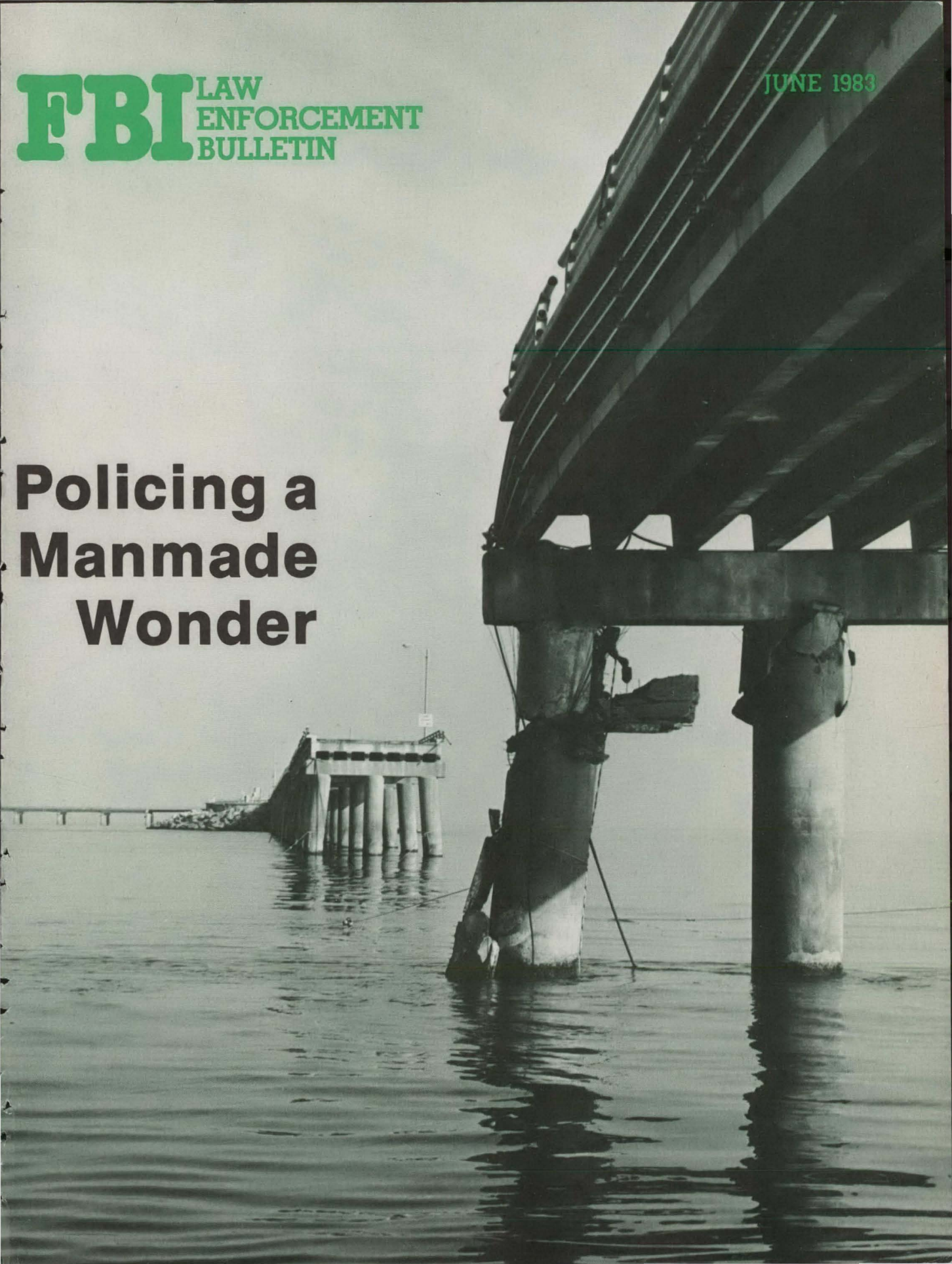
FBI LAW ENFORCEMENT BULLETIN

JUNE 1983

Policing a Manmade Wonder



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JUNE 1983, VOLUME 52, NUMBER 6

Contents

The Cover: *Over the years, the Chesapeake Bay Bridge-Tunnel, a manmade wonder, has sustained considerable damage. Yet, no one has been injured in any of these emergencies. See article p. 1. (Photo courtesy of Studio III, Norfolk, Va.)*

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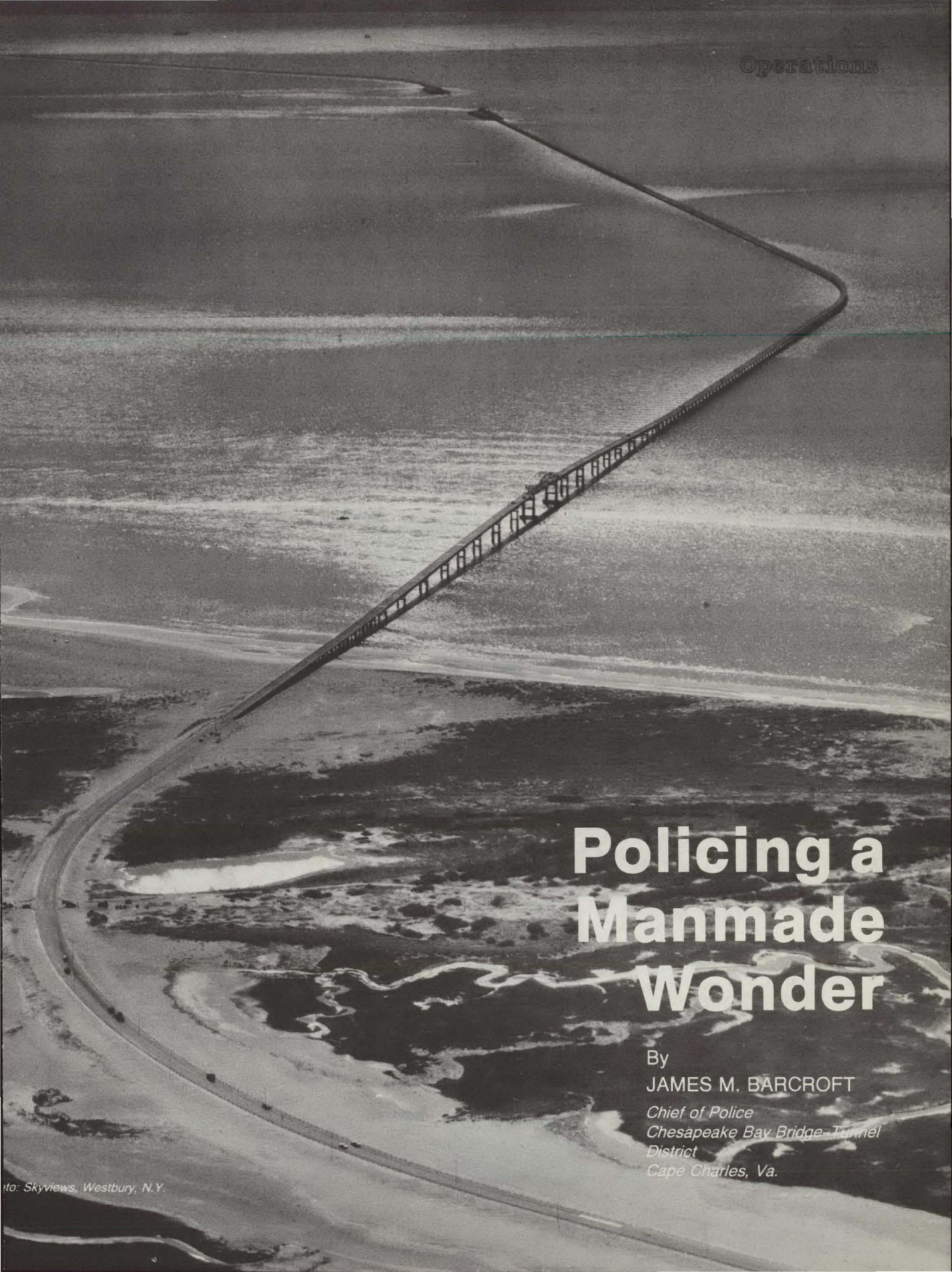


Policing a Manmade Wonder

By
JAMES M. BARCROFT
Chief of Police
Chesapeake Bay Bridge-Tunnel District
Cape Charles, Va.

to: Skyviews, Westbury, N.Y.

Chief Barcroft

A pickup truck approached the toll plaza at the north end of the Chesapeake Bay Bridge-Tunnel at a high rate of speed. Inside were two men and a woman who was seated between them. The truck skidded past the booth and came to a stop against a cement lane barrier. When a bridge-tunnel police officer asked the driver to step out of the truck after determining he had no license or registration, the woman crawled out of the vehicle and screamed she was being kidnaped. As the officer handcuffed one of the men, the second man struck the officer and fled into nearby woods with his handcuffed accomplice.

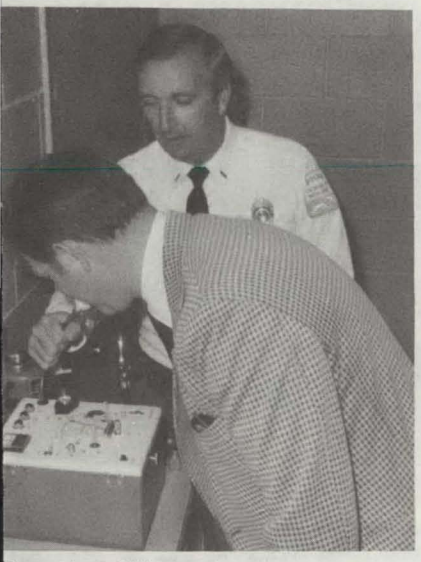
In the ensuing 3-hour search, bridge-tunnel police were aided by the Virginia State Police, deputies from two nearby counties, and a Virginia game warden. The manhunt ended when a bridge-tunnel officer wounded the two fugitives with a single shotgun blast when they refused to halt as they entered a wooded area. Charges against the men in the October 1982, incident included two armed robberies.

"Gillnet across the road"

This story is one of many that has given the Chesapeake Bay Bridge-Tunnel its local nickname—"a big gillnet (or fishnet) across the road." This renowned feat of engineering skill spans 17.6 miles of the lower Chesapeake Bay and connects Virginia's naturally picturesque Eastern Shore with the resort area of Virginia Beach. Tourist and commercial traffic take the bridge-tunnel to avoid extra travel by land, and the bridge-tunnel police force has the responsibility for whatever passes through the bridge-tunnel's two toll plazas.

Acting as a human fishnet for law offenders is not the only unusual duty assigned to the bridge-tunnel police. Although the division's officers are commissioned under the same section of the Code of Virginia that applies to all political subdivisions in the Commonwealth, they are charged with other duties beyond those usually associated with a law enforcement agency. Those duties include the transportation of large sums of money, firefighting, emergency wrecker operations, toll collection, and transportation of arrested persons.

It is the bridge-tunnel itself that makes the jurisdiction unique. Measuring only about 50 feet in width at its narrowest point and 17.6 miles in length, the Chesapeake Bay Bridge-Tunnel is the world's longest bridge-tunnel complex. The $200 million construction took 3½ years to complete and included building more than 12 miles of trestled roadway, two mile-long tunnels, two bridges, almost 2 miles of causeway, four manmade islands, and 5½ miles of approach roads, totaling 23 miles. Considering that the job was accomplished under conditions imposed by hurricanes,



Processing a DUI suspect

northeasters, and the unpredictable Atlantic Ocean, it is no wonder the Chesapeake Bay Bridge-Tunnel earned status as one of the wonders of the modern world and is an important tourist attraction in itself.

With a great deal of fanfare, the bridge-tunnel was opened to traffic April 15, 1964. The creation of a separate police department within the new Chesapeake Bay Bridge-Tunnel District was authorized by the Virginia General Assembly in the same year.

What began as a traffic enforcement/patron service department has grown into a department of 72 personnel, 57 of whom are sworn officers, including a chief of police, a captain, 4 lieutenants, 4 sergeants, 4 corporals, and 15 civilians. On any given day, there are at least two officers in marked patrol units patrolling the roadways. More officers are assigned as needs dictate.

The district has no jail or judicial facilities within its boundaries, and officers must sometimes transport an arrested person as far as 80 miles for incarceration. This also requires an officer to testify in two different court jurisdictions. Traffic offenders are tried based on their place of residence, not their direction of travel. A southbound motorist from New York, arrested for speeding, will be tried on the north side of the facility in Northampton County. A northbound motorist from South Carolina, arrested for the same charge, will be tried in the city of Virginia Beach.

As is the case throughout the country, the intoxicated driver is one of the most common problems faced by our personnel. We use two breathalyzer machines and eight licensed breathalyzer technicians, with at least two technicians on each shift, 24 hours per day.

