



# FBI

September 1986

## Law Enforcement Bulletin

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### The Investigation of Fatal Fires

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**The Cover:**

This 10-alarm fire in Manhattan was adjacent to the quarters of a NYCFD rescue company.

# FBI

## Law Enforcement Bulletin

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**William H. Webster, Director**

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# The Constitution and Criminal Procedure

**“... our Constitution ... stands without equal as an instrument of government and is a fitting monument to the genius and foresight of those who wrote it.”**

By  
JOHN C. HALL  
Special Agent  
FBI Academy  
Legal Counsel Division  
Federal Bureau of Investigation  
Quantico, VA

*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.*

The year 1987 marks the Bicentennial of the U.S. Constitution. For 200 years that document has charted the course by which American Republic has developed and matured. Under its influence and guidance, there has arisen a body of laws, unequaled in human history, to balance the prerogatives of government against the liberties of the individual. This article is respectfully dedicated to the memory of those men who gave us this Constitution 200 years ago, and to the men and women in law enforcement today who have committed themselves to uphold it.

On September 1, 1982, Santa Clara, CA, police officers received an anonymous tip that an individual named Dante Carlo Ciralo was growing marijuana in his backyard. Because the yard was completely enclosed by two fences, which obstructed observation from the street level, the officers flew over the property in a small airplane and observed the marijuana from that vantage point. Using the information thus obtained, the officers acquired a search warrant and seized 73 marijuana plants, each 8-10 feet in height. Ciralo was convicted under California law for cultivating a controlled substance, but his conviction was overturned by the State appellate court on the ground

that the aerial surveillance of his property violated his constitutional rights. On May 19, 1986, the U.S. Supreme Court held that the overflight was permissible under the fourth amendment to the U.S. Constitution, and the evidence was therefore admissible against Ciralo at his State criminal trial.<sup>1</sup>

This case, and the process by which it was resolved, would present several surprises to the framers of our Constitution. Obviously, they would not yet have heard of a State called California and would undoubtedly be impressed with the technology which made the overflight of a person's property possible. They probably would be more than a little surprised to learn that the same hemp plant which they had used to make rope, and which had been a major cash crop at such notable places as Mount Vernon, had not only acquired a new name but also a new usage, and was now declared to be contraband. But even beyond these points, perhaps the most puzzling of all would be the knowledge that a local police case could be reviewed by the U.S. Supreme Court and that provisions found in the Federal Bill of Rights would govern its outcome. Such an occurrence would not have been possible in their day. The purpose of this article is to trace the development of the process which made it commonplace in ours.

The book's future impact will probably be judged on the concluding chapter, "Prospects for Police Innovation," well-written as is the whole work. It sets out the various elements or thrusts of this new orientation: police-community reciprocity, decentralization of command, reorientation of patrol, and civilianization. But the authors, not being historians, or perhaps from lack of space, neglect the historical analysis that these elements of policing were practiced before professionalism began to develop at the outset of the 20th century. However, *The New Blue Line* does cover the community dissatisfaction with police in the 1960's which caused this type of reorientation of policing.

Best of all, these academic authors recognize the elements that are *required* for this type of innovation: the police chief's wholehearted commitment to this approach; the chief's ability to motivate department personnel, continuing defense of the new methods, and the public's support.

The history of American policing has been dominated by the question of "what do the public want from their police?" In the last half of the 19th century, politicians set the parameters. Then new political forces urged professionalism for their own reasons, which police executives soon co-opted for their purposes. The insight developed in this book is that police executives can influence not only their own personnel but the public as well to not only continue professionalism, but fight crime, and render the preventive services the public expects. The authors may be correct in their belief that this will be the prevalent mode of policing in the next century, especially given the changing nature of America's cities.

*COPS: Their Lives in Their Own Words*, Mark Baker, Simon and Shuster, 1985 (\$16.95). Also available in paperback, Pocket Books, \$4.50.

