.* at 93.

<sup>11</sup> 333 U.S. 103 (1948).

<sup>12</sup> *Id.* at 111.

<sup>13</sup> 18 U.S.C. 2510-2520.

<sup>14</sup> *Id.* at Section 2511(3).

<sup>15</sup> 407 U.S. 297, 303 (1972).

<sup>16</sup> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV.

<sup>17</sup> *Katz v. United States*, 389 U.S. 347 (1967).

<sup>18</sup> *Id.* at 353. See also *Silverman v. United States*, 365 U.S. 505, 511 (1960).

<sup>19</sup> 407 U.S. 297 (1972).

<sup>20</sup> *Id.* at 321-22.

<sup>21</sup> *United States v. Clay*, 430 F. 2d 165 (5th Cir. 1970); *United States v. Brown*, 484 F. 2d 418 (5th Cir. 1973); *United States v. Butenko*, 494 F. 2d 593 (3d Cir. 1974); *United States v. Hoffman*, 334 F. Supp. 504 (D.D.C. 1971).

<sup>22</sup> D.C.C. No. 73-1847.

<sup>23</sup> *Supra.*

<sup>24</sup> 484 F. 2d at 426.

<sup>25</sup> *Supra.*

<sup>26</sup> 494 F. 2d at 602.

<sup>27</sup> *Supra.*

<sup>28</sup> 376 F. Supp. 29 (D.D.C. 1974).

<sup>29</sup> Brief for the United States at 31.

<sup>30</sup> 376 F. Supp. at 331.

<sup>31</sup> *Id.*

<sup>32</sup> Memorandum for the United States at *amicus curiae* at 1-2.

<sup>33</sup> 102 Cong. Rec. 4140 (daily ed. Mar. 24, 1976); "The Washington Post," Mar. 24, 1976, at 1, col. 4.

<sup>34</sup> The partial text of 18 U.S.C. 2511(3) appears in the last paragraph of "National Security and Presidential Power," *Supra.*

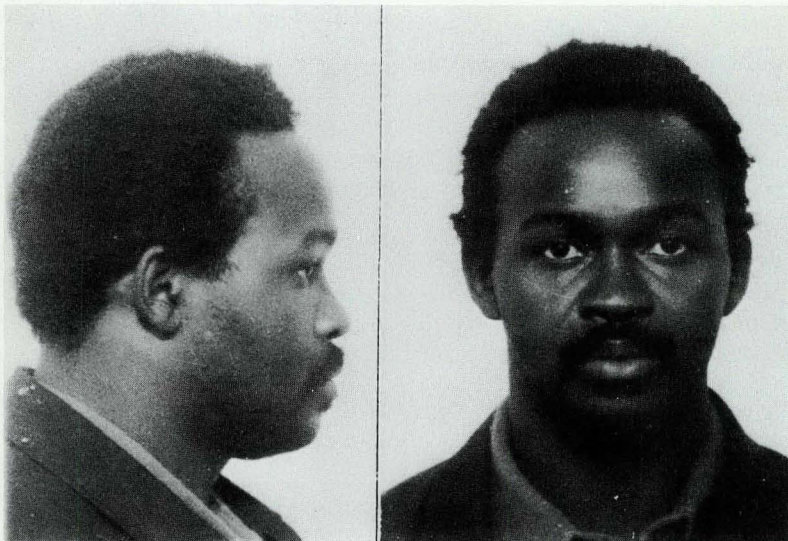
<sup>35</sup> 102 Cong. Rec. 4140.

<sup>36</sup> "The Washington Post," Mar. 24, 1976, at 1, col. 4, and at 4, col. 1.

<sup>37</sup> Statement of the Honorable Edward H. Levi before the Senate Judiciary Committee, Subcommittee on Criminal Laws and Procedures, Mar. 29, 1976. (F)



# WANTED BY THE FBI



Photos taken 1971.



Right Index  
Fingerprint.

