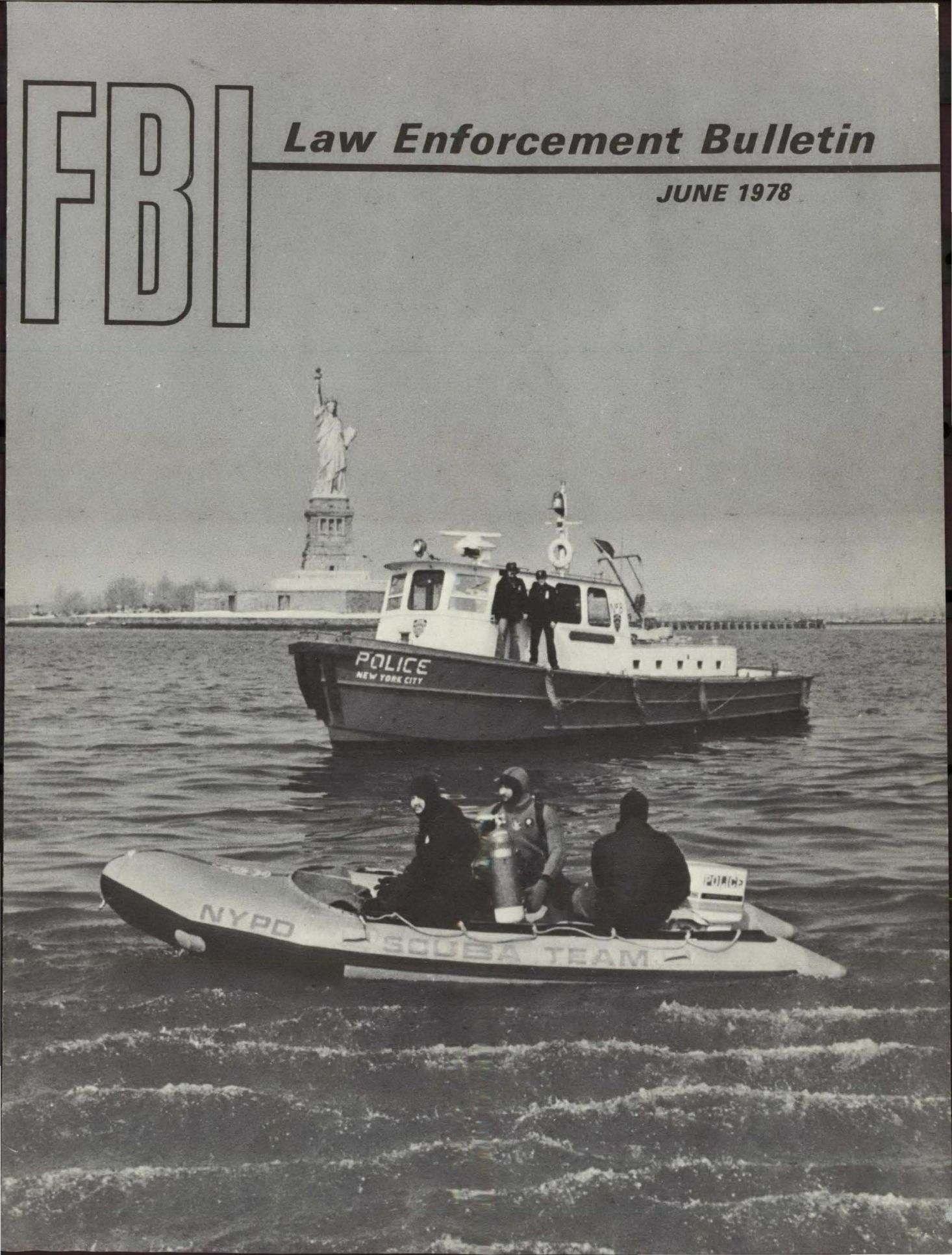
FBI Law Enforcement Bulletin

JUNE 1978



FBI Law Enforcement Bulletin

JUNE, 1978
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WILLIAM H. WEBSTER, DIRECTOR

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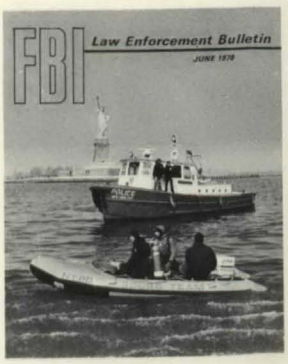
CONTENTS

THE COVER

New York City Police Department Underwater Recovery Team members and support vessel. See article page 16.



" 'Our task, yours and mine, is to enforce the law in a constitutional manner. We can accomplish this through professionalism. We can be tough and effective *within* the law'."

FBI Director William H. Webster

FBI Director William H. Webster, on the occasion of the graduation of the 112th session of the National Academy on March 24, 1978, supported the concept of professionalism of all law enforcement and outlined the priorities of the FBI.

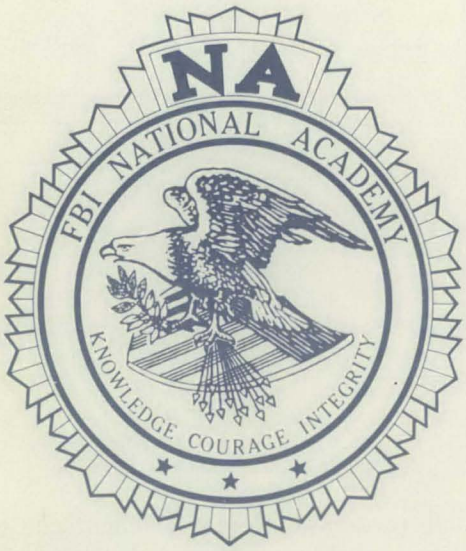
Addressing the 250 graduates, representing 48 States, the Virgin Islands, and 5 other nations, Judge Webster told this first class to graduate since he became FBI Director:

"Society has charged you with an important and difficult undertaking. It is your responsibility to enforce the law. You must do it fairly and effectively—sometimes with ingenuity, sometimes with toughness, yet invariably with respect for the privacy and individual rights of all concerned. This is not an easy task, especially in light of the enormous amount of crime in today's society, or in view of agency regulations and constitutional or judicial requirements, both Federal and State, to which you must adhere.

"But this is not all. The resourcefulness of criminals presents unique and difficult challenges. In addition, new problems arise in the administration of police departments. Labor or political problems can frustrate the most competent agencies. Budget and manpower limitations force us all at times to function with less than we need.

"Changes in emphasis at the national level may also affect you. The FBI, for example, has reassessed its commitments to investigating varying kinds of criminal violations within its jurisdiction. Under former Director Kelley and also at the behest of Congress, the FBI has directed and will direct more of its resources into investigations of organized crime, white-collar crime, and public corruption. I support this shift not only because we are well suited to undertake these responsibilities but because a change in emphasis will enable us to do more to diminish the total impact of crime. But this also means that we will be spending less time with bank theft investigations, fugitive cases, and auto theft cases.

" 'It is your responsibility to enforce the law. You must do it fairly and effectively—sometimes with ingenuity, sometimes with toughness, yet invariably with respect for the privacy and individual rights of all concerned'."



"Because these are areas of concurrent jurisdiction, you will necessarily conduct a much greater share of these investigations. I recognize that this is an unsolicited but serious and unavoidable responsibility.

"We would all like to have increased budgets, more manpower, and more equipment, yet the fact remains that we must meet our responsibilities, both expected and unforeseen, with the resources that we have.

"Obviously, only the most capable can meet these challenges. We need well-trained, resourceful, tough, and flexible police officers, operating within well-administered and efficient police departments. If this requirement is not met, the prospects of maintaining a peaceful, orderly society, based on respect for individual liberties will be severely diminished. We will become discredited in the eyes of the public. We will lose their support. And our efforts to stop crime will become increasingly ineffective.

"At my swearing-in ceremony . . . President Carter noted that no agency played a more formative role in influencing people's attitudes about the Federal Government than the FBI. The same can be said of local and State law enforcement agencies with respect to the way citizens feel about their local and State governments.

"You will set the standard for integrity, competence, dedication, and professionalism among public servants. The public's attitudes about law, government, and public justice will in large measure be determined by the professional manner in which you meet your responsibilities.

"I strongly believe that those in law enforcement cannot afford to risk encouraging an image of disrespect for the law, the Constitution, and the legal system as a whole. It would be ill-advised for any policeman to give the impression that he accepts constitutional requirements only because they are imposed upon him.

" 'The public's attitudes about law, government, and public justice will in large measure be determined by the professional manner in which you meet your responsibilities'."

Director Webster presents diploma to National Academy graduate.

"These requirements protect all of us, and our families, as citizens. If they seem at times to make our job in some sense more difficult, it is not too great a price to pay. The protection of rights *is* consistent with law enforcement. Our task, yours and mine, is to enforce the law in a constitutional manner. We can accomplish this through professionalism. We can be tough and effective *within* the law."

Prior to the Director's remarks, Mr. R. David Jones of the Virginia State Police addressed those assembled as the spokesman for the graduating class. Mr. Jones commented that: "In past years we have all complained at one time or another of the lack of solidarity among police agencies which we believed benefited only the criminal element. Our association during these 11 weeks has, in my opinion, dispelled that theory. Through adequate communications, the solidarity generated by this graduating class, says to one and all within the criminal arena, we can and will hold the line on crime."

The graduation concluded with the presentation of diplomas by Director Webster, a benediction, and a selection by the United States Marine Corps Band.

Compulsory Arbitration and Police Labor Relations

By
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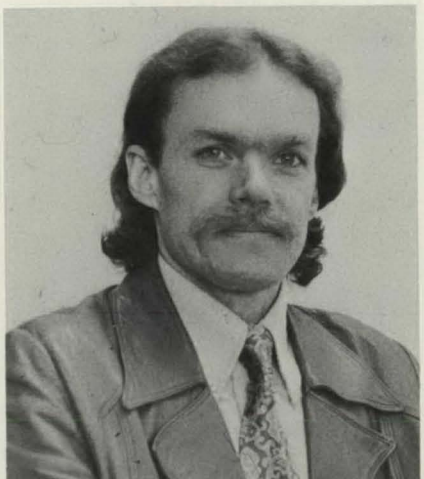


(Editor's note: Adapted from Dr. Feuille's presentation to the FBI's National Executive Institute at the FBI Academy in January 1978.)

During the past 12 years, compulsory arbitration has emerged as a frequently used mechanism to resolve collective bargaining impasses between government employers and unions of police officers and fire fighters.

The vast majority of public sector negotiations produce agreements without strikes, but a large number of these agreements are created as a result of strike threats. Each year several hundred of these threats become operational. Experiences with public employee strikes suggest several conclusions.

First, these strikes are overwhelmingly a local government phenomenon.[1] In any given year, 90 percent or so of all strikes will occur among the municipalities, counties, school districts, and special districts which

"[C]ompulsory arbitration has emerged as a frequently used mechanism to resolve collective bargaining impasses between government employers and unions of police officers and firefighters."

comprise local government. Occupationally, teachers are the most strike-prone group, and wages are the most contentious issue. This strike distribution is not surprising when one considers that local governments employ more than one-half of all public employees, that these workers are more solidly organized [2] and more militant than State and Federal employees, and that local governments tend to be faced with greater financial scarcities than State and Federal governments.

Second, the relationship between strike prohibitions and strike activity is mixed. For example, 1973–75 data show Pennsylvania and Michigan as two of the most strike-prone States. In Pennsylvania, strikes are statutorily permitted; in Michigan, they are statutorily prohibited but judicially permitted because of the reluctance of the courts to enjoin them. However, Hawaii legalized strikes in 1970; since then, only one work stoppage has occurred in the State.[3] During 1973–75, Ohio also had a large number of strikes, and these stoppages occurred in the face of that State's Ferguson Act and its stringent strike penalties, which are rarely applied. During these same two years, New York experienced only a fraction of the Pennsylvania, Michigan, and Ohio levels of strikes, and New York has a larger number of bargaining units. As a possible explanation, New York's Taylor Law not only prohibits strikes but mandates that some fairly stiff penalties be applied in each strike.[4] Existing research may not have been able to discover any consistent relationship between strikes and strike prohibitions, but the somewhat simplistic analysis presented above tentatively suggests that consistently applied strike penalties may prevent many stoppages from occurring.

Third, there is little systematic data on the relationship between strikes and bargaining outcomes. Logical reasoning suggests that strike-induced settlements may be more favorable to the employees than nonstrike settlements on the grounds that employers of striking personnel are willing to pay a premium to have withheld services restored. This, in fact, may happen, but it has not happened to such an extent that is readily apparent. For instance, Gerhart correlated an index of favorable union-bargaining outcomes with a State strike-activity index and found a positive but weak association.[5] Kochan and Wheeler correlated firefighter strikes with favorable union outcomes and found no discernible relationship, but they did find favorable outcomes correlated with union pressure tactics, such as picketing and slowdowns.[6] Thus, strikes may produce otherwise unrealizable gains for employees, but the available evidence suggests that these strike gains are rather small. Further, there have been some well-publicized strikes in 1976 which have resulted in very small settlements for the employees.[7] As a result, any positive or negative general conclusion about the relationship between strikes and bargaining outcomes is very tenuous.

Fourth, the relationship between government strikes and the maintenance of the public welfare is similarly ambiguous. As a general conclusion, the danger most public employee strikes pose to the citizenry's health, safety, or welfare is more rhetorical than real, for the public appears to survive the vast majority of these strikes (including police stoppages) with a minimum of apprehension and inconvenience. However, this conclusion needs to be qualified with three important considerations: (1) There are widely varying degrees of essentiality to the public welfare across the range of government services, so a

police strike is more troublesome than a parks and recreation strike; (2) the essentiality of the same services (for example, fire protection) can vary among jurisdictions along such dimensions as size, density, population composition, income level, and so on, with large central cities appearing more vulnerable than small suburbs; and (3) citizens' proximity to and need for the deprived services may vary greatly.

