

## 11-13-2001 Philadelphia PA - Thomas Bray- LEO PSD Buoy Recovery- Suspicious

[https://en.wikipedia.org/wiki/List\\_of\\_Philadelphia\\_Police\\_Department\\_officers\\_who\\_died\\_in\\_the\\_line\\_of\\_duty](https://en.wikipedia.org/wiki/List_of_Philadelphia_Police_Department_officers_who_died_in_the_line_of_duty)

Thomas M. Bray	Police Officer	1302	Marine Unit	2001	52	Drowned	Drowned under suspicious circumstances <sup>[5][6]</sup>
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### Philadelphia Police Officer Thomas Bray

<https://forum.officer.com/forum/public-forums/officer-down-news-memorials/7682-philadelphia-police-officer-thomas-bray>

11-14-2001, 04:11 PM

Philadelphia Police Officer Thomas Bray, a diver for the Marine Unit died while trying to assist the U.S. Coast Guard in freeing a stuck buoy in the Delaware River. He became entangled under the buoy; a fellow officer dove in to rescue him, but it was too late. Bray was 52, married w/3 grown children and 5 grandchildren. He had 23 years on the job, 5 as a diver in the Marine Unit



## OFFICER DOWN MEMORIAL PAGE

REMEMBERING ALL OF LAW ENFORCEMENT'S HEROES

<http://www.odmp.org/officer/15866-police-officer-thomas-m-bray>

### Thomas M. Bray



#### Bio & Incident Details

Age: 52

Tour: 23 years

Badge # Not available

Cause: Drowned

Police Officer

**Thomas M. Bray**

**Philadelphia Police Department, Pennsylvania**

**End of Watch: Tuesday, November 13, 2001**

Officer Thomas Bray, a member of the police department's marine unit, drowned while attempting to recover a sunken channel marker in the Delaware River.

He and two other marine unit officers were working with the U.S. Coast Guard in an attempt to recover the buoy. Several minutes into the dive, Officer Bray radioed that he was tangled and he was instructed to cut the line. However, he did not surface. Other officers were able to bring him to the surface and transport him to a local hospital where he was pronounced dead.

Officer Bray had been employed with the Philadelphia Police Department for 23 years, and is survived by his wife and three grown children.

## **Thomas M. Bray**

American aged 52, Philadelphia police force, assigned to the marine unit, recovering a buoy in the Delaware River near Fort Mifflin in Douth Philadelphia, entangled in the line, drowned. Reported in the Philadelphia Inquirer.

<http://www.thediversassociation.com/index.php/sheets>

## **Police diver drowns in the Delaware**

[http://dailynews.philly.com/content/daily\\_news/2001/11/14/local/DRWN14C.htm](http://dailynews.philly.com/content/daily_news/2001/11/14/local/DRWN14C.htm)

11-14-2001 By DANA DiFILIPPO

### **Thomas Bray was sent to free buoy in frigid waters & became ensnared**

IT WAS A ROUTINE assignment that drew Philadelphia Police Officer Thomas Bray into the frigid currents of the Delaware River yesterday.

A buoy was stuck near Fort Mifflin in South Philadelphia, and the Coast Guard asked help from the Police Department's marine unit to retrieve it.

So Bray donned his underwater gear and dove in.

It would be his last assignment.

Bray, a 23-year police veteran and a marine diver for more than five years, got entangled under the buoy and died.

It wasn't clear what ensnared Bray, 52, or what killed him. Police officials hope those answers will emerge as the investigation unfolds. The homicide unit, which probes all police deaths, is investigating.

"This appears to be just one of those tragedies that can happen," Mayor Street said. "It's a very, very sad day. We talk about the heroes in our department and our city - this is an officer who went to work as he always did and he will not go home."

Fraternal Order of Police President Rich Costello agreed. "It shows that even routine police work is hazardous and dangerous. It's just an example of what these men and women face every day."

Bray, a married father of three grown children and five grandchildren, was alone in the water when he got stuck at 1:35 p.m., Deputy Police Commissioner Sylvester Johnson said.

Bray was in audio communications with three other police divers aboard a Coast Guard boat, Johnson said. When they realized their comrade was in trouble, one leapt into the water to save him.