Dedicated to "a good police officer and a fine human being," the author of *Nam* does it again, this time with police officers. Mark Baker is a free-lance journalist, not a police officer. So this book is based on interviews of over a hundred police officers—in metropolitan areas, small towns, black and white officers, both male and female, rookie's and veterans. The 6-day rookie's experience with a "mental" on a Sunday afternoon is a classic.

The book will be of interest to the public, should be read by police commanders long removed from the street to refamiliarize them with today's rank and file attitudes, and should be required reading for law enforcement students. But it will probably be most read by the half million or so "working cops" in our profession, perhaps because the book's final story, about a police killing and the witness who came forward, tells us why we stay in this profession: "It's people who keep you in this game. Long after you're completely disaffected with society as a whole, the majority of people you encounter, you always think of those few good people."

*Police Passages*, John G. Stratton, Ph.D., Glennon Publishing, Manhattan Beach, CA, 1984 (\$24.95).

Author and police psychologist Stratton, with the Los Angeles County Sheriff's Department for over 10 years, has written an outstanding contribution to our understanding of police psychology. The California Peace Officers Research Association cogently observed: "A copy of Dr. John Stratton's *Police Passages* should be issued to every newly hired police officer along with the badge. It will be helpful to every police officer who reads it."

Dr. Stratton, a contributor to the *FBI Law Enforcement Bulletin* since 1975, covers all the phases ("passages") of the police officer's career, from the application process, through the training period, the initial years on the street, the stress that officers face throughout their careers, marriages, command problems, officer-involved shootings, alcoholism, and retirement.

There are several factors that point up Dr. Stratton's objective, yet sympathetic, view of police. His long service with his department, his many contributions to the *Bulletin*, referencing other *Bulletin* and *Police Chief* articles, and, finally, his view that psychology cannot provide all the answers, it can only help to understand the problems. For example, on the police application process, Dr. Stratton notes that psychologists "must make theirs a more exact science." Psychologists cannot tell, at this time, who would have a "healthy" cop personality at the time of application, or more important, who would stay "healthy" throughout their career.

With all the concern about police stress today, the author makes the important observation that of those officers involved in shooting incidents, one-third have minimal problems afterwards. Another one-third have moderate reactions, and the last third have severe difficulties that can affect their families. The chapters on police marriages and on women and minorities are co-authored by Barbara Tracy-Stratton, the author's wife, and are particularly good at outlining the purpose of today's marriages.

The final chapter on "Police Widows—The Forgotten Ones" also breaks new ground for police and the author's afterword on grief, entitled "Roy," shows an eloquence we seldom see in our profession. The California police group was right, issue this book with the badge.



Special Agent Hall

### A MORE PERFECT UNION

When the delegates met in Philadelphia in the summer of 1787 to begin work which produced the present Constitution, they were fully aware of the difficult task which confronted them. Their recent past had defined it clearly enough: To establish a central government possessing sufficient power to govern, but without the capacity to become a tyranny.

As men who had been born into the rich heritage of English history, they laid strong claim to those principles of self-government and personal liberty, which had begun to take tangible form in England with the Magna Carta in 1215, and continued with a persistent, if somewhat halting, development into the unwritten English constitution and common law of their own day. The central theme of this development may be found in the following portion of the Magna Carta:

"No freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed, nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land."<sup>2</sup>

Scholars correctly point out that the Magna Carta, at the time it was written, was nothing more than a contract forced upon an unwilling king by the landed barons of that day demanding recognition of their privileges. It is also true that the document says nothing of the principles of democratic government or the rights of man. With the passage of time, however, it took on a meaning far beyond its original purpose, for it came to represent the

principle that there is a law which is above the King and which even he must not break. Winston Churchill once wrote concerning the significance of the Magna Carta:

"Government must henceforward mean something more than the arbitrary rule of any man, and custom and the law must stand even above the King.... This reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it."<sup>3</sup>

It is perhaps one of the great ironies of history that the American Revolution was inspired by *English* principles of liberty. When the Americans claimed protection against taxation without representation, or unreasonable searches and seizures, they were only asserting the rights which they had come to expect as good Englishmen. Again, it was Winston Churchill—son of an English father and an American mother—who expressed this point in response to a question concerning the American war for independence:

"Revolution against the English? Nay, it was a reaffirmation of English rights; Englishmen battling a Hun king and his Hessian hirelings to protect their English birthright ... a scene not unfamiliar to English-speaking peoples..."<sup>4</sup>

Undoubtedly, his statement would have won the approval of many Englishmen of the Revolutionary War period.