Finally, the high level of strikes that has prevailed since 1969 indicates that these are becoming more and more "normal" events which increasingly are built into the parties' expectations. This admittedly subjective assessment is supported by the increasing legalization of strikes, and by the apparent increasing willingness of management to take strikes in order to implement "less" relative to union demands for "more." [8] Just as this society has learned to cope with a relatively high level of private sector strikes, so the same process is occurring in the public sector. However, there is still a widespread unwillingness to accept police and fire strikes as "normal," and an increasing number of jurisdictions have implemented compulsory arbitration to insure that public safety work stoppages will not occur.

Compulsory Arbitration

During the past few years, arbitration seems to have captured the lion's share of the attention focused on governmental impasse resolution procedures. For instance, there are presently at least 17 States that have implemented compulsory arbitration statutes; in 1965, there was only 1.[9] Here we deal with the arbitration of contract negotiation impasses (or "interest disputes"), where arbitration is compulsory rather than voluntary and the award is binding rather than advisory. Voluntary arbitration, where two sides must agree to take their dispute to an arbitrator, is rarely used, and advisory arbitration is a euphemism for factfinding. Grievance arbitration ("rights disputes") is not included in the analysis. The term "legislated arbitration" lacks explanatory power. Every public sector arbitration statute or ordinance has been approved by the relevant legislative body or by a vote of the electorate (the ultimate legislature), so the fact that an arbitration procedure has been "legislated" says nothing about whether it is a conventional or final offer, compulsory or voluntary, advisory or binding, etc.

The desire for arbitration seems to be based on four factors: (1) Its binding award creates a final resolution of a dispute; (2) it reduces strikes almost to the vanishing point; (3) it tends to equalize the power of the parties in negotiations; and (4) it provides a face-saving tool which union and management representatives may find useful.

The most important publicly stated rationale supporting the existence of arbitration statutes is that arbitration reduces strikes. Most of these statutes apply to police and firefighters, who arguably provide government's most essential services. Thus they insure that the citizenry will continuously receive vital public safety protection. The available evidence does show that in those jurisdictions where arbitration exists, there have been almost no strikes, especially over arbitrable issues.[10] Critics respond by pointing to the 1969 Montreal police strike, the 1974 New York City fire strike, and a few early 1970's police strikes in Michigan, all of which took place while arbitration procedures were in effect in those jurisdictions. These isolated incidents do not destroy the validity of the strike-prevention rationale; instead they demonstrate that in a democratic society there is no feasible way to insure a total and complete absence of such stoppages.

Arbitration reduces strikes because its binding award eliminates almost any opportunity for one side to provoke or conduct a work stoppage for terms more favorable than those provided by the arbitrator. However, it is incorrect to view arbitration as the *quid pro quo* for the right to strike, for employee groups are not giving up any right they previously enjoyed.[11] A more accurate interpretation of arbitration statutes is that they represent political and functional *quid pro quos*. Politically, the arbitration advocates—mostly police and fire unions—have been able to convince State legislators of the desirability of such statutes, and the politicians presumably collect political IOU's in return. Functionally, such statutes represent a procedural compromise with the police and fire unions in return for giving up their ability to conduct (illegal) strikes.

The fact that such statutes have come into existence primarily because of vigorous union lobbying—frequently over the opposition of municipal management—illustrates a third point: Arbitration is perceived by the unions as a low-cost power equalizer which increases their strength at the bargaining table. Under an arbitration procedure, management cannot realistically adopt a "take it or leave it" bargaining posture, for such a tac

"The most important publicly stated rationale supporting the existence of arbitration statutes is that arbitration reduces strikes."

tic may be rendered useless by the arbitrator's binding award. Similarly, management cannot bargain to impasse and unilaterally implement its desired changes. Further, arbitration is a much lower cost route for seeking benefits than strikes, for strikes are risky and may engender a negative public and managerial response.[12] In contrast, arbitrators usually award the employees more than the employer has offered, and hence the risk of an antagonistic arbitration award is minimal.

"Arbitration provides both union leaders and managerial officials with the ability to save face when coping with constituent pressures."

Although most municipal managers appear unenthusiastic and even hostile toward arbitration, the process is not devoid of benefits for them (in addition to the absence of strikes). Arbitration provides both union leaders and managerial officials with the ability to save face when coping with constituent pressures. The binding nature of the arbitrator's award enables union and management representatives to use the arbitrator as a scapegoat, if there is constituent backlash toward the outcome. This face-saving feature assumes the greatest importance in those large and financially constrained central cities where union member militancy tends to be high and municipal ability to pay rather low.[13]

In summation, what sets arbitration apart from mediation and factfinding is its binding award. In those impasses where the parties are unable or unwilling to reach a mutually satisfactory agreement without a work stoppage, this quality of finality offers a useful guarantee of the continued availability of essential public services.

The binding nature of arbitration, though, has raised three important questions about the process: (1) Does the existence of arbitration reduce the parties' incentives to engage in the hard bargaining necessary to reach agreements? (2) does arbitration provide for more expensive settlements than would result from direct negotiations? and (3) is arbitration, with its delegation of governmental authority to a private party, constitutionally and politically compatible with our democratic system of representative government?

Conventional compulsory arbitration is alleged to have a "chilling effect" on the parties' incentives to reach their own agreement. The reasoning behind this is that if either one of the parties perceives, for whatever reasons, that it may get a better deal from an arbitrator than from a negotiated agreement, it will have an incentive to cling to excessive demands in the hope of tilting the arbitration award in its favor. If one side acts this way, the other side has no realistic choice but to respond in a like manner; the result is surface bargaining and a wide gap between the parties' real positions. This lack of hard bargaining will occur because of the very small costs attached to remaining in disagreement: There will be no strike by the union, no unilateral changes by the employer, and the compromise nature of the typical arbitration award will give the employees less than the union has asked for but more than the employer has offered. This compromise award is made possible by the discretion the arbitrator possesses to fashion the award he deems appropriate on the disputed issues.

This reasoning applies to the bargaining process under conventional arbitration, which is the more common kind. However, policymakers in several jurisdictions—including Wisconsin, Iowa, Massachusetts, and Eugene, Oreg.—recently have implemented final-offer arbitration,[14] a process which attempts to preserve the strike-prevention and impasse-finality features of conventional arbitration while simultaneously increasing the parties' incentives to reach their own agreement. This kind of arbitration attempts to increase the parties' costs of not reaching agreement by eliminating arbitral discretion and thus forcing the arbitrator to select one or the other party's final offer. The final-offer theory predicts that each side will develop even more reasonable negotiating positions in the hope of winning the award. These convergent movements will result because of the fear that the arbitrator will select the other side's offer. Consequently, final-offer arbitration should not have a chilling effect upon the parties' incentives to negotiate because the potentially severe costs of disagreement should push the parties together in a "strikelike" manner that conventional arbitration does not.

"Conventional compulsory arbitration is alleged to have a 'chilling effect' on the parties' incentives to reach their own agreement."

There is some evidence which supports the chilling effect rationale under conventional arbitration. For instance, Bowers found that in the first few years under Pennsylvania's arbitration statute for police and fire impasses that one-third to one-half of all of these negotiations ended in arbitration awards.[15] Wheeler found that the proportion of firefighter negotiations resulting in arbitration awards (in those States where arbitration was available) was much higher than the proportion of negotiations in other States which produced factfinders' reports.[16] Tom Kochan and his associates found in New York police negotiations that the gap between un-

"Examination of conventional and final-offer experiences from several jurisdictions suggests that although final-offer arbitration does not meet all its theoretical expectations, it does seem to induce or coerce a larger proportion of negotiated settlements than conventional arbitration."

ion demands and employer offers on salaries was larger under conventional arbitration than under the previous factfinding procedures.[17] Kochan's study also has found that the financially hard-pressed central cities around New York State have become semipermanent clients of the arbitration system. However, this chilling effect data should not hide the fact that in conventional arbitration jurisdictions the majority of negotiations are settled through negotiated agreements. In other words, this chilling effect has not destroyed good faith collective bargaining.

Examination of conventional and final-offer experiences from several jurisdictions suggests that although final-offer arbitration does not meet all its theoretical expectations, it does seem to induce or coerce a larger proportion of negotiated settlements than conventional arbitration. However, it is important to note that different kinds of final-offer procedures have been constructed, and these procedural differences may have diverse impacts upon the bargaining process. For instance, the parties' incentives to negotiate their own agreement may be greater when the arbitrator makes one "all or nothing" selection decision (package selection) than when he makes separate selection decisions on each of the disputed issues (issue selection).[18]

Final-offer arbitration also has its faults, the most publicized being the potential for inequitable arbitration awards under a package selection requirement. The final-offer arbitrator cannot excise any offensive or unworkable proposals, and if he is faced with two unpalatable final offers, he may be forced into implementing an award which he knows is inequitable toward one side and hence will cause problems between the parties. However, this "lesser of two evils" phenomenon has rarely occurred.[19]

The debate between the advocates of conventional and final-offer arbitration essentially boils down to a debate over which phenomenon should be accorded greater weight: Avoiding the possibilities of inequitable arbitration awards, or increasing the parties' incentives to reach their own agreement. The writer places more emphasis on negotiating incentives, but other observers may have contrary preferences.[20] Since there is no formula by which the labor relations community can decide which of these goals is more important, the relative merits of conventional and final-offer arbitration will be debated for some time to come.

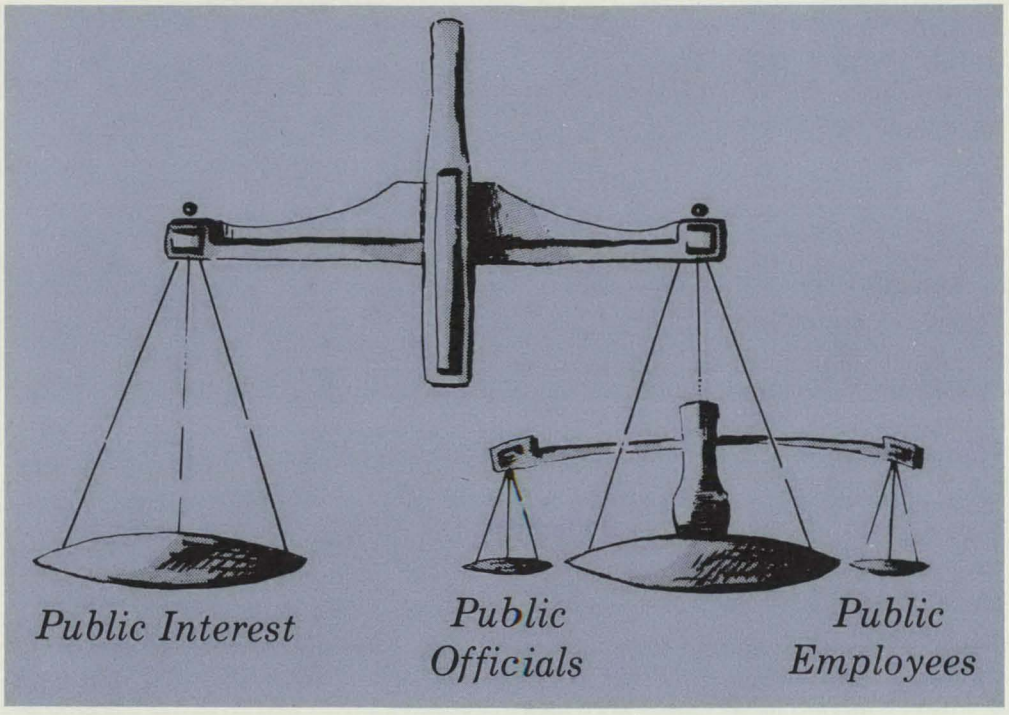
A second line of criticism directed at compulsory arbitration—conventional and final-offer— is that it may result in excessively generous awards, especially on economic issues. Although there is no precise definition of "excessive," presumably it refers to a comparison between the cost of arbitration awards and negotiated agreements. The available evidence suggests that arbitration is associated with favorable union outcomes, but the magnitude of this effect is not large. For instance, Kochan and Wheeler report a significant positive correlation between the presence of arbitration and the favorableness to the union of firefighters' contracts—on both dollar and nondollar items.[21] On the salary issue, Kasper found that final-offer arbitration in Michigan and Wisconsin raised police and fire salaries above what they would have been, but the amount was about 5 percent or less.[22] It is not surprising that favorable union outcomes are associated with arbitration, given that arbitration is designed to increase the union's bargaining power vis-a-vis management. However, the magnitude of this favorable union impact appears less than "excessive."

The third category of criticism is aimed at arbitration's alleged constitutional and political incompatibility with our democratic system of representative government. In this system, the citizens elect government officials who are responsible for the allocation of scarce public resources—both dollar and nondollar. If a majority of the citizenry is dissatisfied with these allocation decisions, the relevant officials may be voted out of office. In addition, the government's financial resources are coerced from the citizenry in the form of taxes, and government officials should be accountable for the use of these funds. Arbitration critics point out that under the typical arbitration procedure, the arbitrator often is appointed by an outside agency, enters an impasse on an ad hoc basis, issues an award, and leaves the scene. He is not elected to his position, and he is not accountable to those groups—employees, employer, and citizens—who must live with and bear the impact of his award. Further, the arbitration process it-

self rarely, if ever, provides an opportunity for the direct involvement of citizen-interest groups. Consequently, arbitration is said to be an unwarranted delegation of governmental authority to a private party and is inconsistent with our system of government.