But when the officer pulled Bray to the surface, he wasn't breathing.

Continuous CPR by paramedics and medications administered at the Hospital at the University of Pennsylvania weren't enough to revive him, said Dr. Stefanie Porges Wolfson, emergency-room physician.

The medical examiner's office will conduct an autopsy today to determine the cause of death.

FOP Vice President Jimmy McDevitt, who worked with Bray for about 10 years in Center City's ninth district, remembered Bray as a "happy, fun-loving, easy-going guy."

"He was a prankster - he always like to play jokes on people," said McDevitt, who last saw his friend two weeks ago. "But Tommy was one hell of a cop."

Bray worked for years on a burglary detail in Center City and as a community officer at a police substation in Spring Garden.

He was so good at catching thugs that one angry hood once lobbed a grenade at him in the substation, McDevitt recalled. Bray wasn't hurt, and the grenade-hurler was caught and convicted, McDevitt said.

Bray loved water sports and transformed his scuba-diving skills into a successful stint on the elite marine unit, McDevitt said.

The Coast Guard doesn't have divers, said Kimberly Wilder, spokeswoman for the Coast Guard in Portsmouth, Va. Some of the largest ice-breakers around Alaska may have them, but not East Coast buoy tenders, she added.

The Daily News was unable to reach the local Coast Guard for comment.

The currents where the incident occurred are about 50 feet deep, Johnson said. Water temperatures there were 45 to 50 degrees yesterday, according to the National Weather Service.

"The only safety precaution he could have done was not to go in the water. But that's part of our job," the FOP's Costello said. "It was almost like God decided this was the day for him."

The last city cop killed on duty was Officer Jose Ortiz, who died in September 2000 after another officer, responding to a call for aid, struck Ortiz with her cruiser as he chased a suspected car thief on foot. \* Staff writer Ramona Smith contributed to this report.

## **FROM THE PHILADELPHIA INQUIRER: A last salute to fallen Phila. Officer**

### **A last salute to fallen Phila. Officer**

By Thomas J. Gibbons Jr. INQUIRER STAFF WRITER

On a sun-drenched autumn day seemingly more fit for a wedding than a funeral, the city yesterday buried a fallen police officer.

As a contingent of kilned bagpipe players and drummers played the traditional Scottish lament "Highland Cathedral," the flag-covered casket of Officer Thomas M. Bray, 52, who died in the line of duty last week during a dive in the Delaware River, was carried from the Cathedral Basilica of SS. Peter and Paul through a Coast Guard honor guard to the hearse that would take his body to Our Lady of Grace Cemetery in Pennel.

In ranks almost two-dozen deep and standing at rapt attention, police and city officials - including the mayor and police commissioner, who offered one last salute lined 18th Street.

While his grieving family was helped to limousines, eight uniformed members of the police Marine Unit, to which Bray was assigned, lifted the coffin into the hearse.

A resident of Roxborough, Officer Bray leaves behind his wife, Genevieve; daughters Jennifer and Cristie; and a son, Thomas Jr.

A poem by Jennifer dedicated to her father was part of the memorial booklet distributed at the cathedral during an 11 a.m. Mass of Christian Burial.

### **The first two stanzas read:**

I can't explain the emptiness I feel inside,  
To have so much sadness and

Yet so much pride.  
You were true to your badge  
'till the very end  
You were not only my dad  
But also my friend.

"It's a tragedy that you lose an officer this way," said Chief Inspector Richard Bullick.

Bray, a 23-year veteran, died last Tuesday while assisting the Coast Guard in freeing a steel buoy from the bottom of the river near Fort Mifflin. Bray encountered problems during the dive and radioed that his line was tangled, officials said. A rescue attempt was initiated, but Bray was underwater about eight minutes before he was brought up; he was unconscious and not breathing. He was pronounced dead a short while later at the Hospital of the University of Pennsylvania.

A spokesman for the Medical Examiner's Office said yesterday that the cause and manner of Bray's death had not yet been determined and continued to be under investigation.

