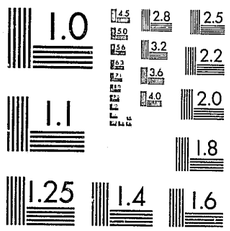

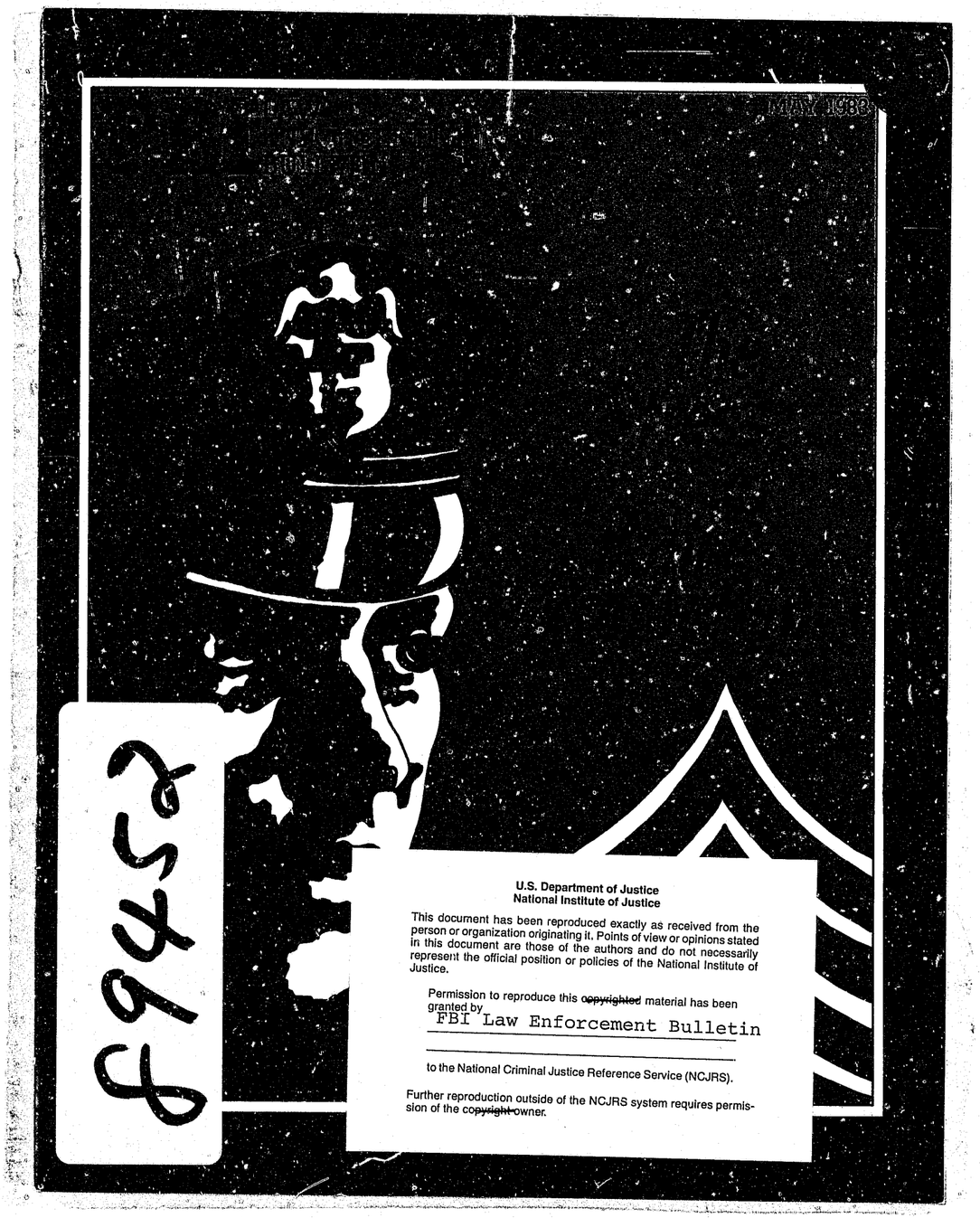

FBI LAW ENFORCEMENT BULLETIN

MAY 1983, VOLUME 52, NUMBER 5

Contents

The Cover: Unique stressors are placed upon police officers seeking promotion. See story page 2.

Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

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Director's Message

This month marks the observance of Law Day, on May 1, and Police Week, the first week of May. The purpose of Law Day is to remind our citizens of our heritage of law as the basis of the social contract which governs our way of life.

The relationship between Law Day and Police Week is of vital concern to all citizens. Police, as every modern society has agreed, are the necessary first element of an ordered system of government and police officers are the most visible symbol of our rule of law. The murder of any police officer undercuts the rule of law in a way which affects all our citizens.

In 1981, 91 law enforcement officers were feloniously killed in the line of duty. Last year saw the same number slain, of the more than 440,000 police officers on the rolls today. While this is fewer officers than in any of the last 10 years, it is still a most sobering statistic for the police manager, not to mention the sorrow visited upon survivors.

The FBI analyzes each shooting incident involving an Agent, and our Training Division constantly adapts its efforts in light of the lessons thus learned. The effort extends to our police training programs, both in the National Academy and in the field.

Each police executive should do no less—the safety of each and every officer under his command should be a primary management concern. The FBI also publishes, through the Uniform Crime Reporting system, a summary of law enforcement officers killed to help provide the law enforcement community the data needed to reduce these tragedies more effectively. The tragic loss of just one police officer in terms of talent, experience, and training, as well as the disastrous loss to the family, justifies considerable expenditure of government funds toward prevention.

The necessary research of this problem is ongoing, as are training efforts to best equip the individual officer for physical survival. There is new equipment available, in the area of ballistic protection, to help meet the threat of the police killer.

It is appropriate, at this time when we observe Law Day and Police Week, that we seek new and more effective ways to safeguard the lives and safety of the police officers who protect us all.

William H. Webster
Director
May 1, 1983

The Stress of Police Promotion

By
ROBERT B. SCHAEFER
Special Agent
Behavioral Science Unit
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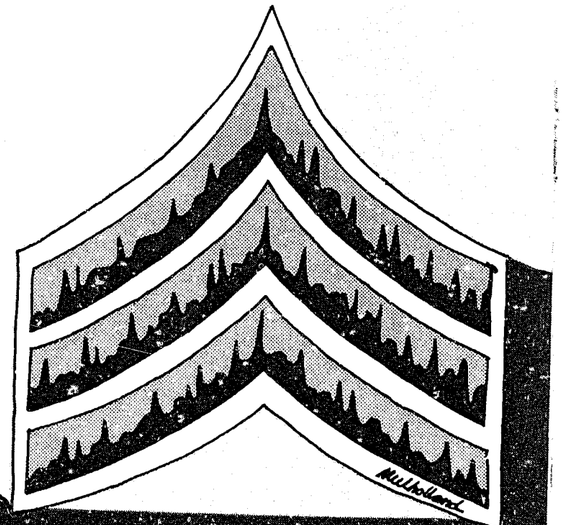
Quantico, Va.



Special Agent Schaefer

The concept of competitive promotion is relatively new in the criminal justice system. Prior to organized law enforcement, the head of a family, tribe, or clan assumed a position of authority. Later, sheriffs and constables were appointed by the crown, governor, or finally, by popular election.[1] This led to the birth of "politics" within police systems. The police officer who had the most personal influence or who was willing to pay the highest price for promotion was raised to the next highest grade.[2] Today, promotions are based on testing, interviews, and analyses of ability and performance. As a result, the promotional process imposes unique stressors upon police officers.

Stress, in general terms, can be defined as the amount of wear and tear on the human body caused by living.[3] Police work has been traditionally referred to as an occupation that leads to a variety of stress-related maladies, such as hypertension, cardiovascular irregularities, and gastrointestional disorders.[4] This is probably due, in part, to the actual physical dangers associated with being a police officer.

The law enforcement profession, however, creates other stresses, less physical in nature, but equally wearing. These emotional stressors stem from the ingestion and "burying alive" of undigested everyday negative stress, also known as distress. This distress, inherent in the internal and external environmental demands made upon police officers, modifies their behavior. Among the least explored areas of this distress is the stress associated with promotion and career development. Such stress can be negative (distress) or positive (eustress), depending upon the individual's ability to keep the stress within his individual tolerance or elastic limits. This limit varies from individual to individual. If an individual does recognize this limit, stress can be used to his advantage in the career development and promotional system.

The first stressor to be considered and understood in modern police career development systems is the awareness that organizational charts are hierarchical and paramilitary—there is very little room at the top. There are more police officers than sergeants, more sergeants than lieutenants, etc.[5] This fact is frequently ignored or overlooked by employees and management officials, and as a consequence, becomes a source of severe stress for many officers. Phil Caruso, President of the New York City Police Department Patrolmen's Benevolent Association, recently stated, "The department no longer wants seasoned senior people doing the headquarters jobs, and there is little or no promotion."[6] This stressor is, in part, responsible for reports of spiraling retirements reaching 2,026 for the fiscal year ending June 30, 1982, in New York City.[7] These officers are seeking alternatives for what Caruso has labeled "a deadend job."[8]

A second stressor is the promotional examination process. Civil service laws in most cities provide that promotions be made through successive ranks. Promotional examinations are open only to those who have served in the next lower rank for a specified period of time.

"The long term effects on the self-esteem of those officers passed over, yet considered qualified by examination standards for the vacant position, are devastating."

The written examination is usually prepared by either the Civil Service Commission or the department itself to test a candidate's knowledge and understanding of subject matter required for a new position. Normally, an officer's educational background does not play a significant role in promotion, except as it contributes to the acquisition of "test-taking ability," which permits his moving up the promotional ladder at an accelerated rate.

Traditionally, promotional examinations have had few, if any, questions pertaining to the measurement of general management concepts.[9] This generates frustration among police officers who believe that promotions should be based on their competency to handle particular positions, rather than on a test of memory and reading skills. Police officers should be promoted because they are competent to carry out the functions and tasks demanded by the particular ranks for which they are competing.[10] All too often, as a result of the ability to do well on tests, one falls prey to the "Peter Principle." The "Peter Principle" in a police hierarchy emerges when an employee tends to rise to his level of incompetence.[11] A common assumption made in the law enforcement profession is that an individual who performs well as a sergeant will perform equally as well as a lieutenant and so forth. However, experience has demonstrated that this is not necessarily true.[12]

The written examinations police officers "cram" for are a continuing source of frustration for police officers. They are usually the chief factor in determining promotion. Using the written test to measure management skills, such as planning, organizing, and leadership, severely limits some officers.[13] A recent study of the promotional methods of 10 law enforcement agencies reflected that respondents felt frustrated by the use of a single selection instrument.[14] Their frustration is easily recognizable in the following comments:

"Written tests only measure ability to retain study material."