If the above argument were compelling, we would expect to find the courts striking down arbitration statutes as unconstitutional. However, the legal record to date tends to support arbitration, as the highest State courts in Michigan, New York, Pennsylvania, Rhode Island, and Wyoming have upheld the constitutionality of arbitration laws in those States. The South Dakota Supreme Court, however, struck down that State's law as unconstitutional.[23] In the main, it seems fair to conclude that arbitration statutes do not unlawfully delegate governmental functions to a private party and hence are constitutionally permissible.

The other part of the governmental incompatibility criticism focuses on the political wisdom of using arbitration as a mechanism for allocating governmental resources. For instance, Ray Horton suggests that arbitrators are not necessarily neutral, in possession of the requisite expertise, or concerned with the interests of the public.[24] In short, he seems to be saying that just as war is too important to be left to the generals, governmental labor relations decisions are too important to be left to arbitrators. He then offers some specific recommen-



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"As long as public labor relations policy prohibits strikes, impasse resolution procedures will be implemented and used. As a result, governmental unions and managements will rely on third parties to help them reach an agreement . . . or to impose a settlement. . . ."

dations for reducing the importance of arbitration and for obtaining higher quality awards, including implementation of the right to strike and licensing examinations for arbitrators. The points Horton makes merit serious consideration, given the importance of the resource allocation nature of the arbitration process and because these points tend not to be raised by practitioners.

As long as public labor relations policy prohibits strikes, impasse resolution procedures will be implemented and used. As a result, governmental unions and managements will rely on third parties to help them reach an agreement (via mediation or fact-finding) or to impose a settlement (via arbitration). One concern is that unions and managements will depend too much on third parties to the detriment of the effective functioning of the collective bargaining process, and we have seen that in selected jurisdictions the availability of various procedures—especially conventional arbitration—has reduced substantially the parties' efforts to negotiate their own agreements. Further, this third-party dependency seems to be greater in those States with lengthier public sector bargaining histories, which tentatively suggests that over time unions and managements learn how to incorporate the manipulation of these procedures into their negotiation strategies.[25]

However, there is no formula to determine how much third-party intervention is "too much." For example, some observers will conclude that a 25-percent arbitration award rate is evidence of too much dependency, while others will emphasize that three-fourths of the negotiations ended in negotiated agreements. In addition, if policymakers place greatest weight on protecting the public from strikes, then the extent of third-party intervention is of secondary importance. In other words, the conclusions people reach about the appropriate shape of impasse procedures will depend primarily upon their normative preferences, and the "objective" impasse resolution data can be used to support a wide variety of different conclusions.

FOOTNOTES

[1] Unless otherwise noted, the data in this section comes from the U.S. Department of Labor, Bureau of Labor Statistics, *Work Stoppages in Government, 1973*, Report 437 (1975); *Work Stoppages in Government, 1974*, Report 453 (1976); Bureau of National Affairs, *Government Employee Relations Report Reference File*, Vol. 71, pp. 1012–1027.

[2] U.S. Department of Commerce, Bureau of the Census, *Public Employment: Management-Labor Relations in State and Local Government*, 1972, Census of Governments, Vol. 3, No. 3 (1974).

[3] *New York Times*, July 4, 1976, p. 35.

[4] The Taylor Law requires that the employer of striking workers shall collect from each striker 1 day's pay as a penalty for each day on strike, in addition to the pay withheld for not working that day (i.e., a total of 2 days' pay for each day on strike). In addition, the State's Public Employment Relations Board usually suspends the union's dues checkoff privileges for several months.

[5] Paul F. Gerhart, "Determinants of Bargaining Outcomes in Local Government Labor Negotiations," *Industrial and Labor Relations Review*, Vol. 29, No. 3, pp. 347–349, April 1976.

[6] Thomas A. Kochan and Hoyt N. Wheeler, "Municipal Collective Bargaining: A Model and Analysis of Bargaining Outcomes," *Industrial and Labor Relations Review*, Vol. 29, No. 1, pp. 55–56, October 1975.

[7] John F. Lawrence and Harry Bernstein, "Public Employee Militancy in Transition," *Buffalo Evening News*, July 17, 1976, Sec. C, p. 4.

[8] *Ibid.* Perhaps the classic example of this tough negotiating posture is the San Francisco Board of Supervisors' efforts to cut the pay of city craft workers and their willingness to take a 38-day strike over the issue in spring 1976. The supervisors appeared to have overwhelming public support.

[9] These States include Alaska, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nebraska (via the Court of Industrial Relations), New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Washington, Wisconsin, and Wyoming. Wyoming's arbitration statute was passed in 1965. Most of these statutes apply only to police and/or firefighters.

[10] Hoyt N. Wheeler, "An Analysis of Fire Fighter Strikes," *Labor Law Journal*, Vol. 26, No. 1, pp. 17–20, January 1975; Charles M. Rehmus, "Legislated Interest Arbitration," *Proceedings of the Twenty-Seventh Annual Winter Meeting, December 1974*, Industrial Relations Research Association, Madison, Wis., 1975, pp. 307–312.

[11] This *quid pro quo* reasoning does apply, for instance, to private sector grievance arbitration, for most unions have surrendered their legal right to strike over contract interpretation disputes in return for the employer's promise to arbitrate such disputes.

[12] For instance, in August 1975, the San Francisco police went on strike for higher wages. The public responded by voting to cut their starting pay.

[13] For a more elaborate discussion of arbitration's face-saving characteristic, see Mollie H. Bowers, "Legislated Arbitration: Legality, Enforceability, and Face-Saving," *Public Personnel Management*, Vol. 3, No. 4, pp. 270–278, July–August 1974.

[14] Other names for this process include either/or last offer, last best offer, one or the other, and forced choice arbitration.

[15] Mollie H. Bowers, "A Study of Legislated Interest Arbitration and Collective Bargaining in Public Safety Services in Michigan and Pennsylvania," Ph. D. dissertation, Cornell University, Ithaca, N.Y., 1974, p. 220; Mollie H. Bowers, "A Practical Appraisal of Legislated Arbitration in the Public Sector," unpublished manuscript, 1974, p. 64.

[16] Hoyt N. Wheeler, "Compulsory Arbitration: A Narcotic Effect?" *Industrial Relations*, Vol. 14, No. 1, pp. 117–120, February 1975.

[17] Thomas A. Kochan, et al., *An Evaluation of Impasse Procedures for Police and Firefighters in New York State*, New York State School of Industrial and Labor Relations, Cornell University, Ithaca, N.Y., January 1977, chap. 4.

[18] This discussion only hints at the potential for procedural complexity across final-offer systems. For some information, see Peter Feuille, *Final Offer Arbitration: Concepts, Developments, Techniques*, Public Employee Relations Library, No. 50, International Personnel Management Association, Chicago, Ill., 1975, chaps. 4 & 5; James L. Stern, et al., *Final Offer Arbitration*, D.C. Heath, Lexington, Mass.

[19] Stern, et al., *op. cit.*, pp. 185–186.

[20] For instance, see Charles Feigenbaum, "Final Offer Arbitration: Better Theory Than Practice," *Industrial Relations*, Vol. 14, No. 3, pp. 311–317, October 1975.

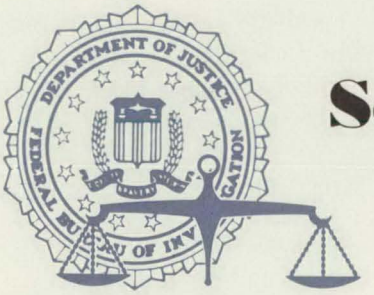
[21] Kochan and Wheeler, *op. cit.*, pp. 54 & 60.

[22] Stern, et al., *op. cit.*, chap. 6.

[23] For a discussion of several of these decisions, see Bowers, *Public Personnel Management, loc. cit.*

[24] Raymond D. Horton, "Arbitration, Arbitrators, and the Public Interest," *Industrial and Labor Relations Review*, Vol. 28, No. 4, pp. 497–507, July 1975.

[25] For one examination of this phenomenon, see Peter Feuille, "Final Offer Arbitration and Negotiating Incentives," *Arbitration Journal*, Vol. 32, No. 3, pp. 203–220, September 1977.



Search by Consent

By
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Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

Conclusion

Proof of Consent

Ordinarily, a law enforcement officer seeks the consent to search, obtains the invitation to enter, conducts the search, and records the circumstances of the transaction. Yet it is the prosecutor who later must prove the consent was lawful, and he depends heavily on the officer in meeting this burden of proof. So while the problem of proof is principally a concern of the prosecutor, the officer must share in the responsibility of demonstrating that the search conformed to fourth amendment requirements.

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

Burden of Proof

Searches conducted outside the judicial process, i.e., without warrant, are *per se* unreasonable under the fourth amendment, subject to a few carefully delineated exceptions. *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971); *Katz* v. *United States*, 389 U.S. 347 (1967). The burden of showing the exemption rests with those who seek it (the State). *United States* v. *Jeffers*, 342 U.S. 48 (1951).

Before discussing the State's burden of proof, it is well to note that in any consent search case there are two questions that must be resolved: (1) Did the consenting party have the capacity or authority to waive? and (2) was the consent voluntary?

In *United States* v. *Matlock*, 415 U.S. 164 (1974), the issue was whether evidence presented by the Government with respect to voluntary consent of a third party to search the appellant's living quarters was sufficient to render the evidence thereby seized admissible. The problem was not the voluntariness of the consent, but whether the third party had authority to permit the search. The Court made plain that the authority did exist, 415 U.S. at 169–71, and in addition, the Government met its burden of proof by showing by the preponderance of the evidence that the

third party could and did consent, 415 U.S. at 177–78, n. 14. The Court noted, ". . . the controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence." *Ibid.* See also *United States* v. *Harris*, 534 F. 2d 95 (7th Cir. 1976); *United States* v. *Cook*, 530 F. 2d 145 (7th Cir. 1976), cert. denied 426 U.S. 909 (1976); *State* v. *Koucoules*, 343 A. 2d 860 (Me. 1974); *State* v. *Peterson*, 525 S.W. 2d 599 (Mo. App. 1975).

Where the issue is the voluntariness of consent, lower courts are not agreed on the appropriate evidentiary standard. Some have held the proper burden to be preponderance of the evidence, citing *United States* v. *Matlock*, *supra*, and *Lego* v. *Twomey*, 404 U.S. 477 (1972), a confession case. See, e.g., *United States* v. *Boston*, 508 F. 2d 1171 (2d Cir. 1974), cert. denied 421 U.S. 1001 (1975); *United States ex rel. Rigsbee* v. *Parkinson*, 407 F. Supp. 1019 (D. S.D. 1976); aff'd 545 F. 2d 56 (8th Cir. 1976); *State* v. *McLain*, 367 A. 2d 213 (Me. 1976); *State* v. *Wilson*, 367 A. 2d 1223 (Md. 1977); *State* v. *Peterson*, *supra*. Many, however, have insisted on a higher standard. See, e.g., *United States* v. *Mapp*, 476 F. 2d 67 (2d Cir. 1973) (clear and convincing evidence); *United States* v. *Jones*, 475 F. 2d 723 (5th Cir. 1973), cert. denied 414 U.S. 841 (1973) (clear and convincing evidence); *United States* v. *Pugh*, 417 F. Supp. 1019 (W.D. Mich. 1976) (clear and convincing evidence); *United States* v. *Pagan*, 395 F. Supp. 1052 (D.P.R. 1975), aff'd 537 F. 2d 554 (1st Cir. 1976) (clear and convincing evidence); *Hock* v. *State*, 531 S.W. 2d 701 (Ark. 1976) (clear and positive evidence); *State* v. *Bidegain*, 541 P. 2d 971 (N.M. 1975) (clear and positive evidence); *Evans* v. *State*, 530 S.W. 2d 932 (Tex. Crim. App. 1975) (positive and unequivocal evidence).

Written or Oral Proof

Whatever standard is imposed on the prosecution to prove consent, the better practice is to get it in writing. Properly authenticated, a written consent to search is highly persuasive. To be sure, the consenting party may argue that his signature was coerced or the result of trickery, fraud, or improper promises. But these objections may be overcome by testimony of officers who obtained the consent and have firsthand knowledge of the surrounding circumstances.

Proper use of a written consent search form is demonstrated in *United States* v. *Haun*, 409 F. Supp. 1134 (E.D. Tenn. 1975), where an FBI Agent obtained a consent to search for a stolen weapon from a suspect in custody. The court noted that the Agent punctiliously "dotted all the i's and crossed all the t's." Numerous other decisions approving consent searches reflect the desirability of obtaining the consent in writing. See *United States* v. *Smith*, 543 F. 2d 1141 (5th Cir. 1976), cert. denied 51 L. Ed. 2d 564 (1977) (written consent form quoted in its entirety); *United States* v. *Willis*, 473 F. 2d 450 (6th Cir. 1973), cert. denied 412 U.S. 908 (1973) (language of consent form reproduced in opinion). The language of consent need not be on a preprinted form. *United States ex rel. Lundergan* v. *McMann*, 417 F. 2d 519 (2d Cir. 1969) (detective "wrote out" consent form which defendant read and signed); *United States* v. *Hecht*, 259 F. Supp. 581 (W.D. Pa. 1966) (consent recorded in language written on old envelope).