In his remarks during the Mass, Monsignor James J. Howard called Bray "a man for all seasons," an officer whose vocation was "to serve the people of the community." That calling took on a personalized tone in the 1980s when Bray was assigned to the first police mini-station in the city, located in Spring Garden, a post where he dealt with community issues and problems.

"He was everything you would ever want in a police officer," said Inspector James Tiano, Bray's boss before Bray was transferred to the Marine Unit in 1996, fulfilling a longtime dream of becoming a professional diver. Bray and his police partner in the mini-station, Thomas Leisner, "set the tone for community policing," said Tiano, his voice cracking.

"They were just the right people at the right time," he continued. "I was proud to have been his commanding officer for many years."

Then, as police motorcycles roared to life for the escort to Our Lady of Grace - where two police helicopters would fly overhead before one peeled off to leave a missing man formation - the bagpipers broke into the doleful melody "Danny Boy." At that moment, the face of Detective T. Patrick Boyle tightened.

There was reason for the reaction. Bray was his friend. But the Irish ballad held even more sweet grief for Boyle. In 1991, his 21-year-old police officer son, Daniel, was mortally wounded by a gunman in East Philadelphia.

"I hate coming to these things," Boyle said, "but I feel I have to."

Thomas J. Gibbons Jr.'s e-mail address is [tgibbons@phillynews.com](mailto:tgibbons@phillynews.com)

Inquirer researcher Denise Boal contributed to this article.

## **Cop with Link to Jamal Frame Up Dies Under Suspicious Circumstances**

<http://antimove.blogspot.com/2007/05/new-witness-in-jamal-case-speaks.html>

**by Tony Allen and Lori Tetrault**

This weekend advocates for controversial death row inmate Mumia Abu-Jamal will seek to highlight the plight of the prisoner, whose case and writings have propelled him to the forefront of social justice agendas the world over. Central to Jamal's contentions is the overwhelming evidence of gross police misconduct that tainted his prosecution and subsequent appeals. It is perhaps fitting that as Jamal supporters converge from all over the world, the Philadelphia Police Department may once again find itself in yet another scandal....this time due to the events surrounding the death of a police officer who, himself, was involved with the now infamous "frame up" of Mumia Abu-Jamal.

In the beginning, the Nov 13th, 2001 death of Thomas Bray seemed to be nothing more than a tragic end to the celebrated life of a popular and decorated veteran officer. The truth, however, may not be so cut and dry. Bray was a police diver, a notoriously dangerous, and at times grizzly, job. He was a popular cop, was featured on national TV shows, and met President Bush and Clinton. His peers labeled him as aggressive and he had a reputation as a media hound. Much earlier in his career, he was involved in a case that would be catapulted into the world spotlight for it's shocking misconduct on the part of police and prosecutors of Mumia Abu-Jamal.

On the early morning of Dec 9th, 1981, Bray arrived at Jefferson Hospital, where Jamal and slain officer Daniel Faulkner were taken. According to the Philadelphia Inquirer, Bray testified that as Jamal was being handcuffed to a gurney, had said to Bray "I'm glad. If you let me go I will kill all you cops." This pseudo-confession was purportedly given in addition to the other damning statement that was attributed to Jamal "Yeah I shot the motherf---er and I hope he dies." This supposed confession has been one of the most widely discredited aspects of Jamal's case. The most telling components of the confession fallacy is the length in time it took for police to come up with the confession (two months) and the fact that only police and a security guard who knew the slain officer allegedly heard it. This was in an emergency room full of hospital personnel, none of whom report the gravely wounded Jamal saying anything. The involvement of Bray, a purported "good cop," speaks volumes as to the depths of the depravity of law enforcement with regard to this case and lends credence to the widely held belief that the Philadelphia Police department is and was rife with corruption. Indeed, it's the very same corruption that may have led to the death of Officer Bray.

It seems that Bray may have been a victim of the same corruption that he once sought to perpetuate against Mumia Abu-Jamal. At the time of his death, Bray was involved in a corruption investigation against his former supervisor and had, in that endeavor, worn a "wire." The exact contents of the taped conversations remains unclear, as DA Lynne Abraham has yet to release the tapes to the public; however, the aforementioned supervisor was later charged with four misdemeanor corruption

charges: theft, conspiracy, intimidation of witnesses, and obstruction in the administration of law.