High speed on the two-lane roadway without shoulders is another potential problem which we attempt to reduce through strict enforcement of the speed limit and the use of handheld radar units to apprehend violators. However, although traffic enforcement takes up much of the police officer's time, he is faced with other problems, including murder, kidnaping, grand larceny, shoplifting, domestic problems, juvenile runaways, mentally disturbed individuals, bomb threats, and suicides.

Late one afternoon, a vehicle was stopped by an officer for a speeding violation. As he approached the vehicle, he observed a hysterical woman clutching her 3-year-old daughter. When questioned, she stated she was taking her daughter to meet Jesus and that she was going with her. Her intent was to jump from the bridge with the child in her arms.

Another incident involved a woman who parked her car on an

Traffic enforcement with radar

island opened to the public, wrote a suicide note, left it in the vehicle, walked to the end of the fishing pier, climbed over the railing, and jumped. Before officers arrived, the woman had recovered from her leap into the water, swam approximately 150 yards, climbed onto the rocks that surrounded the island, and was preparing to jump again. After officers removed her from the rocks, she stated that after she jumped into the water, she had changed her mind, but after climbing back onto the rocks, she decided that she really did want to die.

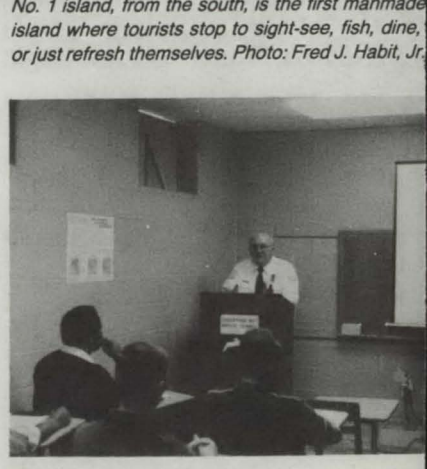
Bridge-tunnel officers are called upon several times a year to deal with persons suffering from phobias. When most people hear about phobias, they tend to think about people who suffer from claustrophobia or acrophobia. However, the phobics encountered on the bridge-tunnel are mostly those who for some reason become hysterical, freezing at the steering wheel, while crossing the facility. This condition does not always occur in the tunnels, but also takes place on the islands, trestles, bridges, and in the parking lots.

The several bomb threats received range from a caller giving specific information regarding the location and reason for the bombing to simply saying there is a bomb on the bridge. While a vast majority of the telephone bomb threats have been proven to be hoaxes, the real thing did occur in the late 1970's. At the southern end of the facility, where the beach is close to the bridge roadway, officers encountered fire-bombs (Molotov cocktail type) being thrown onto roadways. Fortunately for all concerned, no one was injured, and with the help of undercover officers from the bridge-tunnel and the Virginia Beach Police Department, the bombings were quickly halted.

Over the years, the Chesapeake Bay Bridge-Tunnel District has attracted worldwide attention by being struck or narrowly missed by ships using the much traveled channels of the Chesapeake Bay. Since opening in 1964, it has been struck seven times, twice by the U.S. Navy and five times by commercial shipping, resulting in the bridge being closed to traffic five times, with a cost in excess of $6,250,000 in repairs.

On a cold and windy night in October 1981, a railroad flat barge sank with a load of boxcars. The tide and wind conditions were such that the boxcars began to float toward the bridge piling. With the help of our officers, the U.S. Coast Guard actually guided floating boxcars between bridge piling for more than 6 hours without any damage to the piling or roadway.

No. 1 island, from the south, is the first manmade island where tourists stop to sight-see, fish, dine, or just refresh themselves. Photo: Fred J. Habit, Jr.



Inservice classroom instructions

"The Chesapeake Bay Bridge-Tunnel District Police serve as a vital link between the law enforcement agencies of the Eastern Shore and the greater Tidewater area. . . ."

Officials were not so fortunate on another occasion. In 1972, a commercial barge drifted into the roadway 3 miles from the Virginia Beach shoreline. An officer was on patrol late one night when suddenly all of the roadway lights went out. There in front of him was a large ship—right in the middle of the roadway. Without warning, a converted, powerless barge had struck the bridge span. The bridge-tunnel was closed to traffic for several days for repairs and safety checks.

The longest closure, 6 weeks, occurred after the U.S.S. Yancey, a Navy war vessel, struck the bridge-tunnel and knocked out several spans of roadway during a period of high winds in January 1970. During that and other closings, the bridge-tunnel police force has joined with Federal and local governments in providing emergency services. Helicopters and U.S. Navy LCU landing crafts have ferried repair workers, medicine, ambulance patients, perishable produce, and truckdrivers over the Chesapeake Bay. On one occasion, a stretcher patient was carefully carried by foot over a damaged span from one ambulance to another. Luckily, no one has been injured in any of the waterborne collisions.

Without warning, a converted powerless barge struck the bridge span, closing the bridge-tunnel to traffic for several days. Photo: Studio III, Norfolk, Va.

Other waterborne emergencies which do not threaten the bridge structure itself are the many hundreds of pleasure craft assisted annually by bridge-tunnel police officers. In addition to their regular communications systems, patrol units are equipped with CB radios and are constantly monitoring the fishermen in the area during the fishing season which lasts approximately 9 months. Bridge-tunnel patrol units are called to locate overdue boats and spot disabled or distressed boats and lost fishermen. Many times this will require a unit to remain on the scene with roof lights activated, acting as a beacon for rescue craft, either by air or by water.

Due to the wide variety of duties, it has become necessary to develop our own inservice training school. We presently conduct three to five 40-hour inservice schools each year. What began as an inservice school exclusively for bridge-tunnel district police officers has now branched out to become an inservice school for several Eastern Shore law enforcement agencies, in order that they may meet their inservice training requirements.

The Chesapeake Bay Bridge-Tunnel District Police serve as a vital link between the law enforcement agencies of the Eastern Shore and the greater Tidewater area, and we are proud of our association with these agencies.

FBI

The Uniformed Generalist

One Approach to Police Professionalism

By
E. B. HANSEN
Deputy Chief
Police Department
Santa Ana, Calif.

This article discusses the Santa Ana Police Department's attempts to promote police professionalism. It does not suggest a universal prescription for police professionalism, but it does offer an approach that one department has found successful. It involves a 10-year evolutionary period in which change was slowly accepted, and marked strides were made toward a transition from traditional policing to an environment where professionalism is possible. It encompasses five basic programs that have been drawn together within the framework of an "integrated police service delivery system" (IPSDS). The system involves the basic elements of community involvement, team policing, and a generalist view in the use of uniformed patrol police officers.

One might immediately think there is nothing new in this proposal; however, our approach is one of combining the best available disciplines from past, present, and hopefully, projections of future programs. We have mixed our organization and community personalities into a successful blend of cooperation and help in both our residential and business communites. The uniformed officer is the catalyst in this transaction. We have worked to minimize his menial tasks while increasing his responsiblity with the community and providing him with an opportunity for complete criminal investigations.

The five basic programs in IPSDS—case management, police service officer, major enforcement teams, career criminal apprehension, and field investigator program—have been developed within the framework of team policing and community involvement. It is the field investigator who is the focal point of the 10-year process, and each of the other four programs are designed as his support. It is believed that a more professional uniformed police patrol with a corresponding respect and recognition from the community it serves will be achieved through the field investigator.

The seed for the police professional was planted by August Vollmer who served as police chief in Berkeley, Calif., from 1909 to 1932. It was he who demonstrated what could be

Deputy Chief Hansen

achieved through the use of uniformed police personnel to do complete criminal investigations. The concept deemphasized the importance of the followup investigator, a giant accomplishment during its time. The police patrol division was established as the "backbone" of each police organization. Lip service has always been paid to this contention but little has been done to upgrade the self-esteem or work environment for this component in police organizations. Vollmer did much to set the tone for this concept in the Berkeley Police Department, but this impetus was later lost in the changing expections of community and service demands.

In the 1960's, perhaps the strongest and most identifiable contribution to the generalist process was the introduction of the Santa Ana career incentive program. Although career incentive is not new, this program is unusual in that it applies only to uniformed patrol officers, who can now earn more money than detectives or officers assigned to other specialized duties. It also allows the uniformed officer to become more of an investigator rather than simply being a report-taker. Prior to this, criminal investigation was allowed to continue during the complete period of a daily work assignment, but was transferred to the Investigations Division at the end of watch.

In an attempt to provide adequate training to the generalist officer, a planned 2-year rotation system was devised for the Investigations Division. This program was resisted and became such a morale factor that it was ignored. No consideration was given to continued tenure in investigations based on competency or performance because the idea was to circulate trained investigative personnel back into uniformed patrol service. This process eventually worked on a voluntary basis—it was never made a mandatory process.

As in the case of Berkeley, community expectations, the crime rate, and other service demands weighed heavily on this neophyte generalist program, eroding its effectiveness. In 1973, a new chief dramatically changed the complexion of the department. His concepts developed well, and his new programs were accented by the favorable conditions that existed in the organization before his arrival. Emphasis on community participation and team policing soon developed into the community-oriented policing program (COP), creating a new environment for change.

During the following 10 years, flexibility accommodated constant change and slow but continuous organizational evolution. Our 10-year strategic program provided adequate time for the evolution from traditional to futuristic policing styles, as well as time for favorable personnel conditioning. Black and white issues gave way to abstractions of gray in pragmatic decisionmaking, and bureaucratic redtape was cut. An environment of constant personnel mobility was stimulated, and new personnel incentives were developed to recognize the increased professionalism of our uniformed officers. There is now a bal-

"Possibly the clearest difference between our generalist program and others is the degree of assistance provided to our uniformed personnel through supporting programs."

ance between centralized support services and decentralized personnel use. The uniformed generalist is supported by a select number of sworn specialist personnel and an increased number of nonsworn civilian personnel.

Time and training have overcome the majority of resistance to change. The personnel have been conditioned to expect change. Although there have been differences with the police union, conflict has been minimized and there has been general acceptance of the attempts to professionalize the uniformed officers. Since not all officers can be promoted or be assigned to specialized assignments, there has been a concerted effort to place more than 80 percent of the sworn personnel into some form of uniformed patrol operations. Rather than considering the patrol force as a dumping ground or the first rung on a career ladder, they are the backbone of the organization, deserving the professional recognition that accompanies such an acknowledgment. Perhaps the best tribute to our progress was paid by personnel in the Investigations Division, who voiced complaints of feeling subordinate to the patrol section. This perception was not allowed to continue, but it was a novel expression in that the traditional view of the detective being superior had been reduced, if not eliminated. It then became necessary to find new forms of incentive and motivation to bring the Investigations Division back into a balanced relationship with the new-found image of patrol personnel.

Several premises were taken into consideration during the formation of the program, including the importance of training, community support and neighborhood involvement, personal contact between the officer and the community, and the fact that 70 to 80 percent of an officer's work is service-related as opposed to criminal law enforcement. Also considered was the deployment of personnel since it is futile for followup investigators to work cases without leads. With these premises identified, what does an organization do about them?

If the uniformed officer does not possess a good self-image, he cannot be expected to deal efficiently or effectively with the community he serves. Training, of course, is of immense importance, but simple academic credentials are not the total answer. The emphasis of law enforcement has shifted toward better education, and college degrees abound. However, some law enforcement agencies have functionally illiterate college graduates who still do not know how to provide competent police functions. They cannot communicate effectively, find it difficult to get along with the community, and their low self-esteem is reflected in citizen complaints regarding both conduct and service. In some cases, frustration has been created by the assumption that promotion or transfer to special assignment should automatically accompany an academic credential, but there are not sufficient opportunities to accommodate either the deserved or undeserved aspirations of all these college graduates. As a result, it behooves each police organi zation to make the uniformed force as attractive as possible for those who wish to be professional career officers within the confines of the available mobility.