A waiver of the right to be free in one's home from unreasonable searches need not be in writing. *United States* v. *Strouth*, 311 F. Supp. 1088 (E.D. Tenn. 1970). So long as the language is specific and unambiguous (See Part VI—Implied Consent, Ambiguous or Equivocal Responses), a valid consent may be proven. See, e.g., *United States* v. *Boston*, 508 F. 2d 1171 (2d Cir. 1974), cert. denied 421 U.S. 1001 (1975); *United States* v. *Legato*, 480 F. 2d 408 (5th Cir. 1973), cert. denied 414 U.S. 979 (1973); *Earls* v. *State of Tennessee*, 379 F. Supp. 576 (E.D. Tenn. 1974); *United States* v. *Kohne*, 358 F. Supp. 1053 (W.D. Pa. 1973), aff'd sub nom. *Appeal of Denham*, 485 F. 2d 679 (3d Cir. 1973), cert. denied 417 U.S. 918 (1974).

Cautionary Warnings

After the Supreme Court decision in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), which required cautionary warnings of fifth and sixth amendment rights prior to a waiver thereof by an accused in custody, it was argued frequently, but generally unsuccessfully, that a warning of fourth amendment rights should likewise precede any effort by an officer to obtain a consent to search.

The Court laid the matter to rest in *Schneckloth* v. *Bustamonte*, 412 U.S. 218 (1973). It was held that the State need not prove knowledge of the right to refuse consent as a necessary prerequisite to demonstrating a voluntary consent. A cautionary warning, therefore, prior to seeking consent, is not essential. The Court pointed out that ". . . it would be thoroughly impractical to impose on the normal consent search the detailed requirements of an effective warning," but also made clear that the subject's knowledge of a right to refuse is a factor to be taken into account in deciding the voluntariness of a consent.

> **"[T]he subject's knowledge of a right to refuse is a factor to be taken into account in deciding the voluntariness of a consent."**

The rule regarding warnings is no different, even if the consenting party is in custody. The absence of proof that the suspect in custody knows he can withhold consent, though a factor in the overall judgment, is not to be given controlling significance. *United States* v. *Watson*, 423 U.S. 411, 424 (1976). See also *United States* v. *Smith*, 543 F. 2d 1141 (5th Cir. 1976), cert. denied 51 L. Ed. 2d 564 (1977); *United States* v. *Garcia*, 496 F. 2d 670 (5th Cir. 1974), cert. denied 420 U.S. 960 (1975).

Special Situations

Employment Contracts—Conditions of Employment

Ordinarily, the search of an employee's locker, desk, or personal belongings by his employer, acting alone, raises no constitutional issue. The employer acts as a private citizen and the fourth amendment, designed to deter *official* or *governmental* misconduct, simply has no applicability. *Burdeau* v. *McDowell*, 256 U.S. 465 (1921). See also *Coolidge* v. *New Hampshire*, 403 U.S. 443, 488 (1971). Evidence taken by the private employer may be turned over to authorities and used in a criminal prosecution. The employer's conduct may be tortious, but it is not unconstitutional.

It is a quite different matter, however, where the employer acts as an agent of police, or where the employer himself is a governmental officer. Under these circumstances, a search by the employer becomes "official" action for purposes of the fourth amendment. Thus, the question is whether the search is reasonable. The test of reasonableness is best met by adherence to the warrant procedure. But even in the absence of a warrant, the search may be lawful. Where, for example, an employee relinquishes his right of privacy in a desk or locker as a condition of employment, he assumes the risk of entry by his employer and may not assert later that his constitutional right was infringed.

A decision which illustrates the point is *United States* v. *Bunkers*, 521 F. 2d 1217 (9th Cir. 1975), cert. denied 423 U.S. 989 (1975). Bunkers was a postal employee suspected of stealing packages traveling through the mails. Postal inspectors with "well-founded suspicions" caused a warrantless search to be made of her locker, where she was thought to be storing the stolen property. Her conviction of theft was appealed on grounds that the inspectors illegally searched the locker.

The Federal appellate court rejected the claim, holding that the postal employee did not possess a reasonable expectation of privacy in a work-connected post office locker supplied by the Government. Furthermore, the court pointed out that by the terms of her employment agreement she effectively relinquished her fourth amendment protection in the locker. A similar case is *United States* v. *Donato*, 269 F. Supp. 921 (E.D. Pa. 1967), aff'd 379 F. 2d 288 (3d Cir. 1967), where a warrantless search of an employee's locker was made at the U.S. Mint in Philadelphia and justified pursuant to a Mint regulation authorizing inspection of employees' lockers "whenever necessary for any reason." See also *United States* v. *Collins*, 349 F. 2d 863 (2d Cir. 1965), cert. denied 383 U.S. 960 (1966) (warrantless search of employee's desk by U.S. Customs agent and Post Office inspector lawful).

Decisions approving warrantless searches of lockers or desks based on a finding of "no reasonable expectation of privacy" are *United States* v. *Speights*, 413 F. Supp. 1221 (D. N.J. 1976) (police officer had no justified expectation of privacy in his locker as against superiors); *Shaffer* v. *Field*, 339 F. Supp. 997 (C.D. Cal. 1972), aff'd 484 F. 2d 1196 (9th Cir. 1973) (deputy sheriff had no constitutionally justifiable expectation of privacy in his substation locker). But see *State* v. *Ferrari*, 357 A. 2d 286 (N.J. App. 1976) (deputy chief entitled to fourth amendment protection in locked desk).

Effect of Statutes and Ordinances

Can a legislature condition the conferral of an advantage on a citizen by requiring that he yield a constitutional right? It seems clear that in limited circumstances such a price can be exacted from an individual. Statutes requiring waiver invariably concern activities where tight control is the order of the day and warrantless searches and inspections are essential to protect the public interest. They are confined to activities which threaten public safety or have a high potential for corruption and vice. In effect, the laws require citizens to consent to warrantless searches in return for a benefit granted by the State. Licensing statutes provide a good example.

In *Lanchester* v. *Pennsylvania State Horse Racing Commission* 325 A. 2d 648 (Pa. Cmwlth. Ct. 1974), a horse trainer appealed his license suspension for violation of the Pennsylvania Rules of Racing. The suspension followed a hearing at which evidence was presented which had been forcibly seized from the trainer's truck without warrant by commission officials. At issue was the constitutionality of the search.

The Pennsylvania Court held that the search was reasonable on two grounds. First, warrantless regulatory searches in pervasively regulated businesses may be authorized by a legislature. The court cited two Supreme Court decisions supporting this view—*United States* v. *Biswell*, 406 U.S. 311 (1972); *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970). *Biswell* concerned the warrantless search of a federally licensed

gun dealer's storeroom; *Colonnade*, the inspection of a licensed alcohol beverage dealer's premises. Both decisions recognize that control and regulation of the firearms and spirits industries, given their potential for abuse, can only be achieved through frequent and unannounced inspections.

Second, the *Lanchester* court held that an express consent to search, obtained from an applicant for a horse trainer's license as a condition precedent to licensing, is a relinquishment of constitutional protection:

> "Where an individual entering a traditionally regulated licensed field such as horse racing consents to a warrantless search of his person or premises directly related to or involved in that endeavor, his consent is held to constitute a waiver of his Fourth Amendment protections within the limits of valid regulation." *Lanchester* v. *Pennsylvania State Horse Racing Commission, supra*, at 653.

The same conclusion was reached by a State appellate court in *Greensboro Elks Lodge* v. *North Carolina Board of Alcoholic Control*, 220 S.E. 2d 106 (N.C. App. 1975). In order to effectively control the dispensing of spirits, a State statute authorized certain officers to enter licensed premises in the performance of their duties at any hour of the day or night. Officers made a warrantless entry and seized certain evidence. At issue was the admissibility of such evidence in a license suspension hearing. The court held that the Elks Lodge, by seeking and obtaining a permit to dispense intoxicating beverages, waived its fourth amendment right to the limited extent of inspection to enforce State liquor regulations. The court quoted from a 1973 Supreme Court decision:

> ". . . [B]usinessmen engaged in . . . federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade. . . . *The businessman in a regulated industry in effect consents to the restrictions placed upon him.*" *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 271 (1973) [emphasis added].

And unlike the administrative inspection cases where close regulation of a particular industry is not the objective, *Camara* v. *Municipal Court*, 387 U.S. 523 (1967); *See* v. *Seattle*, 387 U.S. 541 (1967), the officers need not obtain prior judicial approval (i.e., warrant) prior to entry. Compare *United States* v. *Biswell, supra*, and *Colonnade Catering Corp.* v. *United States, supra*, with *United States* v. *Enserro*, 401 F. Supp. 460 (W.D. N.Y. 1975).

> **"The common elements in the warrantless search cases are: [1] A business, industry, or activity by practice and tradition heavily controlled; and [2] statutes or administrative regulations conferring broad authority on officers responsible for enforcement."**

The common elements in the warrantless search cases are: (1) A business, industry, or activity by practice and tradition heavily controlled; and (2) statutes or administrative regulations conferring broad authority on officers responsible for enforcement. In the absence of such factors, a law will not survive constitutional challenge. In 1976, the Supreme Court of Ohio was called upon to determine the constitutionality of a municipal ordinance which compelled the seller of real property to tender a certificate of inspection to a prospective buyer. In order to obtain the certificate, the seller had to submit to a warrantless inspection of the premises. Failure to tender the certificate subjected the seller to criminal penalties. The court found the ordinance in violation of the fourth amendment. A citizen cannot be placed in a position where he must agree to a search or face a criminal penalty. *Wilson* v. *City of Cincinnati*, 346 N.E. 2d 666 (Ohio 1976).

Parolees and Probationers

In recent years, an entire body of law has developed about the rights of prisoners, parolees, and probationers. Most is beyond the scope of this discussion and of limited interest to law enforcement officers. Yet one problem is of concern—the right of a parolee (or probationer) to be free from unreasonable search of his premises.

Parole or probation is not a right enjoyed by those convicted of crime. Rather it is a benefit accorded in the correctional process where release of a prisoner is deemed advantageous to both State and individual. There are, of course, significant differences of legal status between the parolee and probationer. But common to both is the purpose of release. It is rehabilitation. The rehabilitative effort is invariably accompanied by State-imposed limits and conditions on the freedom of the parolee or probationer. So long as the restrictions are reasonable, i.e., contribute significantly to the rehabilitation of the convicted person and the protection of the public, they are lawful. See *Morrissey* v. *Brewer*, 408 U.S. 471, 477–80 (1972) (parole); *Porth* v. *Templar*, 453 F. 2d 330 (10th Cir. 1971) (probation).

Release on probation or parole is generally provided for by statute. Conditions of release may be imposed by the sentencing court or an administrative board or department. To in-

" '[A] search pursuant to consent may result in considerably less inconvenience for the subject of the search, and, properly conducted, is a constitutionally permissible and wholly legitimate aspect of effective police activity'."

sure compliance with these conditions, the courts and boards rely upon probation and parole officers, who are vested with arrest and search authority with respect to those in their charge. The authority is not unlimited. Even probationers and parolees enjoy some constitutional protection. *Croteau* v. *State*, 334 So. 2d 577 (Fla. 1976); *Tamez* v. *State*, 534 S.W. 2d 686 (Tex. Crim. App. 1976).

Suppose a State, acting through its parole board, imposes on a parolee as a condition of release a requirement to submit to a search of his dwelling at any time at the complete discretion of a law enforcement officer. In effect, the State exacts a consent to search as the price of freedom. Will this condition survive constitutional challenge? There is a conflict in the reported decisions. Recent Federal cases hold the condition either overly broad, allowing any police officer to conduct an unrestricted "probation" search, *United States* v. *Consuelo-Gonzalez*, 521 F. 2d 259 (9th Cir. 1975); or involuntary, *United States* v. *Smith*, 395 F. Supp. 1155 (W.D. N.Y. 1975). Some State courts agree with this view, *Tamez* v. *State, supra,* but others have concluded that the consent search provision of parole or probation does not offend the fourth amendment. *People* v. *Mason*, 488 P. 2d 630 (Cal. 1971), cert. denied. 405 U.S. 1016 (1972); *State* v. *Schlosser*, 202 N.W. 2d 136 (N.D. 1972).

There is another basis for a parole or probation search. It arises from the unique role the officer plays in the correction scheme. He may make a warrantless search of premises of a parolee or probationer, but his actions must be reasonable. To satisfy the reasonableness requirement, he must: (1) Carefully limit his search to purposes of parole or probation supervision; and (2) justify the search based on an objective standard. The standard is defined as facts amounting to a reasonable belief or suspicion. See *Latta* v. *Fitzharris*, 521 F. 2d 246 (9th Cir. 1975), cert. denied 423 U.S. 897 (1975); *United States* v. *Smith, supra.*

The foregoing is of little significance to the law enforcement officer unless he causes or participates in the search. Notwithstanding some decisions to the contrary, many courts disapprove the practice of police acting as parole or probation officers, *People* v. *Anderson*, 536 P. 2d 302 (Colo. 1975), or using the probation officer as a "stalking horse for the police," *Latta* v. *Fitzharris, supra.* At the same time, nothing should preclude "mutually beneficial cooperation" between parole or probation officers and other law enforcement officials, so long as the cooperation does not result in a subterfuge for criminal investigations. *United States* v. *Consuelo-Gonzalez, supra,* at 267; *State* v. *Simms*, 516 P. 2d 1088 (Wash. App. 1973).