Officer Bray was near death when he was brought to the surface of the Delaware River where he had been ensnared, attempting to dislodge a buoy. He died a short time later at University of Penn Hospital of his injuries and asphyxiation. The district attorney, after an investigation, made the assertion that there was no "wrong doing" in the death of Bray. However, the media has uncovered gross procedural errors that may have helped lead to the death of Bray. Whether this train of mistakes were simply that, or were of a more deliberate and sinister nature, remains to be seen.

What exactly happened to Officer Bray will likely never be known. Bray, who likely was going along with the "team" in 1981 when he fraudulently attributed incendiary statements to Jamal, may have suffered the penalty for going against the grain in a police department that has long been known to be one of the most brutal and corrupt in the nation. Whether as a "good cop" or as a result of saving his own skin, the allegations that Officer Daniel Faulkner was killed for interfering with police corruption and other criminal activities sets a precedent for what may have also happened to Officer Bray. Many dismiss this as mere coincidence or as works of fiction, but the growing number of these cases seems more to be exposing a widespread plague rather than there being rare occurrences.

## **Philadelphia Police Murderers of Hero Cop Tom Bray Philadelphia Pennsylvania**

<http://www.ripoffreport.com/r/philadelphia-police/philadelphia-pennsylvania-19106/philadelphia-police-murderers-of-hero-cop-tom-bray-philadelphia-pennsylvania-1060627>



How's this for the ultimate ripoff: Thomas Bray, a Philadelphia police officer decorated for bravery, was murdered the day after he testified against another cop, Sergeant Shawn Dougherty. Officer Bray's drowning death was officially ruled an accident. Yeah, I'm sure that cops always accidentally die in scuba diving accidents the day after they testify against other cops. Even knowing that Officer Bray was a potential retaliation target and that his equipment's safety may have been compromised, a certain cop on the surface is

responsible for the long delay before divers responded to the hero cop's requests for help. [[continued here](#)]...

## **Crime in Philadelphia**

<https://www.revolvy.com/main/index.php?s=Crime%20in%20Philadelphia>

Officer Thomas Bray's possible murder (November 13, 2001) - Bray died in a suspicious on-duty scuba diving incident the day after he testified against Sergeant Shawn Dougherty at a disciplinary hearing.<sup>[4] [5]</sup> Bray's estate and mother, Genevieve, sued the city and federal government in federal court over Bray's death, settling for an amount that could not be determined from a summary Internet search.<sup>[6] [7]</sup>

## **TIL that in 2001, a Philadelphia Police Officer died in a suspicious scuba diving accident the day after he testified against another officer at a disciplinary hearing**

<http://rebrn.com/re/til-that-in-a-philadelphia-police-officer-died-in-a-suspicious-s-274168/>

Here's some additional info from Wikipedia:

On November 13, 2001, Officer Thomas Bray died in a suspicious on-the-job scuba diving incident the day after he testified against Sergeant Shawn Dougherty at a disciplinary hearing. Even knowing that Bray, a marine unit diver decorated for bravery, was a possible retaliation target whose diving equipment may have been sabotaged, Bray's fellow law enforcement officers delayed in responding to his calls for help while he was underwater and having trouble with his airline - and also waited before bringing him to a hospital. Bray's estate and mother, Genevieve, sued the city and federal government in federal court over Bray's death, settling out of court.

[http://en.wikipedia.org/wiki/Misconduct\\_in\\_the\\_Philadelphia\\_Police\\_Department#2001](http://en.wikipedia.org/wiki/Misconduct_in_the_Philadelphia_Police_Department#2001)

**Original Comments here:** <http://rebrn.com/re/til-that-in-a-philadelphia-police-officer-died-in-a-suspicious-s-274168/>

## **Proof That Hero Cop Tom Bray Was Killed By Cops For Snitching On Them**

[https://www.youtube.com/watch?v=WMMo9kLg6\\_8](https://www.youtube.com/watch?v=WMMo9kLg6_8)