"The written exam did not test true knowledge of my profession. In our case the officer with the best memorization capabilities has the best chance for promotion."

"No written exam can evaluate potential, judgment, or commonsense."

"I completed only the written test and I feel that no written test can evaluate a person's supervisory capabilities. . . ."[15]

Officers often become obsessed with the written examination. Paradoxically, this worry affects their efficiency and performance. The level of stress tends to increase with the announcement of a promotional examination within a department.[16] Although this stress can be healthy if properly directed, when taken to extremes, it can upset the relationships of an entire police department.

The written examination is usually followed by an interview conducted by three or more high-ranking departmental officers. The next step is the preparation of a special or promotional performance rating for each candidate. These performance ratings frequently include subjective items such as reliability, dependability, job attitude, and quality of work. Supplementary criteria such as work products, education, citations, physical and medical condition, disciplinary action, and veterans' credit may be interwoven into the performance rating or given special consideration.[17]

When the examinations and ratings are completed and the candidates are listed in the order in which they have passed, the appointing authority of the police department is generally given the opportunity of selecting one out of every three names presented to him from the top of the list for every vacancy available.[18]

The creation and publication of the promotional list is a significant stressor. The long term effects on the self-esteem of those officers passed over, yet considered qualified by examination standards for the vacant position, are devastating. In addition, Equal Employment Opportunity (EEO) court decisions have frozen promotional lists across the United States in cities such as Atlanta, Boston, Chicago, Los Angeles, Memphis, New Orleans, and New York.[19] Organizational stress mounts and departments experience the needless loss of highly competent, trained, experienced officers to other law enforcement agencies or even to other professions.

Promotional opportunities often occur during the midlife emotional crisis in a person's life cycle. Thus, the officer is competing at a time when he is already experiencing personal stress. These stages of development for both men and women have been identified and addressed by both Yale social psychologist Daniel Levinson[20] and author Gail Sheehey.[21] The developmental stage most likely to affect those in career development has been called the midlife emotional crisis. This typically occurs in both males and females between the ages of 35 and 42,[22] although it can occur earlier or later in life. This period presents an individual with predictable challenges, crises, and problems that must be resolved. If this individual is already experiencing stress as a result of participation in the career development program and is several managerial levels below where he or she expected to be, the midlife crisis can intensify this career development stress. Without recognition and understanding of this stage, this stress can lead to feelings of apathy or to a pattern of blaming one's failure on others or the system.

Recommendations

Stressors for those involved in the career development program will never be eliminated, but certain logical steps may be taken to keep stress within one's own tolerance limits. Police executives throughout the United States should examine their department's promotional policies to determine whether their policies are realistic in terms of modern police organizations. Executives should also examine the entire system to ensure it has been designed to operate in a manner that will *reduce* rather than *induce* stress. The administrator needs to ask himself, "Have I, as an administrator, determined the best method for identifying the specific competencies associated with positions and ranks?" Only after the administrator has discovered what these specific competencies are, can they be measured.[23] Written tests have been challenged, and promotional lists permit contamination by "politics" or "palace guards." One method for reducing test and list stress is the implementation of assessment centers to choose supervisory and management personnel.

The administrators of the Metropolitan Police Department (MPD), Washington, D.C., have recognized and are actively attempting to minimize promotional stress by standardization and removal of subjectivity from promotions up to and including the rank of captain. Their new promotional examination system consists of a written examination to test knowledge and a performance-based phase to test management skills. The written examinations are made up by MPD sworn personnel. Inclusion of EEO officers in the promotional system from the outset provides guidance and prevents affirmative action issues from arising.[24]

In Chicago, Ill., psychologist William Ruch has developed an assessment center entitled "What Now Sergeant?"[25] Candidates for promotion are observed during an inbasket exercise to rate their ability to manage time and prioritize work. Additionally, the candidates participate in simulated exercises to rate their ability to react as a manager when there is no "operational cookbook" available to cover the varying situations that arise. The cities of Memphis, New Orleans, Richmond, and Rochester are also using assessment centers for the selection of promotional candidates. Traditional multiple choice and essay-type examinations have not been favorably received by the courts, while the opposite has been true of assessment centers.[26]

It is also important for the individual officer to learn to take personal inventory of himself. This includes asking three important questions: Who am I? Where am I going? and Why? The next step is to move at his own pace, carrying with him an awareness of the stressors to which he is likely to be exposed. Learning to visualize several alternatives may also assist an officer in surmounting those inevitable, uncontrollable, organizational barriers toward upward mobility.

Stressors for officers participating in the career development program are both numerous and varied. They begin with the very organizational structure of police departments and are further complicated by written and oral examinations, court decisions, and even the officer's self-induced stress. Police executives have begun to recognize these unique stressors. Future efforts are being directed toward *reducing* rather than *inducing* promotional stress. The use of assessment centers within police departments to replace the traditional written examination represents a positive step in that direction.

FBI

"Stressors for those involved in the career development program will never be eliminated, but certain logical steps may be taken to keep stress within one's own tolerance limits."

Footnotes

[1] National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Police* (Washington, D.C.: U. S. Government Printing Office, 1973), p.6.
[2] Leonard Felix Fuld, *Police Administration: A Critical Study of Police Organizations in The U. S. and Abroad* (New York: G. P. Putnam and Sons, 1909), p.425. (Though dated, this text provides an instructive and valuable overview of the development of police organizations.)
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[13] Supra note 9.
[14] John F. Miller, "The Police Promotional Process," *The Police Chief,* November 1981, p.52.
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[17] Sidney Epstein and Richard S. Layman, *Guidelines For Police Performance and Placement Procedures* (Washington, D. C.: U. S. Department of Justice, 1973), p.28.
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[20] Daniel J. Levinson with C. N. Darrow, E. B. Klein, M. H. Levinson, and B. McKee, *The Seasons of a Man's Life* (New York: Alfred A. Knopf, Inc., 1978).
[21] Gail Sheehey, *Passages: Predictable Crises in Adult Life,* (New York: Bantam Books Edition, 1977).
[22] Daniel J. Levinson, Charlotte N. Darrow, Edward B. Klein, Maria H. Levinson, Braxton McKee, "Periods in the Adult Development of Men: Ages 18 to 45" *Counseling Psychologist,* vol. 6, No. 1, 1976, p.21.
[23] Supra note 5.
[24] Ronald E. Crytzer, David Faison, Jr., Max J. Krupo, Thomas Novak, Fred W. Raines, Jimmie L. Wilson, "Promotion Process," *The Police Chief,* January 1981, p.44.
[25] Supra note 20.
[26] Ibid.

AARP Seeking Information on Volunteers in Law Enforcement

A nationwide study of voluntarism in law enforcement is being conducted by the Criminal Justice Services Section of the American Association of Retired Persons (AARP). AARP requests readers' assistance in identifying agencies to be contacted. Data will be collected from law enforcement executives, volunteer supervisors, and volunteers themselves.

Please send AARP the names and addresses of agencies in which volunteers serve in crime prevention, crime analysis, or other support activities. If known, also include the phone number and person to be contacted within that agency. Send this information to:

Criminal Justice Services
AARP Program Department
1909 K Street, N.W.
Washington, D.C. 20049

Findings of the study will be disseminated in 1984.

Geometric Bloodstain Interpretation

By
SGT. TOM BEVEL
Police Department
Oklahoma City, Okla.

Crimes of violence frequently produce bloodstains which, when properly studied, will aid in reconstructing the occurrences that took place to produce the patterns found at the scene. In the study of specific bloodstain patterns, care must be taken to record location, stain shape, direction, size, and surface of impact area. When this information is applied to the known physical characteristics of blood, the investigator may be able to disclose the:

1) Origin of blood,
2) Distance between impact area and origin at the time of occurrence,
3) Type and direction of impact,
4) Number of blows,
5) Position of victim during attack, and
6) Movement and direction of suspect and victim during bloodshed and after.[1]

Laws of Physics on Fluids

Due to a molecular attraction called cohesive force, a drop of blood is held together by a skin similar to a balloon. The skin is actually surface tension or an outer covering of the drop. This principle is similar to that of a razor blade floating on water if laid gently onto the surface. It is supported by the unbroken skin of the water. However, if the blade is held on its edge and placed on the water, the sharp edge will puncture the skin or surface tension, and the razor blade will sink. It is cohesive force and surface tension which cause a drop to be circular in shape during free fall and to resist rupturing even upon impact. On a perfectly smooth, clean surface, a drop will not rupture or break upon impact, regardless of the height of the free fall. However, on a rough surface or due to some other force or energy, this principle does not hold true.

During the study of a crime scene, the investigator should keep in mind the following known characteristics of blood:

1) Blood is uniform in character and can reproduce specific patterns.
2) A drop of blood is circular in shape during free fall.
3) A drop of blood does not break up unless acted upon by some force or energy.
4) A single drop of blood has a volume of .05ml, unless acted upon by some force or energy.
5) Terminal velocity is 25.1′ per second (±0.5′) in free fall.
6) The majority of high velocity droplets have diameters of less than 1mm, which travel usually no further than 46″.[2]

Distance and Direction

To estimate accurately the distance a blood drop has fallen, it is necessary to conduct a series of blood drop vs. distance experiments on the specific surface in question and to use these as known standards for direct comparison to the unknown.

Determining the directionality of blood droplets is possible because a

Sergeant Bevel

Lloyd A. Gramling
Chief of Police

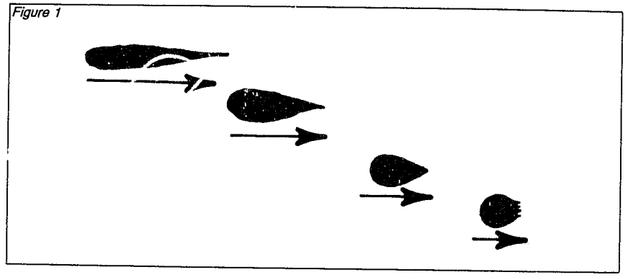
droplet striking an angled surface produces a teardrop-shaped pattern. This is caused by the physical law of inertia, i.e., the resistance of a moving body to any force operating to change its motion, direction, or speed. Therefore, as the speed is dissipated abruptly by the surface upon which it impacts, the blood droplet trails off into a pointed end of varying degrees, depending on the angle of the surface. The greater the angle, the more elongated and narrower the stain pattern produced. The pointed end shows the direction of travel of the droplet.[3] (See fig. 1.)