Conclusion

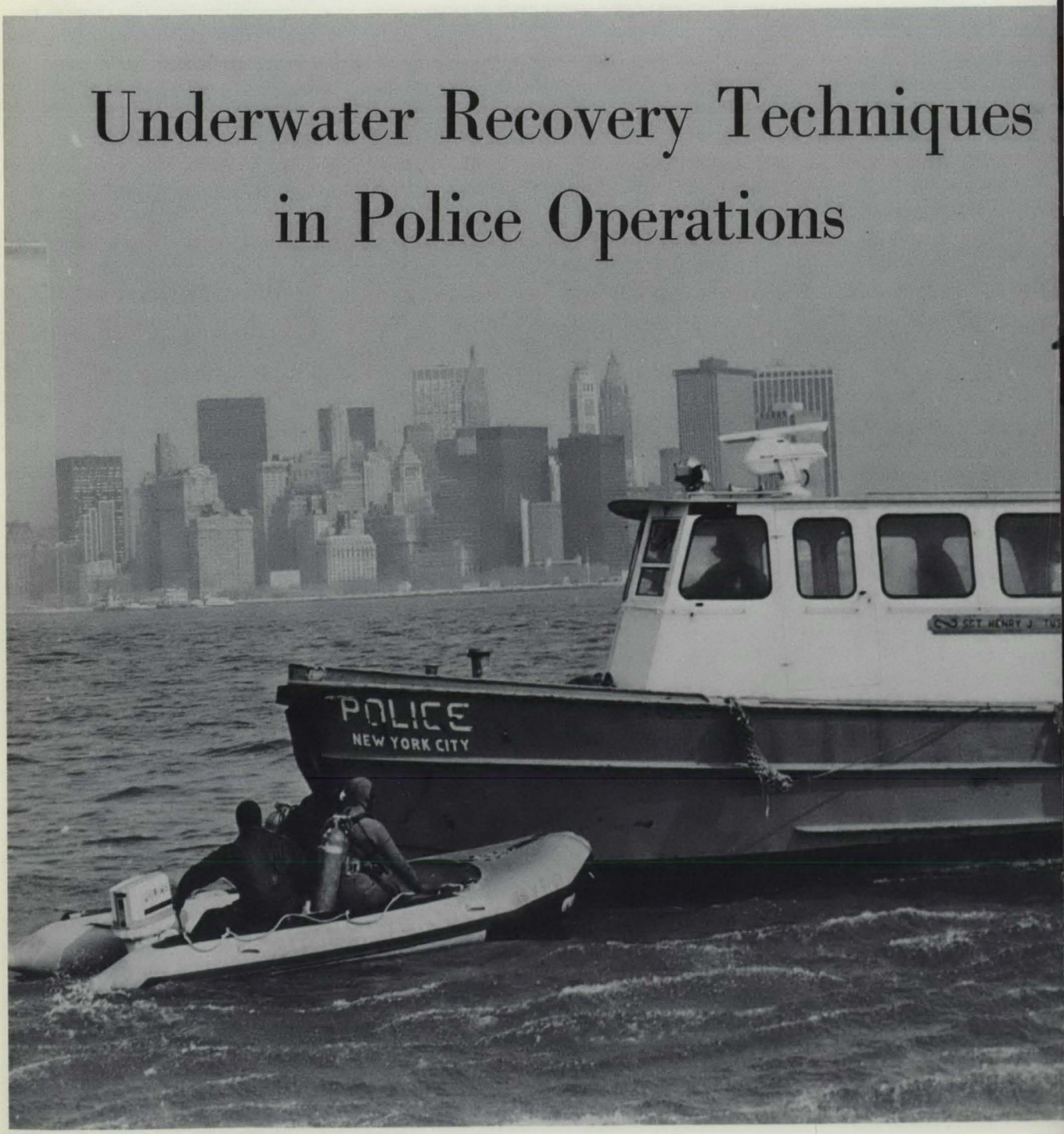
Consent to search does not substitute for a search warrant. Yet used judiciously, it can be a lawful and effective means of finding and seizing evidence. For the officer, it is also an area of high vulnerability. A consent to search is the relinquishment of a citizen's fundamental protection under the Constitution. Defense attorneys, therefore, may be expected to attack the search routinely and vigorously. Courts will examine carefully the circumstances surrounding the consent to determine voluntariness. The law enforcement officer must be prepared to demonstrate the rights of the consenting party were not violated. He should identify the person empowered to give consent, do nothing to interfere with the free choice of the consenter to reject the officer's request to search, and make an accurate record of what happened.

"Officers are entitled and expected to use all lawful techniques in the investigation of crime . . . . the consent search is firmly established as one such technique."

Officers are entitled and expected to use all lawful techniques in the investigation of crime. There is little doubt that the consent search is firmly established as one such technique. Its importance and propriety are nowhere better described than in the words of Justice Stewart:

> "In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence. . . . [A] search pursuant to consent may result in considerably less inconvenience for the subject of the search, and, properly conducted, is a constitutionally permissible and wholly legitimate aspect of effective police activity." *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 227–28 (1973).

Underwater Recovery Techniques in Police Operations



By

DEPUTY CHIEF ROBERT J. JOHNSTON, JR.

Commanding Officer
Special Operations Division
New York City Police Department
New York, N.Y.

New York City, in addition to being one of the largest metropolitan cities of the world, is in reality a city of islands. Although many people know that it is made up of five counties, few out-of-towners realize that four of these counties are either islands (Manhattan and Richmond), or part of an island (Brooklyn and Queens), and that within these counties there are entire communities of people living on smaller islands (Coney Island, City Island, Roosevelt Island, Wards Island, Rikers Island, and Broad Channel). Because of this geographical configuration, there are 576 miles of shoreline encompassing 146 square miles of water. To police this vast area, the New York City Police Department has, within the Special Operations Division, a harbor unit of 100 men and officers with the capability of launching 14 boats, ranging in size from 25-foot fiberglass boats to 52-foot steel-hulled launches.

Although the bulk of waterborne police problems have been successfully handled by this surface fleet throughout the years, the advancement in technology, which has permitted man to graduate from cumbersome diving gear to the more flexible wet suit, has also enabled us to conquer the underwater surface of harbors, lakes, and rivers within the city. We have done this through the formation of scuba-trained police officers into the Underwater Recovery Team.

Prior to 1973, team members were assigned to various commands throughout the city and activated as needed, on a case-by-case basis. After completing their assignment, the divers were returned to their regular police commands. Diving in the murky and often dangerous waters of New York, the teams successfully located and recovered everything from a downed aircraft to weapons required as evidence in major criminal cases. As their expertise and success rate grew, the department realized the valuable contribution these men could make in support of various units within the department as well as other city agencies. And so, in 1973, one sergeant and six police officers became part of a permanent Underwater Recovery Team, working within the harbor command.

The divers, who are called upon to work in all weather conditions, frequently do not have the luxury of time normally allowed to prepare and plan the detailed approach which is the hallmark of their trade. On one occasion, members of the team were airlifted by police helicopter from their base and dropped into the choppy Atlantic Ocean to rescue crew members trapped in an overturned tugboat. The episode ended happily with the rescue of four men who were trapped neck deep in water in the overturned and sinking tug. They had kept themselves alive by breathing

Officers surface under a Brooklyn pier after locating a weapon used in a homicide.

from a small pocket of trapped air while awaiting rescue. During the rescue, the victims shared the air tanks of the divers while making the swim to surface. Although this particular assignment was dramatic and extraordinary, most Underwater Recovery Team assignments are not so newsworthy or exciting.

While the primary function of the team is search and recovery, they have been assigned other roles, including assisting detectives in homicide investigations. In 1973, divers were sent to recover the bodies of two workmen who had drowned during the construction of a "coffer dam" in the treacherous waters of the East River's Hell Gate channel. After a 2-day search, during which time the team had to swim and examine each level of the twisted and torn steel in almost zero visibility, the bodies were recovered. Several months later, at the request of the district attorney, they repeated this operation in order to assist in the determination of the cause of the collapse. As a result of the divers' subsequent court testimony, the district attorney was aided in his prosecution against the builder of the dam for criminally negligent homicide.

The search for a body, a car, or even an aircraft provides the divers with a recognizable target, a distinct advantage in the dark and murky waters of New York Harbor. The search for a smaller object, such as

"While the primary function of the [Underwater Recovery] [T]eam is search and recovery, they have been assigned other roles, including assisting detectives in homicide investigations."

"One of the most important considerations in [an underwater] operation is safety."

a gun or knife, requires detailed planning, knowledge of the area and its currents, and close teamwork. When all available information has been sifted and analyzed and a determination of the most probably search location has been made, the divers are ready to begin.

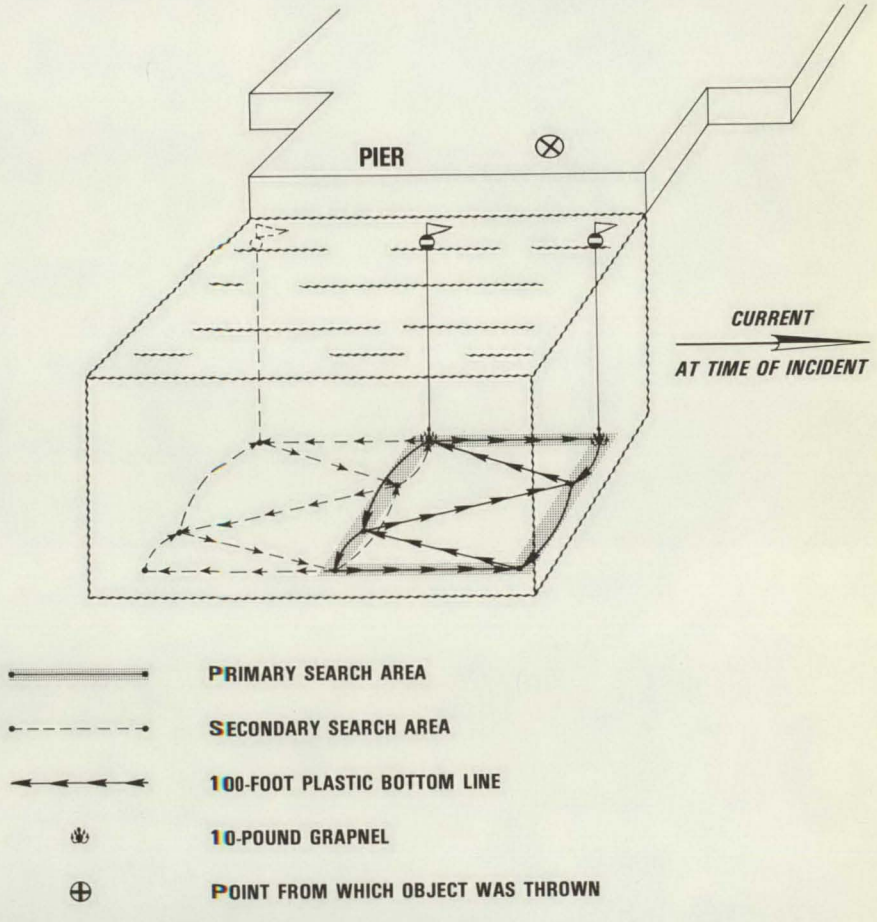
"The Underwater Recovery Team . . . has developed a [parallel] search technique which enables them to cover the bottom in a thorough and exact search pattern."

The Underwater Recovery Team, through a process of trial and error, has developed a search technique which enables them to cover the bottom in a thorough and exact search pattern. Known as a "parallel search," it can be used in any type of water—lakes, ponds, streams, reservoirs, or even sewer systems. The pattern is established by attaching 100 feet of 5/8-inch floating plastic line to two 10-pound grapnel hooks. This setup is lowered to the bottom with "up" lines attached to each grapnel, which are in turn connected to surface buoys. With one diver on either side of the bottom line, visual or touch-type search can be made while traveling from one grapnel to the other. The grapnel is then moved away from the entry point to a distance determined by visibility and bottom conditions. Once the grapnels are reset, the divers continue their systematic search. Moving along the bottom line, the divers have sight and touch contact with each other. They can easily move the bottom line over any object, regardless of its size, and thus insure that the line will remain free and untangled. Using the parallel search pattern frees the divers to work without an umbilical line to the dive boat. That type of line is prone to tangle, creating a danger to the diver and retarding the search. A search pattern is usually run parallel to the river's current and perpendicular to the point of entry.

Using this parallel pattern, the Underwater Recovery Team has achieved a recovery rate of over 90 percent. During 1976 and 1977, the team logged approximately 10,600 hours underwater during 252 assignments, resulting in the recovery of 61 bodies, 62 guns, and 74 stolen vehicles, as well as numerous other pieces of evidence.

One of the most important considerations in this type of operation is safety. Any underwater diving operation can be dangerous, but in a congested and cluttered waterway, such as New York Harbor, the dangers are multiplied. The Underwater Recovery Team operates from its own 52-foot police launch, supplemented by a 16-foot inflatable boat. Prior to any dive, a notice to all mariners is transmitted via radio. The inflatable boat is then launched to survey the scene and establish the diving pattern. The crew maintains constant vigilance for surface traffic during the entire operation and is available to assist any diver.

A cardinal rule of the team's diving operations is that no one dives alone.