Uploaded on Nov 5, 2011

Thomas Bray, a Philadelphia police officer decorated for bravery, was murdered the day after he testified against another cop. Officer Bray's death was officially ruled an accident. Yeah, I'm sure that cops always accidentally die the day after they testify against other cops. Even knowing that Officer Bray was a potential retaliation target and that his equipment's safety may have been compromised, a certain cop on the surface is responsible for the long delay before divers tried to rescue the hero cop. Naturally, the tampered-with scuba-diving equipment has since been destroyed. Bray's mother, Genevieve, and his estate sued the city and federal government over Bray's death, settling out of court for a reported six figure amount. That settlement was a de facto admission of guilt by city officials. Nineteen months after posting this video, I watched an episode of the old television show "Sea Hunt" which depicted a murder attempt using entangled scuba gear. Unfortunately, Officer Bray's such victimization was not a fictitious TV episode. One can only speculate if Tom's killers were influenced by that episode. The song, "A Little Less Conversation" (since deleted for copyright violations) was originally used because Officer Bray was reportedly an Elvis fan, and the song has a metaphorical significance to his death. This remix was Elvis' last million-selling single and was released in 2002, the year after Officer Bray was killed. Tom never got to hear it on Earth, but you can bet that he is dancing to it in a better place.

## **Hero Cop Murdered For Reporting Cops - Tom Bray - Philadelphia, PA**

<https://www.youtube.com/watch?v=inpeAYA6U40>

Uploaded on Oct 12, 2011

Philadelphia, PA --- Thomas Bray, a decorated, heroic Philadelphia police officer, was murdered by cop cowards for breaking the blue code of silence. He was killed the day after he testified against another cop. No charges were ever brought against the politically-protected perpetrators. Even the U.S. Coast Guard was involved in the coverup to protect their "brother" law enforcement officers. Why did cops wait several minutes before diving in to rescue Tom after he called for help, knowing that he was a possible retaliation victim? Officer Bray is gone but his bravery and integrity will live on forever. He was too good for the Philadelphia Police Department. His honesty prevented him from getting promoted. Tom has the last laugh because he is in a better place -- which rewards good and penalizes evil. Bray's mother, Genevieve, and his estate sued the city and federal government over his death, settling out of court for a reported six figure amount. That settlement is a de facto admission of guilt by city officials.

### **From Comments:**

[Steezie Crowe](#) 4 years ago

A Philadelphia police sergeant was charged yesterday with selling beer kegs recovered from collapsed Pier and with working as a basketball referee during hours he collected police pay. DA Lynne Abraham announced yesterday that some evidence against Sgt. Shawn Dougherty had been recorded by his subordinate, Officer Thomas Bray. Wearing a wire, Bray, who drowned on duty Nov. 13, recorded conversations that allegedly indicate Dougherty tried to obstruct police investigation of the matters

- Civil Action No. 03-5150. (E.D. Pa. Mar. 14, 2005)

# BRAY V. U.S

## MEMORANDUM

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**THOMAS O'NEILL, Senior District Judge**

This is a case in admiralty arising out of the death of Philadelphia Police Marine Unit diver Thomas Bray, decedent of plaintiff Genevieve Bray. At the time of his death, Officer Bray was conducting an underwater "grid search" for a sunken U.S. Coast Guard buoy and its concrete sinker in an area of the Delaware River. Plaintiff now moves to require defendant United States of America to produce documents including the Coast Guard Mishap Analysis Board investigation report, the administrative investigation report, the personnel files of Coast Guard personnel involved in Officer Bray's dive and written materials, videotapes and other instructional materials used by the Coast Guard for SCUBA training.

### **A. Coast Guard Mishap Board Investigation Report**

The Coast Guard convened a Mishap Board to review the incident involving Officer Bray "to determine whether any systemic or programmatic changes should be affected to make future operations safer." The Mishap Board collected statements from Coast Guard personnel, interviewed witnesses and drafted a report regarding the incident. Defendant asserts that the Coast Guard personnel who gave statements to the Mishap Board were not given any promise of confidentiality and that their statements have been provided to plaintiff.

