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Rhetoric
An Important Tool for Police Officers

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Rhetoric
An Important Tool for Police Officers

Mr. Thompson

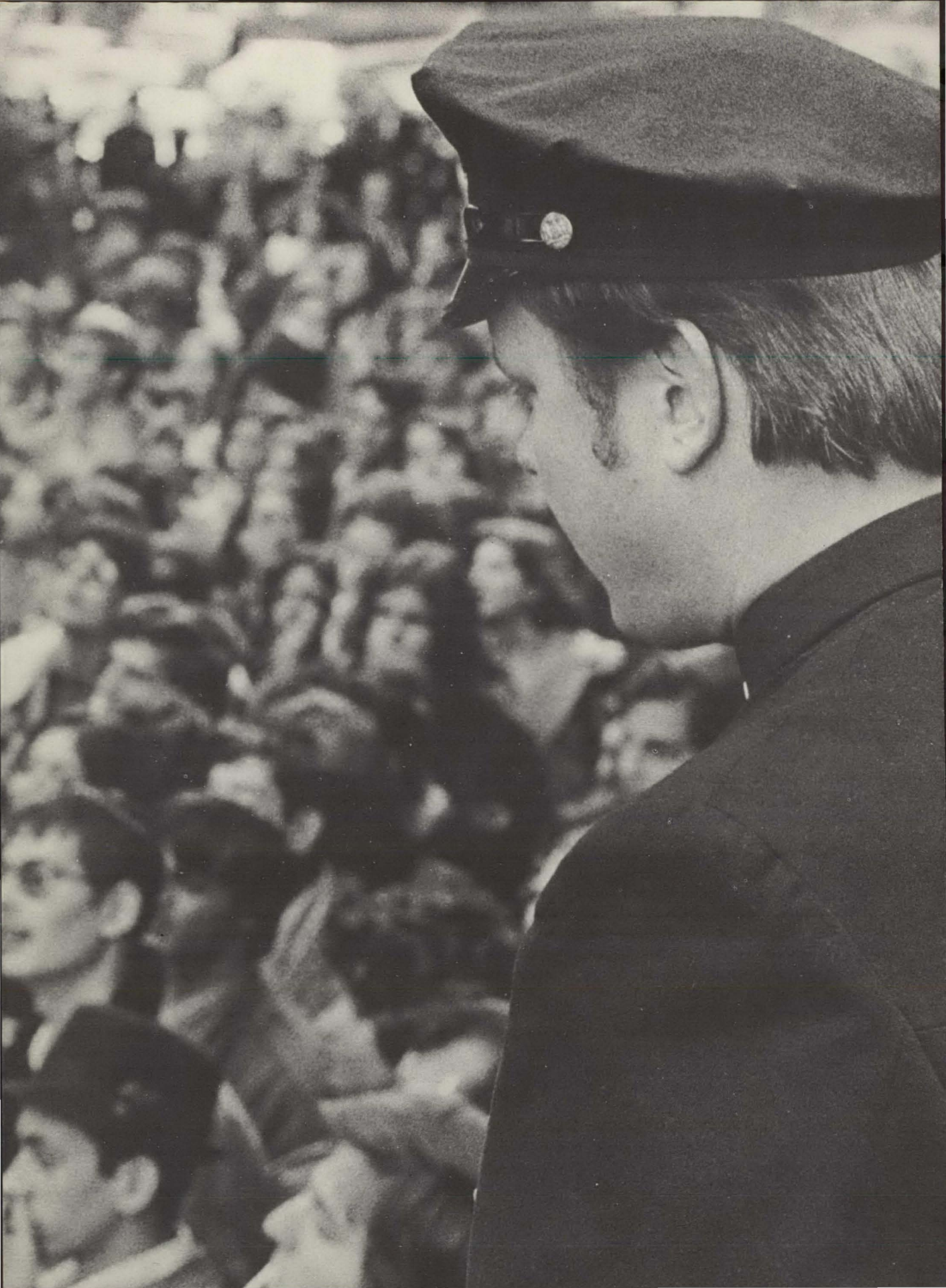
More powerful than mace, the night stick, or the gun, effective rhetoric is an officer's most useful tool in the field. Loosely defined as the art of effective communication, rhetoric is exercised numerous times each day by every officer on duty, whether in civil or criminal matters. Repeatedly, an officer's ability to select the appropriate means of communication, often under surprising or stressful circumstances, is a measure of good police work and good public relations.