Blood dropping onto a flat surface that is nearly horizontal will produce an elliptical rather than a circular stain. As the angle decreases, the stain patterns become more elongated, as illustrated in figure 3.

There are certain points to remember when interpreting bloodstain patterns:

1) Surface texture, not distance fallen, determines the degree of spatter.
2) Teardrop stains (pointed ends) point in the direction of travel. Smaller and longer droplets have their pointed ends pointing back to the larger stains from which they originated.
3) The smaller the drops of blood, the greater the energy of impact.
4) The angle of impact of a bloodstain may be estimated by the geometry of the stain.[4]

Figure 1



Secondary Drops and Impact Angle

Primary blood droplets may produce smaller castoff spatters which point back to the source. The smaller droplets break away from the parent drop due to inertia or resistance to being stopped. These droplets travel close to the surface until impact, producing exclamation-like marks which point back to the parent drop. (See fig. 2.)

When dealing with firearms and bloodstain evidence, the following rules apply:

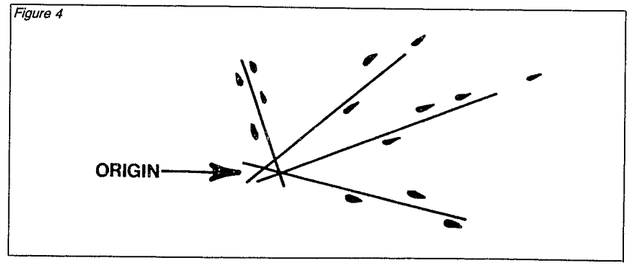
1) Back spatter usually occurs less than 3″ from muzzle to target area when blood is found inside the barrel.
2) The larger the caliber or gage, the greater the depth of blood penetration into the barrel.
3) Less penetration and concentration of back spatter occurs in recoil autoloading weapons than weapons whose barrel does not recoil.
4) Higher energy loads will produce more depth of back spatter penetration than standard ammunition.
5) When double-barrel shotguns are discharged on body contact, considerable back spatter (up to 12 cm) occurs in the dormant barrel.
6) The majority of blood spatter patterns will be 1mm or less in diameter.[5]

Figure 2

Documentation

The purpose of documentation is to show location, direction, size, shape, impact surface, angle, number of stains and/or volume, and human blood type.[6] However, reconstructing the chain of events that occurred at a crime scene where bloodstain patterns are present is directly proportional to the skill and care taken while examining the scene. Since the ultimate test is effective prosecution in a court of law, successful presentation of physical evidence can only be accomplished if there is proper documentation, collection, and preservation of bloodstains. Therefore, the scene should first be processed for physical evidence that is easily lost or destroyed. Unlike hairs or fibers, bloodstains are easily found with proper lighting, and once dry, will stay in place in most instances. However, they can become tainted if care is not taken when processing the crime scene. For example, the powder used when dusting for latent prints can interfere with the analysis of a bloodstain and may very well make an analysis impossible. It is extremely important to the outcome of an investigation that all evidence is properly collected, packaged, marked, and preserved.

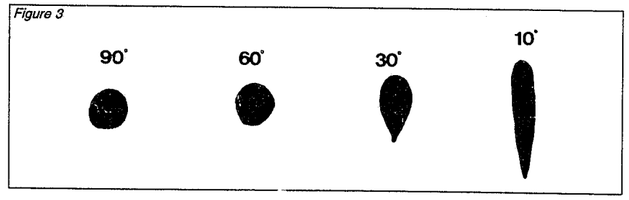
Figure 4



Photographs taken of the scene document bloodstain evidence, showing both location and relationships. Closeups must be taken with a scale of reference, such as a metric ruler, and at a 90° angle from stain to camera. The investigator should tape a string of contrasting color to the background beside the stains that form a trail to show directionality. All strings should run parallel to the surface and in the direction shown by the stains. At some point, the strings may converge if the stains form a trail made by a swinging object. A photograph should be taken to show this convergence, which should also be measured and sketched as shown in figure 4.

If the stains are on a movable object, they can be transported to the lab for more detailed study, although this is not necessary in most cases if they are properly documented. However, before the object is moved, the stains should be protected with clean paper and tape. It is essential that the item is photographed, measured, and sketched before transporting. Also, directional markings (east, west, north, and south) should be made so that the direction of the stains can be reestablished.[7]

Figure 3



"Bloodstain pattern interpretation can be a valuable investigative aid in the reconstruction of a violent crime scene."

Although there are some who assert that stains can also be preserved by fingerprint tape used for lifting latents, I prefer not to use this method. However, for those interested in the technique, the stain is covered with fingerprint tape and then placed on a contrasting colored cardboard background or on clear plastic, such as celluloid. The clear plastic can be used as a negative to contact print 1:1 photographs of the stains on high-contrast paper. One must keep in mind that using the tape would probably destroy the ability to do ABO and enzyme typing, eliminating the option for serological exams if deemed necessary in the future.

If the scene has been properly documented by photographs, sketches, measurements, and proper collection of stains, evaluation by trained blood interpreters can be accomplished even years later.

Clothing Examination

A careful examination should be made of the clothing the suspect was believed to be wearing during the commission of the crime. Again, location, size, and shape may help prove or refute any story of what took place. For example, if the victim was kicked repeatedly by the suspect, medium velocity spatter should be found on the lower front portion of the clothing covering the ankle and leg used in the assault. This will often include some upward spatter on the inside of the pant cuff. Also be sure to examine shoes and socks. Likewise, medium velocity spatter might be found on the clothing covering the wrist and arm, if an instrument or hand was used in the assault. Spatters may also be found on the inside cuff of longsleeved shirts.[8]

Summary

Bloodstain pattern interpretation can be a valuable investigative aid in the reconstruction of a violent crime scene. However, it must be stressed that this article is not an attempt to make the reader an expert in this technique. It is designed to make the reader aware of:

1) The more basic principles of bloodstain interpretation,
2) What this discipline can do to aid in the investigation of violent crimes, and
3) The proper documentation and collection of bloodstains.

To become qualified, an individual must have extensive training in this technique and must begin a lengthy period of personal experimentation to establish the basic principles as scientifically valid. Before a qualified person testifies in court as to his opinion of what occurred to cause a specific bloodstain pattern, he must perform experiments to recreate and duplicate the specific patterns. If the specific pattern cannot be duplicated using the occurrences as set forth by the expert's opinion, then his opinion is simply useless in court and cannot be accepted.

For additional information, contact Sgt. Tom Bevel, Oklahoma City Police Department, 701 Colcord Drive, Oklahoma City, Okla. 73102, or call (405) 232-5331, ext. 494. **FBI**

Footnotes

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PERF Acts to Improve Citizen Complaint Procedures

By
JOHN F. DUFFY
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Sheriff's Department
San Diego, Calif.

The ability of law enforcement agencies to provide citizens with effective mechanisms with which to seek redress for legitimate grievances against the police has been sharply challenged in recent years. Citizens in many communities say that they are harassed and intimidated when they file a complaint, and moreover, that "nothing happens" after the complaint has been filed. As a result, they believe that guilty officers are not punished—that, quite literally, the agency is "above the law."

These citizen perceptions are serious because they threaten the very core of community trust essential to all law enforcement agencies. When citizens believe that law enforcement officers are accountable to no one, they become alienated from and distrustful of those officers. The ability of government to exercise legitimate authority is challenged and law enforcement becomes an increasingly antagonistic task, often resulting in public disorder. We are reminded of the recent loss of life and property in Miami's Liberty City area following the acquittal of four Caucasian Dade County police officers charged with the fatal beating of a black insurance executive.

While it is difficult to determine if, in fact, reported incidents of harassment and intimidation are increasing, there is ample evidence to suggest that citizens in minority group neighborhoods, especially, believe the situation is becoming more serious. One indication of this concern is the dramatic increase in the public's demand for external controls on law enforcement agencies, most notably of civilian review boards. Since 1980, civilian review boards have been created in Oakland, Calif., Washington, D.C., Miami, Fla., and Dallas, Tex. Formation of these boards became a priority of the National Association for the Advancement of Colored People and of La Raza.[1] The U.S. Department of Justice also became involved in the issue when it filed in 1979 an unprecedented lawsuit against the Philadelphia Police Department, alleging a pattern of violations of citizens' civil rights.[2]

These developments are symptomatic of a gathering pessimism among many citizens about the legitimacy of law enforcement authority and the inherent fairness of its application. Simply stated, it does not appear that existing citizen complaint procedures in many agencies guarantee full and impartial treatment of citizens' grievances, nor do they encourage an examination of agency operations which may permit abuse of authority to occur.

The Forum Response

Confronted with these challenges to the integrity of the law enforcement profession, the member police chiefs and sheriffs of the Police Executive Research Forum (PERF) decided to address the problem. It was decided by a newly formed policy committee that a model policy on citizen complaint procedures should be developed. This decision was made not because it was necessarily the most relevant issue to Forum members, but because the problem of deteriorating citizen/police relationships was one of the most serious facing us in 1981. The members of the committee regarded these citizen concerns as an "early warning signal" that serious problems lay ahead unless we assumed a leadership position to correct both real and perceived grievances about our citizen complaint investigations.

Sheriff Duffy

The first step was to determine the current state-of-the-art concerning the nature, scope, and operations of existing citizen complaint procedures. Copies of the complaint procedures and relevant materials were solicited from our 60 member agencies and were then reviewed and analyzed by Forum staff. There was specific interest in several areas including: (1) The extent of due process protections afforded to citizens and accused officers; (2) the methods of informing citizens about the complaint process; (3) the variety of investigation techniques used; and (4) the avenues of appeal for citizens and officers. As might be expected, there was a full range of complaint procedures, from closed authoritarian models to open due process models. Aspects of some complaint procedures were so complicated that one would need a law degree to understand them, while others were so simple that they could not possibly provide a credible investigation of complaints. Most agencies' procedures, however, were of above-average quality and provided the staff with useful provisions that were later incorporated into the model policy.