Pursuant to Federal Rule of Civil Procedure 26(b), a party may discover any relevant matter which is "not privileged." Defendant argues that the report of the Mishap Board is privileged as it "reflects the Board members' deliberations and recommendations as to policies that should be pursued." Defendant asserts the report is protected by the Machin privilege, established in Machin v. Zuckert, [316 F.2d 336, 338](#) (D.C. Cir. 1963), a civil lawsuit brought by the sole surviving member of a crashed Air Force B-25 bomber against an aircraft company.

In Machin, the Secretary of the Air Force asserted a claim of privilege over certain Air Force reports and the Court of Appeals for the D.C. Circuit held that

when disclosure of investigative reports obtained in large part through promises of confidentiality would hamper the efficient operation of an important Government program . . . the reports should be privileged. . . . The privilege extends to any conclusions that might be based in any fashion on such privileged information. Also, a recognized privilege attaches to

any portions of the report reflecting Air Force deliberations or recommendations as to policies that should be pursued.

Id. at 339.

Plaintiff asserts that the Machin privilege is a form of the executive or deliberative process privilege. For the deliberative process privilege to apply: 1) "the head of the agency that has control over the requested document must assert the privilege after personal consideration;" 2) "the head of the agency must state with particularity what information is subject to the privilege;" and 3) "the agency must supply the court with `precise and certain reasons' for maintaining the confidentiality of the requested document." Walsky Constr. Co. v. United States, 20 Cl. Ct. 317, 320 (1990), citing Mobil Oil Corp. v. Department of Energy, 102 F.R.D. 1, 5 (N.D.N.Y. 1983). See also Scott Paper Co. v. United States, 943 F. Supp. 501, 502 (E.D. Pa. 1996) ("the deliberative process, or executive, privilege may only be invoked by the head of the agency or department"); Cooney v. Sun Shipbuilding Drydock Co., 288 F. Supp. 708, 714 (E.D. Pa. 1968) ("a claim of executive privilege is validly made only by the head of the executive department or administrative agency involved, after actual personal consideration by that officer").

Defendant argues that "the Machin privilege does not derive from the separation of powers in our government, but rather from the public policy of protecting the deliberations of those charged with making military evolutions safer from improper considerations" and that the requirements for the assertion of the executive privilege do not apply. I disagree and find that the Machin privilege falls within the executive or deliberative process privilege. In United States v. Weber Aircraft Corp., 465 U.S. 792 (1984), the Supreme Court explained, "[t]he claim of privilege sustained in Machin was denominated as one of executive privilege." See Machin, 316 F.2d at 338 (citing the "Secretary's `Claim of Executive Privilege'"). Indeed, the claim of privilege in Machin was made by the Secretary of the Air Force himself, and thus the Court did not need to consider whether the "head of agency" requirement for the executive privilege was met before it considered the applicability of the privilege to the reports at issue. See also Cooper v. Department of the Navy of the United States, 558 F.2d 274, 277 (5th Cir. 1977) (referring to Machin as "the seminal case on executive privilege for" statements made during the course of an Aircraft Accident Safety Investigation); Cooney, 288 F. Supp. at 714 (discussing Machin in the context of a motion claiming executive privilege for a report prepared by OSHA after an accident at defendant's drydock). Because defendant does not assert that the Commandant of the Coast Guard has personally considered the Mishap Board Report and asserted the privilege, it has not properly invoked the deliberative process privilege and the Mishap Board Report cannot be protected from discovery under the Machin privilege. Therefore I will order defendant to produce a copy of the investigative report prepared by the United States Coast Guard Mishap Board.

## **B. Administrative Investigation Report**

Defendant argues that the investigative report of the Coast Guard's Administrative Board "was specifically undertaken in contemplation of litigation and to assist attorneys" and thus it is shielded from discovery under Federal Rule of Civil Procedure 26(b)(3). Rule 26(b)(3) provides that "documents and tangible things . . . prepared in anticipation of litigation" are discoverable "only upon a showing that the party seeking discovery has need of the materials in the

preparation of the party's case and the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Fed.R.Civ.P. 26(b)(3). Plaintiff argues that the administrative investigation was not specifically undertaken in contemplation of litigation and thus the administrative investigation report cannot be shielded from discovery under the work-product doctrine.