Considering the daily pressures of police work—dealing with numerous people whose backgrounds, needs, points of view, and prejudices vary dramatically, moment to moment, as the officer encounters them—it is distressing that so little is presently being done to train officers to anticipate and to handle such complex social situations. Training academies and criminal justice curricula in colleges and universities generally offer little or no specific training in the functional skills of rhetoric. Apparently, criminal justice educators have assumed that such skills have either been learned in a general liberal arts program or that they can be picked up in some phase of the training or probationary period. But such an assumption is probably suspect and certainly should not be relied upon. The skills of practical rhetoric are so necessary to officers in the field that police supervisors should not leave their acquisition to chance or accident.

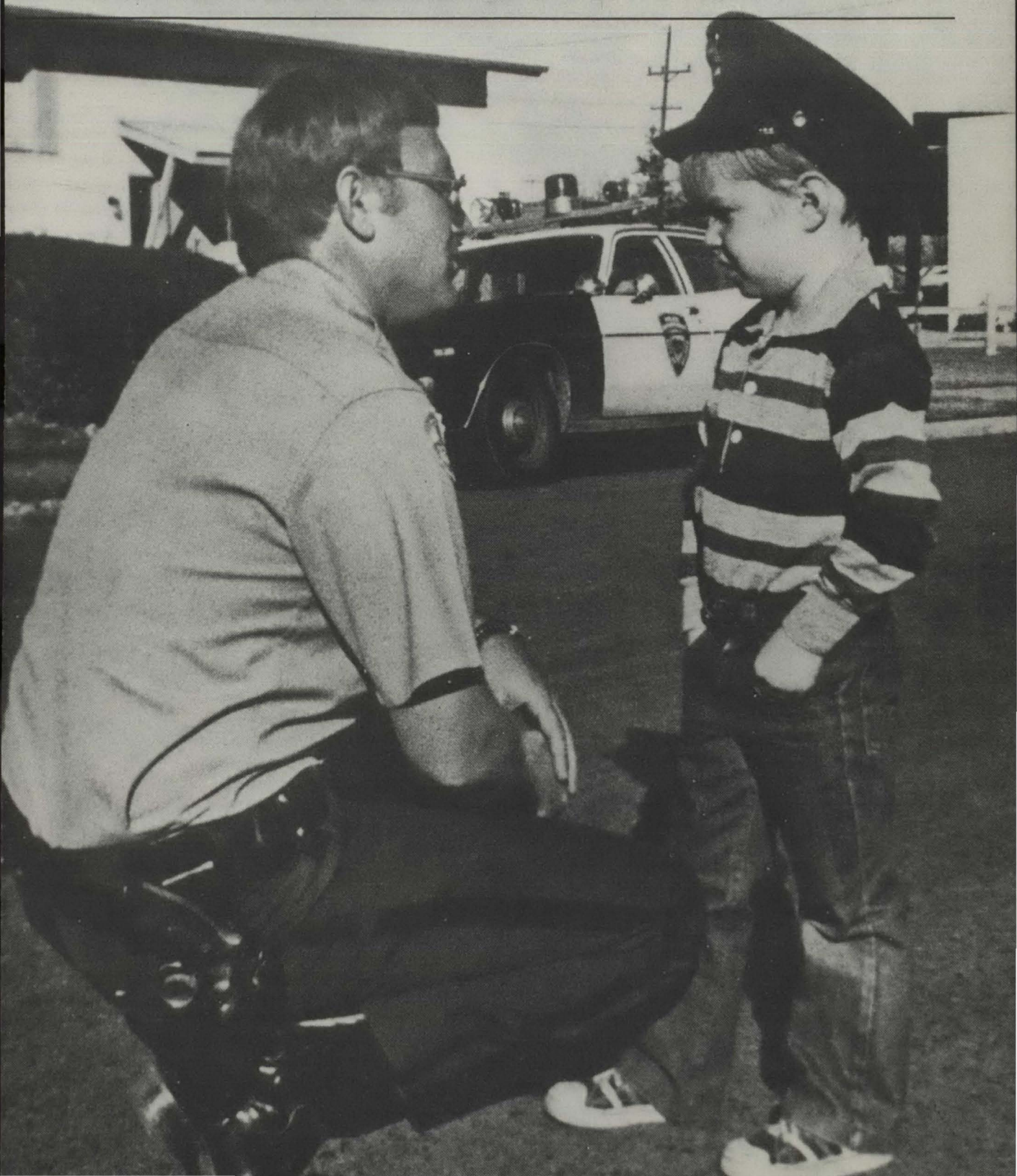
An often abused and misunderstood word, rhetoric, for our purposes, is most clearly defined as the art or skill of selecting the best available *verbal* means of persuasion at any given moment. I see it as consisting of five basic elements: Perspective, Audience, Voice, Purpose, and Organization (PAVPO).