After gaining an understanding of the range of complaint procedures, the staff reviewed the existing research and literature in the areas of police accountability, officer misconduct, and disciplinary systems. It was then decided to produce a model policy statement on handling citizen complaints which could be used by law enforcement agencies across the Nation. Such a policy would establish standards by which agencies could evaluate their current procedures, as well as guidelines for the development of new procedures. While it was recognized that some provisions recommended would conflict with State laws, municipal ordinances, and collective bargaining agreements in some jurisdictions, it was believed that a broad range of procedures could be established that would be acceptable and legal in most agencies. Our hope was that any law enforcement agency needing a policy on citizens' complaints would incorporate as much of our model policy as possible.

Development of the Policy

When the four members of the Forum's policy committee began work on the model policy statement, there was considerable discussion and debate over how the policy should be structured and organized. There also were differences of opinions over several substantive areas that would inevitably be included in the policy—most notably the use of polygraphs and hearing boards for accused officers. It was decided that the Forum staff would develop a working draft of the model policy, and in specific areas where there was disagreement among committee members, three alternative proposals would be submitted for dealing with those specific areas of complaint investigation and disciplinary procedures.

This process worked well. Not only did the committee members have a chance to work out a collective agreement about the overall nature and scope of the policy, but they were also able to evaluate different options for controversial provisions. These steps were taken during a 3-month review and comment phase in which

"Our aim was to provide a framework that would ensure a realistic and meaningful process by which law enforcement agencies can objectively respond to citizen complaints, as well as to protect the legitimate rights and preserve the morale of law enforcement officers."

Forum staff submitted three drafts of the model policy to committee members, each time indicating what changes were made and why. In mid-August 1981, the policy committee submitted the final draft of the policy to the general Forum members, who were asked to review it in preparation for a ratification vote during the mid-term membership meeting.

Prior to the September meeting, six key provisions had not been resolved by the policy committee, so three alternative proposals for each provision were submitted to the membership. The unresolved provisions were the scope of progressive penalties to use as disciplinary actions, whether to establish a maximum penalty for each category of misconduct, when and how to terminate complaint investigations, officer use of polygraph tests, the extent of complainants' right to know of imposed disciplinary action, and the admissibility of polygraph test results at factual hearings. These provisions were debated for several hours during the meeting and a vote was taken on each provision. A final vote was cast and Forum members ratified the entire model policy.

Key Provisions

The 20-page model policy adopted by Forum members is significant in many respects. Not only does it establish strict standards for implementing a competent process for handling citizens' complaints, but it does so in clear and concise language that is understandable to citizens and officers alike. It is organized into three major sections, including:

1) *Prevention of officer misconduct* is accomplished through proper recruitment and selection procedures, proper recruit and inservice training, issuance of a written directive manual, proper training of agency supervisors, community outreach, and proper data collection and analysis.
2) *Categories of misconduct,* including criminal complaints, excessive force, improper arrest, improper entry, improper search, harassment, demeanor, serious rule infractions, and minor rule infractions; and
3) *The complaint process* from the time the complaint is processed to the conclusions of fact and possible imposition of disciplinary actions.

The policy is also unique because of its dual emphasis on fairness and effectiveness. Since both citizens and accused officers must believe that the process is not weighted against them and that their respective rights to due process will be meticulously insured, due process safeguards were included. These are the right to counsel, several avenues of appeal for both parties, and appropriate standards of evidence and testimony. It was believed that such efforts could aid in restoring citizens' faith in the integrity of the complaint system and in increasing officers' sensitivity to respecting citizens' rights when conducting their duties.

Additional provisions to increase citizens' faith in the fairness of the complaint process have been recommended. These include providing citizens with a brochure describing in clear and concise language the complaint process; accepting complaints from all sources, including juveniles, persons under arrest, and even anonymous persons, so long as the complaints contain sufficient factual information on which to base an investigation; designating a clearly marked and accessible place in the police agency to receive complaints; establishing a 120-day limit for the investigation and disposition of each complaint; sending citizens a written explanation of the investigation outcome; and issuing an annual report to the public which summarizes the types of complaints received and their dispositions.

The policy is also designed to ensure a complaint system that is effective in conducting a thorough and impartial investigation of the complaints and one that imposes appropriate disciplinary actions on guilty officers. Equally important, the system protects officers from false and malicious charges and provides for sanctions against citizens who file such charges.

Our aim was to provide a framework that would ensure a realistic and meaningful process by which law enforcement agencies can objectively respond to citizen complaints, as well as to protect the legitimate rights and preserve the morale of law enforcement officers. To achieve this difficult balance, law enforcement professionals had to change the way some officers have regarded citizens' complaints. Instead of immediately taking a defensive posture and "closing ranks," we had to step back and realize that these complaints are an important source of information about the public perception of the department and officer performance. Seen in this perspective, the value of these complaints in identifying

law enforcement practices which citizens either don't understand or don't accept is recognized. Further, the complaints can help point out deficiencies in agency policies or procedures which may permit or even encourage officer misconduct.

Impact of the Policy

Since the release in December 1981, the Forum has responded to requests for over 600 copies of the model policy from law enforcement agencies, district attorneys, civil rights advocates, elected officials, and citizens' groups. Provisions of the policy are also being considered in pending legislation in several States.

Aside from this heartening public acclaim and the extensive press coverage which followed the release of the policy, the most important impact has been the enthusiasm with which our member chiefs and sheriffs have implemented the policy or major portions of it in their own agencies. Chiefs in Charlotte, N.C., Miami, Fla., and Racine, Wis., were quick to implement major provisions, while many other chiefs are using the policy to evaluate the effectiveness of their own current complaint procedures, with an eye toward improvement.

Another heartening response to the policy has come from numerous chiefs of smaller law enforcement agencies. One chief wrote to compliment the Forum on the high quality of the policy, noting that "It would have taken smaller departments 10 years to develop a policy such as this." Another chief wrote, "I want you to know . . . that there is support of the Forum's (model policy) guidelines by smaller law enforcement agencies and that . . . I follow them when investigating complaints of police misconduct by my agency's officers." A chief in yet another department said the policy would help convince his political leadership of the need to have a fair, consistent, and objective means to handle citizen complaints about his officers.

During the past 7 years, the Forum's mission has remained unchanged. It still provides a mechanism for law enforcement executives from larger jurisdictions to come together and explore problems of mutual and national concern. We will continue our efforts to improve the law enforcement profession and to provide information and assistance on a range of issues that are important to us. It is our belief that through research, discussion, and debate, we most effectively learn from each other and initiate meaningful and effective change in our profession.

FBI

What Is PERF?

A brief review of the history of the Forum reveals a fundamental commitment to research and the exploration of new ideas that made development of this model policy possible. Founded in 1975 following a series of informal discussions among 10 police chiefs who were particularly interested in exchanging new ideas and promoting innovation in the management of law enforcement agencies, the Police Executive Research Forum has always been associated with efforts to promote innovation and improvement in policing. Thus, this group of Forum founders were characterized by an unabashed curiosity, a willingness to experiment and depart from tradition, and a genuine desire to improve the quality of the law enforcement profession in America.

The Forum's founders also placed a great deal of emphasis on academic learning and experimentation as ways to improve law enforcement. The underlying principles of the Forum, to which all members must subscribe, emphasize the necessity of research and the open debate of all views on important police issues. There is a firm belief in the importance of college education for police chiefs, and as of 1977, all new Forum members must have at least a 4-year college degree.

The founders wanted a professional association where chiefs and sheriffs of large jurisdictions who share similar crime and police problems could discuss mutual concerns and exchange ideas. Candidate members, nominated by and voted in by existing Forum members, must be chief executives of a full-service police agency with at least 200 employees or serve a population of at least 100,000. The focus of the organization's work is on those issues most relevant and sometimes unique to large police agencies, much in the way the U.S. Conference of Mayors is concerned only with big-city issues. The three criteria for membership in the Forum assure the establishment of an association serving a particular group of law enforcement executives who share mutual problems and a similar philosophy of management.

In order to include individuals who do not meet the educational or size criteria or who are not currently serving as a law enforcement executive, the Forum has established an additional membership category. These subscribing members may also be members of law enforcement agencies or of other criminal justice agencies, as well as criminal justice professors, researchers, and planners.

Footnotes

[1] Thomas A. Johnson. "N.A.A.C.P. Urging Review by Civilians of Police Acts." *New York Times*, January 12, 1980, p. A10.

[2] *United States v. City of Philadelphia*, No. 80-1348 (3d Cir. December 29, 1980), 482 F. Supp. 1248 (E.D. Pa. 1979). While the case was dismissed by the Federal district court for lack of statutory authority to bring the suit, the Justice Department continues to investigate cases of police misconduct that are within its statutory authority.

1983 National Law Enforcement Explorer Conference

The setting is Fort Collins, Colo.—a quiet college town nestled at the foot of the Rocky Mountains just an hour's drive north of Denver. A college dormitory believed to be the headquarters of a major international narcotics cartel is about to be raided. In the next building, barricaded gunmen hold a young woman hostage while police negotiators attempt to convince them to surrender. A few blocks away, investigators meticulously search an apartment for fingerprints and other clues to the identity of the fiendish murderer of its occupant. Nearby, a group of idealistic young people discuss the use of worldwide terrorism to further political causes. Over a dozen of the world's top law enforcement officials have traveled here to lend their expertise in resolving these and other ongoing crime problems.

An international crime wave of unprecedented proportions? The nightmare of every police officer suddenly come true? The first chapter of a new detective novel? The opening scenes from another James Bond movie? The answer is none of the above.

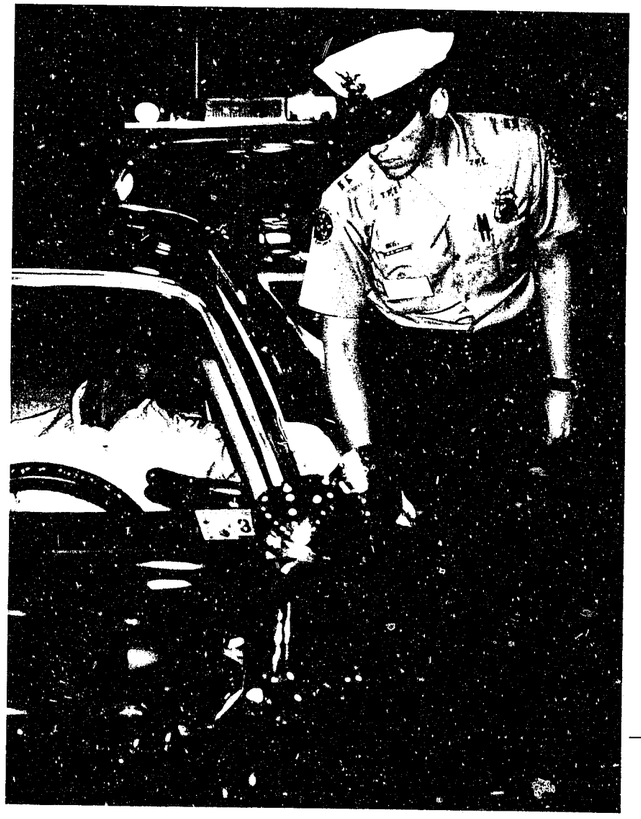
What you have just read is a preview of some of the training programs being planned for the 1983 National Law Enforcement Explorer Conference to be held July 11–16, 1983, on the campus of Colorado State University.