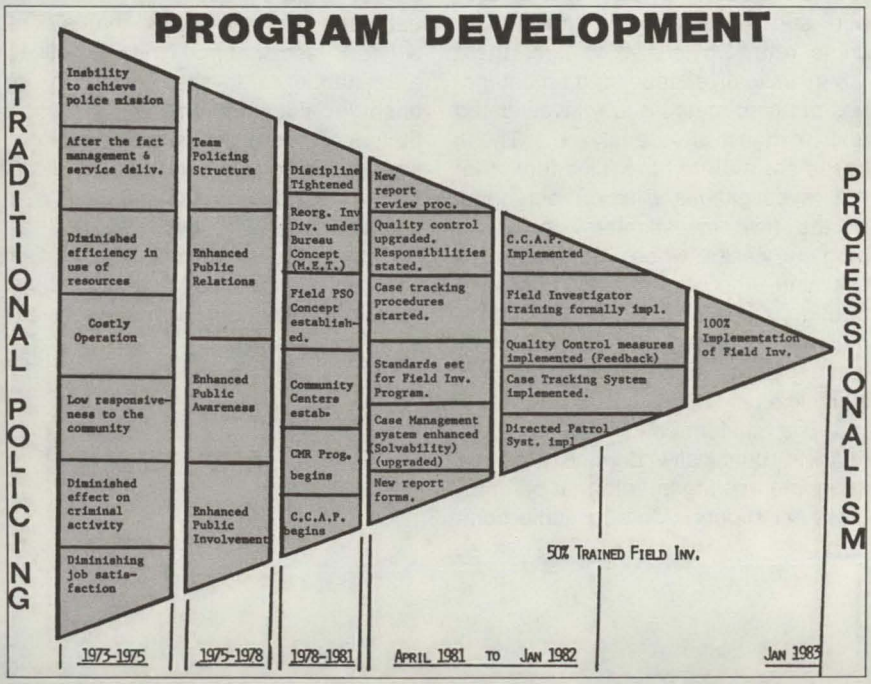
Training standards must be es tablished and there must be proof o the ability to use that training effec tively. In an attempt to gain parity be tween uniformed field investigators and investigators in the Investigations Division, officers must demonstrate the ability to write multiple police re ports that are judged competent by both our analysts and the district at torney's office. This standard, moni tored through a constant inspectio process, must be maintained. The offi cer must be competent in completin criminal investigations and obtainin necessary criminal complaints an search warrants. During the testin process, the officer must demonstrate the ability to gain criminal complaint independently, as well as arrest an search warrants, by "walking" throug the process.

As his ability to complete a entire criminal investigation matures the uniformed officer begins to se beyond the initial arrest and bookin at the jail facility. One of the majo stumbling blocks to police professior alization has been the failure to tak the uniformed officer beyond this firs step in the criminal justice process. A too often, an officer believes that h has done both a competent and com plete job by simply arresting an booking the perpetrator. With a com plete investigation, including the wor commonly done by a followup invest gator, the officer not only receive

more job satisfaction but can also more readily identify and solve those investigative problems that caused deficiencies in his case or a poor case disposition. It also provides a feedback loop so that the officer may work and coordinate with the community to solve other problems identified in the criminal justice system.

Possibly the clearest difference between our generalist program and others is the degree of assistance provided to our uniformed personnel through supporting programs. Not all uniformed personnel can qualify as field investigators. This, in effect, creates a separation between the report-takers and the field investigators who are allowed to complete investigations within certain crime categories and may also be detached to assist investigative specialists in other crime categories. Criminal investigations that require additional followup are assigned to the officer who can most effectively handle the case based on time consumption and complexity. Cases without leads are generally inactivated immediately. This has reduced the number of special investigators and has allowed the creation of another support unit for major violators. This unit consists of uniformed field investigators who may work in either uniform or plain clothes, depending on whether they are assigned to "selective incapacitation" or crime pattern suppression.

The department has also begun to educate the community on the role of the field investigator. The goal is to change the public's level of expectation and needs, as well as its perception of public safety. In effect, we are attempting to educate the public as to objective reality as opposed to subjective perception on elements such as police visibility and response time.



By targeting the 20 to 30 percent of an officer's time devoted to criminal investigation, we are attempting to expand this time frame for the field investigator and create a more realistic investigative opportunity. Correspondingly, nonsworn support personnel are filling the community service needs that consume the remaining 70 to 80 percent of a typical officer's time.

In order to get closer to the community and draw the citizens into the decisionmaking process on crime suppression and solution, the Field Operations Division has been decentralized and the centralized Field Inspections Division has been created as its uniformed counterpart. This unusual blending protects the department from the common pitfalls of "communal" policing and provides strategic operations within the first division and tactical operations within the second division. The Field Operations Division is concerned with long-range planning for each of the four individual areas within our city while the Field Inspections Division is concerned with short-range watch operations on a citywide basis. The divisions are uniformed and complement each other in the same manner typically found in private industry where there are both production planning requirements and quality control standards. Our Investigations Division has also remained centralized in respect to such functions as robbery/homicide investigations and white-collar crimes, which do not lend themselves to the generalist form of investigation.

"The uniformed generalist concept is principally dependent upon adequate management and paraprofessional support."

The development of the field investigator program has been facilitated by the police service officer (PSO), who is nonsworn. The cost equates to approximately three civilian personnel for every two sworn officers. The PSO's wearing uniforms handle the bulk of the calls for services that do not require the expertise of an officer but have typically been handled by them in the past. These paraprofessionals, functioning in all of the Operations Bureau divisions, have assumed the more mundane tasks previously performed by sworn personnel. Although this concept was initially thought to be dangerous, field PSO's have been used for over 5 years with no major injuries. Job satisfaction among these personnel remains high, and the turnover rate is negligible. These civilians have been accepted by both line and staff personnel, and as the professional image of the field investigator has grown, the analogy of a doctor/nurse relationship has frequently been used to describe the relationship between these two elements. The PSO has been far more effective in dealing with basic community concerns and minor public nuisances than the sworn officer, who has been trained for actual law enforcement.

Former investigations personnel have been deployed as uniformed field investigators on major enforcement teams, using previously published techniques on "selective incapacitation," as well as the technique of crime suppression based on crime patterns. These units deal with crime analysis on a citywide basis as opposed to "directed patrol," which is used on an area basis within four segments of the city. Again, the crime problem is being dealt with on both a centralized and decentralized basis with uniformed personnel through a generalist concept based on sound management information.

The career criminal apprehension program (C–CAP) is the hub of the management information system. It provides the necessary data on major violator identification for neutralization and citywide crime pattern analysis for strategic suppression. This information system is also linked to court liaison which provides information feedback on case dispositions and allows community involvement in the criminal justice system after the case enters the district attorney's office and the court system. This function serves solely as an intelligence system and has no independent enforcement capability.

With proper public education and explanation, our community has accepted the realities of limited case solution where no initial leads exist. We have been straightforward and honest with our citizens—they have repaid us with understanding and realistic support and assistance in reducing our crime rate. Obviously, whether there are investigative leads, certain categories of crime must be fully investigated and exhaustively analyzed. These cases are afforded the full attention of the Investigations Division personnel or the field investigators. In typical burglary cases where no leads are available, the cases are processed through C–CAP in order to provide data for directed patrol and other crime pattern analysis or perpetrator identification.

The uniformed generalist concept is principally dependent upon adequate management and paraprofessional support. Unreasonable community expectations or an overwhelming call for community services will destroy any generalist program. The value of this type of approach lies in the fact that it transforms a former report-taker into an actual police investigator. This transition, not easily made, must be accomplished slowly in order to break the resistance to change and gain support from the community. This process is further compounded when an attempt is made to integrate multiple programs that are being developed simultaneously with a common date of achievement. You may be assured, however, that the finished product will be worth the challenge. We are now one step closer to a professional police officer who can better serve his community with a reasonable amount of cooperation.

As the role of police service evolves, so must we evolve. That does not, however, mean an abrogation of all past practices or embracing each and every new trend that is considered fashionable. While practices are shaped to fit the personality of each individual community, common factors of public concern, budget constraints, rising crime rates, and disaffection of police personnel and their unions demand creative, as well as flexible, police administrations. Our approach is effective in meshing community involvement with the professional police officer.

FBI

Harold L. Dielmann, mayor of the City of Creve Coeur, examines a newly installed breath analyzing machine.

By
LT. FRANK HARRIS
Commander
Investigations Division
Police Department
Creve Coeur, Mo.

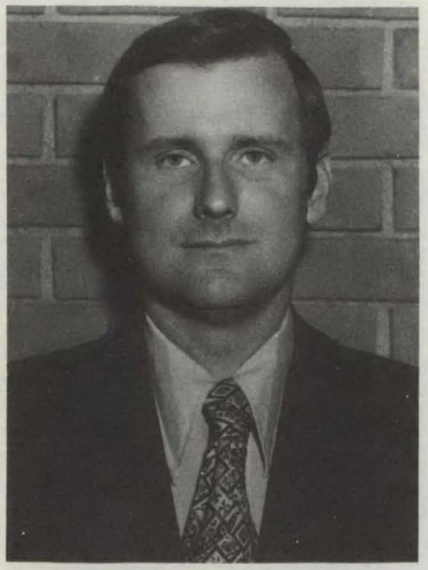
New Approaches to an Old Problem

The Drunk Driver

Since the advent of the automobile, the drunk driver has plagued our society. Alcohol-related offenses accounted for untold manhours in police departments nationwide, regardless of size. Effective steps for slowing or reducing the incidents of drunk driving had all but failed, and until recently, advocates' cries to keep drunk drivers off the streets fell on deaf ears or were tied up in bureaucratic indecisiveness.

Recognizing the potential threat of the drunk driver, programs have been reinstituted in many areas to combat this age-old problem. Something new, something different, or something old with a "new approach" was needed. The City of Creve Coeur, Mo., adopted a new approach, mainly through the efforts of the mayor, board of aldermen, and chief of police. The program consists of two phases—the traditional and the electronic.

"Through commitment and cooperation, a new approach to an old problem has been set in motion. . . ."



Lieutenant Harris

Don L. Daniel
Chief of Police

Traditional Phase

Like most other agencies throughout the country, the police department in Creve Coeur, a suburb of St. Louis, stepped up its enforcement actions directed at the intoxicated driver because of the efforts of such organizations as R.I.D. (Rid Intoxicated Drivers) and the Missouri Division of Highway Safety to increase public awareness of this potential killer. The chief not only ordered stricter enforcement of closing hours for all bars, lounges, and taverns within the city but also increased patrols around such establishments during closing hours. In addition, a policy was adopted to print the names of persons arrested and charged with drunk driving in a major St. Louis newspaper.

Electronic Phase

Implementation of the electronic phase required bold measures by the mayor and board of aldermen and has stirred interest and inquiries from police agencies throughout the United States and several foreign countries. An ordinance was passed which required all restaurants and cocktail lounges in the city having a license to sell liquor by the drink and a sales of $100,000 or more annually to install a breath analyzing machine for use by their customers. This machine allows customers to test the alcohol concentration in their blood so that they can make the determination of whether they should get behind the wheel of a motor vehicle. According to the mayor of Creve Coeur, "The purpose of the ordinance is to help reduce automobile accidents due to drunkenness by enabling a person to have the opportunity to use the machine if they desire."

The machine is an electronic, coin-operated device that determines whether the person using the machine has more than 0.1 percent alcohol in his bloodstream. If the legal intoxicated level is reached, a "don't drive" sign flashes. The machines can be rented or purchased from various distributors throughout the country.

All machines must meet specifications outlined in the ordinance. They must be accurate to within ± 10 percent of the measurement at a concentration of 0.10g/100 ml. This requirement is satisfied by demonstrating that two standard deviations equal 0/01 grams or less per 100 ml. It is also required that machines purge themselves between measurements so that previous usages do not influence readings. The machines cannot be affected by variations in environmental conditions such as temperature, pressure, and humidity. They must also be "fail safe," that is, in case of failure of any component, the machine must either turn itself off or fail to indicate any measurement. In

". . . the ultimate goal of any campaign initiated against the drunk driver is to keep the intoxicated person from getting behind the wheel of a motor vehicle."

addition, the machines must be designed and constructed to require calibration no more than once every 30 days in order to maintain the accuracy required. However, at 30-day intervals, each machine must be checked and confirmed for accuracy.

Reinstitution of the "car with the camera" program is another phase in the intoxicated driver program. In 1971, the Creve Coeur Police Department attached a video camera to the dashboard of a traffic enforcement unit. Video taping traffic offenses as they occur, particularly the drunk driver, met with praise and approval of prosecutors and judges. However, video equipment in the early 1970's was expensive to purchase and maintain, bulky, and easily damaged. For these reasons, budgetary constraints, and other priorities, the program was abandoned. However, with advances made in video equipment, plans are now in the making for the reactivation of this electronic phase, with the addition of a new dimension.