Perspective may be defined as the viewer's point of view; in the case of an officer during a traffic stop or at a public disturbance, it is *his* view of the situation. *Audience* is the person or persons with whom the officer has made contact. *Voice* is the tone in which the officer conveys his information, his verbal personality. *Purpose* is the officer's goal or end, whether it be an explanation, a warning, or an arrest. *Organization* is the way in which the officer chooses to present or structure his communication; the officer must choose when to tell what and how much. The shaping of his communication or message often depends on his interpretation of the first four elements of rhetoric, and it often determines the eventual outcome of the rhetorical situation.

Perspective, the first P in the acronym PAVPO, is extremely important. The officer's own point of view is generally influenced by the written legal code. On most scenes, an officer represents not himself but society; he is society's spokesman and authority. Yet he is also a human being, with his own personal point of view and biases, and the many typical police calls—child abuse, beatings, and rapes, for example—wrench his personal feelings, making fair and impartial judgment difficult. As much as possible, the good officer must try to blend his own personal feelings with his sworn legal perspective, letting his humanity come



". . . an officer's ability to select the appropriate means of communication . . . is a measure of good police work and good public relations."



"The ability to analyze the precise nature of the audience and the ability to act spontaneously on that analysis is one mark of a professional officer."

through when it can help a situation and suppressing it when it threatens to make him an avenger of the law rather than an enforcer.

An officer's task is further complicated by the necessity to understand the perspective of those with whom he is dealing, citizens often quite unlike himself in every way. These citizens, an officer's *audience,* constitute the most difficult and challenging rhetorical problem for the police officer. Hour by hour during a daily shift, officers carry the pressure of having to see from another's perspective. It is not easy to acquire this habit of mind; it takes practice and training. The ability to achieve a sense of "otherness," a necessary requirement to see from another's point of view, demands a great deal of *disinterest* or nonbias. Sensitive attention to *audience,* the A in PAVPO, is hard to learn and easy to forget, especially under the day-by-day exigencies of police work.

Consider a typical audience problem, for example. Officers make numerous traffic stops during an 8-hour shift. After a while, stopping cars becomes just that—stopping *cars.* It is all too easy to forget that one is stopping *people.* Most people have experienced being stopped by an officer. It is rarely a pleasant experience. It is always anxiety producing. Even if no ticket is issued, the driver usually feels inconvenienced and embarrassed. Typically, police officers forget a traffic stop moments after it has happened, but the person stopped often remembers the event weeks, even months later, and most generally with negative feelings. If an officer has been careless or insensitive in the verbal exchange, it is this that the citizen will remember, nothing else. Too often an officer's reputation, and indeed a whole department's reputation, will be created by the sum of such incidents.

In short, any time a policeman encounters the public, the encounter is apt to have a more lasting effect on the citizens involved than an officer is likely to anticipate, and it will always have, at least, a different effect on the persons involved than it does on the officer. Thus, it is important for officers to see from the other person's perspective. Admittedly, some officers are born with this ability; others develop it out of a sensitive and compassionate view of their job. The officer who is known to possess "street sense" has this skill, this ability to see disinterestedly, but all officers can develop it by gaining a more thorough knowledge and understanding of the principles of rhetoric. The ability to analyze the precise nature of the audience and the ability to act spontaneously on that analysis is one mark of a professional officer. It is often the difference between good police work and bad.

A clear understanding of one's own perspective and that of one's audience aids in the intelligent and judicious selection of tone or *voice,* the V in PAVPO. Most officers know the importance of body language; most know that one's gestures, one's facial expressions, or one's physical stance have the power of one's words. People react to them *as if* they were words. The rhetorical equivalent to body language is voice, the verbal *persona* or character conveyed by one's tone. Every officer knows that if he wants a problem in a resisting arrest situation of some sort, it only takes a word or two to get it started. Words can ignite or defuse. The way something is said makes every difference, and tone and diction (word choice) are the determiners. The way in which an officer voices his questions, his commands, or his statements should be a matter of conscious choice. During a typical day, an officer will employ countless different voices, create and recreate his public personality again and again. He must be a chameleon, a master of the changeable *persona.* He becomes the person he must be to handle each situation.