Law Enforcement Explorers are young men and women, ages 14 through 20 years, who are interested in careers in law enforcement, and who, under the auspices of the Boy Scouts of America, are finding out more about their intended profession. Over 35,000 young adults nationwide are members of 1,800 Explorer posts sponsored by a wide variety of Federal, State, and local law enforcement agencies. Approximately 2,000 of these Explorers come together every 2 years on a major university campus for a week-long program of seminars, roleplaying competitive events, demonstrations, and meetings with an impressive array of law enforcement and criminal justice officials.

FBI Director William H. Webster is serving as chairman for the 1983 conference, and he will be joined by a number of top-level foreign and domestic police officials in putting on this program. Included in this group are Acting Administrator Francis Mullen of the Drug Enforcement Administration, Director John Simpson of the U.S. Secret Service, Commissioner William von Raab of the U.S. Customs Service, Maj. Gen. Paul Timmerberg, Commander of the U.S. Army Criminal Investigation Command, and Chief Howard Runyon,

First Vice President of the International Association of Chiefs of Police. They will be joined by the top executives of a number of major law enforcement agencies from around the world who will participate in a panel discussion comparing the criminal justice systems in their countries.

Explorers will have the opportunity to test their skill at searching crime scenes, negotiating the release of hostages, investigating traffic accidents, resolving domestic disputes, and conducting crime prevention surveys. They can attend seminars on such diverse topics as international drug trafficking,



organized crime, terrorism, future employment trends in law enforcement, and the use of forensic sciences in criminal investigations. Each seminar will be moderated by experts in these fields.

At the end of the conference, these future citizens will return to their homes better prepared to provide the services to their communities that is an integral part of the Exploring program. In St. Louis, Mo., they have provided escorts for elderly citizens in high-crime areas. In El Monte, Calif., they helped sandbag homes during torrential rains. In Orlando, Fla., they conducted crime prevention surveys. And in Baltimore, Md., Law Enforcement Explorers assisted with searches for lost children.

At the same time that they are serving their communities, these young adults are learning what a career in law enforcement in all about. They become more aware of the dedication and high standards of the profession and learn more about themselves as well. Many will go on to become the leaders of tomorrow's police and sheriff's departments.

If you or your organization would like to know more about this exciting program, or the 1983 conference, contact your local office of the Boy Scouts of America or write to the National Director of Law Enforcement Exploring, Boy Scouts of America, 1325 Walnut Hill Lane, Irving, Tex. 75062.

FBI

Amy Therese Roberts

"Any student 14 to 20 who is interested in finding out more about a career in law enforcement should attend a meeting with Sergeant Kindervater, chief adviser of the Baltimore County Law Enforcement Explorer Post." This announcement over the school PA system was the first contact I had with Exploring. I never realized then what an impact these few words would have on my future.

For the past 3 years, I have been a member of Baltimore County Law Enforcement Explorer Post 990. I am presently an 18-year-old high school senior and captain of my post.

Training is the first step in the program after joining our Explorer post. In Post 990, a 3-month probation period is set during which the Explorer is exposed to various police duties, including traffic control, use of the radio, patrol procedures, and police ethics. At the end of this period, a test is administered and a passing grade is required before the Explorer is given the privilege of riding along with police officers on patrol.

Ride-along programs vary from post to post. In Baltimore County, an Explorer may ride in a patrol car on any of the three 8-hour shifts. This "hands-on" experience gives the Explorer the opportunity to see if he is suited for this type of career. My own experiences have taught me many valuable lessons. After just one night of riding with an accident investigation unit, I no longer get into a car without fastening my seatbelt.

The true benefit, however, is the Explorer learning what it is really like to be a "street cop." You see the ups and downs of the job. You are always on display. As one officer stated on my first ride-along, "You're like an exotic fish in a glass bubble."

On many occasions, Explorers are able to assist the officers as a second set of eyes. They can help with traffic control at an accident, crowd control at a fire, or even ticket and report writing. The use of Explorers is constantly expanding.

Individual posts finance their Exploring programs chiefly through the services the Explorers perform. Parking cars is the most common, whether it be snowing with temperatures below freezing or during a sunny day with temperatures in the high 90's. Departments do help with the funding, but with dwindling budgets, the Exploring program is often the first expense to be cut.

Another advantage of Exploring is the chance to meet people. My post is a member of the Potomac Boundary Association which includes posts from Virginia and Maryland. During the summer months, over the past 3 years, we have held a week-long leadership training academy during which Explorers have the opportunity to discuss various ideas, concepts, and problems common to law enforcement.

Exploring involves not only youths but adults as well. Most advisers are police officers who devote their time freely to the program.

It is virtually impossible to sum up Exploring in a few words or sentences, since it means so much to so many different people. Personally, Exploring has given me the chance to see beyond the realm of the average teenager's world. I have seen what the adult world has to offer and I know I will be entering it with a better understanding of society and its problems.

Strategies for Increasing the Number of Black Police Executives (Part I)

By
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Too often, "newly hired employees from minority groups are overlooked when it comes to training and assignment to better jobs." [1] With the number of black officers growing rapidly in police departments, these practices cannot continue. The pressure is on management to have their rank structures represented by the percentage of blacks that are represented in the internal workforce, and eventually, parity with the external population.

The major problem in reaching this goal centers around the promotional system. Whether it's the performance evaluation, the written test, or the inability of the black officer to write a competitive examination, the present systems used by most police departments are inadequate for increasing the number of blacks to a representative proportion throughout their rank structures. Therefore, new strategies must be developed to accomplish the goal with minimum disruption of the overall system.

Blacks and the Criminal Justice System

During the last 10 years, there has been increasing recognition of the need for the criminal justice system to become more responsive to the needs and more representative of the various minority communities in the United States. The basis for this recognition is at least twofold. First, the majority of crimes that are of concern to the criminal justice system are committed by and are perpetrated against members of minority communities. Thus, any effort to contain the crime problem is going to involve minorities either directly or indirectly.[2] Secondly, most professionals agree that credibility in, and active support of, local communities is essential to the success of law enforcement efforts. Thus, potential success of the criminal justice system is, in fact, dependent upon the active support of minority communities, at least in central cities.[3] This cooperation can be viewed in terms of how blacks are treated internally regarding promotion and assignments. Many administrators do not equate the presence of black officers as an extension of the black community. It should be understood that if discrimination limits the promotion of black officers, police minority relations will suffer.

In a study conducted by the Public Administration Service in 1978, *Civil Service Systems: their impact on police administration*, data showed that apprehension effectiveness for almost any type of major crime is higher in police departments that include larger proportions of females and minorities among its various ranks and positions. According to the report, this was especially the case with regard to detectives and among minority sergeants.[4] The report indicated that opening the police ranks to minorities and women has a very desirable effect on the quality of local police performance. The report stated that such data tends to reinforce the argument long advanced by minority officers themselves, i.e., as minority populations in major cities increased, minority officers, due to their personal life experiences and their comparatively earlier ability to establish rapport with minority citizens, could improve the apprehension effectiveness of policing.[5]

". . . the present systems used by most police departments are inadequate for increasing the number of blacks to a representative proportion throughout their rank structures."

Through court action brought by black officers, the U.S. Justice Department, and voluntary action by individual police departments, the link between police departments and the black community has begun to materialize through the hiring of black officers into entry-level positions; however, the main barrier has shifted to the promotion of these officers to supervisory and executive positions.

Aggressive equal employment opportunities enforcement that includes affirmative action and minority recruitment plans has been used as a strategy for increasing black employment in criminal justice agencies and has provided the necessary change that has made the system more reflective of the black interest.[6] Ten years ago, approximately 4 percent of the sworn police personnel in the Nation were racial minorities; as of 1979 that number had risen to 10 percent.[7]

Blacks represent 90 percent of this minority representation.[8] Due to an anticipated rise in the number of blacks into entry-level positions, we should see an increased representation of blacks in higher level positions throughout the rank structure in police departments during the next decade if discrimination is eliminated from their promotional procedures. However, to assume that increasing black employment in police agencies will eliminate racial discrimination and pave the way for equal access for blacks throughout the rank structure is too simplistic. Institutional tendencies toward self-preservation and value maintenance are documented, and to assume a direct positive relationship, without qualification, between black employment in a particular organization and that organization's responsiveness to black interests is to ignore a substantial accumulation of evidence to the contrary. Thus, the problems of racial discrimination in criminal justice systems, especially in police agencies, are far too complex and institutionalized to be resolved merely by hiring more black police officers.[9] In order to ensure that blacks are promoted into supervisory and executive positions, strategies must be developed to overcome the barriers that exist within the present promotional system.

The primary responsibility for upward mobility remains with individual officers; however, the role of the organization in providing resources, hiring the best people, and removing barriers that stifle upward mobility is of equal or greater importance. No less importance is placed on the role of higher education in its relationship with police departments. Universities are presently paving the way toward professionalism in police circles by providing academic services and influencing the drive toward professionalism through various studies and consultative work. However, the major problems that limit the promotion of blacks in police departments center around the promotional process. Therefore, new strategies must be developed to accomplish this goal with minimum disruption of the overall system.

This article offers strategies for increasing the number of black police executives. Black police officers cannot do it alone; therefore, this task should be a shared responsibility of the employing agency, the individual, and higher education. The need for strategies to increase the number of women and other minorities is also apparent; however, Caucasian women do not face the same problems as blacks nor do other minorities in police departments.