Nevertheless, the demonstration during the pre-Revolution period that fundamental rights, so deeply rooted in the customs and laws of the people, could be so readily disregarded by the government persuaded the Americans that a new course must be pursued. There must be a written

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**“... the greatest law enforcement power—that which resides in State and local government—was unrestrained by the Bill of Rights.”**

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constitution—a document which would clearly mark the boundaries of government power and to which the government could be held accountable. Their first effort—the Articles of Confederation—was a failure. Written during the heat of the war, when suspicion of a strong central government was at its height, the Articles established a government that was ill-equipped to govern. There was a single-house legislature—the Continental Congress—made up of delegates selected by the State governments, not the people; it had no power of direct taxation, no authority to regulate commerce among the States, and no power to enforce its own laws. Consequently, the central government, such as it was, depended heavily upon the goodwill of the sovereign States for the performance of the most basic of functions.

Thomas Jefferson probably expressed the views of many when he wrote, “I own I am not a friend to a very energetic government. It is always oppressive.”<sup>5</sup> Accordingly, the central government lacked power as well as energy, and this defect became apparent when the war with England ended and the common interest in defense, which had bound the separate States together during the conflict, was removed.

It was against the background of these recent experiences that the delegates did their work in Philadelphia. The creation of a Federal Government composed of three branches and the distribution of the functions and powers of government among the three independent branches, with the resulting system of checks and balances, were the result of their labors. The newly created government now had the

power to regulate interstate commerce, to impose direct taxes, and enforce its own laws. It could exercise those powers—but only those powers—set forth in the new Constitution, which would henceforth be “the Supreme law of the Land.” To preclude recurrence of some of the abuses suffered under the English, the new government was specifically prohibited from enacting bills of attainder and *ex post facto* laws and from suspending the writ of habeas corpus, except in cases of emergency. The crime of treason, used with such ingenuous flexibility by the King and Parliament to quell political dissent throughout English history, was moved beyond the reach of the new government by fixing its definition in the Constitution itself.

#### **A BILL OF RIGHTS**

Notwithstanding the great achievement, there were many who saw in the document, and the government it created, the seeds of future tyranny. A bill of rights should be added to prevent such an occurrence. Against this view was the argument that since the new government could only do what the Constitution clearly permitted, a bill of rights would be superfluous. That view was little consolation to those who feared that the new Constitution—which would now be the “Supreme law of the land”—could be someday broadly interpreted to grant the very powers which they believed should be prohibited. Joseph Story, who served on the Supreme Court from 1811–1845, summarized these thoughts when he wrote:

“... a bill of rights may be important, even when it goes beyond powers supposed to be granted. It is not always possible to foresee the extent of the actual reach of certain powers which are given in general terms.

They may be construed to extend [and perhaps fairly] to certain classes of cases, which did not at first appear to be within them. A bill of rights, then, operates as a guard upon any extravagant or undue extension of such powers.”<sup>6</sup>

Thomas Jefferson added his strong voice in support of a bill of rights. After expressing general approval of the new Constitution, he wrote:

“Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse....<sup>7</sup> The inconveniences of the Declaration [of Rights] are that it may cramp government in its useful exertions. But the evil of this is short-lived, trivial and repairable. The inconveniences of the want of a Declaration [of Rights] are permanent, afflicting and irreparable.”<sup>8</sup>

The proponents of specific safeguards were adamant. What the King and Parliament had once done, the President and Congress could yet do. A bill of rights must be added. In fact, so strong was the sentiment for a bill of rights, that many of the States, when ratifying the new Constitution, urged upon the new Congress the submission of amendments to accomplish that object. Accordingly, the first Congress to meet following the adoption of the new Constitution submitted 12 amendments to the States, 10 of which were ratified by 1791, and the first 8 of which we now know as the Bill of Rights.