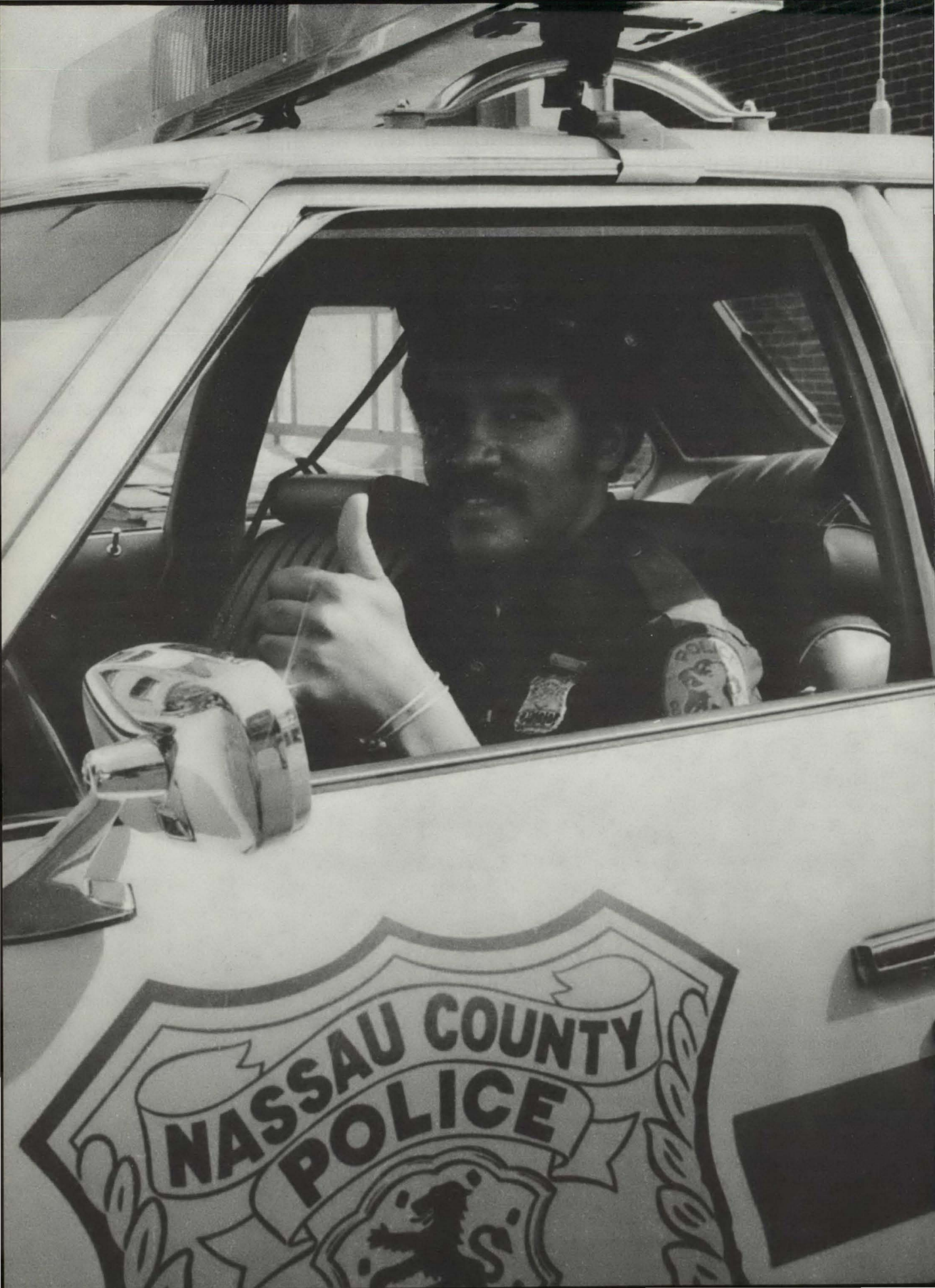
Now an officer will not only video tape traffic violators but also record subsequent conversations through a wireless microphone attached to his shirt. All events are electronically collected and permanently maintained for evidence in court.

Since there are few violations that can escape the watchful eye of the camera, the main restriction being the inability to detect those traveling at excessive speeds, capturing the audio and video portions of the confrontation between the officer and violator enhances courtroom presentation. Judges and prosecutors are able to see and hear what actually took place from the first detectable violation, to the field sobriety test, to the arrest. The value to the judicial process is obvious.

Because of its recent implementation, the impact of this program cannot be calculated. However, the ultimate goal of any campaign initiated against the drunk driver is to keep the intoxicated person from getting behind the wheel of a motor vehicle. Through commitment and cooperation, a new approach to an old problem has been set in motion in Creve Coeur, Mo.

FBI

A bar patron uses a breath analyzing machine as the mayor of Creve Coeur looks on.


NASSAU COUNTY
POLICE

". . . the present promotional systems used by police departments . . . are inadequate to allow blacks to rise to a level in their department's rank structure that will be representative of their percentage in the department's work force."

The first part of this article discussed existing barriers that hinder efforts to increase the number of blacks in executive positions. The conclusion deals with available methods that could assist in rectifying this problem.

ALTERNATIVE METHODS

Present System

The major premise of this paper is that the present promotional systems used by police departments, which include a performance evaluation, a written test, and an oral interview, are inadequate to allow blacks to rise to a level in their department's rank structure that will be representative of their percentage in the department's work force. Many factors account for this dilemma. A review of the literature has indicated that blacks receive average performance rating scores regardless of their level of performance. This, coupled with low test scores of blacks and low seniority, gives one an understanding of why blacks have a low representation in higher ranks.

Planning Alternatives

In developing alternatives, there must be a well-planned and executed affirmative action program based upon present case law and problem identification. Alfred W. Blumrosen in his article, "Equal Employment Opportunities in the Eighties: The Bottom Line," stated that "just as the seventies were dominated by the *Griggs* decision, the eighties will be dominated by radiations from the decision in the *United Steelworkers of America* v. *Weber*," [31] which was handed down in 1979. That decision protects employers' programs that are geared toward increasing the proportion of minorities in skilled jobs through race-specific actions. Just as *Griggs* adopted a principle known as "adverse impact" to identify discriminatory practices, the *Weber* case supports another principle, the "bottom line," which is geared toward improving the employment position of minorities and women. This principle will permit a direct attack on social indicators of job discrimination, i.e., the higher employment rate, the lower occupational status, and the lower income levels of minorities and women.[32] The premise behind the bottom line principle is that Congress intended to increase employment opportunities for minorities and women, thereby improving their economic and social status. The bottom line principle protects employers who improve employment opportunities from direct discrimination claims by minorities and reverse discrimination claims by white males.[33] This protection may take the form of: (1) A complete defense against discrimination claims; (2) a decision by administrative agencies not to proceed against such an employer; (3) a factor favorable to an employer, which is to be taken into account in a discrimination suit brought against the employer by a minority group member or female; or (4) a basis for denying injunctive relief.[34] A recent Supreme Court case, *Connecticut* v. *Teal*,[35] could remove this bottom line protection afforded by *Weber.*

Strategies for Increasing the Number of Black Police Executives

(Conclusion)

By
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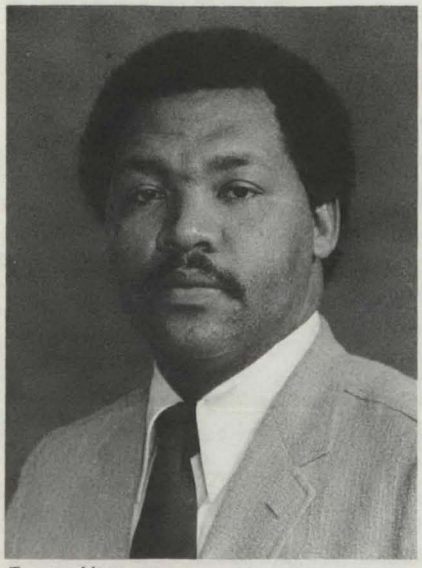
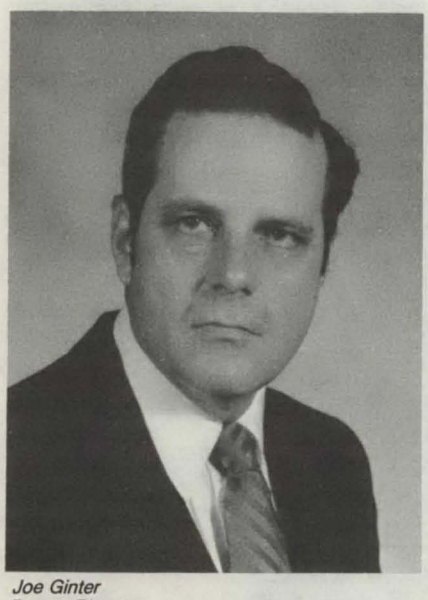


Trooper Moore



Joe Ginter
Deputy Director

Optional Selection Systems

Some possible optional selection systems include expanding the rule of 3 to a rule of 10, assessment centers, exempt positions, lateral entry, rank-jumping, and banding of candidates.

The Illinois Department of Law Enforcement expanded its selection rate to a rule of 10 in 1980. This expansion resulted in 12 minorities and women being promoted in the first year of its implementation.[36]

The assessment center approach has shown favorable results; however, the creation of exempt positions that will allow blacks to be appointed to executive-level positions seems to be the surest way to increase their numbers in higher ranking positions. Proposals for lateral entry have been met with stubborn resistance in most police departments; therefore, the likelihood of this being a successful alternative is not promising at this time.

Rank-jumping allows an officer to compete for a higher rank, normally two steps above his present position. Finally, banding candidates together is another option. This allows for a bottom line cutoff score, and all persons in the band are equally eligible for promotion. Under its pending consent order, for example, New Orleans has agreed to promote blacks and whites on a one-to-one basis using "bands" of candidates who pass the test.[37] This process will allow authorities to pick equal numbers of blacks and whites from among those in the band without picking anyone certified as having a lower score.

The military has distinguished between "fully" qualified and "best" qualified. This differentiation lies at the heart of moving blacks more rapidly into higher ranks.[38] Eli Ginzberg in his article, "EEO's Next Frontier: Training and Promotion," stated:

> "Nobody should be promoted, in my view, who is not judged competent to perform at the level at which he or she is to be assigned. Such a promotion makes no sense for the individual, the individual's group, or the company. However, I think it does make sense to select minority candidates who are fully qualified for preference in promotion. There is no other way to achieve an improved balance in the higher ranks. Moreover, the justification for such a procedure lies not only in reducing past discrimination but also in recognizing that judgments about the 'best' qualified are likely to be more subjective than those about the 'fully' qualified who constitutes a larger group." [39]

The question of how to increase blacks to positions of authority will long be debated; however, the options that have been discussed should serve as a starting point to enhance the process. The only safe policy for employers to follow in the future is to consider everyone who is hired in any open position to be in the pool of potential promotables.[40]

SELF-DEVELOPING STRATEGIES

Understanding the Organization

Since the passage of the 1972 Equal Employment Act, many blacks have been recruited and hired for positions in police departments, sheriff's departments, and State police agen-

cies through the process of affirmative action. The entry of these officers into these departments has resulted in numerous changes. Many of these changes have resulted in blacks being promoted to firstline supervisory and executive positions. For example, both Washington, D.C., and Atlanta, Ga., police departments showed a 48-percent black representation among their sworn officers. Atlanta's black officer representation at the rank of captain and above represents 59 percent of its hierarchy, as compared to Washington, D.C.'s 33 percent. Detroit's highest civil service police rank, which is lieutenant, shows a 32-percent black representation.[41] These data are not typical of the majority of police departments. It appears that these particular departments have developed their own strategies for promoting blacks to executive positions. Black officers in other departments continue to face the same problems in their quest for upward mobility as they did in the hiring process. At the heart of the struggle for upward mobility in police departments is "power." The controlling majority do not want to share with blacks or be subject to the legitimate power that comes with upward mobility.

In developing strategies, blacks must understand what barriers they will face in their quest for upward mobility. If they are to succeed, they must understand the nature of organizations. The first obstacle that they should expect to face is resistance to change and the political nature of the organization. In other words, the political power game is very real in today's organizations.[42] Robert Miles stated that "conditions that threaten the status of the powerful or encourage the efforts of those wishing to increase their power will stimulate the intensity of organizational politics and increase the proportion of decision-making behaviors that can be classified as political as opposed to rational." [43] Affirmative action and the external political process have begun to erode the political power base of the majority in urban police departments. White administrators are mandated to develop policies that will reduce their own power base. This process causes a natural conflict, and blacks should recognize the dilemma of these administrators when developing their strategies.

Resistance to Change

Proposals for change are almost certain to encounter internal and external obstacles for individuals and groups.[44] Rather than being attributable to personality characteristics, the course of resistance may be rooted in the past experiences of those facing change. It is not unreasonable to assume that a good deal of change in an organization is planned for the organization's benefit at the individual's expense. Secondly, lower-level members of organizations may have had direct experience which has led them to associate change with negative consequences.[45] Black officers must realize that no other group will look

out for their interests or advocate change for them. Therefore, black officers must form organizations to relay their message for them.