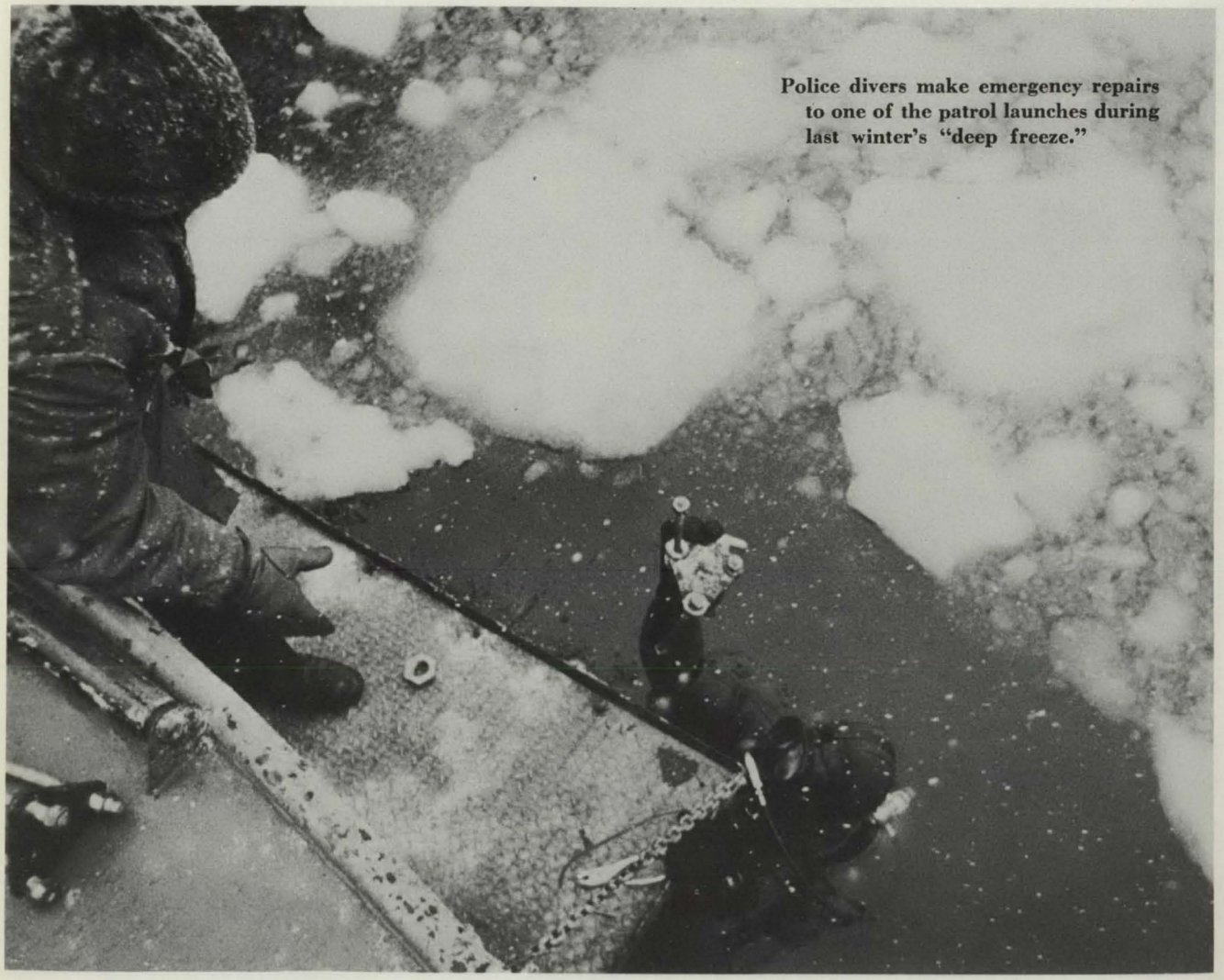
Only in the extreme emergency where a life is in danger will a diver be permitted to go down alone. The ideal dive operation uses four divers, alternating with each other for a maximum of three dives on any day.

The Underwater Recovery Team's work uniforms are the typical wet suits, face masks, fins, and air tanks; however, New York waterways, like those of any busy commercial harbor, present special problems. These problems have required the divers to supplement their equipment with additional safety equipment. An observer, seeing the divers strapping on a large, very sharp diving knife, might consider this overdramatic, as there are very few sharks in New York City waters. However, in the past, divers have encountered serious and potentially dangerous problems with fishing lines, discarded movie film, and computer tape. There are literally miles of such refuse under the surface, and any diver tangled in line, film, or tape could easily lose his life without the knife to cut himself free.

A diver going down into New York waters never knows what he will encounter. Underwater Recovery Team men have seen every type of underwater obstacle imaginable, including telephone booths and safes. One diver, working beneath the George Washington Bridge, found himself caught up on the most unusual piece of junk yet encountered, a circus cage!

Just as dangerous to a diver is the junk and debris encountered on the bottom. Sharp edges of broken metal and glass can shred a diver's wet suit and skin in seconds, causing serious lacerations and possible infection. To counter this problem, the divers wear protective-covering suits over the usual wet suits. In addition, the use of heavy insulated, self-sealing gloves are essential to the safety of the officers.

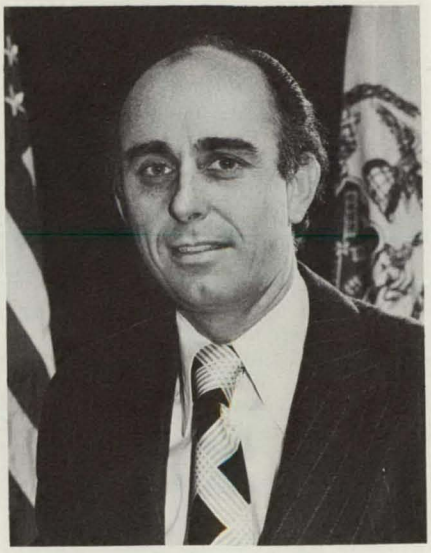
The health of the divers is also an important concern to the department. Working underwater is tiresome and demanding. A diver in poor



Police divers make emergency repairs to one of the patrol launches during last winter's "deep freeze."

physical condition is a threat to himself and to his diving partners. Members of the New York City Police Department's Underwater Recovery Team are required to be in top physical condition. Each man participates monthly in 18 hours of physical training under the supervision of the Police Academy's Physical Training School. Their physical health is the direct responsibility of a police department surgeon, who is one of the leading authorities in hyperbaric medicine. Each diver is examined on a regular basis, and a close check is kept on his overall condition, with special emphasis placed on those conditions which could be affected by his underwater assignment.

Deputy Chief Robert J. Johnston, Jr.



Robert McGuire
New York City Police Commissioner

Another role for the team is routine hull inspections, repairs, and maintenance. This practice has saved the department countless hours of down time, by not having to dry dock its craft.

The search role of this team sometimes takes on the aspect of crime prevention. For example, in 1976, the Mayor's Office, with the cooperation of the State Department, scheduled a function on board the luxury liner Queen Elizabeth II. The event was jeopardized because of bomb threats from a terrorist group. The Underwater Recovery Team was assigned to carry out a complete underwater search of the ship's hull, pier, and surrounding water. As a result of this search, the affair was able to proceed without incident.

A NYPD officer and a Connecticut State trooper prepare to take off on a jump/rescue mission. The Underwater Recovery Team frequently performs joint training sessions with other municipal police departments.

"The concept of underwater police operations is worthy of consideration by every police administrator."

The concept of underwater police operations is worthy of consideration by every police administrator. Having such capability need not be expensive and need not even be maintained on a full-time basis. In small police departments, this capability could be had on a shared basis or with trained volunteers. However, as police divers are operating in an alien atmosphere and subject to conditions where panic could cause disaster and possible loss of life, it is imperative that training be afforded by a privately certified organization or by a cooperative governmental agency.

Manpower and Monetary Losses—Investigations of Fraudulent Checks

By
SGT. THOMAS L. FRAZIER
Carmel Police Department
Carmel, Calif.

The city of Carmel-by-the-Sea, a coastal village of 1-square mile, is well-known throughout the world for its unique atmosphere and attractive businesses. The city has a permanent population of 4,640 (1970 census) and hosts a tourist population, summers and holidays, that runs into the thirty thousands per day. Visitors from every part of the globe are accommodated by the 700 businesses, 42 motels and guesthouses, 74 restaurants, and 17 bars. It is the 700 businesses, located in the city's commercial district of 25-square blocks, that create special problems for law enforcement, especially in the area of refer to maker, nonsufficient funds, and account-closed check complaints.

The city is protected by a force of 14 sworn officers and 10 civilian employees. There are 12 men in the patrol division who are responsible for patrol as well as investigations, since the department does not have a detective or a specific investigative division. The members of the patrol division rotate watches every 4 months. Each of the 3 watches is supervised by a sergeant.

William H. Ellis
Chief of Police

Sgt. Thomas L. Frazier

Before October 1976, complaints of dishonored checks received by citizens were handled in the same manner as any other criminal complaint. Officers would respond and take the check from the victim, prepare a crime report, and conduct an investigation to determine if a violation of the penal code occurred. The reports were then processed through the records system in the mandated manner.

The problems facing the department were many. The officers were spending approximately 1 hour, not including investigation time, on each complaint. Shopkeepers would not re-

port checks of small denominations on the belief they "weren't worth bothering the police with." In addition, officers were finding that the shopkeepers would hold checks for several weeks attempting to collect on them before calling the police. Investigations often revealed that the majority of criminal checkpassers had written their checks and had left town weeks before the first shopkeeper complained. Also, officers were conducting investigations and discovering from bank records additional dishonored checks that were not being reported and could not be located. The result was that victims who might have been assisted were not, and evidence, that would strengthen a case or constitute a felony, was lost to the prosecution. In many cases, people who committed no crime more serious than being bad mathematicians were being the subject of criminal reports and investigations.

The chief of police realized the problem and agreed with the opinion of most law enforcement executives that a police department should not be a debt collection agency. However, the chief also believed that a major function of every police department is to protect life and property and to suppress crime. The recovery of lost property or restitution of damages sustained by the victim of a criminal is very much the business of the police. It was with these goals in mind that approval for the check investigation program came about.

"A shopkeeper education session was held, and the check program was outlined and explained to members of the city's business association at their monthly meeting."

A shopkeeper education session was held, and the check program was outlined and explained to members of the city's business association at their monthly meeting. It was pointed out that the success of the program depended on their cooperation, and each shopkeeper was urged to demand identification from checkwriters and to note that information on their checks. The check was then to be initialed by the clerk who received it. Shopkeepers were requested to telephone the police immediately upon receiving a dishonored check from the bank. They were reminded that in order for the program to be successful, they must be willing to adhere to the following three principles: (1) Report dishonored checks promptly; (2) report any restitution received immediately; and (3) testify in court if necessary.

The second phase of the program involved the news media. The business association newsletter and the city newspaper agreed to inform the public by printing articles announcing and explaining the program. The first article dealt with the program's concepts and organization and urged community support. The papers then printed monthly articles reporting the success of the program, reminding shopkeepers of its existence and importance to them.

Implementation was the least difficult phase of the new service. Officers were supplied with 3 x 5 index cards for "check information" and when an officer was dispatched to a store to investigate a dishonored check, he would simply fill in the following information: (1) Writer's name; (2) writer's address and telephone; (3) identification used by the writer; (4) victim store's name; (5) amount of check; and (6) date complaint is received.

The check is retained by the shopkeeper. The officer, upon returning to the station, files the card in the check file box, located in the day-watch sergeant's office. He then addresses the form letter and mails it to the writer of the check, entering the name of the victim shop in the "in reply refer to" area of the letter. This letter simply informs the writer of the check that their check was dishonored and gives them the opportunity to rectify the situation. (See example letter.)

The day-watch sergeant monitors the check file, and if he sees a pattern developing with a checkwriter or discovers sufficient grounds to warrant a criminal investigation, he assigns a patrol officer to conduct a thorough investigation. The assigned officer then recontacts that victim and obtains statements and other pertinent information necessary for successful prosecution.

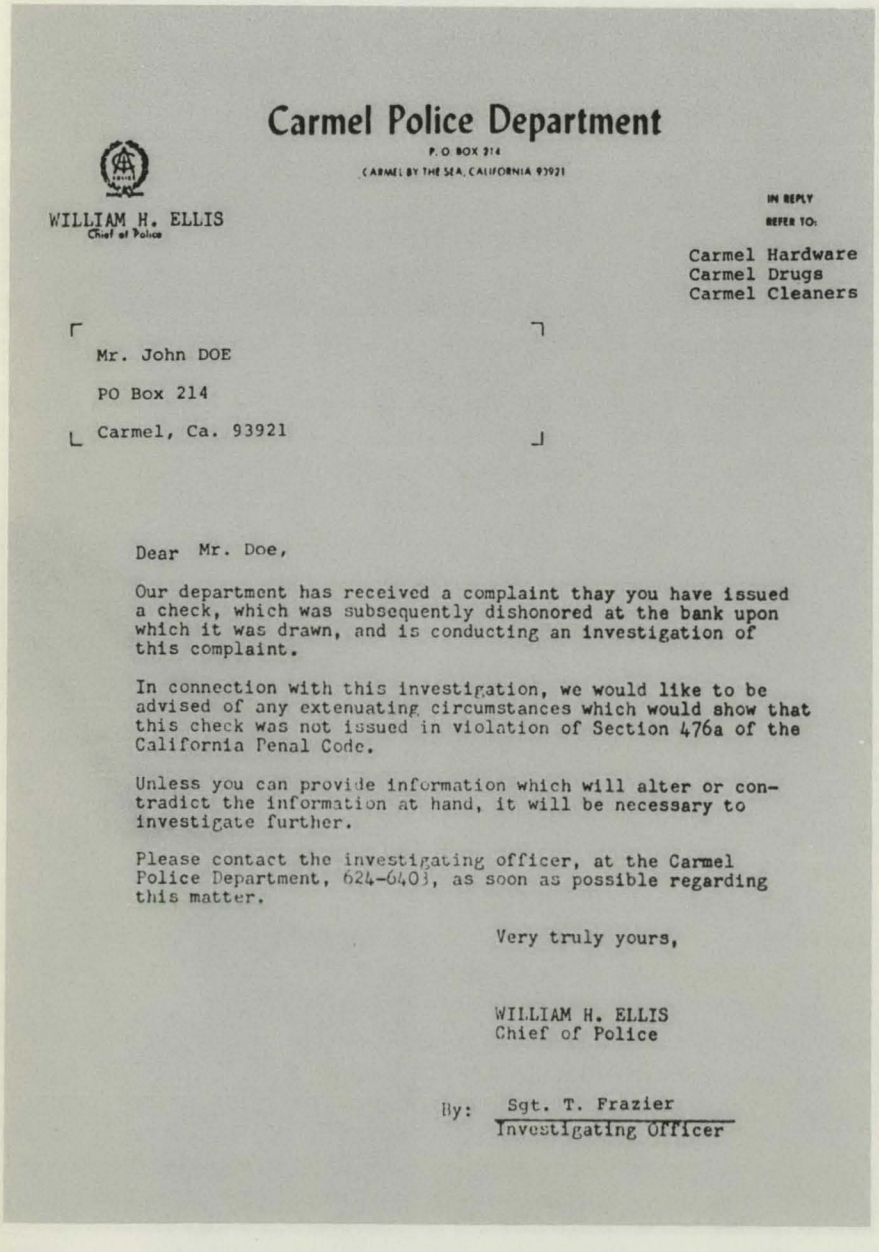
"Before October 1976, complaints of dishonored checks received by citizens were handled in the same manner as any other criminal complaint."