The general rule for determining whether a document was prepared in anticipation of litigation is whether "in light of the nature of the document and the factual situation in the particular case, the document can be fairly said to have been prepared or obtained because of the prospect of litigation." In re Grand Jury Proceedings, 604 F.2d 798, 803 (3d Cir. 1979). Rule 26(b)(3) does not require that a suit be filed before materials may be prepared in anticipation of litigation. See Raso v. CMC Equip. Rental, 154 F.R.D. 126, 127 (E.D. Pa. 1994). Thus it is not dispositive that the Coast Guard's administrative investigation was undertaken in January 2002 before this suit was instituted. Not is it necessary that the report have been prepared by lawyers. Maertín v. Armstrong World Industries, Inc., 172 F.R.D. 143, 151 ("Rule 26(b)(3) of the Federal Rules of Civil Procedure defines a 'representative' expansively, permitting a 'consultant, surety, indemnitor, insurer, or agent' to assert the privilege."). Instead, defendant must show that there existed "an identifiable specific claim or impending litigation when the materials were prepared" in order to establish that its anticipation of litigation was objectively reasonable. Leonen v. Johns-Manville, 135 F.R.D. 94, 97 (D.N.J. 1990). Given the serious nature of the incident involving Officer Bray, defendant was on notice of "an identifiable specific claim" when the report was drafted.

Defendant "must show that the document was prepared or obtained because of the prospect of litigation, not in the regular course of business, and [defendant] can rely on the nature of the document and the facts of the case in order to meet its burden." Raso, 154 F.R.D. at 127-28. Plaintiff argues that the administrative investigation may have been convened for purposes other than anticipation of litigation, such as to determine whether there was misconduct by a member of the Coast Guard or whether disciplinary measures should be imposed. If this is the case, plaintiff asserts that the report cannot be shielded by the work-product privilege because documents prepared in the regular course of business are not protected under Rule 26(b)(3). In support of its assertion that the report was prepared in contemplation of litigation, defendant cites a February 25, 2002 letter from LTJG Mark Kuperman to Commander, Fifth Coast Guard District which states that "[t]his investigation is being conducted and this report is being prepared in contemplation of litigation and to assist attorneys, acting on behalf of the Chief Counsel, representing interest [sic] of the United States in this matter."

I have not been provided with a copy of the report in question for in camera review and without more information from defendant about the report's contents and the purpose of the investigation I cannot decide whether the report in question was in fact prepared in anticipation of litigation. Therefore I will order defendant to produce a copy of the administrative investigation report to the Court for review in camera. If I determine that the report was indeed prepared in anticipation of litigation, I will then proceed to consider whether plaintiff has established a "substantial need of the materials . . . and [her inability] without undue hardship to obtain the substantial equivalent of the materials by other means" such that disclosure of the report is required. Fed.R.Civ.P. 26(b)(3).

## C. Personnel files of Kathryn Dunbar, Michael Davis and Robert Scott Pugh

Plaintiff seeks to compel production of the personnel records of all U.S. Coast Guard personnel involved in the dive pursuant to Federal Rule of Civil Procedure 37. Such records are governed by the Privacy Act which permits disclosure of records maintained on individuals by agencies of the U.S. government pursuant to the order of a court of competent jurisdiction. [5 U.S.C. § 552a\(b\)\(11\)](#). "[A] party can invoke discovery of materials protected by the Privacy Act through the normal discovery process and according to the usual discovery standards, and the test of discoverability is the relevance standard of FRCP 26(b)(1)." *Forrest v. United States*, No. 95-3889, 1996 U.S. Dist. LEXIS 4589, at \* 4 (E.D. Pa. Apr. 11, 1996). Federal Rule of Civil Procedure 26(b)(1) provides that:

In her brief, plaintiff specifically refers to the personnel records for Kathryn Dunbar, Robert Pugh, Shawn Barnes and Marshall Miller. On January 20, 2005, plaintiff's counsel sent the Court a letter which requested that defendant produce the personnel files of Kathryn Dunbar, Michael Davis and Robert Scott Pugh.