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Included among the provisions were three which would, in time, have great impact on criminal law enforcement: The fourth amendment restrictions on searches and seizures, the fifth amendment protection against compelled self-incrimination, and the sixth amendment guarantee of the right to counsel in criminal cases. Each of these provisions reaffirmed values which were deeply rooted in American custom and law, and their disregard by the Crown and Parliament had done much to fan the flames of revolt among the colonists.

#### **Unreasonable Searches & Seizures Prohibited**

Chief among the evils which affronted the Americans was the use of general warrants and writs of assistance by agents of the Crown to enforce unpopular customs laws. These general warrants were repugnant for a variety of reasons: They were universal in nature, authorizing anyone to execute them; their execution was not limited by any time frame; and they authorized broad searches which were unconstrained by particular descriptions of places to be searched or persons or things to be seized and unsupported by sworn statements of fact to justify their issuance and execution. The right to be free from unreasonable government intrusions while in one's own home was a fundamental tenet of English custom predating even the Magna Carta, and while not always scrupulously respected by the Crown, it was nonetheless treasured by the people. In 1763, at a time when the arbitrary actions of the English Government were sowing the first seeds of re-

volt in America, William Pitt made this celebrated statement to the House of Commons:

"The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement."<sup>9</sup>

During the same year in England, that statement of principle found tangible expression in successful lawsuits against officers of the Crown who either issued or executed general warrants in violation of it, and by 1766, Parliament had declared general warrants illegal in the mother country. However, they continued to be used in America—to the chagrin of the colonists—with the result that in the words of John Adams, "Then and there the Child Independence was born."<sup>10</sup> The experience has been memorialized in the words of the fourth amendment:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

#### **Compelled Self-Incrimination Prohibited**

Less directly related to the underlying causes of the Revolution, but no less important in the minds of most Americans, was the protection against compelled self-incrimination found in the fifth amendment. Early in English history, there had developed a particu-

larly obnoxious entity called the Court of the Star Chamber. Originally intended to mete out swift justice to robber bands and other common criminals who preyed upon the good folk of the realm, it eventually grew into a dreaded instrument of the government to ferret out and punish political dissenters. Its method included the oath *ex officio*, which required a person suspected of crime to answer all questions put to him by the court. There was no jury, and physical torture was not unheard of as a means of encouraging cooperation. As might be expected, the Court of the Star Chamber was highly successful in obtaining convictions, and that success encouraged other English courts to borrow its tactics. For example, in 1615, Edward Peacham was accused of treason. Prior to his trial in the Court of Kings' Bench, the Attorney General, Sir Francis Bacon, made the following report to King James I:

"Upon these interrogatories, Peacham this day was examined before torture, in torture, between torture and after torture; notwithstanding, nothing could be drawn from him, he still persisting in his obstinate and insensible denials, and former answers."<sup>11</sup>

Even though the Court of the Star Chamber had been abolished by the time of the Revolution, and its evil influences largely removed from the English courts, its memory remained to influence the men who sought to establish an instrument by which the power of government could be constrained. If a man could not be compelled to convict himself with his own words, then the government would bear the whole burden of proving his

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**“...criminal procedure—the means by which government forces its criminal laws—has now been elevated to constitutional status.”**

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guilt through other independent evidence, and the incentive to use such means as torture would hopefully be removed. It was with that object in view that the fifth amendment was written to affirm: “No person . . . shall be compelled in any criminal case to be a witness against himself.”