Checkwriters, who have no intention of defrauding a shopkeeper, are

"The program's success is measured by the reduction of monetary losses. The program has saved the Carmel business community $27,679.10 in sales revenue which might otherwise have been lost through inaction."

notified of their dishonored checks, thereby being saved the embarrassment of a criminal complaint. They then have the opportunity to make restitution to the store, and when they do, that fact is noted on the check information card, canceling that particular entry.

Shopkeepers are satisfied with the results since their losses have been greatly reduced. Valid criminal investigations are made easier since the police department can act on checks while witnesses' memories are fresh. Identification of the suspect is more of a possibility since the incident is only a few days, rather than months old. Positive witnesses provide the district attorney's office with stronger felony complaints. Checkpassers who have trouble adding or subtracting or who have a problem with their bank are pleased since they no longer experience the stigma of a criminal inquiry.



Carmel Police Department

P. O. BOX 214
CARMEL BY THE SEA, CALIFORNIA 93921

WILLIAM H. ELLIS
Chief of Police

IN REPLY REFER TO:

Carmel Hardware
Carmel Drugs
Carmel Cleaners

Mr. John DOE
PO Box 214
Carmel, Ca. 93921

Dear Mr. Doe,

Our department has received a complaint thay you have issued a check, which was subsequently dishonored at the bank upon which it was drawn, and is conducting an investigation of this complaint.

In connection with this investigation, we would like to be advised of any extenuating circumstances which would show that this check was not issued in violation of Section 476a of the California Penal Code.

Unless you can provide information which will alter or contradict the information at hand, it will be necessary to investigate further.

Please contact the investigating officer, at the Carmel Police Department, 624-6403, as soon as possible regarding this matter.

Very truly yours,

WILLIAM H. ELLIS
Chief of Police

By: Sgt. T. Frazier
Investigating Officer

The program's success is measured by the reduction of monetary losses. The program has saved the Carmel business community $27,679.10 in sales revenue which might otherwise have been lost through inaction. Monthly figures of dishonored checks reported, compared to losses recovered, are recorded and reported to the public. Monies recovered per month have ranged from 59 percent to 84.4 percent of the total amounts reported to the police.

The program has been in operation for 1 year with a total recovery rate of 87.5 percent of all reported monies. The average cost per month including postage, form letters, and index cards is less than $10. In addition to the recovered $27,679.10, there has been a reduction in manhours for investigating and processing check complaints, indicating a further savings to taxpayers. The program has also resulted in the filing of 20 felony complaints. However, regardless of the savings in money and resources, the public relations benefits alone more than justify the program's costs.

"National Youth Program Using Minibikes"

By
WILLIAM WAWRZONEK
Juvenile Officer
Police Department
Oak Creek, Wis.

The Oak Creek Police Department in Oak Creek, Wis., is responsible for a community of about 15,000 persons residing in a 30-square mile area adjacent to the metropolis of Milwaukee, Wis. The population is grouped in clusters, interspersed among farm fields and open spaces. During the summer months, the police department receives numerous complaints of minibike riding in these fields. The complainants characteristically allege damage to farm crops and excessive noise, and the people residing in the areas express concern, especially about liability in the event a minibike rider receives an injury while on their property. These problems prompted the city of Oak Creek to enact an ordinance regulating the use of minibikes.

Cognizant of the attraction young people have for motorized vehicles and the law enforcement responsibilities resulting from the minibike ordinance violation, police personnel decided to look into a program sponsored jointly by the Young Men's Christian Association (YMCA) and a leading motorcycle manufacturer—the "National Youth Program Using Minibikes" (NYPUM).

NYPUM was presented to the Chief of the Oak Creek Police Department, who subsequently authorized formation of a minibike club. After the motorcycle manufacturer donated 10,000 minibikes nationwide to the YMCA for the purpose of communications with young people through the appeal the bikes hold for them, the next step was to raise about $600—funds to buy insurance, pay for helmets, and cover transportation costs for these bikes—to implement the program. Fortunately, the president of one of the industries in Oak Creek, who was enthusiastic about this concept, presented the program to his board of directors, and his company donated the necessary funds.

Finding a secure place to store the bikes was the next order of business. The program director of the South Shores YMCA persuaded the owner of a truck-

"Club organizers wanted a blend of straight 'A' students, underachievers, and some who had previous dealings with the police. They did not want this program to be solely a reward for young people who had been in trouble with the law."

ing firm to donate an old semitrailer, and the Wisconsin National Guard Armory in Oak Creek, which is in close proximity for storage of the bikes, was made available as a storage area for the semitrailer.

In late October, 16 minibikes finally arrived. Even though it was too late to start riding, the unseasonable arrival provided an opportunity to select the youngster to pilot this program. Club organizers wanted a blend of

Participants in the youth minibike program are pictured with Officer Wawrzonek.

straight "A" students, underachievers, and some who had previous dealings with the police. They did not want this program to be solely a reward for young people who had been in trouble with the law. This program obviously would be scrutinized by the community and continued support would depend on its success.

By the time the snow had melted in the spring and the ground became solid, the club had 16 brandnew minibikes, a place to store the semitrailer, and 16 brandnew crash helmets. All of this was obtained at no cost to the taxpayers of Oak Creek.

The next step was to study and understand the laws regarding the safe operation of minibikes. Safety regulations were spelled out and a code of conduct was enacted by the club members.

Since some of the youngsters had never ridden a minibike, they fell down occasionally, damaging the bike and its more fragile parts. This, of course, created additional problems, because extra parts cost money. Hoping to teach the club members the responsibility involved in maintaining the bikes, it was decided to try and let them raise their own operating expense money.

The first fundraising activity was a carwash, which was highly successful. Fifty cars were washed during this operation, and when it was over, there wasn't a dry piece of clothing among all the carwashers.

Finally, the club was ready for its first public appearance. On the Fourth of July, at the Annual Community Independence Day Parade, 16 proud young people rode their shining minibikes down the parade route, accepting the applause of friends and parents. The guidance and training they had received would remain a highlight in the lives of the kids and their instructor.

Subsequent to the parade, the department was swamped with requests from youngsters wanting to know how to join the "Minibike Club." It was a delight to see adults volunteering their assistance in supervising, instructing, and participating in minibike club activities. By the end of the summer, club members were participating in two 2-hour sessions, three times a week, which allowed about 90 young people to use these 16 bikes.

"While some of the youngsters still get into trouble occasionally, the difference is that the police and kids are no longer strangers—instead, they are friends helping friends."

While some of the youngsters still get into trouble occasionally, the difference is that the police and kids are no longer strangers—instead, they are friends helping friends.

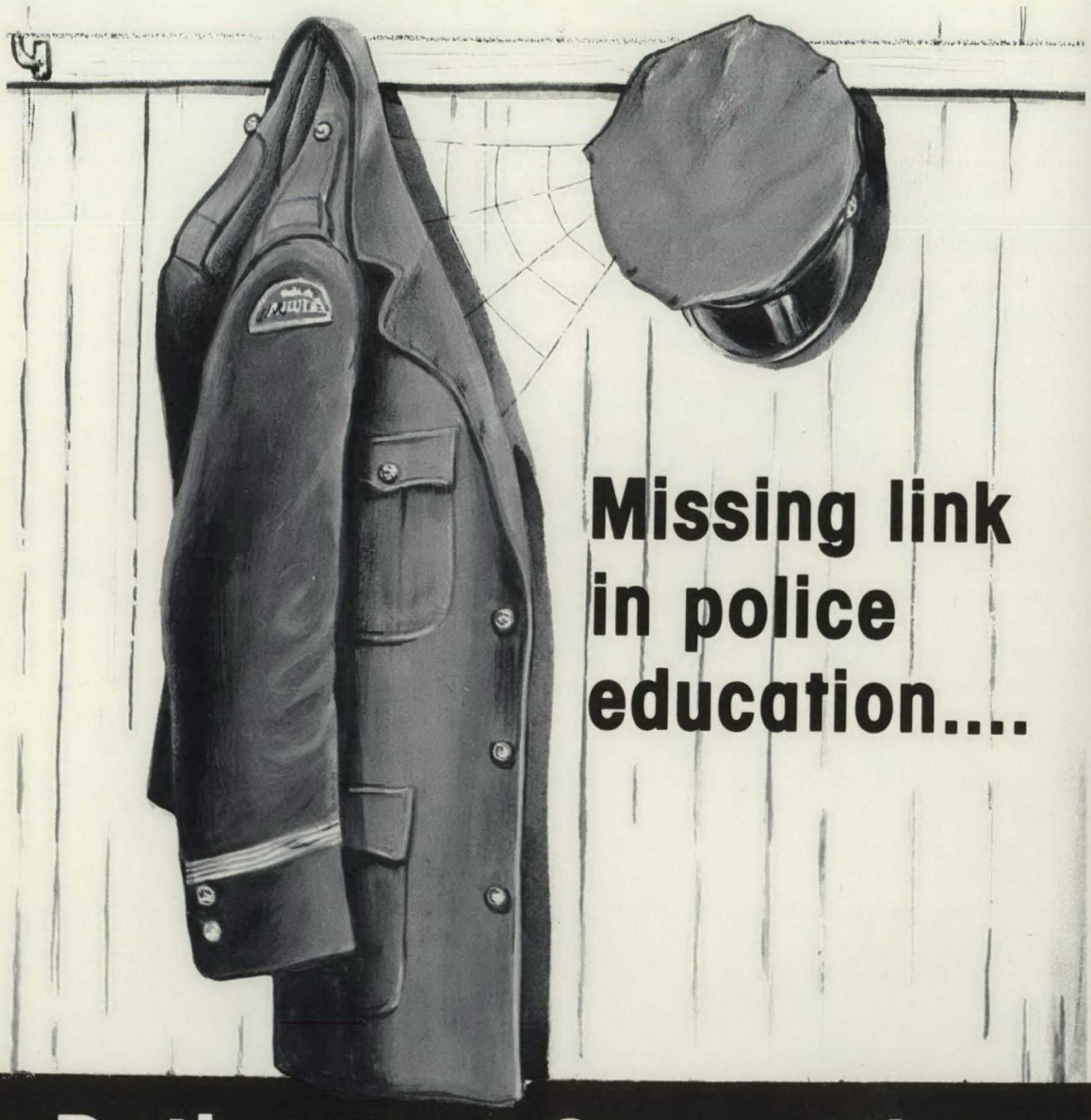
FBI

Research on Radar

Dept of Commerce Nat'l Bureau of Standards

A 3-year project to test police radar and other speed-measuring equipment used in law enforcement has been initiated by the Commerce Department's National Bureau of Standards Law Enforcement Standards Laboratory.

Tests will be conducted on mobile and stationary radar, speedometers, odometers, and other electronic speed-measuring devices, with the primary objectives of developing performance standards for the various speed-measuring devices and establishing qualified products lists of equipment meeting these standards. In addition, a compliance information system will be established to obtain reports on the equipment's performance while in actual use. Once the lists are compiled, law enforcement agencies purchasing these devices with Federal highway safety funds will be required to select equipment from the lists.



Missing link in police education....

Retirement Counseling

By
CAPT. KENNETH E. JOHNSON
Tucson Police Department
Tucson, Ariz.

It is safe to say that the attention being paid to police training is now at an alltime high. Lawsuits filed for negligent retention of officers, and for the negligent training of officers have made police administrators aware that attention must be given to this area as never before. As a result, basic police training is improving and is rapidly advancing from somewhat of a hit-and-miss approach into an exercise in modern methods of education. Programs are being developed to provide for supervisors, midmanagers, and top level executives. Policemen as professionals are addressing the entire range of training needs linked to advancement. There is, however, still one area being ignored in the design of police training programs; that of properly preparing an officer to take and to enjoy his retirement.

"There is, however, still one area being ignored in the design of police training programs; that of properly preparing an officer to take and to enjoy his retirement."

The idea of having a behavioral science unit in a police department is still new, yet such a unit deals with people and their reactions to each other or the situations they find themselves in. It is in this field of human behavior that career counseling, such as retirement preparation, is centered.

Author Joseph Wambaugh relates one result of a police retirement: "It's your friend Andy Kilvinsky, Gus. Your wife said that she was called tonight by a lawyer up in Oregon. Kilvinsky left you a few thousand dollars. He's dead, Gus. He shot himself." [1] This excerpt from *The New Centurions* represents the all-too-often result of retirement from police service. The stress of change becomes too much for the individual to cope with, and the path of least resistance is followed. There is stress connected with retirement. Holmes and Rahe (1967) found in constructing a Social Readjustment Rating Scale that retirement is 10th of 43 items in difficulty of adjustment.[2] While people do not retire often in their lives, when they do—it is one of the most difficult adjustments that they will have to make.