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

"[S]ince the precise boundaries of the Rule 26 relevance standard will depend on the context of the particular action, the determination of relevance is within the district court's discretion." *Forrest*, 1996 U.S. Dist. LEXIS 4589, at \*4, [citing Huang v. Dalton, Sect'y of Navy](#), No. 93-3143, 1994 U.S. Dist. LEXIS 9025 (E.D. Pa. Jun. 30, 1994).

Defendant argues that no information that might be obtained from the crew's service records would be relevant to this lawsuit and that production of the Coast Guard personnel's Service records would be an unwarranted invasion of privacy. I agree with defendant that it is unlikely that data such as marital status, dependents, religion, next of kin, insurance beneficiaries, tax deductions, and basic medical history will lead to the discovery of admissible evidence. This portion of the personnel records will be barred from discovery.

Plaintiff argues that she does not seek personal information about the crew but information pertaining to the training, experience, credentials and any disciplinary infractions for all persons involved in the dive. She argues this information is relevant to her case as it may address the crew's experience with buoy retrievals and their overall competency. She also argues that previous disciplinary measures taken may be relevant to determining defendant's liability in this instance. Defendant counters that because plaintiff has alleged no fault in the Coast Guard's shiphandling, buoy retrieval or rescue procedures and because plaintiff has not raised any issue of training in these areas, the information plaintiff seeks is not relevant. Defendant

further argues that any military discipline imposed upon a member of the crew for an unrelated infraction is irrelevant.

Because the information plaintiff seeks appears to be reasonably calculated to lead to the discovery of admissible evidence, I will allow plaintiff to discover only those documents in the personnel files of Kathryn Dunbar, Michael Davis and Robert Scott Pugh that address their experience with buoy retrievals and rescue procedures and any disciplinary records pertaining to similar incidents. Discovery of disciplinary records for matters unrelated to buoy retrievals or rescue procedures or of any other documents will not be permitted.

## **D. Written Materials, Videotapes and Other Instructional Materials Used by the Coast Guard for SCUBA Training**

Under Federal Rule of Evidence 401, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Defendant argues that the evidence plaintiff seeks regarding written materials, videotapes and other instructional materials used by the Coast Guard for SCUBA training is irrelevant because none of the Coast Guard personnel present at the time of the incident involving Officer Bray had received SCUBA training. Plaintiff argues the materials sought are relevant as they may establish the standards and precautions that should be followed during dive operations. As noted above, discovery is not limited to relevant evidence, but to matters "reasonably calculated to lead to discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1). Because I agree with plaintiff that discovery of materials pertaining to Coast Guard SCUBA training could reasonably lead to the discovery of admissible evidence regarding standards and safety precautions for SCUBA operations in which the Coast Guard participates, I will order defendant to produce any written materials, videotapes and other instructional materials used by the Coast Guard for the purpose of training its personnel for SCUBA operations.

### **ORDER**

AND NOW, this 14th day of March 2005, after considering plaintiff's motion to require defendant United States of America to provide complete and specific responses to document requests and to produce documents requested, and all responses thereto, it is ORDERED that:

1. Plaintiff's motion to compel production of the Coast Guard Mishap Investigation Report is GRANTED. Defendant shall produce a copy of the investigative report prepared by the United States Coast Guard Mishap Board and any exhibits attached thereto.
2. Defendant shall produce a copy of the report of the Coast Guard's Administrative Board to the Court within ten business days from the date of this Order for in camera review and further consideration of whether plaintiff's discovery of said report is warranted under Federal Rule of Civil Procedure 26(b)(3).

3. Plaintiff's motion to compel the production of personnel records for all U.S. Coast Guard personnel involved in the November 13, 2001 dive is GRANTED as to only those documents in the personnel files of Kathryn Dunbar, Michael Davis and Robert Scott Pugh that address their experience with buoy retrievals and rescue procedures and any disciplinary records pertaining to similar incidents. Discovery of disciplinary records for matters unrelated to buoy retrievals or rescue procedures or of any other documents is not permitted.

4. Plaintiff's motion to compel production of written materials, videotapes and other instructional materials used by the Coast Guard for SCUBA training is GRANTED.