### **The Right to Counsel**

Although the right to counsel could be found in English law, the right to counsel in *all* criminal prosecutions was peculiar to America. Under English law, an accused was allowed counsel in misdemeanor, but not felony, cases. The only exception to this rule at the time of the Revolution was the right to counsel when a defendant was charged with treason. Nevertheless, at the time the Bill of Rights was adopted, 12 of the 13 original colonies had granted the right to counsel in all criminal cases, and the inclusion of that right in the sixth amendment reflected the value attached to it in that day. The pertinent language reads: “In all criminal prosecutions . . . the accused shall enjoy the right to . . . have the assistance of counsel for his defense.”

### **LIMITED APPLICATION**

Important for the future development of the country was the fact that these treasured rights and some 25 others set forth in the Bill of Rights—e.g., freedom of religion, speech, press, and assembly—were limited in their application to the Federal Government. Any doubts which may have existed on this point at the time they were adopted were removed in the Supreme Court's 1833 landmark decision of *Barron v. The City of Baltimore*.<sup>12</sup> Rejecting the argument

that the City of Baltimore was bound by the fifth amendment to the Federal Constitution, Chief Justice John Marshall wrote:

“... it is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were extensively entertained that those powers . . . deemed essential to union, and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments.”<sup>13</sup>

That was probably considered to be of little importance by most people at the time, since most of the States had their own constitutions with their own bills of rights containing similar language to that of the Federal charter. The result, however, was the development of diverse systems of justice, fostered by the lack of a common standard and by the seemingly unlimited interpretations which could be applied to the same words and principles by different courts. In the absence of a specific constitutional grant, the Federal Government was without power to impose a uniform standard upon the sovereign States. The significance of this point lay in the fact that within our Federal system of government, the administration of criminal justice is predominantly committed to the care of the States. Thus, the greatest law enforcement power—that which resides

in State and local government—was unrestrained by the Bill of Rights.

### **DUE PROCESS—THE LAW OF THE LAND**

The first step toward change came with the adoption of the 14th amendment in 1868, just 3 years after the Civil War ended. In many respects that war was merely the climax of a long series of challenges to the capacity of the Federal Government to maintain the Union in the face of persistent assertions of sovereignty by the individual States. Now that the issue had been settled to some extent by the war, it seemed fitting to establish a means by which some common meaning could be given to the principles which had brought the Union into being. Aimed directly at the States, the 14th amendment declared: “. . . nor shall any state deprive any person of life, liberty, or property without due process of law. . . .”

“Due process” was a familiar term to those even vaguely familiar with English and American history. In England, by the year 1354, it had come to be synonymous with the “law of the land” mentioned in the Magna Carta; while in America, it had already been absorbed into several State constitutions and specifically placed in the fifth amendment to the Federal Constitution as a restriction on the power of the Federal Government. Unfortunately, the shifting tides of English law and custom had precluded the development of any precise definition of the term, and its incorporation into the fifth amendment to the American Constitution, among numerous other specified

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rights, camouflaged its significance and presented little opportunity, or apparent need, for further definition in this country. It appeared to be a general—albeit important—expression of principle rather than a guarantee of anything specific.

The 14th amendment would change that; for now there was a common standard—due process—by which both Federal and State power could be measured and restrained. And equally important, there would henceforth be one arbiter—the Supreme Court of the United States—to give meaning to that standard. Nevertheless, change would come slowly.

It was supposed by some that adoption of the 14th amendment would make the rights guaranteed against the Federal Government by the Bill of Rights equally applicable against the States. However, that view was rejected by the Supreme Court. As an alternative, the Court adopted the position that due process included those principles—but only those principles—which are “so rooted in the traditions and conscience of our people as to be ranked as fundamental.”<sup>14</sup> Consequently, due process came to be described by the Court in such terms as “fairness,”<sup>15</sup> or principles which are “implicit in the concept of ordered liberty,”<sup>16</sup> or “canons of decency and fairness which express the notions of justice of English-speaking peoples....”<sup>17</sup> These concepts do not necessarily include all that is in the Federal Bill of Rights.