Police psychologist Harold Russell identified this problem by describing police officers as people who face stress as a group. "Similar to the military, police work is a way of life and retirement may present special problems. While many officers talk about putting in their 'twenty', few make plans for that magic day." [3]

The most obvious of the special problems is the one presented by police retirement systems themselves. After 20 to 25 years of service most officers are then eligible for retirement. At the time of eligibility, most of these officers are in the range of 43 to 48 years of age; the prime of the working life for most American males. To suddenly be faced with the prospect of starting all over again is a reality that no one wants to face. Many do not, and while the brain does not cease to function the day 20 years of service is completed, many officers are still on the job long after they should have left for lack of an alternative vocation.

"To suddenly be faced with the prospect of starting all over again is a reality that no one wants to face."

Most sensible men realize they are not likely to be very happy unless they are striving for the goals that are ahead. Vocational success hinges partly upon not trusting your life to chance, but knowing what you want and how to get it.[4] The fact that an officer is not prepared for retirement when the time comes is surely a sign that he has not looked to the future or done any long-range planning. Is the fault with the individual? Not entirely. It's also the fault of training and behavioral science programs.

In a system that plans and runs the working life of an employee, the old are being cast aside much like the trading of autofleets when the vehicles become worn out. Although there is extensive planning for the career development of officers, the final step in the progression of planning has been ignored. An officer is not taught to retire nor is he assisted in the logical planning for retirement. In this manner, the police service, as a whole, is concerned with the future only as it applies to the organization.

There is a solution to the retirement trap as it applies to police officers. It has already been suggested by police psychologists Harold E. Russell and Martin Reiser. First, administrators must recognize that their responsibility to the people who work under them goes beyond the years of active service and reaches into the years after retirement. Once administrators accept this responsibility, they must be willing to do something about it. The trend toward behavioral understanding is already pointing administrators in that direction.

Author Wambaugh shed some light on the educational approach in discussing his book *The New Centurions*. "My purpose is not to sell the book. The publishers don't need my help on that. My purpose is to take another look and project some thoughts on the kind of training that these new centurions might receive that would more adequately prepare them for the difficult and demanding, confusing and complex, tasks that lie before them on the streets of every American city." [5] Police administrators should also have this same purpose, as it applies to the preparation of officers to accept retirement and to make the most of it.

In the field of managerial thinking, industry has continually been more advanced than the public sector. This is also true in the area of retirement counseling. Moore and Streib commented in 1959: "Not a few companies, although still a minority, are experimenting with methods seeking to prepare employees for the retirement experience. The methods of preparation take a variety of forms." [6] This employee education has begun to appear in the public sector of employment in recent years. Yet even with the concern for police education and stress, much remains to be done in establishing a police-personnel service.

"Yet even with the concern for police education and stress, much remains to be done in establishing a police-personnel service."

There has been very little written on this subject as it applies to police officers. Too few guidelines exist today for the establishment of such a program. However, before considering a retirement counseling program for your department, two separate and distinct needs must be analyzed.

There is the need of the individual officer. As explained previously, the effects of retirement on the individual can be traumatic, even fatal. By the time an officer retires, a police department and the jurisdiction it represents have made a sizable investment in the man as a person and as a resource. It should be incumbent upon a public agency to insure that this investment will continue to reap returns for the community.

One retiree explained the effect of an unplanned retirement as "The worst thing that can happen to you is to become a ho-hummer. You know, one of those fellows who gets up in the morning and says, ho-hum, what am I going to do today." This is a waste of human resource.

In establishing a career-guidance program the needs of the agency must also be considered. Without availability of promotional opportunities for the younger officers, the agency can become bound to traditional and unimaginative thinking. With new people come new ideas. This does not mean that an officer should be forced out at the earliest possible moment, for the agency will need stability too. What must be recognized is that a time does come when the officer should leave, for his own good and for that of the agency. Those who do not leave when their time comes stay for a lack of anything else to do. "It was found that people who had planned for the time after their retirement were more prepared to give up their job than those who had given no thought to that period of life." [7]

A healthy, normal turnover, one which moves the stagnated employee into new fields where his interest and motivation will once again bring creative thinking, will assist an organization in planning for the future. The people involved in a major portion of planning will have a vested interest in the future of the organization. They will still be employed to see the results of those long-range plans. Thus, one plans more logically when he knows that he must live with the results of his plans.

The orderly phasing in-and-out of employees helps both the individuals and the organization to continue growth in ideas and in interest. Each stays healthy by not avoiding changes in their association as an acceptable alternative to sitting around and watching the world go by. An education and counseling program can be designed to assist employees in the preparation for a second career.

Dr. Martin Reiser introduced a model plan which may be applied to local situations once the basic purpose is understood. The purpose is to start the employee thinking about retirement plans and adjustments, and to create a setting where questions, criticisms, and desires on the part of the worker can be freely voiced.[8] This atmosphere is best created by the employment of a vocational psychologist, or at least of the techniques that he would use.

The individual responsible for career guidance should use vocational aptitude tests and personal interviews to assist the officer in identifying his interests and abilities. Periodic retesting and updating of his personnel file will allow the counselor to follow changes in the officer's professional growth throughout his career. This information will be of assistance in planning, with the officer, an individual career-development plan that will allow him to realize reasonable goals in the organizational system. This plan will include close coordination with the training section to move him through necessary training and education programs. In this manner the training section is as much an integral part of the career-guidance program as is the psychologist.

The final stage of a career plan is to prepare the officer for the final step in the organization and retirement. While in phase, career development is an ongoing review. While there is no one "right" time at which to begin this stage, a guideline of 5 years before the time of retirement seems to be reasonable.

Five years is sufficient to allow the officer to explore many possibilities, choose the one for him, and obtain the needed preparation and training that might be helpful in succeeding. While it is up to the career counselor to guide and advise, it is the responsibility of a training section to prepare the officer either through in-house training programs or through community-based educational programs. If the second career design is

identified at an early point in time, the officer can be guided in that direction.

It has been pointed out by one vocational psychologist that it is vitally important to include the wife as well as the worker in planning for retirement.[9] This is especially true of police officers who retire at a much earlier age. Both must realize the important need for the officer to develop long-term plans, rather than only for the months immediately following retirement. It will also prepare the wife for the changes that will occur in the husband when he is no longer an officer.

Through a well-planned career-guidance program which includes such a preretirement phase, police departments can help to preserve and to enhance one of the community's most valuable resources—that of human ability channeled into useful endeavors. This final step will also boost the morale of the midtenure officer by offering a visible service that he can use.

"Through a well-planned career-guidance program which includes such a preretirement phase, police departments can help to preserve and to enhance one of the community's most valuable resources. . . ."

Ultimately, both the police department and the community it serves will be better for having established such a program. A gold watch and a retirement badge are nice mementos, but they will not help the employee to be a healthy, active person 10 years afterwards. A system of retirement counseling will.

FOOTNOTES

[1] Joseph Wambaugh, *The New Centurions*, Little, Brown & Co., Boston, 1970, p. 297.

[2] Barbra Snell Dohrenwend and Bruce P. Dohrenwend, *Stressful Life Events, Their Nature and Effects*, John Wiley & Sons, New York, 1974, p. 50.

[3] Harold E. Russell and Allen Beigel, *Understanding Human Behavior For Effective Police Work*, Basic Books, Inc., New York, 1976, p. 292.

[4] Harry Walker Hepner, *Psychology Applied to Life and Work*, Prentice Hall, Englewood Hills, 1973, p. 298.

[5] Leonard Steinberg and Donald W. McEvoy, *The Police and The Behavioral Sciences*, Charles C. Thomas, Springfield, 1974, p. 6.

[6] Elon H. Moore and Gordon Streib, *The Nature of Retirement*, MacMillan Co., New York, 1959, p. 197.

[7] Robert J. Havighurst et al., *Adjustment to Retirement*, Humanities Press, Assen, 1969, p. 118.

[8] Moore and Streib, *op. cit.*, p. 198.

[9] Ibid., p. 198.

DOJ - LEAA

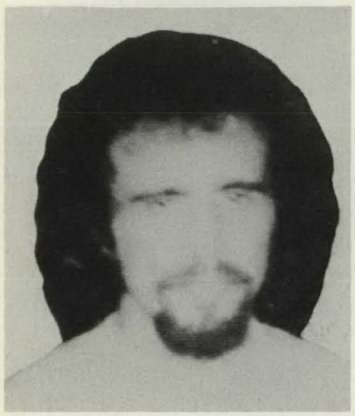
CRIMINAL JUSTICE EXPENDITURES

The Law Enforcement Assistance Administration (LEAA) recently conducted a study on public expenditures for criminal justice. The results indicate that increased spending occurred at all levels of government, showing a cumulative growth of 14.1 percent in 1976 to a record $19.7 billion.

Areas experiencing this growth in expenditures included: Public defender, 18.1 percent; judicial, 17.5 percent; corrections, 14.1 percent; police protection, 12.7 percent; and legal services, 12.3 percent.

During the period 1971 through 1976, criminal justice spending by all levels of government rose 87.1 percent, with the Federal Government showing the largest increase of 101.6 percent. Also on the rise was the number of criminal justice system personnel, which reached an approximate 1.1 million mark as of October 1976. However, as in the past, local governments accounted for more expenditures and employment in criminal justice than the Federal and State governments combined.

WANTED BY THE FBI



Dates of photographs unknown.

CODY RENE LANDRY, also known as George Karakos, Cody R. Landry, Cory Rene Landry, William Taylor

Unlawful Interstate Flight To Avoid Prosecution—Murder

The Crime

Landry is believed to be in the company of Celia Maurine Steck. Both are currently being sought by the Federal Bureau of Investigation for the crime of murder.

The murdered victim, who had been shot twice, was found in his vehicle on October 10, 1975, in the vicinity of Pinellas Park, Fla. Federal warrants were issued for Landry and Steck on October 10, 1975, at Tampa, Fla.

Description

Age	33, born October 21, 1944, Lake Charles, La. (not supported by birth records).
Height	5 feet 8 inches.
Weight	160 pounds.
Hair	Brown.
Eyes	Brown.
Build	Average.
Complexion	Dark.
Race	White.
Nationality	American.
Occupations	Automobile repossessor, carpenter's helper, laborer, service station attendant.
Scars and marks	Scar beneath chin, teeth chipped; tattoos: "LOVE" and "HATE" on knuckles; heart with "MOM," upper left arm; peacock, outer left forearm; two dice and "Crapped Out," left shoulder; "USN," "TEXAS," right forearm; and several others.
Remarks	Landry is believed to be in the company of Celia Maurine Steck, white female, born in Texas, October 9, 1954, 5 ft. 4 inches, 125 pounds, brown hair, hazel eyes, FBI No. 560,907 L8. She is also being sought by the FBI.
Social Security No. used	465-72-8836.
FBI No.	304,523 E.

Fingerprint Classification:

$$\frac{1\ 1\ tAt\ 2}{1\ R2\ a}$$

NCIC Classification:
TTAATT01020651AAAA01

Caution

Landry, a reported narcotics dealer, is wanted along with associate Celia Maurine Steck in connection with the murder. Both individuals 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.

Landry's left index fingerprint.

U.S. GOVERNMENT PRINTING OFFICE : 1978 O - 267-880

FBI LAW ENFORCEMENT BULLETIN

FOR CHANGE OF ADDRESS ONLY—NOT AN ORDER FORM

Complete this form and return to:

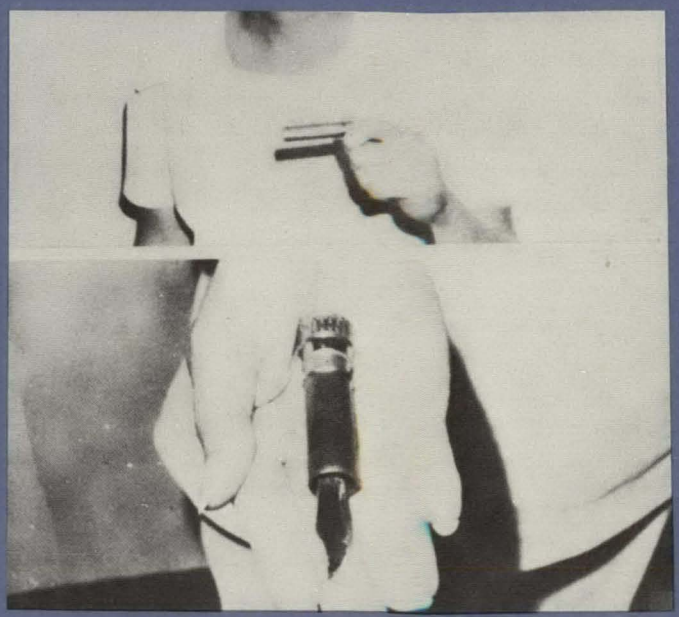
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

(Name) (Title)

(Address)

(City) (State) (Zip Code)

COSMETIC KILLER



The extremes to which the criminal imagination will go in conjuring up ways to create pain and destruction seem almost without limit. Pictured above is a tube of lipstick which can be converted into a knife by a simple turn of the wrist. As is apparent, this weapon is easily concealable and would not be readily detected in a police officer's search.

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 INVESTIGATIO
JUS-432

CONTROLLED CIRCULAT
RATE

INTERESTING PATTERN

Although the classification of the above pattern is not questionable, its formation is unusual and interesting. In the Identification Division of the FBI, this impression is classified as a double loop whorl with an outer tracing.