Building Specific Political Strategies

Once black officers understand and accept the theory that contemporary organizations are largely political systems, they can begin to develop specific strategies that can help them acquire the power to operate successfully as executives. One of the most comprehensive lists of strategies for modern managers came from Dubrin.[46] A look at several of these strategies may provide important insight into power and politics in modern organizations.[47]

1) *Maintain alliance with powerful people.* This is critical to the acquisition of power in an organization. An obvious coalition would be with members of other important departments or with members of upper-level departments.
2) *Manipulation of classified information.* Observational studies by Henry Mintzberg and others have clearly demonstrated the importance of obtaining and disseminating information.
3) *Make a quick showing.* This is a strategy to look good on some project or task right away in order to get the right people's attention.
4) *Collect and use IOU's.* This strategy says that the powerseekers do other people favors, but it should be made clear that they owe something in return and are expected to "pay up" when asked.

5) *Fabianism.* This is a strategy of going slow and easy—an evolutionary rather than a revolutionary approach to change.
6) *Camel's head in the tent.* This strategy is one of going one step at a time instead of trying to push a whole major project or reorganization attempt. One small change can be a foothold that the powerseekers use as a basis to get other, more major things accomplished.

Obviously, the strategies discussed are only representative and not exhaustive of the possible strategies for developing one's career. The black officer must educate himself regarding these and other strategies if he is to reach and survive in the upper level of management.

Promotional Strategies

In the not-too-distant past, the black community showed concern over the lack of black executives in police departments. Police administrators responded by saying they "would promote blacks to these positions, but they can't pass the examination, or they don't pass high enough to be reached on the promotional register. If

they pass the exams, they will be promoted." [48] In an article on policies for increasing the number of black police executives, it was noted that:

> "Service in specialized units or special training has a significant effect on an officer's 'suitability for promotion' and his place on the promotional roster. The opportunity for assignment and training for favored staff functions has been systematically denied blacks. Lack of knowledge and experience in these critical functional areas have been an effective bar to promotion. Discriminatory assignment and promotional practices largely account for the demise of black executives in staff and command positions.
>
> "When blacks do penetrate specialized units, they are often denied opportunities to attend seminars, workshops, or advanced study courses, dubious reasons are often cited; for example, budgetary limitations, availability of slots, or the irrelevance of the program to one's present assignment." [49]

According to the author of the article, the promotional problems that blacks faced in Washington, D.C., led him to form a promotional study group in 1959 that challenged and overcame departmental barriers to promotion. He further stated that "all nine officers that attended the study session were promoted" and concluded by saying that supervisors may continue to give bad performance ratings, but fortunately, "we can overcome this handicap." [50] However, to do so he stated, "blacks must assume the attitude that you might beat me with the rating system, but I'll beat you with the books." Unfortunately, the author is right, and until we have a more equitable promotional system, we must accept this reality. However, organizations must realize that qualified blacks should not have to bear the burden of overcoming low performance ratings in order to be promoted.

Using a Mentor

The term "mentor" dates back to Greek mythology—Mentor having been the wise counselor and friend to whom Ulysses entrusted his own son while he was on a 10-year odyssey.[51]

Other words, such as "sponsor," "coach," and "senior advisor," have been used to describe this type of relationship. When applied to modern-day organizations, the term conveys the image of a senior executive who can counsel and guide younger individuals as they move ahead in their careers.

The existence of mentor relationships in the private sector has been documented. One recent survey of over 1,200 top officials of the Nation's largest companies, for example, indicated that two-thirds of the executives had informal mentors or sponsors at some point in their careers.[52] The obvious conclusion from these studies is that if white males need mentors to succeed in organizations, it is also essential for blacks to have mentors if they are to succeed.

The black officer cannot negotiate the barriers alone; however, these suggested strategies, coupled with organizational efforts, can be a beginning for increasing the number of blacks to executive positions in police departments.

ROLE OF HIGHER EDUCATION

Education and Law Enforcement

A major relationship has evolved during the past decade between the police and institutions of higher education. Hundreds of colleges and universities have established programs to educate police officers, and thousands of police officers and individuals aspiring to careers in law enforcement have enrolled in these programs. Few efforts to improve police operations in recent years have received such enthusiastic and widespread support as the general notion that police officers should be educated.[53]

It is recognized that it makes little sense to train students exclusively for administrative positions that are not available to them until they have served for years at the operating level in a police agency. It is a recognized fact that future police leaders have a greater need for a broad education that acquaints them with critical issues in the profession than they have for courses on how to run a police agency. The biggest shift is an acceptance of the idea that police personnel at the operating level should have a higher education.[54] Several prominent schools have now established a curriculum to provide police administrators with needed skills to operate efficiently and professionally. Among those offering law enforcement-related courses is the Southern Police Institute, the idea of which originated with a Swedish economist, Gunnar Myrdal. In 1944, Mr. Myrdal, author of *An American Dilemma,* wrote:

> "It is my conviction that one of the most potent strategic measures to improve the Southern Interracial

"Once black officers understand and accept the theory that contemporary organizations are largely political systems, they can begin to develop specific strategies that can help them acquire the power to operate successfully as executives."

situation would be the opening of a pioneering modern police college in the south, which would give a thorough social and pedological training as well as technical police training." [55]

Mr. Myrdal's conviction was one of prophecy, for "The Southern Police Institute was established at the University of Louisville in 1951 to provide education and training for public police administrators from Southern and bordering states." [56] The university has graduated more than 2,500 persons from its Administrative Officers Course; Northwestern had graduated more than 2,100 officers as of 1979.[57]

Role Universities Play in Career Development

As a member of the 68th Administrative Officers Course at the University of Louisville, I was 1 of 5 black officers enrolled in a class of 48. This representation is a growing trend of blacks that are attaining executive and managerial positions in departments that use higher education for training.

It is apparent that black managers face additional problems that Caucasian managers do not face, including the social interaction dilemma, credibility due to affirmative action, black cultural values vs. corporate or organizational norms, isolation, overcoming paranoia and defensiveness, and how to incorporate one's black identity into effective management styles.[58]

With the Southern Police Institute being founded on the principle of helping to solve southern interracial problems through training, it would seem appropriate that this school would research the training needs of the black police manager and provide seminars or other training to help them overcome barriers to upward mobility.

The American Management Association has recognized these needs for black managers in private industry and has developed seminars for these managers.[59] The success of the program is being evaluated; however, it is my opinion that every black police manager would benefit from such a program.

Summary

With the influx of black police officers into police departments, and with their desire to become a part of the management team, the best possible training must be afforded these officers. The officers, the organization, and educational institutions must recognize that the problems of the black officer, due to past historical practices and the environmental obstacles he will face once he becomes an executive, must be addressed.

The black officers must take it upon themselves to prepare for the role of executive.[60] Once the barriers are removed by the organizations, they can no longer depend on affirmative action for their upward mobility. They must become politically astute, use mentors, form study groups, and use educational institutions to gain upward mobility.

The educational institutions must play a major role in the process of increasing the number of black police executives. They must use research to measure the discriminatory environment of organizations and develop methods for eliminating its effects. Research must also be conducted for the purpose of determining the type of training black supervisors and executives need to become effective managers. Universities must take the lead in fighting the obvious backlash that occurs due to blacks being promoted. Finally, these universities must expose their classes to black lecturers and black police executives. The Southern Police Institute was founded for the purpose of education and improving interracial relations. It appears that this concept must be revisited to deal with the internal racial problems in today's modern organizations. **FBI**

Footnotes

[31] Alfred W. Blumrosen, "Equal Opportunities in the Eighties: The Bottom Line," *Employee Relations Journal,* vol. 6, No. 4, Spring 1981, p. 34.
[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] 29 FEP Case 1, 1982.
[36] Robert Moore, *FY-83 Affirmative Action Plan,* Springfield, Ill., FY 83, p. 27.
[37] Supra note 15, p. 38.
[38] Supra note 1.
[39] Ibid., p. 35.
[40] Ibid., p. 36.
[41] Peggy E. Tripplett in a letter to the author, September 30, 1982.
[42] Fred Luthans, *Organizational Behavior* (New York: McGraw-Hill, Inc. 1981), p. 405.
[43] Ibid.
[44] Leonard Territo, "Planning and Implementing Organization Change" *Journal of Police Science and Administration,* vol. 8, No. 4, 1980, p. 396.
[45] Ibid.
[46] Supra note 42, p. 404.
[47] Ibid., p. 407.
[48] Burtell Jefferson, "Policies for Increasing the Number of Black Police Executives." Illinois Department of Law Enforcement, *National Institute of Law Enforcement and Criminal Justice Publications,* Washington, D.C., October 1977, p. 129.
[49] Ibid.
[50] Ibid.
[51] Rudi Klauss, "Formalized Mentor Relationships for Management and Executive Development Programs in the Federal Government," *Public Administration Review,* July/August 1981, p. 490.
[52] Ibid.
[53] Herman Goldstein, *Policing a Free Society* (Boston: Ballinger Publishing Company, 1977), p. 33.
[54] Ibid., p. 333.
[55] George D. Eastment and James A. McCain, "Education, Professionalism, and Law Enforcement in Historical Perspective," *Journal of Police Science and Administration,* vol. 9, No. 2, 1981, p. 128.
[56] Ibid., p. 285.
[57] Ibid., p. 128.
[58] Floyd Dickens, Jr., and Jacqueline B. Dickens, *The Black Manager* (New York: Amaco, 1982), p. 3.
[59] William Regional, "Self-Development Strategies for Black Managers." *American Management Association,* Chicago, Ill., March 22 to 25, 1982.
[60] Supra note 58.

1982 FBI Crime Index

For the first time in any annual period since 1977, serious crime in the United States dropped 4 percent in 1982, as compared to 1981. This is according to preliminary 1982 Crime Index figures compiled by the FBI Uniform Crime Reporting Program.

Collectively, the Index's violent crimes fell 3 percent in volume. Murder and robbery each declined 7 percent; forcible rape was down 5 percent. Only aggravated assault showed an increase—1 percent.

All property crimes showed decreases. Burglary fell 10 percent; larceny-theft, 1 percent; motor vehicle theft, 3 percent. This accounted for a 4-percent total decline in property crime offenses in 1982.

Last year, the number of arsons committed was down 12 percent from the 1981 level. When arson was considered in the Crime Index total, the overall percent change remained the same.

Regionally, the total Crime Index volume fell 7 percent in the Northeastern States, 6 percent in the North Central States, 2 percent in the Western States, and 1 percent in the Southern States. The Nation's rural and suburban areas each registered annual decreases of 6 percent, while cities with populations of over 50,000 recorded a 3-percent decline.

Number of Officers Slain Remains The Same

Preliminary Uniform Crime Reporting statistics reveal that 91 law enforcement officers were feloniously killed in the United States and its territories during 1982, the same number of line-of-duty deaths that occurred in 1981. The totals for the past 2 years were lower than for any annual period in the preceding decade.

Fifty-seven of the slain officers were city policemen, 27 were employed by county law enforcement agencies, 5 were State-level officers, and 2 were Federal officers. Law enforcement agencies have cleared 86 of the 91 slayings.

Of the officers slain, 81 were killed by firearms. Handguns were used in 60 of the murders, rifles in 17, and shotguns in 4. The murder weapons used in the remaining 10 incidents included vehicles, knives, personal weapons, and a blunt object.

Fourteen officers were killed attempting to thwart robberies or were in pursuit of robbery suspects, 3 died while handling burglary-in-progress calls or were pursuing burglary suspects, and 19 were attempting other arrests when slain. Seventeen officers lost their lives responding to disturbance calls, and 13 were slain enforcing traffic laws. The remainder were killed investigating suspicious persons or circumstances (10), in ambush situations (9), transporting or handling prisoners (3), dealing with mentally deranged individuals (2), and during a civil disorder (1).

Regionally, 41 officers were slain in the Southern States, 21 in the North Central States, 18 in the Western States, 7 in the Northeastern States, 3 in Puerto Rico, and 1 in the Mariana Islands.

THE ATTORNEY-CLIENT RELATIONSHIP— INTRUSIONS AND REMEDIES (Conclusion)

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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.

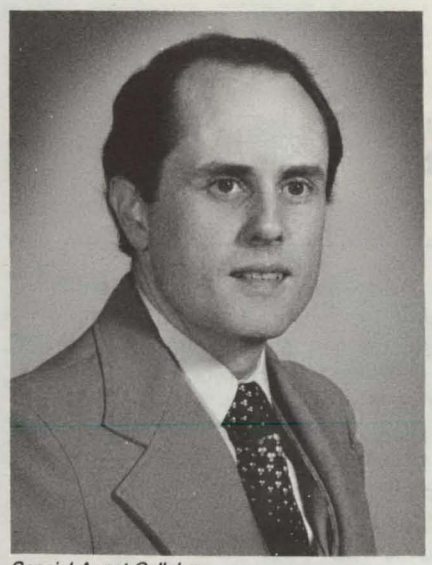
Part I of this article reported on the law with respect to governmental intrusions into the attorney-client relationship after adversary criminal proceedings had been initiated against the client. This included a discussion of whether deliberate and unjustified intrusions constitute a per se violation of the sixth amendment, and if so, what should be the appropriate remedy. It was noted that although such intrusions may well violate the sixth amendment, the Supreme Court has declined to apply the traditional remedies of dismissal of the indictment or suppression unless actual prejudice or a substantial threat thereof is present. The meaning of prejudice, begun in part I, will be expanded, and civil liability as a potential remedy will be discussed.