But with the passage of time, and within the framework of these general expressions, the Due Process Clause of the 14th amendment came to bear a

remarkable resemblance to the Federal Bill of Rights. The following cases will serve to illustrate the point.

In 1932, seven young, indigent, illiterate black men were convicted in Scottsboro, AL, of raping two white girls. Despite their inability to defend themselves or to hire counsel, no effective steps had been taken by the trial court to provide the assistance of counsel to conduct their defense. The Supreme Court reversed the convictions on the grounds that the denial of effective counsel in a criminal case violated the Due Process Clause of the 14th amendment, not because that right is guaranteed by the 6th amendment, but because the Court considered it to be fundamental to the principles of liberty and justice.<sup>18</sup>

In 1936, two black men in Mississippi were convicted of murder and sentenced to death. The evidence against them consisted of their confessions, which had been extracted through a process of alternately hanging them and then beating them with a large belt. At their trial, which occurred a day and a half following their arrests, the rope marks were still visible on their necks. Not only they, but a deputy sheriff who directed and participated in the “interrogations,” testified as to the manner in which the confessions were taken. The deputy described the beatings as “not too much for a negro; not as much as I would have done if it were left to me.” Despite this testimony, and the fact that Mississippi law prohibited the use of an accused’s coerced confessions at his trial, the State supreme court in Mississippi upheld the convictions. The U.S. Supreme Court reversed them, not on the grounds that the fifth amendment prohibits compelled self-incrimination, but because the extraction of confessions by torture was considered by the Court to violate due process.<sup>19</sup>

In 1949, a California man, suspected by local police of selling narcotics, was arrested in his home without a warrant. At the time of his arrest, he swallowed some capsules despite the efforts of the police to stop him. He was then taken to a hospital where his stomach was pumped and partially dissolved capsules containing morphine were found. That evidence was used to convict him in State court. The U.S. Supreme Court reversed, not because the actions of the police violated the fourth amendment protections against unreasonable searches and seizures, but because their conduct “shocks the conscience” and therefore violates due process.<sup>20</sup>

In each of these cases, the Court was careful to point out that the basis for reversal was not because the State actions had violated some provisions found in the Bill of Rights, but because they violated rights which were considered to be fundamental to the American concept of justice. In other words, while disclaiming any intent to incorporate the Bill of Rights into the Due Process Clause of the 14th amendment, the Court ingeniously allowed the Due Process Clause to “absorb” certain principles which just happened to be in the Bill of Rights as well. Supreme Court Justice Cardozo, writing in 1937, explained the process in this fashion:

“These [rights] in their origin were effective against the federal government alone. If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed.”<sup>21</sup>

**“...virtually every aspect of an officer's job touches that area where the authority of government and the liberty of the individual meet.”**

This so-called “absorption” doctrine soon gave way to a more-direct approach—“selective incorporation.” By this process, the Court would selectively incorporate certain provisions found in the Bill of Rights into the 14th amendment Due Process Clause, thus applying them to the States. For example, in 1949, the Court held that the fourth amendment was applicable to the States through the Due Process Clause.<sup>22</sup> Similarly, in the years which followed, the Court held that certain provisions of other amendments were also applicable to the States, including the sixth amendment right to the assistance of counsel in a criminal prosecution (1963)<sup>23</sup> and the fifth amendment privilege against compelled self-incrimination (1964).<sup>24</sup>

Each of these provisions directly impacts upon law enforcement—local and State, as well as Federal—and establishes a common boundary beyond which government power cannot go. In other words, criminal procedure—the methods by which government enforces its criminal laws—has now been elevated to constitutional status. Thus, the Supreme Court's interpretations of the fourth amendment, the fifth amendment privilege against compelled self-incrimination, and the sixth amendment right to the assistance of counsel in criminal prosecutions are now as relevant and important to the local police officer as they are to their Federal counterparts.