Background

From the inception of the police in the early 1800's, law enforcement agencies throughout the country have been plagued by many growing pains; however, it wasn't until 1965, the year of the Watts riots, that the police attained national attention.[10]

According to Bopp and Whisenand, "The pages of history are filled with accounts of urban upheaval, followed by citizen clamor for law and order, and corresponding attempts to upgrade the police." Unfortunately, the greatest historical phenomenon that had the greatest impact on police reform were incidents of social dislocation, political unrest, racial turmoil, and economic problems.[11]

In 1965, President Lyndon Johnson established the President's Commission on Law Enforcement and Administration of Justice. The commission conducted the most sweeping probe of crime and the criminal justice system since the Wickersham Commission Report in 1931.[12] A major share of the report was directed at an investigation of the police system.

In 1967, the commission reported its findings in *Task Force Report: The Police*, which is probably the most comprehensive volume provided in

". . . to assume that increasing black employment in police agencies will eliminate racial discrimination and pave the way for equal access for blacks throughout the rank structure is too simplistic."

law enforcement history. The commission made many recommendations that had a profound effect on the criminal justice system. In their investigation, the commission found that there was very little minority recruitment in police agencies.[13]

In 1973, the National Advisory Commission advanced more than 400 standards and goals pertaining to the criminal justice system.[14] Among these were standards for minority hiring, assignments, and promotions [15] that along with court decisions have paved the way for the inclusion of a small percentage of blacks into entry-level positions; however, the assignment and promotional goals have been ignored by most police departments.

ORGANIZATIONAL CHANGE

Planning for Change

In the dynamic social surrounding of today's law enforcement agencies, the question of whether change will occur is no longer relevant. Instead, the issue is: How do police executives cope with the inevitable barrage of changes that confront them daily while attempting to keep their agencies viable, current, and responsible to community needs? Although change is a fact of life, police executives cannot be content to let change occur as it will—they must be able to develop strategies to plan, direct, and control change.[16]

To be effective in the change process, police executives must have more than good diagnostic skills. Once they have analyzed the demands of their environment, they must be able to adapt their leadership style to fit the demands and must develop the means to change some or all of the other situational variables.[17]

Identifying Barriers to Change

Activity in support of change will not be successful if it occurs in reaction to pressure, as opposed to action in phases that are a part of a systematic planned program for change. While an analysis of an employer's workforce is necessary to determine the extent of problems in the promotional process and for setting goals and timetables, these goals cannot be implemented out of context of a model for change that identifies and deals with organizational, interpersonal, and intrapersonal barriers to change.[18]

According to Gloria J. Gery in her article, "Equal Opportunity Planning and Managing the Process of Change," barriers must be identified and dealt with on a progressive basis for systematic change to occur. She stated that the first issues that must be examined are "organizational barriers" which include policies, practices, personnel systems, benefits, communications, expectations, accountability, and reward systems.[19]

The second set of issues according to Ms. Gery are the "managerial barriers" that exist within individual managers and supervisors in the organization. She described those barriers as attitudes, values, expectations, and beliefs or stereotypes about blacks that are a result of their past conditioning by society and by the organization.[20]

"Intrapersonal barriers," or barriers within blacks themselves, are the third set of issues that must be considered in establishing programs for change. Ms. Gery stated, "These barriers should not be exaggerated or minimized." The barriers within blacks include their attitude, behavior, expectations, confidence, education, and experience, definitions of what they can become, role definitions, etc.[21] Many blacks are in the process of redefinition of self. Others are clinging to familiar behavior patterns and goals as a base of personal security. It is critical that individuals be provided with the tools they need to adapt to rapid change, whether it is technological or social.[22] It is essential that police administrators recognize these barriers and provide all necessary resources for removing them.

Major Barriers that Limit Promotions

In an article in the *Journal of Police Science and Administration*, author Clinton Jones states that the major barriers to increased promotional opportunities for blacks are lack of seniority in entry-level positions and comparatively low scores on written promotional examinations.[23] There seems to be some agreement on these barriers; however, it appears that the author is taking a very simplistic approach in his analysis. For example, he is not considering the appropriateness of the tests, the evaluation system that normally produces an adverse impact on blacks, or other situational factors. These issues must

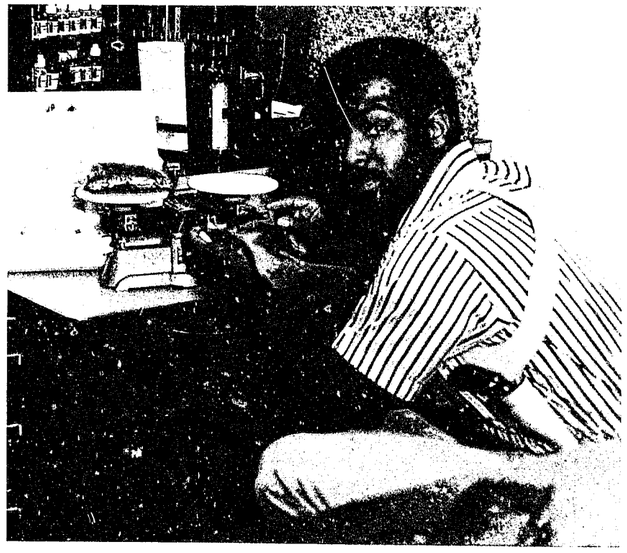
be addressed and included in the overall strategies to increase the number of blacks in executive positions.

Overcoming Organizational Barriers

Top management involvement is critical at this stage to establish expectations and to effect necessary changes in policy, reward systems, and personnel practices. Many organizations make the mistake of establishing separate but equal (or unequal) personnel functions to deal with minority problems. These functions are manifested in minority or women recruiting activities, EEO plans, career counseling centers, and separate programs for the identification of promotable minorities and women.[24] These ideas are not all bad, in and of themselves, if management's primary task is to deal with special interest groups; however, they may not result in permanent change.

More importantly, a significant opportunity might be missed to effect permanent personnel changes that can influence selection, training, and career advancement and development for all employees.[25]

Providing the necessary organizational structure for the accomplishment of specific goals is vital in developing strategies for increasing the number of black executives in police departments.



Overcoming Managerial Barriers to Change

While organizational issues are being resolved, it is essential to deal with the interpersonal barriers that result from managerial behavior, values, attitudes, stereotypes, and expectations.[26]

Although these subjects are seldom taught in police department training programs, they should be considered for inclusion in academy cadet training programs and inservice training. In addition, higher education should consider devoting more material to this vital topic.

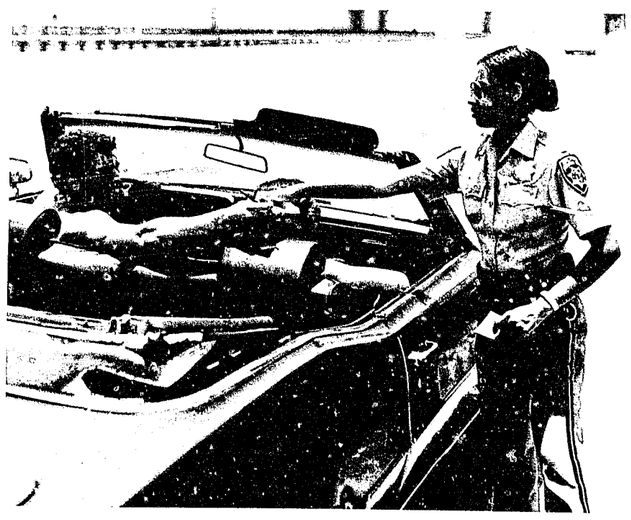
Overcoming Barriers Within Blacks

The tragic history of blacks, as a people and as police officers, in their interaction with white society and with police authority has a tremendous effect on overcoming the barriers that exist within blacks. These barriers are psychological, social, emotional, experiential, and educational. Barriers that are a result of experience or education are easy to correct. Formal training programs, college and professional course work, planned work assignments, exposure, and special developmental programs can be instituted with relative ease.[27]

More difficult to deal with are the psychological, cultural, social, and emotional barriers that are a result of social conditioning, past organizational rewards systems, negative reinforcement systems, and limited support systems for personal achievement. Realistically, most blacks have been conditioned to know their place in organizations and act accordingly.[28] In his book *Black in Blue, A Study of The Negro Policeman,* Alex Nicholas illustrated this point when he wrote, "The Negro policeman will be tolerated as long as he is not uppity, and does not claim the same rights available to white policemen."[29] Whether this point is valid today remains unanswered; however, it serves to illustrate a vital point.

Manipulative behavior patterns have allowed some individuals to achieve in the past in spite of the climate. But today, many of those behaviors are proving to be dysfunctional and must be unlearned. In addition, blacks have had so few role models and such limited amounts of the personal sponsorship that is necessary for success that high achievers have, of necessity, been subject to incredible amounts of both external and self-imposed pressure and stress.[30]

In the past, due to discriminatory practices, only the truly exceptional black individuals have been able to succeed, and there has been almost no tolerance for mediocrity or failure by blacks that has not resulted in generalization to most other blacks that follow.



Methods for increasing the number of blacks to executive and management positions will be developed in the conclusion of this article. **FBI**

(Continued next month)

Footnotes

[1] Eli Ginzberg, "Promotions, EEO Next Frontier," *Employee Relations Law Journal,* vol. 4, No. 1, Spring 1980, p. 32.
[2] Louis P. Salas and Ralph G. Lewis, "The Law Enforcement Assistance Administration and Minority Communities," *Journal of Police Science,* vol. 7, No. 4, 1979, p. 379.
[3] Ibid.
[4] Hubert G. Locke, *The Impact of Affirmative Action and Civil Service on American Police Personnel Systems,* U.S. Department of Justice Publications, 1979, p. 1.
[5] Ibid.
[6] Clinton B. Jones, "Critical Equal Employment Issues in Criminal Justice," *Journal of Police Science and Administration,* vol. 7, No. 2, 1979, p. 129.
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[8] Herbert Norchrup, "Labor Market Trends and Policies in the 1980's," *Employee Relation Journal,* vol. 7, No. 1, Summer 1981, p. 36.
[9] Gloria Gery, "EEO Planning and The Process of Change," *Personnel Journal,* vol. 56, No. 3, April 1977, p. 188.
[10] William Bopp and Paul Whisenand, *Police Personnel Administration* (Boston: Allyn and Bacon, Inc., 1980), p. 16.
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[13] Ibid., p. 28.
[14] National Advisory Commission on Criminal Justice, Standards and Goals, *Police* (Washington, D.C., U.S. Government Printing Office, 1973), p. 329.
[15] "Affirmative Action, Is It a Numbers Game?" *Police Magazine,* June 30, 1982, p. 38.
[16] Supra note 2, p. 396.
[17] Ibid.
[18] Supra note 9.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Supra note 6, p. 135.
[24] Supra note 9, p. 189.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Alex Nicholas, *Black in Blue, A Study of the Negro Policeman* (New York: Appleton-Century, 1969), p. 209.
[29] Ibid.
[30] Supra note 9, p. 189.