Evidence Derived From Intrusion

The first two types of prejudice mentioned in *Weatherford* may be appropriately combined in this discussion. There is no doubt that a defendant will be adversely affected at trial when evidence is admitted which is the product of an intrusion into the sixth amendment right to counsel. This was the case even prior to the Supreme Court's adoption of the actual prejudice test in *Morrison.*

In *United States* v. *Irwin,*[22] the defendant was arrested by agents of the Drug Enforcement Administration (DEA) for distribution of cocaine. He was released on bail, and counsel was appointed. Subsequently, DEA contacted him without notice to counsel and requested that he become an informant. He told DEA that his lawyer told him not to talk with anybody about the offense. During the conversation, however, Irwin made incriminating admissions. Prior to trial, he moved for dismissal of the indictment on the ground that DEA's intrusion into the attorney-client relationship was prejudicial to him in that incriminating statements were obtained. The trial judge suppressed the statements but refused to dismiss the indictment. Irwin was convicted. A Federal appellate court affirmed the conviction and held that since the incriminating statements were not used at trial, there was no merit to his contention that he was prejudiced by them.

In a post-*Morrison* case, the result was the same. The case, *United States* v. *Cross,*[23] resulted in the defendant's conviction for perjury. Cross' first trial on the same charge ended in a mistrial. Between the first and second trial, Cross was visited at home by an FBI Agent. Permission of counsel was not obtained. The Agent convinced Cross to take a polygraph test which resulted in incriminating evidence. Prior to the second trial, the trial judge suppressed the polygraph test and all evidence derived from it. Cross was convicted and contended on appeal that the FBI's conduct amounted to an intentional breach of the attorney-client relationship and that the only proper remedy was dis-



Special Agent Callahan

missal of the indictment. A Federal court of appeals observed that even though the FBI's conduct amounted to a grossly improper breach of the attorney-client relationship, dismissal of the indictment was not warranted. The court referred to the actual prejudice test of *Morrison* and reasoned: ". . . in light of the trial judge's suppression of the evidence, Cross cannot validly assert any prejudice flowing from the government's conduct." [24]

A similar result occurred in *United States* v. *Killian.*[25] The defendant was arrested by DEA agents on Federal drug charges. While in custody awaiting trial, the U.S. attorney's office requested Agents of the Federal Bureau of Investigation to interview him. This interview occurred without notice to and in the absence of counsel. Although the defendant made incriminating remarks, neither the statement itself nor any evidence obtained from it was introduced at trial. The defendant was convicted and on appeal claimed that such Government conduct should warrant a dismissal of the indictment. The court of appeals agreed that the Government's conduct was highly improper and unethical, but nonetheless refused to dismiss the indictment. The court adopted the actual prejudice test of *Morrison* and observed that the defendant had not demonstrated actual prejudice. The court noted that suppression of the statement would probably have been appropriate as a remedy but this was unnecessary since the Government chose not to introduce it at trial. Several other post-*Morrison* Federal decisions have agreed with the above approach.[26]

Defense Plans and Strategy

Presumed vs. Actual Prejudice

In *United States* v. *Orman,*[27] the defendant was indicted for distribution of heroin. A public defender was appointed to represent her. Subsequently, DEA agents surreptitiously eavesdropped on conversations between the defendant and her lawyer. Prior to trial, the defendant moved for a dismissal of the indictment on the ground that the conduct of the Government violated her sixth amendment right to counsel. The trial judge agreed and dismissed the indictment. The court determined that DEA obtained information from the intrusion which related to the possibility of the defendant raising a particular defense. The court did not find that the information was made available to the prosecutor but held that the case was tainted nonetheless. Knowledge by DEA of defense plans and strategy was all that was necessary to require dismissal. The court reasoned that once the Government learns of defense plans through such a gross intrusion, there is no effective way to isolate the prejudice except by dismissal of the indictment. This case by implication suggests that prejudice is presumed when defense plans are learned by Government agents through unlawful means.

The concept of presumed prejudice is further illustrated in *United States* v. *Levy.*[28] DEA agents arrested Visceglia for conspiracy to distribute heroin. In July 1975, Visceglia and three others, including Visceglia's uncle, Verna, were indicted for con-

". . . courts will likely examine with close scrutiny the type of information regarding defense plans that the Government learned from the intrusion."

spiracy to sell heroin. Visceglia agreed to become a DEA informant in August 1975. He retained the same lawyer that represented Verna. DEA agents were aware from the inception of their relationship with Visceglia that he had retained the same lawyer as his uncle. Visceglia attended a meeting with his lawyer and Verna, during which the lawyer commented that defense strategy would concentrate on the lack of credibility of the prosecution's key witnesses. Visceglia communicated this defense strategy to DEA. Prior to trial, Verna moved to dismiss the indictment. The trial judge denied the motion and held that although there was a deliberate intrusion by the Government into the attorney-client relationship, Verna was not prejudiced by what DEA learned. Verna was subsequently tried and convicted. He appealed on the ground that the district court erred by not ordering dismissal of the indictment since defense plans had actually been disclosed to the Government. The court of appeals reversed the conviction and held that prejudice will be presumed when defense plans are actually disclosed to Government enforcement agencies. The court declined to delve into the speculative realm of whether the defendant was actually prejudiced by the disclosure. The court refused to order a new trial and dismissed the indictment, observing:

> "Any effort to cure the violation by some elaborate scheme, such as by bringing in new case agents and attorneys from distant places, would involve the court in the same sort of speculative enterprise which we have already rejected." [29]

Prejudice was also presumed in *United States* v. *Peters,*[30] in which Peters and a codefendant, Battleman, were indicted for Federal drug violations. Battleman was arrested first, and several days later, DEA agents arrested Peters. During Peters' arrest, DEA seized a cassette tape which contained a recorded telephone conversation between him and his lawyer. The conversation included a discussion of possible defenses to the indictment and possible methods of discrediting a Government informant. A Federal agent listened to the tape six times and then provided it to the Federal prosecutor. The prosecutor was informed that the tape contained a discussion of defense strategy. Nevertheless, he listened to it at least twice. Prior to trial, Peters moved for dismissal of the indictment, alleging that his sixth amendment right to counsel was violated when the Government prosecutor became privy to defense plans. The trial judge agreed and dismissed the indictment, observing that such an impermissible invasion of the attorney-client relationship could only be remedied in that manner. By implication, prejudice was presumed.

Prior to *Morrison,* courts appeared quite willing to presume irreparable prejudice when governmental invasions of the attorney-client privilege disclosed defense plans, and dismissal of the indictment was the usual remedy. *Morrison,* however, contains language which suggests that the presumed prejudice-indictment dismissal approach is incorrect. The Supreme Court observed: ". . . absent *demonstrable* prejudice, or a *substantial threat* thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have been deliberate." [31]

At least one Federal district court has adopted the actual prejudice test of *Morrison.* In *United States* v. *Boffa,*[32] the defendant and one Rispo were indicted in July 1980, for Federal mail fraud and racketeering violations. The charges stemmed from alleged unlawful payments made to a union officer for the purpose of influencing his conduct as a union official. After the indictment, Rispo entered into a plea agreement with the Government. It was then disclosed that Rispo had been an FBI informant from 1973 until January 1981. During a pretrial evidentiary hearing, the defense alleged that after indictment, Rispo learned defense strategy through contact with Boffa and his lawyer in violation of the sixth amendment. Specifically, it was alleged that Rispo learned that:

1) The defendant would testify on his own behalf at trial;
2) The defense intended to subpena certain unnamed truckdrivers, union officials, and corporate officials; and
3) The defense intended to use charts to establish an unspecified defense at trial.

The trial judge ruled that Boffa failed to demonstrate that Rispo's alleged conduct resulted in actual prejudice or a substantial threat thereof. The court reasoned that even assuming that the defense allegations were true, the information was too general

in nature to result in actual prejudice or a substantial threat thereof to the defendant.

In the aftermath of *Morrison,* courts will likely examine with close scrutiny the type of information regarding defense plans that the Government learned from the intrusion. The purpose of this examination will be to assess whether the defendant will be adversely affected by the Government's knowledge of the information gleaned. A court could decide that the information learned is too general in nature to affect the defendant adversely.

The difficulty is that when a substantial threat of prejudice is demonstrated, courts will probably be unwilling to construct and oversee an elaborate plan to insulate any future court proceeding from the taint. Such schemes would probably involve bringing in prosecutors from other jurisdictions and ordering new investigators to become involved. Even then, there exists a risk that the tainted knowledge of other Government personnel would furnish to the Government some definite advantage. Therefore, it is likely that when actual prejudice or a substantial threat of it exists, a court will order the indictment dismissed. Government intrusions of this nature should be scrupulously avoided. When information concerning defense plans and strategy is unavoidably acquired by an informant, every effort should be made to keep such plans outside the knowledge of Government agents and prosecutors. Informants who must attend attorney-client meetings for safety sake should not be debriefed regarding defense plans discussed.

Erosion of Attorney-Client Relationship

Law enforcement officers frequently attempt to convince charged defendants to become informants. Investigators have sometimes become overzealous in their efforts to attain their goal. These efforts sometimes include contacting the defendant without notice to counsel and deliberately disparaging the lawyer's competence. This kind of investigative approach provides criminal defendants with a fourth type of prejudice argument.

In *People* v. *Moore,*[33] the defendant was arrested and arraigned on local felony charges and an attorney was appointed to defend him. Moore was visited in jail by police who asked him to become an organized crime informant. Moore was falsely told that his appointed counsel was inadequate and had been disbarred. He agreed to become an informant and was told not to inform his lawyer of the agreement. He was subsequently released on bond and engaged in extensive undercover activities with the understanding that his cooperation would be made known to the sentencing judge and that his case would be dismissed if his efforts resulted in conviction of an organized crime figure. Prior to trial, the lawyer filed a motion for dismissal on the ground that Government conduct denied Moore effective aid of counsel. The motion was granted and the Government appealed. A California appellate court affirmed the dismissal, reasoning that Moore had been prejudiced because the police convinced him to act without counsel during critical pretrial negotiations. The court further observed that the conduct was prejudicial in that it imperiled Moore's life, lulled him into illusory promises of freedom, and caused substantial delays in his trial.

People v. *Mason*[34] presented a similar situation. Mason was arrested on local drug charges. At arraignment, a lawyer was appointed to represent him. During a subsequent hearing, a judge instructed the police not to contact Mason without consent of counsel. This order was issued after Mason's lawyer overheard police threaten him with a long jail term unless he became an informant. The police ignored the order and again approached Mason without his lawyer's permission. An officer proceeded to discredit Mason's attorney, telling him that his lawyer was young, inexperienced, and clearly no match for the prosecutor. Against advice of counsel, Mason agreed to become an informant in return for a prosecution promise that lenient treatment would be recommended.

Mason's role included an approach to a lawyer suspected of bribing judges. Pursuing that role, Mason dismissed his first lawyer and retained the lawyer suspected of bribery to represent him in the pending criminal case. This effort to ferret out judicial

". . . actual prejudice can occur only when the prosecution gains some tangible benefit or item of evidentiary value from the sixth amendment violation."

corruption proved unproductive. Prior to trial, Mason moved to dismiss the indictment on the ground that the police interfered with his right to effective assistance of counsel in violation of the sixth amendment. The motion was granted. The court observed that the police destroyed Mason's confidence in the ability of his appointed counsel to defend him. Furthermore, the court criticized prosecution approval of Mason substituting a lawyer who was the target of a judicial bribery investigation. The court also reasoned that Mason was prejudiced by the length of time—over 3 years—that had passed since the date of indictment. The prosecutor's promise to recommend leniency was also subjected to harsh criticism. The court labeled it a cruel illusion in that the prosecutor knew that the trial judge was limited by statute regarding lenient treatment in sentencing. The court concluded that the Government conduct destroyed the attorney-client relationship and warranted dismissal of the indictment.