## CONCLUSION

Today, every law enforcement academy in America provides training in constitutional law, because virtually every aspect of an officer's job touches that area where the authority of government and the liberty of the individual meet. Arrests, searches and seizures, investigative detentions,

eyewitness identification, interrogations—all of these everyday law enforcement tasks, and more, are governed by the Federal Constitution. Under their own constitutions, the States may provide greater protections to their people; but by virtue of the Due Process Clause of the 14th amendment, they cannot provide less.

As we consider the Bicentennial of the Constitution, it is interesting to speculate about how the framers would view the long-term results of their labor if they could see it today. That they succeeded in their overall objective of forming “a more perfect union” could not be doubted. That they wisely separated and balanced the powers of government among the three branches would also be an undoubted source of satisfaction. An independent judiciary, a smooth process of transition from one administration to another, the built-in guarantees of a republican form of government, the successful amendment process—all of these would surely be cause for pride. But perhaps their greatest pleasure would be derived from the knowledge that the Constitution which they wrote 200 years ago has become firmly rooted in our National consciousness. Its precepts influence the way we think about ourselves, our fellow man, and our Government. Even without thinking, we instinctively know it is there, towering above the President, the Congress and even the Supreme Court, and only we can change it. We may from time to time quarrel with its interpretation . . . we seldom quarrel with its content.

It is true that other countries have constitutions, some containing language similar to our own. There is a difference, however, which transcends any similarity in content—our Constitution deeply affects the manner in which we think and live and govern ourselves. Its influence on our lives has increased steadily with time. It stands without equal as an instrument of government and is a fitting monument to the genius and foresight of those who wrote it.

FBI

## Footnotes

- <sup>1</sup>*United States v. Cirafolo*, 39 Cr.L. 3106 (1986).
- <sup>2</sup>Irving Brant, *The Bill of Rights* (Mentor, 1965), pp. 89-90.
- <sup>3</sup>Winston S. Churchill, *A History of the English-Speaking People* (Bantam Books, 1956), p. 186.
- <sup>4</sup>James C. Humes, *Churchill, Speaker of the Century* (Stein & Day, 1980), p. 287.
- <sup>5</sup>Thomas Jefferson, letter to James Madison, December 1787, quoted in *Jefferson Writings* (The Library of America, 1984), p. 917.
- <sup>6</sup>William F. Swindler, *The Constitution and Chief Justice Marshall* (Dodd, Mead & Co., 1978), p. 112.
- <sup>7</sup>Thomas Jefferson, letter to James Madison, December 1787, *supra* note 5.
- <sup>8</sup>Thomas Jefferson, letter to James Madison, March 1789, *supra* note 5, p. 944.
- <sup>9</sup>*See Miller v. United States*, 357 U.S. 301, at 307 (1958).
- <sup>10</sup>*See Boyd v. United States*, 116 U.S. 616, at 625 (1886).
- <sup>11</sup>Irving Brant, *The Bill of Rights* (Mentor, 1965), p. 95.
- <sup>12</sup>Peters 243 (1833).
- <sup>13</sup>*Id.* at 250.
- <sup>14</sup>*Snyder v. Massachusetts*, 291 U.S. 97 (1934).
- <sup>15</sup>*Duncan v. Louisiana*, 391 U.S. 145, at 149 n. 14 (1968).
- <sup>16</sup>*Palko v. Connecticut*, 302 U.S. 319, at 325 (1937).
- <sup>17</sup>*Malinski v. New York*, 324 U.S. 401, at 416 (1945).
- <sup>18</sup>*Powell v. Alabama*, 287 U.S. 45 (1932).
- <sup>19</sup>*Brown v. Mississippi*, 297 U.S. 279 (1936).
- <sup>20</sup>*Rochin v. California*, 342 U.S. 165 (1952).
- <sup>21</sup>*Palko v. Connecticut*, *supra* note 15, at 326.
- <sup>22</sup>*Wolf v. Colorado*, 338 U.S. 25 (1949).
- <sup>23</sup>*Gideon v. Wainwright*, 372 U.S. 335 (1963).
- <sup>24</sup>*Malloy v. Hogan*, 378 U.S. 1 (1914).