**RONALD STANLEY BRIDGEFORTH, also known as Benjamin Matthew Bryant**

## *Interstate Flight; Assault On A Police Officer*

Ronald Stanley Bridgeforth is being sought by the FBI for unlawful interstate flight to avoid prosecution for assault on a police officer.

### The Crime

Bridgeforth reportedly had engaged local police officers in a shootout when they attempted to arrest him for fraudulent use of credit cards at a discount department store. A Federal warrant for Bridgeforth's arrest was issued on November 29, 1971, at San Francisco, Calif., upon the request of San Mateo County, Calif., authorities.

### Description

Age----- 31, born Aug. 23,  
1944, Berkeley, Calif.  
Height----- 6 feet.  
Weight----- 185 to 205  
pounds.  
Build----- Heavy.  
Hair----- Black.  
Eyes----- Brown.  
Complexion----- Medium.  
Race----- Negro.  
Nationality----- American.  
Occupation----- Teacher.  
Scars and marks--- 3-inch scar left  
wrist and fore-  
arm, scar  
right heel.  
Social Security  
Nos. used----- 568-92-3698,  
547-64-2939.  
FBI No.----- 568, 064 G

Fingerprint classification:

8	M	25	W	MIO	Ref: 29
S	22	U	IOI	11	22

NCIC classification:

PM DM 08 PO PM 08 06 11 CI 11

### Caution

Inasmuch as Bridgeforth allegedly engaged police officers in a gun battle, he should be considered armed and 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.



## FOR CHANGE OF ADDRESS ONLY

(Not an Order Form)

Complete this form and return to:

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

NAME

TITLE

ADDRESS

CITY

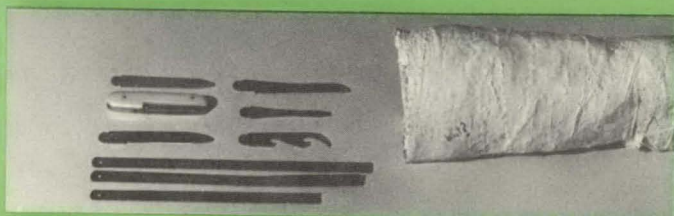
STATE

ZIP CODE

## Cast Conceals Contraband

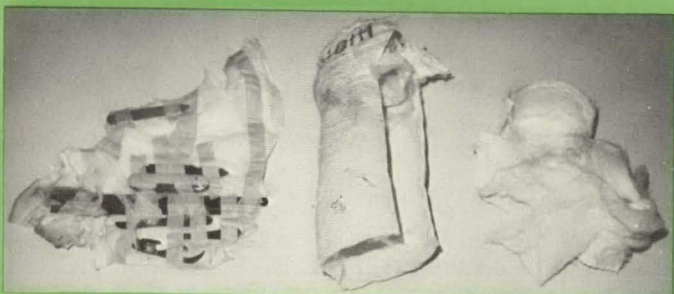
The U.S. Marshals Service recently brought to the BULLETIN'S attention a unique concealment device. An individual in Federal custody had apparently suffered a broken arm and was wearing a cast. However, information was received that the cast contained contraband. A subsequent X-ray of the cast revealed that a number of items were concealed within it. These included hacksaw blades and a combination tool with various attachments, such as screwdriver, file, and knife blade.

As a result of this discovery, a policy has been established to X-ray all casts that prisoners may be wearing.



Devices concealed within the cast.

Arrangement of devices in the cast.





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

OFFICIAL BUSINESS

ADDRESS CORRECTION REQUESTED



POSTAGE AND FEES PAID  
FEDERAL BUREAU OF INVESTIGATION

JUS-432

THIRD CLASS



## QUESTIONABLE PATTERN

The questionable pattern illustrated at left at first glance appears to be a central pocket loop-type whorl. However, a closer analysis reveals the absence of a sufficient recurve in front of the inner delta formation. Therefore, the pattern is classified as a loop with 28 ridge counts.