In the cases discussed above, both courts made a specific finding of actual prejudice. However, in *Commonwealth* v. *Manning,*[35] the Supreme Judicial Court of Massachusetts presumed prejudice and dismissed the indictment, notwithstanding the defendant's rejection of a Government effort to turn him into an informant. Manning was arrested and arraigned on local drug charges. After counsel was retained, Manning was contacted by a DEA agent. The agent sought his cooperation and made disparaging remarks about his lawyer and the manner in which he was conducting the defense. The agent told him that his lawyer's efforts would not keep him out of jail. The defendant rejected the agent's overture, and prior to trial, moved for dismissal. The trial judge ruled that although the conduct of the agent deserved strong condemnation, the defendant still had confidence in counsel. Furthermore, the ability of counsel to represent Manning had not been adversely affected. Manning was convicted and the Supreme Judicial Court reversed. The court observed:

> ". . . We have here a deliberate and intentional attack by government agents on the relationship between Manning and his counsel in a calculated attempt to coerce the defendant into abandoning his defense. . . ." [36]

The court reasoned that prejudice could be presumed from such offensive conduct.

The facts in *Morrison* are strikingly similar to those in *Manning.* For example, DEA agents met with Morrison without counsel for the purpose of seeking cooperation. They criticized the competence of her lawyer. The U.S. Supreme Court did not presume prejudice on these facts and noted that Morrison never alleged on appeal that the claimed violation prejudiced the effectiveness of her legal representation. The Court required a showing of actual prejudice or a substantial threat thereof before it would consider altering the criminal proceedings against the defendant. The Court observed that dismissal of an indictment in the absence of adverse impact was an inappropriate remedy even for a deliberate sixth amendment violation. *Morrison* appears to lay to rest the notion that prejudice can be presumed from deliberate Government conduct which interferes with the right to counsel.

Although the Court's decision in *Morrison* did not define actual prejudice, the Court made clear that remedies for sixth amendment deprivations should be tailored to the injury suffered. For example, the Court stated: "The remedy in the criminal proceeding is limited to denying the prosecution the fruits of its transgression." [37] Implicit in that statement is the suggestion that actual prejudice can occur only when the prosecution gains some tangible benefit or item of evidentiary value from the sixth amendment violation. Support for this argument is found in two post-*Morrison* cases which examined the meaning of actual prejudice.

The first is *United States* v. *Davis,*[38] wherein the defendant was arrested by DEA agents for distribution of methamphetamine. An attorney was appointed to represent him. Without securing the approval of counsel, DEA contacted Davis in an effort to turn him into an informant. Davis provided no information at that time and later declined to cooperate on the advice of counsel. An agent thereupon became verbally abusive and threatened Davis with property confiscation and a stiff jail sentence in an

effort to convince him to change his mind. Davis refused, and prior to trial, moved for dismissal of the indictment on the ground that DEA's conduct violated his sixth amendment right to counsel. The motion was denied and a conviction ensued. The court of appeals affirmed the conviction and held that in determining whether an indictment should be dismissed on sixth amendment grounds due to interference with the right to counsel, it is not enough to show that an intrusion occurred. The court reasoned that in addition there must exist some connection between the intrusion and some benefit to the prosecution. The court noted that no such connection was demonstrated in this case.

The second case, *United States* v. *Solomon,*[39] involved the arrest of Solomon for cocaine trafficking. Drug Enforcement Administration agents solicited his cooperation. Solomon asked them if he needed a lawyer. They told him that if he retained a lawyer, he could not work with them and his car would be seized. Even though he became an informant, he later retained a lawyer, whereupon DEA seized his car and he dismissed the lawyer. He continued as an informant but ultimately refused further cooperation. He was indicted, and prior to trial, moved for dismissal on the ground that DEA interfered with his sixth amendment right to counsel. The motion was denied and a conviction followed. A Federal appellate court affirmed the conviction and rejected defense claims that actual prejudice resulted from DEA actions which deprived him of the assistance of counsel and prevented him from plea bargaining. Solomon argued that he might have received immunity or other favorable treatment as a *quid pro quo* for his cooperation and claimed that DEA caused him to ignore his own defense while providing them assistance. The court observed that the sixth amendment violation had no impact on the finding of guilt inasmuch as the only evidence introduced at trial was obtained prior to the constitutional intrusion. The court noted that DEA had pressured Solomon into foregoing the assistance of counsel and labeled such conduct reprehensible. However, since no evidence was gained from the intrusion, dismissal of the indictment or even reversal of the conviction was not required. By implication, the court rejected the rather flimsy *actual prejudice* arguments fashioned by Solomon and suggested that if the Government gains nothing of evidentiary significance or other unfair trial advantage from the intrusion, actual prejudice will not lie.

The *Solomon* court's narrow view of actual prejudice appears correct in light of the Supreme Court's statement in *Morrison* that the prosecution should be denied the fruits of its transgression. This narrow construction of actual prejudice is in direct conflict with pre-*Morrison* State court decisions such as *Moore* and *Mason, supra,* which adopted a much broader view of actual prejudice. If this narrow construction of the actual prejudice requirement is correct, insubstantial defense claims will not meet the actual prejudice test of *Morrison.* These vague claims of actual prejudice include such arguments as erosion of attorney confidence, loss of ability to plea bargain, unspecified loss of ability to prepare a defense, and trial delays that result in nonspecific harm to the defendant. With respect to defense arguments that prejudice should include the loss of ability to plea bargain, it is useful to recall that the Supreme Court made clear in *Weatherford* that there is no constitutional right to plea bargain.[40]

Unconstitutional Government conduct which succeeds in convincing a represented defendant to become an informant could result in actual prejudice if a substantial delay in trial ensued and a critical defense witness became unavailable. Two post-*Morrison* cases serve to illustrate this point. In *United States* v. *Armijo-Martinez,*[41] the defendant was arrested for transporting illegal aliens. Prior to indictment, the Government allowed several illegal aliens to return to Mexico before being interviewed by defense counsel. On motion of the defendant, the trial judge dismissed the indictment, concluding that the defendant's sixth amendment right to compulsory process had been denied by the unilateral action of the Government. The Government appealed and urged the appellate court to reverse on the ground that the defense had failed to demonstrate prejudice. The court of appeals affirmed the dismissal and held that a sufficient showing of prejudice had been made. Prejudice resulted from the inability to interview several witnesses who might possess in-

"The defendant must demonstrate actual prejudice or a substantial threat thereof before consideration would be given to altering the proceedings against him."

formation helpful to the defense and who were unavailable because of unconstitutional Government conduct.

Similarly, in *United States* v. *Morrison* [42] (a district court decision unrelated to the Supreme court case of the same name), the defendant was indicted for assault upon an employee of the Federal Bureau of Prisons. Six months elapsed between the time of the assault and indictment. During that time, the Federal prison routinely destroyed a list of inmates who were in the area of the crime when it occurred. Upon the defendant's pretrial motion, the indictment was dismissed. The judge concluded that the defendant was prejudiced by the Government's gross negligence in not maintaining the list of potential defense witnesses. While courts may differ with respect to what constitutes a sufficient showing of actual prejudice, these two cases demonstrate the point that in light of the Supreme Court's holding in *Morrison,* such a showing is required.

PREJUDICE—BURDEN OF PROOF

Another issue that remains cloudy in the aftermath of *Morrison* is which party in a criminal case has the burden of proof with respect to actual prejudice. By implication, the Court in *Morrison* offered some guidance:

> "Here, respondent has demonstrated no prejudice of any kind, either transitory or permanent, to the ability of her counsel to provide adequate representation in these criminal proceedings." [43]

It appears from this language that a defendant has the initial burden of demonstrating that a sixth amendment right to counsel violation has occurred and that there exists a likelihood of actual prejudice. Several post-*Morrison* Federal appellate cases and at least one district court decision have placed the burden of proof regarding actual prejudice on the defendant.[44] All of these cases provide only a superficial analysis of the issue. If the defendant must accept the entire burden of proving actual prejudice when intrusions into the right to counsel are alleged, the burden may be impossible to overcome. Consider the defendant's dilemma. He may be able to produce evidence that a Government informant participated in confidential attorney-client meetings. The defendant will usually be aided in this endeavor by cautious prosecutors who will probably disclose the fact of a governmental intrusion rather than risk a constitutional due process argument for failure to disclose evidence favorable to the accused.[45]

However, the defendant will not be privy to what confidential information, if any, the informant actually disclosed to Government agents. Furthermore, it may be impossible for him to know whether the Government prosecutor became aware of any confidential information. Courts may decide that in such cases, due process requires that the defendant make only a threshold showing of actual prejudice. Courts may reason that notions of fairness would call for the burden of proof to shift to the Government to produce evidence of the absence of prejudice. This procedure would likely take place in a pretrial evidentiary hearing. The defendant would produce evidence that an undercover agent or informant attended a meeting between himself and his lawyer. He would be required to provide testimony that the discussion involved confidential information that could be of benefit to the Government if relayed to agents or prosecutors. This portion of the testimony could be handled *in camera* to prevent defense plans and strategy from becoming known by the prosecutor.[46] If the trial judge is satisfied that the defendant has met this threshold burden, he could order the Government to produce evidence of lack of prejudice. This might be accomplished by ordering testimony from informants, Government agents, and prosecutors concerning what each knew about the information discussed at the meeting. If the informant is not going to testify at trial, his testimony could be received *in camera* to protect his identity. Support for this procedure can be found in *Hoffa* v. *United States.*[47]

Hoffa, a well-known union leader, was awaiting trial after indictment for alleged violations of the Taft-Hartley Act. An informant, one Partin, was instructed to renew his association with Hoffa and remain alert for any indication that Hoffa would attempt to tamper with the jury. Hoffa's Taft-Hartley trial ended with a hung jury, but he was subsequently indicted and convicted of obstructing justice. A Federal appellate court affirmed and the Supreme Court accepted the case for review. Hoffa argued that Partin's presence in the defense camp prior to his Taft-Hartley trial violated his sixth

amendment right to counsel. The Court affirmed the conviction and observed that none of the Government's evidence in the obstruction of justice trial came from any alleged intrusion into the sixth amendment right to counsel with respect to the Taft-Hartley prosecution. Prior to trial in the jury-tampering case, a pretrial hearing was held on Hoffa's sixth amendment claim. At that hearing, Partin furnished testimony on the sixth amendment issue and a Government agent testified as well. The agent testified that Partin disclosed to him certain defense plans which related to the Taft-Hartley trial. The agent revealed that he relayed this defense strategy to the chief Government attorney in the Taft-Hartley case. The Supreme Court implicitly approved of this procedure, i.e., a pretrial hearing which included significant testimony from Government witnesses on the issue of prejudice. The Court observed that had the Taft-Hartley trial ended in conviction, it probably would have set aside the conviction on sixth amendment grounds.

A statement from the Court's opinion in *Weatherford* is also persuasive. The Court observed:

> "Nor do we believe that federal or state prosecutors will be so prone to lie . . . that we must always assume not only that an informant communicates what he learns from an encounter with the defendant and his counsel but also that what he communicates has the potential for detriment to the defendant or benefit to the prosecutor's case." [48]

The comment that prosecutors would not lie suggests that they might be required to testify at a pretrial hearing regarding what they learned, if anything, from the informant's participation in the attorney-client meeting.

The Court of Appeals of Maryland did consider this issue at some length in *Weiner* v. *State.*[49] In this post-*Morrison* case, a law student agreed to assist the Maryland Attorney General's Office in an investigation into alleged misuse of State resources by a county public defender. The student volunteered to work as a clerk in the Anne Arundel County Public Defender's Office. During the undercover assignment, a criminal investigator, on behalf of the suspected public defender, took an incriminating statement from Weiner, an incarcerated murder suspect who was represented at the time by the public defender. The criminal investigator allowed the law student to read the entire statement. Weiner was prosecuted by the State's attorney for Anne Arundel County and was convicted of murder. Prior to trial, Weiner moved for dismissal of the indictment on sixth amendment grounds.

An evidentiary hearing was held, at which an assistant attorney general testified that the law student never informed him of any information regarding the *Weiner* case. Weiner's motion was denied. He appealed and argued for dismissal of the indictment. The court of appeals concluded that the law clerk's actions amounted to an intrusion into the attorney-client relationship and then considered whether Weiner was prejudiced thereby. The court noted that the ultimate burden of proving prejudice is on the accused. Here, Weiner proved that a Government agent was planted in the office of his lawyer and became privy to very confidential information. The question of whether this information was communicated to the *Weiner* prosecution team was uniquely within the power of the prosecution to answer. The court concluded that the burden of proof must shift to the State to demonstrate that the law clerk did not communicate his knowledge to anyone on the prosecution team. The court observed that no testimony was furnished at the pretrial hearing by the law student or the prosecution team on this issue. Only testimony from an assistant attorney general not involved at all in the *Weiner* case was received. The court remanded the case to the trial court for the limited purpose of conducting a new hearing on the issue of prejudice. The court instructed the trial court to order the Government to produce testimony from the law student and the prosecution team at the hearing.