THE ATTORNEY-CLIENT RELATIONSHIP— INTRUSIONS AND REMEDIES

(Part 1)

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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.

In recent years, criminal defendants have increasingly argued for reversal of their convictions on the ground that Government agents and informants violated their sixth amendment right to counsel by intruding into the attorney-client relationship.[1] The cases generally fall into two categories. The first involves attendance by an informant or undercover agent at a meeting between a criminal defendant and his lawyer. The second involves Government attempts to persuade a *represented criminal defendant* to forego the advice of counsel and become an informant.

It is worthwhile to note at the outset that such governmental intrusions cannot violate a criminal defendant's sixth amendment right to counsel unless the right has attached. The U.S. Supreme Court has held that the right to counsel attaches at the initiation of formal adversary proceedings such as indictment, arraignment, or preliminary hearing.[2] The absence of such proceedings in the individual case precludes defense arguments that the sixth amendment is violated.[3]

This article begins with the assumption that the sixth amendment right to counsel has attached and that the attorney-client relationship has been established. It then traces the recent history and development of the law with respect to the question of whether and under what circumstances governmental actions such as those described above violate that right. Assuming a violation of the sixth amendment exists, consideration is given to the question of whether a defendant will benefit from that violation in the absence of harm or prejudice. Finally, the meaning of prejudice in this context will be examined.

INTRUSIONS INTO THE ATTORNEY-CLIENT RELATIONSHIP—*WEATHERFORD V. BURSEY*

In 1977, the U.S. Supreme Court decided *Weatherford* v. *Bursey.*[4] Weatherford was an undercover agent for a State investigative agency who participated with Bursey in vandalizing a selective service office in Columbia, S.C. Weatherford was arrested and charged along with Bursey in order to maintain his undercover status. On two occasions prior to trial, Weatherford attended, by invitation, meetings between Bursey and his lawyer for the purpose of assisting Bursey's defense. At no time did Weatherford discuss with or pass on to his superiors or the prosecutor any information he learned at these meetings. Weatherford testified at Bursey's trial concerning his observation of Bursey's criminal actions on the night of the offense, and a conviction resulted.

Bursey subsequently filed a civil suit against Weatherford in Federal court alleging that Weatherford's attendance at the meetings between himself and his lawyer deprived him of effective assistance of counsel to which he was entitled under the sixth amendment. Although the trial court denied Bursey's claim, the court of appeals reversed. The court observed that whenever the Government knowingly permits intrusion into the attorney-client relationship, the right to counsel is violated. The court declared immaterial the fact that the intrusion occurred to preserve the undercover role of Weatherford and further ruled the lack of prejudice to Bursey as a result of Weatherford's attendance at these meetings was of no consequence.

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The Supreme Court reversed. The Court observed that the Government did not *deliberately* intrude into the attorney-client relationship, but rather allowed the undercover agent to accept the invitation in order to preserve his undercover status. The Court further accepted as correct the trial court's finding that Bursey was not prejudiced by Weatherford's attendance at the meetings, inasmuch as he did not communicate anything he learned to his superiors or the prosecutor. Finally, the Court ruled that an informant's intrusion into the attorney-client relationship would not violate the sixth amendment so long as it was justified and did not prejudice the defendant. The Court observed:

> "There being no tainted evidence in this case, no communication of defense strategy to the prosecution, and no purposeful intrusion by Weatherford, there was no violation of the Sixth Amendment . . . ." [5]

Before further examining the issues raised by *Weatherford,* it is appropriate to address two preliminary but fundamental questions. The first is whether there can ever be a sixth amendment right to counsel violation when a third party is *invited* to participate in attorney-client discussions. The second is whether the sixth amendment can be abridged when a person is invited to attend an attorney-client meeting and the lawyer has reason to know that the invitee is a potential Government witness.

ATTORNEY-CLIENT PRIVILEGE—CONFIDENTIAL COMMUNICATIONS

The General Rule

A traditional rule of evidence, long recognized in the American judicial system, is that which protects the communications between an attorney and his client which are made in confidence. The purpose of the privilege is to protect the client. It is based upon the notion that it is in the interest of justice to encourage individuals to seek legal assistance when necessary. Further, the likelihood of candor between client and lawyer would be diminished if there was a possibility that facts disclosed could be forced from the lawyer at a later time.

An Exception—Disclosure to Third Parties

If a client chooses to make or receive a communication to or from his attorney in the presence of a third party, the communication is not confidential and is not entitled to the protection afforded by the rule of privilege. In such situations, the third party is a competent witness to the communication.[6] For example, in *United States* v. *Gordon-Nikkar,*[7] one Marchand attended two meetings between the defendant and her lawyer after both Marchand and the defendant had been charged with Federal drug violations. Marchand had not retained the defendant's lawyer as her own. Marchand testified at trial to what she heard at these meetings and the defendant was convicted. A Federal appellate court affirmed and held that communications uttered in these circumstances could scarcely be considered confidential under the attorney-client relationship. It is not clear, however, that the result is the same when the third party is an agent

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of the Government. When governmental action is involved, the issue reaches beyond the evidentiary rule of privilege and raises deeper questions concerning the right to counsel guaranteed by the sixth amendment.

In *Weatherford,* the undercover agent attended two meetings between Bursey and his lawyer at their invitation. Bursey later claimed that Weatherford's attendance violated his sixth amendment right to counsel. Weatherford countered that whenever a criminal defendant converses with counsel in the presence of a third party thought to be an ally, he assumes the risk that the third party is in fact an informant. He argued that the informant should be able to report what he learned to the prosecutor and testify at trial. The argument is that communications between attorney and client in this circumstance are not confidential and therefore the sixth amendment right to counsel is not applicable. The *Weatherford* majority avoided this issue and observed:

> ". . . we need not agree with petitioners that whenever a defendant converses with his counsel in the presence of a third party thought to be a confederate and ally, the defendant assumes the risk and cannot complain if the third party turns out to be an informer for the government who has reported on the conversations to the prosecution . . . ." [8]

Although the Court did not specifically so state, the fact that the Government was the intruder into the attorney-client relationship was the likely reason that the Court declined to approve Weatherford's argument. Thus, when a Government informant attends a meeting between a lawyer and a criminal defendant, and the defense has no reason to suspect the informant's role, the communications disclosed may yet be confidential. Such attendance does not automatically violate the sixth amendment since the *Weatherford* majority found the intrusion to be justified and without prejudice to Bursey.

Disclosure to Known Government Agent

It has been held that the attorney-client privilege is waived with respect to communications revealed by a client's lawyer to a known Government official. This is true so long as the client has, in general, authorized the lawyer to deal with the Government official.[9] This concept of waiver appears applicable in a criminal case even after the defendant has been formally charged. It is reasonable to argue that when a criminal defendant and his lawyer disclose confidential information to a known Government operative, such disclosures are not confidential and should not result in a violation of the sixth amendment right to counsel. Support for this argument is found in *United States* v. *Gartner.*[10]

In *Gartner,* the defendant and one Diskin pled guilty to Federal drug charges and both agreed to cooperate with Federal agents. Sentencing was postponed to give both men time to cooperate. Gartner learned prior to sentencing that the Government was not impressed with the quality of his cooperation. He and his lawyer approached Diskin and suggested a meeting to discuss Gartner's cooperation and whether he should move to withdraw his plea. Diskin suggested a meeting in his house and Gartner and his lawyer agreed. A Federal agent hid in a closet and recorded the entire meeting. Gartner later withdrew his plea and was convicted. On appeal, he argued that the indictment should be dismissed because the conduct of the Government amounted to an offensive interference with his attorney-client relationship in violation of the sixth amendment. The appellate court rejected the argument and held that in soliciting Diskin to participate in the meeting with full knowledge of his status as a cooperating Government witness, the defendant and his lawyer were not relying upon any confidential relationship between them. The court observed that they took the risk that Diskin might permit a hidden Government agent to record the conversation.

An even broader application of this concept appears in *United States* v. *Melvin.*[11] Powell and Melvin were arrested by U.S. Customs agents for conspiracy to import marihuana. Subsequent to the arrest, Powell agreed to cooperate with the Government in return for an agreement to charge him with a misdemeanor. Melvin was indicted in March 1979, and shortly thereafter, Powell received a telephone call from Melvin and his lawyer inviting him to attend a meeting. Powell told them he did not have a lawyer and his father was trying to find one for him. Melvin's lawyer persisted and the Government authorized Powell to attend in order to preserve his informant status. Powell was fitted with a transmitter ostensibly to insure his safety. At the meeting some trial strategy was discussed, including the possibility of an entrapment defense. Melvin's lawyer encouraged Powell to "stick with us" and he offered to represent him, but Powell declined. Powell attended several additional meetings and during one he was told that the chief Government witness could be impeached because of a prior criminal history. Whatever Powell learned during the meeting was conveyed to Government prosecutors. Upon learning of Powell's informant status, Melvin moved to dismiss the indictment on the ground that the Government had infringed on his sixth amendment right to counsel.

A U.S. magistrate held an evidentiary hearing and ruled that the Government had intentionally intruded into the attorney-client relationship and gained information as a result of that intrusion. The magistrate concluded that the indictment should be dismissed. A Federal judge adopted the findings of the magistrate and the Government appealed. One issue addressed by the appellate court was whether the sixth amendment had been violated at all by the Government. The Government argued that since Powell had not joined the defense team, there was no reasonable expectation of a confidential relationship between Powell, Melvin, and his lawyer. The court accepted the Government's argument, in principle, and reasoned:

> "We observe only that there is no confidentiality when disclosures are made in the presence of a person who had not joined the defense team, and with respect to whom there is no reasonable expectation of confidentiality." [12]

The court held that there can be no sixth amendment violation when a confidential informant attends a meeting between a defendant and his lawyer at their request and they knew or should have known that the informant was not part of the defense team. Under such circumstances, there can be no reasonable expectation of confidentiality in the presence of the informant. The court observed that the defense camp had some reservations regarding Powell's loyalty and were attempting to keep him in the fold. The court remanded the case for a determination of whether the defense team should have known that they were dealing with a person not part of the defense team.