Practically every situation calls for a different voice. A traffic stop, one moment, involving an elderly and confused driver, will be followed, perhaps, the next moment, by an angry and belligerent driver. An encounter with an erring but respectful teenager, one moment, may well be followed by a sneering and hateful one the next. Or, literate professionals, one moment, the ignorant and illiterate the next. In each case, the officer must respond in a verbal way, but rarely is this "way" the same. When to be polite, even deferential, when to be stern and commanding, when to use the language of the street, and when not—all these problems are rhetorical problems and all demand that the officer know his audience well enough *to make* or *create* the best verbal response he can. The voice carries the message; if the voice is wrong or inappropriate, the message, no matter how well-intentioned, will not be accepted without a problem.

Indeed, like the professional actor, the police officer must be capable of many voices and many roles for his audience is never the same. Because so much of his daily work—and its quality—is dependent on the habitual exercise of this skill, an officer should not leave the training of this skill to chance. The study of rhetoric can teach him not only how to understand his own perspective and how to analyze his immediate audience but also how to *choose* and *create* the most appropriate voice to convey his words.

Partly, of course, an officer's choice of voice will be governed by his *purpose,* the second P in the acronym PAVPO. Voice and purpose should be in harmony. Problems arise on the street when an officer's voice is illsuited to his immediate purpose. If an officer's purpose is to inform, clarify, or persuade, the voice he adopts should be consistent with that purpose. Confusion in any or all of the rhetorical areas of perspective, audience, or voice will lessen an officer's ability to achieve his purpose. In any situation, an officer must have a clear sense of purpose if he hopes to act with consistency and fairness. Unsureness of purpose leads to erratic and confusing behavior, an attribute the officer can ill afford. Matters which call for police attention need an officer to give clarity of direction and purpose, not the reverse. Officers make errors on the street when they confuse intentions, such as the intention to inform with the intention to persuade or vice versa.

The last element to consider in rhetoric is *organization,* the O in PAVPO. This refers to the problem of structuring a communication or verbal response. There are many ways to structure or shape a single message. An officer in a street scene plays a dual role—he is both actor and primary director. Every street incident is a mini-drama, with its own beginning, middle, and end, but this structure is amenable to countless variations and modifications, most of which are a result of the way in which an officer decides to direct the scene. Police procedure, of course, helps dictate the basic structure; it is the officer's given script. The attempt to determine, for example, whether a driver is under the influence (DWI) has prescribed steps, legal and departmental, which the officer must follow. Beyond this, how the officer will structure the rhetorical encounter with the subject is greatly a matter of improvisation. Like a detective conducting an interrogation, the street officer must decide when to ask what and when to make the actual arrest, if there is to be one. He must direct and shape the encounter. Too much delay may result in a fight; too quick a judgment may have the same end. The officer must not only be professional, he must also *appear* professional, both to the subject involved and to any bystanders in the area. The officer works the public theater of the streets, and much of his professional success depends on how he goes about his job. Should he "muddle" through a traffic stop or an arrest incident, he can expect problems. The skillful officer knows the procedural and legal script, but he also knows how to structure those steps to fit the particular rhetorical situation.

The acronym PAVPO, then, represents the five elements in every rhetorical situation, and officers have to use these elements each day, often unconsciously or spontaneously. The professional learns to manipulate these elements quickly and skillfully; the amateur never learns. Rhetorical expertise is so necessary to good police work that it is surprising that responsible leaders in law enforcement have been generally content to regard it as a preemployment matter, something a recruit probably has picked up elsewhere. Criminal justice personnel in colleges, universities, and training academies might well consider adding a sixth course to the present five-course curriculum first created by the 1970 Annual California Association of Justice educators. Such a course, perhaps entitled Practical or Functional Rhetoric, would best be taught by instructors who have police experience and academic credentials. Training academies, particularly, would do well to offer recruits a rigorous course in rhetoric, one that would be specifically

". . . because communication is a dynamic, fluid, and a constant-changing medium . . . the police officer . . . needs to be linguistically flexible and shrewd."

designed to meet the realistic demands of the street. Intending to do for the officer what moot court presently does for lawyers, a rhetoric practicum or seminar could, by employing simulation techniques, train officers to make conscious and intelligent rhetorical choices. If approached as a problem-solving course rather than a purely theoretical "book" course, a rhetorical practicum which taught the five elements of rhetoric I have described would significantly improve an officer's street ability, and simultaneously, enhance his public image—a rare combination.