United States v. *Bagley*[50] involved a different sixth amendment allegation but is relevant to this issue. Bagley was convicted of a felony and placed on supervised probation. While on probation, he allegedly violated Federal firearms statutes and was arrested on a probation revocation warrant. He was indicted on Federal firearms charges, and while awaiting trial,

". . . post-*Morrison* Federal decisions have taken the position that prejudice must include a tangible adverse impact upon the defendant's ability to receive a fair trial."

had discussions with his cellmate who was an informant. The information gleaned by the informant related to unsolved murders and not to the charges in the indictment. Prior to trial, the district court held an evidentiary hearing to examine Bagley's claim that use of the informant violated the sixth amendment. The trial court ruled against Bagley and he was convicted. A Federal appellate court affirmed and held that for the defendant to prevail he must show that he suffered prejudice at trial as a result of evidence obtained from interrogation outside the presence of counsel. This he could not do. The court reviewed testimony furnished by the Government at the pretrial evidentiary hearing. That testimony revealed that the informant told Federal agents nothing about the case against Bagley except a description of the charges in the indictment. The testimony disclosed that Federal prosecutors in the case were careful to insulate themselves from any information that informant provided to the agents who debriefed him. They did not receive any information relating to the informant's conversation with Bagley. Although the court required Bagley to demonstrate prejudice, it approved a pretrial evidentiary procedure which included Government testimony concerning whether the informant provided information about the pending indictment.

CIVIL LIABILITY—UNJUSTIFIED INTRUSIONS

The Supreme Court decision in *Morrison* assumed, without deciding, that the sixth amendment was violated by Government conduct which included contacting a represented defendant without notice to counsel and questioning the competence of counsel. Although the Court refused to dismiss the indictment because prejudice was not alleged or demonstrated, it nevertheless refused to condone what it described as "egregious" conduct on the part of the Government. In light of the Court's position that the conduct of the Government agents was improper, it is likely that the Court would decide that it violated the sixth amendment if the issue was squarely presented to it.

A recent Federal appellate decision took an approach similar to that of the Supreme Court in *Morrison.* In *United States* v. *Solomon, supra,* DEA agents convinced a represented defendant to dismiss his lawyer by threatening to confiscate certain personal property. Although Solomon's conviction was affirmed because demonstrable prejudice was absent, a footnote in the opinion is enlightening on the issue of whether the governmental conduct violated the sixth amendment. The footnote states in pertinent part:

> "For purposes of argument, we shall assume that the government's conduct constituted a Sixth Amendment violation just as the Court in *Morrison* did. . . . However, there is little doubt that the lower court's holding is correct that Solomon's Sixth Amendment rights were violated." [51]

Inasmuch as both Federal [52] and State [53] law enforcement officers can be sued in Federal court for alleged violations of constitutional rights, officers would be wise to avoid unjustified intrusions into the attorney-client privilege which potentially violate the sixth amendment.[54] Agency or departmental administrative punishment is also possible for officers who violate the constitutional rights of citizens. For example, DEA officials considered a temporary suspension for one agent involved in the *Morrison* case and ultimately the agent received a written reprimand.[55]

CONCLUSION

The *Morrison* decision makes clear that absent prejudice, dismissal of indictment is an inappropriate remedy for an unjustified governmental intrusion into the attorney-client relationship. The defendant must demonstrate actual prejudice or a substantial threat thereof before consideration would be given to altering the proceedings against him. The Supreme Court further suggested that absent a showing of adverse impact upon the defendant's opportunity to receive a fair trial, the more traditional remedies of evidence suppression and a new trial would be unwarranted. Although *Morrison* did not examine the meaning of prejudice in this context, post-*Morrison* Federal decisions have taken the position that prejudice must include a tangible adverse impact upon the defendant's ability to receive a fair trial.

Notwithstanding the prejudice requirement, law enforcement officers would be well-advised to avoid authorizing unjustified intrusions into the attorney-client privilege by informants and undercover agents. If such an intrusion is necessary to promote a legitimate law enforcement interest, such as safety of the source, the informant should be instructed not to reveal anything he learns to officers or prosecutors. Particular emphasis should be placed upon the damage that can occur if defense plans and strategy are disclosed by the informant to officers and prosecutors. Judicial efforts to remedy such disclosures might include dismissal of an indictment where a substantial threat of prejudice is shown.

Law enforcement efforts to turn represented defendants into informants should scrupulously avoid such tactics as threats of lengthy incarceration, confiscation of property, or disparaging remarks about counsel competence. Such actions have been universally condemned by the courts and raise the threat of civil liability on the part of the officers involved. **FBI**

Footnotes

[22] 612 F.2d 1182 (9th Cir. 1980).

[23] 638 F.2d 1375 (5th Cir. 1981), *rev'd on other grounds,* 655 F.2d 50 (5th Cir. 1981).

[24] *Id.* at 1379.

[25] 639 F.2d 206 (5th Cir. 1981), *cert. denied,* 451 U.S. 1021 (1981).

[26] *See United States* v. *Shapiro,* 669 F.2d 593 (9th Cir. 1982); *United States* v. *Solomon,* 678 F.2d 1246 (8th Cir. 1982); *Boyd* v. *LeFevre,* 519 F.Supp. 629 (E.D.N.Y. 1981).

[27] 417 F.Supp. 1126 (D. Colo. 1976).

[28] 577 F.2d 200 (3d Cir. 1978).

[29] *Id.* at 210.

[30] 468 F.Supp. 364 (S.D. Fla. 1979).

[31] 449 U.S. 361 at 365 [emphasis added].

[32] 513 F.Supp. 512 (D. Del. 1981).

[33] 57 Cal. App. 3d 437 (Cal. App. 1976).

[34] 411 N.Y.S.2d 970 (N.Y. Sup. Ct. 1978).

[35] 373 Mass. 438, 367 N.E.2d 635 (1977).

[36] *Id.* at 638.

[37] 449 U.S. 361 at 366.

[38] 646 F.2d 1298 (8th Cir. 1981), *cert. denied,* 70 L.Ed.2d 170 (1981).

[39] 678 F.2d 1246 (8th Cir. 1982).

[40] 429 U.S. 545 at 561.

[41] 669 F.2d 1131 (6th Cir. 1982).

[42] 518 F.Supp. 917 (S.D.N.Y. 1981).

[43] 449 U.S. 361 at 366.

[44] *United States* v. *Shapiro,* 669 F.2d 593 (9th Cir. 1982); *United States* v. *Solomon,* 679 F.2d 1246 (8th Cir. 1982); *United States* v. *Killian,* 639 F.2d 206 (5th Cir. 1981), *cert. denied,* 451 U.S. 1021 (1981); *United States* v. *Cross,* 638 F.2d 1375 (5th Cir. 1981), *rev'd on other grounds,* 655 F.2d 50 (5th Cir. 1981); *United States* v. *Boffa,* 513 F.Supp. 512 (D. Del. 1981).

[45] *See Brady* v. *Maryland,* 373 U.S. 83 (1963) in which the Supreme Court ruled that a defendant's right to due process of law is violated when evidence material to guilt and favorable to the accused is withheld by a prosecutor in the face of a specific defense request for it. *See also United States* v. *Agurs,* 427 U.S. 97 (1976) which further refined the *Brady* rule and held that some evidence is so clearly exculpatory that due process requires it to be revealed to the defense even in the absence of a specific request.

[46] An *in camera* hearing is a proceeding usually held in the chambers of a judge. These hearings are often conducted with only one party to the litigation being present when privileged information is considered.

[47] 385 U.S. 293 (1966).

[48] 429 U.S. 545 at 557.

[49] 430 A.2d 588 (Md. App. 1981).

[50] 641 F.2d 1235 (9th Cir. 1981), *cert. denied,* 70 L.Ed.2d 251 (1981).

[51] 679 F.2d at 1250.

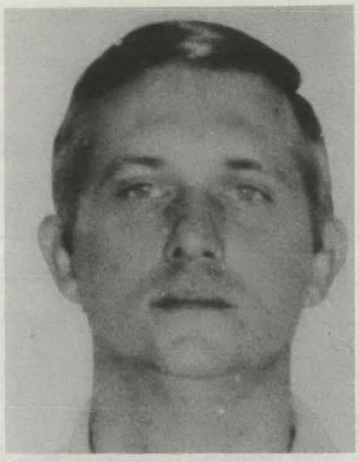
[52] *See Bivens* v. *Six Unknown Named Agents,* 403 U.S. 388 (1971).

[53] *See Monroe* v. *Pape,* 356 U.S. 167 (1961); *Pierson* v. *Ray,* 386 U.S. 547 (1967).

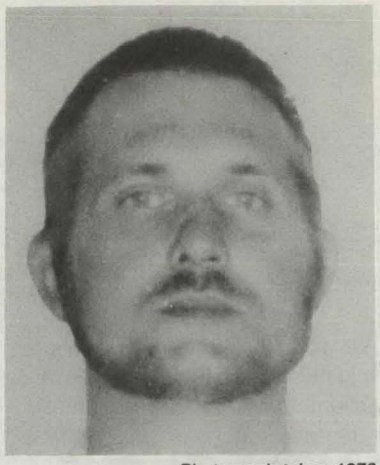
[54] For examples of civil suits based upon allegations of sixth amendment violations, see *Weatherford* v. *Bursey,* 429 U.S. 545 (1977) (lawsuit against State law enforcement officer); *Nees* v. *Bishop,* 524 F.Supp. 1310 (D. Colo. 1981) (lawsuit against FBI Agent). *See also Briggs* v. *Goodwin,* 32 Cr. L. 2370 (D.C. Cir. 1983).

[55] *See* the "Brief For the United States" at 36, *United States* v. *Morrison,* 449 U.S. 361 (1981).

WANTED BY THE FBI



Photograph taken 1977



Photograph taken 1979

James Ray Sapp

James Ray Sapp, also known as Peter Bosha, Woody Clayton, Leroy Harkins, Lee Roy Harkins, Buddy Sapp, J. R. Sapp, and Spencer Webster

Wanted for:

Interstate Flight—Statutory Rape, Incest, Aggravated Sodomy

The Crime

James Ray Sapp is being sought in connection with molesting four girls under the age of 14.

A Federal warrant was issued on July 31, 1979, in Atlanta, Ga.

Criminal Record

Sapp was convicted in Paulding County, Ga., on May 17, 1978, of five counts of statutory rape, one count of incest, and one count of aggravated sodomy. He escaped from the Paulding County Jail on November 18, 1978.

Description

Age	36, born August 29, 1946, Bleckley County, Ga.
Height	5'11" to 6'.
Weight	190 to 215 pounds.
Build	Large.
Hair	Light brown to blond.
Eyes	Blue.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Construction worker, former State trooper, motel operator, truckdriver.
Remarks	May have upper and lower false teeth.
Social Security Numbers Used	252-68-4088; 253-27-7589.
FBI No.	289 048 T5.

Classification Data:

NCIC Classification:
16TT06PM071010121305.

Fingerprint Classification:
16 M 9 T IM 7
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I.O. 4914

Caution

Sapp reportedly carries a .45-caliber automatic handgun and is proficient in the use of firearms. He should be considered both armed and extremely dangerous and an escape risk.

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.

Right middle fingerprint

U.S. GOVERNMENT PRINTING OFFICE : 1983 O - 403-494

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Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City State Zip

Interesting Pattern

The fingerprint pattern presented is interesting due to the odd formation of the ridges in front of the delta. This pattern is classified as a loop with 10 counts.

U.S. Department of Justice
Federal Bureau of Investigation

Official Business
Penalty for Private Use $300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS–432

Second Class

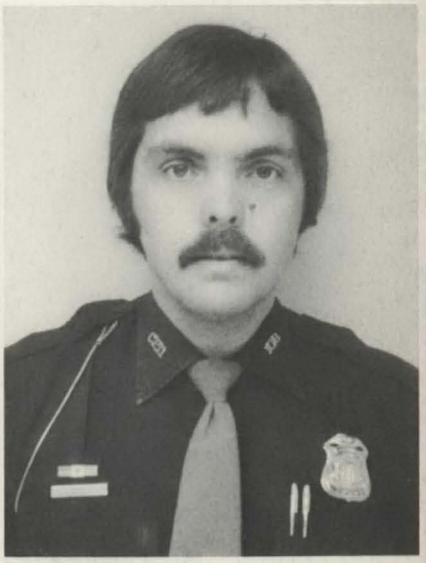
Washington, D.C. 20535

The Bulletin Notes

that while off duty and dining with their wives in another town, Cpl. Robert C. VanLith and Patrolman Gordon L. Stevens of the Canton, Mich., Police Department witnessed two armed men hold up the restaurant. The holdup men fired shots in the restaurant as they left and briefly took the cashier hostage. The two officers pursued and captured the robbers outside and recovered the money taken.

The Bulletin joins the town of Dearborn Heights, where the restaurant is located, in commending the courage of these two officers and their good judgment shown in not causing a shootout that would have endangered citizens.

Corporal VanLith



Patrolman Stevens