In *United States* v. *King,*[13] one Key, an immunized Government witness, met with King, an attorney representing a criminal defendant. They met at the direction of the FBI. At the time of the meeting, King was aware that Key had been granted immunity with respect to the investigation that involved her client. The ostensible purpose of the meeting was to discuss the fact that Key had been subpenaed by the grand jury to testify against King's client. No subpena had in fact been issued, and the real purpose of the meeting was to corroborate Key's claim that King had previously told her to lie to the FBI. During the meeting, King allegedly instructed Key to lie to the grand jury. King was indicted for obstruction of justice, and prior to trial, moved to suppress evidence obtained from the meeting. King argued that the Government deliberately intruded into the attorney-client relationship in violation of the sixth amendment.

The district court rejected this argument on the ground that King and her client had no reasonable expectation of confidentiality at the meeting. The court found that an attorney-client relationship did exist between King and her client at the time of the meeting. However, the court observed that King was well aware that Key had been granted immunity. In addition, King had previously asked Key to notify her if she received a subpena. Furthermore, King testified at the suppression hearing that she knew Key could not be trusted. The trial judge ruled:

> "Since the Sixth Amendment right to effective counsel, like the attorney-client privilege, is based on the confidentiality of the communication, neither the constitutional protection nor the evidentiary rule should be applicable where the parties to the communication *should have reasonably forseen the possibility of a breach of confidentiality by one of the persons present.*" [14]

It is reasonable to conclude that no sixth amendment violation can occur when a Government operative attends, by invitation, an attorney-client meeting and the defense either knew or should have known of the operative's allegiance to the Government.

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DELIBERATE AND UNJUSTIFIED INTRUSIONS

A major issue left unresolved in *Weatherford* is whether a *deliberate* and *unjustified* intrusion by the Government into the attorney-client relationship is a *per se* violation of the sixth amendment. A majority of Federal appellate courts since *Weatherford* have answered in the negative and have concluded that the defendant must actually be prejudiced by the intrusion before the sixth amendment is violated.[15] For example, in *United States* v. *Glover,*[16] the defendant was arrested for attempting to sell stolen gems to an undercover FBI Agent. After the arrest, a lawyer was appointed to represent him. Subsequently, FBI Agents interviewed Glover without notification to and in the absence of counsel. They told him that if he revealed the location of the stolen gems, he would be released. The Agents also informed him that his lawyer had approved the interview, when in fact the lawyer had not consented. By coincidence, the lawyer was present at the jail and learned that the FBI was attempting to interview her client. She interrupted before Glover could make any incriminating admissions. At trial, Glover moved for dismissal of the indictment on the ground that the FBI deliberately attempted to interfere with the attorney-client relationship in violation of the sixth amendment right to counsel. The motion was denied and Glover was convicted. A Federal appellate court affirmed the conviction and rejected Glover's argument that prejudice is irrelevant when dealing with an alleged violation of the right to counsel. The court held that the defendant must establish *actual prejudice* from the intrusion before a sixth amendment violation can be found. The court observed that even if Glover could establish that the sixth amendment was violated, he could cite no Federal decision which remedied the violation by dismissal of the indictment.

A split between the Federal appellate courts developed in 1979 when the Third Circuit Court of Appeals decided *United States* v. *Morrison.*[17] Morrison was indicted on Federal drug charges. After she retained a lawyer, agents of the Drug Enforcement Administration (DEA) visited her at home to seek her cooperation in related drug investigations. They did not obtain permission from her lawyer to conduct the interview. DEA agents told Morrison that she should consider the quality of representation she could expect to receive for the $200 fee she had paid to her lawyer. They told her they had seen the quality of her lawyer's work and suggested she obtain a public defender instead. Morrison refused to cooperate and made no incriminating remarks during this interview. Prior to trial, Morrison moved to dismiss the indictment, alleging a violation of her sixth amendment right to counsel. The trial judge denied the motion, and Morrison pled guilty but preserved her right to appeal. The appellate court reversed and held that the DEA conduct amounted to a willful and unjustified interference with the defendant's sixth amendment right. The court rejected the Government's claim that no sixth amendment violation can occur in the absence of demonstrable prejudice. The Government argued that even if a sixth amendment violation occurred, dismissal of the indictment was an inappropriate remedy and that the only proper remedies for such violations are suppression of evidence or a new trial. Since neither remedy was applicable to this case, the Government argued that the court was precluded from granting any relief at all. The court rejected this contention and held that whenever the Government deliberately attempts to destroy the attorney-client relationship in violation of the right to counsel, an appropriate remedy is dismissal of the indictment.

The appellate court distinguished *Weatherford* by concluding that it applies only when there is both an absence of prejudice and a justifiable intrusion into the attorney-client relationship. The court observed that when the Government intrusion is wrongfully motivated or inadequately justified, this alone would be enough to violate the sixth amendment and warrant a dismissal of the indictment. In view of the conflict between Federal appellate courts regarding the necessity of prejudice, the time was ripe for the U.S. Supreme Court to resolve the issue.

The Supreme Court granted the Government's petition for review of the *Morrison* case and reversed.[18]

The Government first argued that absent prejudice, no sixth amendment violation can occur. The Court refused to decide this issue and instead assumed for the sake of argument that the DEA conduct violated the sixth amendment. The Court, in a rare unanimous opinion, expressed the view that dismissal of an indictment is a plainly inappropriate remedy in the absence of demonstrabie prejudice or a substantial threat thereof. The Court observed that even remedies for deliberate violations of the sixth amendment should be tailored to the injury suffered. The Court pointed out that Morrison was unable to demonstrate any prejudice whatsoever, and therefore, dismissal of the indictment for this *assumed* sixth amendment violation was error. The Court suggested that even the more traditional remedies of evidence suppression or a new trial would also be inappropriate, absent prejudice.

PREJUDICE REQUIRED FOR REMEDY

It should be noted that *Morrison* does not expressly answer the question left by *Weatherford* as to whether, absent prejudice, a deliberate and unjustified intrusion by the Government into the attorney-client relationship constitutes a *per se* violation of the sixth amendment. By assuming a sixth amendment violation, the Court implies that prejudice is not essential to establish the constitutional violation. However, the Court explicitly held that a showing of prejudice is required before remedial measures are warranted. Remedial action must be tailored to the magnitude of the prejudice. Therefore, although prejudice may not be necessary to establish a sixth amendment violation, it is essential to establish a remedy.

PREJUDICE EXAMINED

The *Morrison* case did not explain what constitutes prejudice because Morrison's appeal was based solely upon the alleged flagrant behavior of the agents. She failed to allege that she was adversely affected by this conduct. An examination of the Court's opinion in *Weatherford* provides assistance in determining the meaning of prejudice. *Weatherford* sets forth the following three situations in which prejudice can occur:

1) The informant becomes a witness at the defendant's trial and testifies with respect to privileged conversations overheard during his participation at the attorney-client meeting;[19]
2) The Government's evidence at trial was discovered either directly or indirectly as a result of the informant's participation at the attorney-client meeting;[20] or
3) The prosecution obtains details of defense strategy and trial preparations.[21]

It will be helpful to examine each of these situations in more detail.

Part II of this article will examine in detail each of the types of prejudice set forth in *Weatherford.* In addition, a fourth type of prejudice, namely, erosion of the attorney-client relationship, will be analyzed. The issue of burden of proof with respect to demonstrating prejudice will also be examined. Finally, the specter of civil liability with respect to unjustified Government instrusions into the attorney-client relationship will be considered. **FBI**

(Continued next month)

Footnotes

[1] The sixth amendment to the U.S. Constitution provides, in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." For cases in which defendants have raised this issue, *see United States* v. *Dien,* 609 F.2d 1038 (2d Cir. 1979); *United States* v. *Levy,* 577 F.2d 200 (3d Cir. 1978); *United States* v. *Valencia,* 541 F.2d 618 (6th Cir. 1976).

[2] *Brewer* v. *Williams,* 430 U.S. 387 (1977); *Kirby* v. *Illinois,* 406 U.S. 682 (1972); *Coleman* v. *Alabama,* 399 U.S. 1 (1970); *United States* v. *Wade,* 388 U.S. 218 (1967); *Massiah* v. *United States,* 377 U.S. 201 (1964).

[3] In *United States* v. *Jamil,* 546 F.Supp. 646 (E.D.N.Y. 1982), a Government informant, wearing a recording device, participated in a meeting between the defendant and his lawyer before Indictment. The trial court refused to suppress the evidence on sixth amendment grounds.

[4] 429 U.S. 545.

[5] *Id.* at 558.

[6] 81 Am. Jur. 2d *witnesses § 167.*

[7] 518 F.2d 972 (5th Cir. 1975); *see also, United States* v. *Landorf,* 591 F.2d 36 (9th Cir. 1978).

[8] 429 U.S. 545 at 554.

[9] *See United States* v. *Bump,* 605 F.2d 548 (10th Cir. 1979); *United States* v. *Mierzivicki,* 500 F. Supp. 1331 (D. Md. 1980).

[10] 518 F.2d 633 (2d Cir. 1975).

[11] 650 F. 2d 641 (5th Cir. 1981).

[12] *Id.* at 646.

[13] 536 F. Supp. 253 (C D Cal. 1982).

[14] *Id.* at 265 [emphasis added].

[15] *See United States* v. *Jiminez,* 626 F. 2d 39 (7th Cir. 1980), *vacated on other grounds,* 453 U.S. 918 (1981); *United States* v. *Irwin,* 612 F.2d 1182 (9th Cir. 1980); *United States* v. *Sander,* 615 F.2d 215 (5th Cir. 1980), *cert. denied,* 449 U.S. 835 (1980); *United States* v. *Artuso,* 618 F.2d 192 (2d Cir. 1980), *cert. denied,* 449 U.S. 861 (1980); *United States* v. *Dien,* 609 F.2d 1038 (2d Cir. 1979); *United States* v. *Kilrain,* 566 F.2d 979 (5th Cir. 1978), *cert. denied,* 439 U.S. 819 (1978).

[16] 596 F.2d 857 (9th Cir. 1979), *cert. denied,* 444 U.S. 857 (1979).

[17] 602 F.2d 529 (3d Cir. 1979).

[18] *United States* v. *Morrison,* 449 U.S. 361 (1981).

[19] 429 U.S. 545 at 554 (1977).

[20] *Id.*

[21] *Id.*

END