It is precisely because communication is a dynamic, fluid, and a constant-changing medium that the police officer, perhaps *more* than most professionals, needs to be linguistically flexible and shrewd. At all costs, he must not be deficient in the skills of judgment, tact, and command presence if he is to survive and to be regarded as a true professional. Much of one's judgment, one's tact, and one's command presence is a result of rhetorical skill. Dealing as he does with the public, the hottest possible arena, the police officer must be a master of rhetoric. He must know his own perspective, he must know how to couch his communication, he must be sure of purpose, and he must be clever in structuring his message. He must be able to speak in a variety of ways to a variety of people. He is actor and director in countless scenes daily. Ultimately, he should be linguistically rich and rhetorically smooth.

In short, though effective communication may appear spontaneous, it is usually the result of informed instinct and good training, a training which has taught the art of selecting the best verbal mode of response to a given situation. In the past, most officers have had to rely on street experience to give them this training, but such an approach takes time and can be costly and dangerous to everyone concerned when mistakes are made. I believe officers deserve a better break than this; they deserve as thorough a preparation for the streets as we can give them. The night stick, the mace, and the gun have their place in the street world of the officer, and he generally receives good training with each of them. But because police work is finally more rhetorical than violent, we should prepare each officer to function skillfully and imaginatively, with confidence, in this area. **FBI**

Coordination and Consolidation of the Police Personnel Selection Process

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An area of rapidly growing concern in law enforcement is the selection process for police officers. This concern is valid for at least two reasons. First, the ultimate success of any organization, regardless of its nature or purpose, is primarily dependent on the competence of its personnel. All other organizational resources are less valuable until personnel are properly selected and trained.

The selection process is especially critical as it applies to law enforcement agencies. Because a police officer is entrusted with awesome power and responsibility, administrators must take special care to insure that only highly capable individuals are permitted to serve. Failure to do so could have serious consequences for the law enforcement agency, the individual police officer, and the citizens.

A second major factor in the need for a careful personnel selection process is the necessity for guaranteeing that each applicant is processed in accordance with equal opportunity employment procedures.[1]

In an effort to accomplish these goals in an effective and economic manner, the chiefs of police in Pinellas County, Fla., and the county sheriff agreed in 1975 to work toward the coordination and consolidation of all phases of the police personnel selection process. Pinellas County has 20 municipal police departments and a single sheriff's department. The two largest cities in this south central county of Florida are St. Petersburg and Clearwater.

The decision to consider consolidating segments of this highly specialized police function was made for a number of reasons. First, it was considered to be more cost effective to have these functions performed by one group of highly trained and carefully selected individuals rather than to have them handled in a nonuniform way by officers from different police departments in Pinellas County. Second, the implementation of such a practice assured a high degree of quality control in all phases of the screening process—assurance that could not be given under the previous system.[2] Created to perform this function was the Police Applicant Screening Service (PASS) which was made a part of the Pinellas Standards Council.

The PASS team is comprised of four staff members: A supervisor, two investigators, and a polygraph examiner employed to perform this function exclusively. The PASS office also has two full-time secretaries.

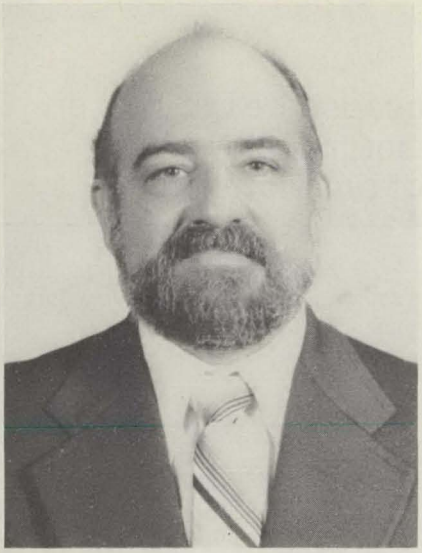
Applicant Sign In

When individuals indicate an interest in being employed as a law enforcement officer in Pinellas County, they are requested to "sign in," at which time they are furnished a file jacket with their file number. The folder contains the following forms which the applicant is required to complete, sign, and date:

1) Equal employment opportunity questionnaire;
2) Police applicant screening service procedures;
3) Selection standards for police officer position in Pinellas County;
4) PASS policies;
5) Application for police screening;
6) Previous law enforcement background;
7) Waiver of damage claim by applicants;
8) Military Statement Form 180N, "requests pertaining to military records";
9) Educational letters;
10) Personal inquiry waiver authority for release of information; and
11) Liability waiver.

Written Test

Applicants are given one of three different tests comprised of 120 multiple-choice questions. All three examinations have essentially the same type of questions. An applicant must make a minimum score of 60 to pass. The test is graded in his presence at the PASS office. If he fails the first written test, he is informed at that time that he



Dr. Territo

Mr. Walker

can take a second test that same day if he chooses, or he may return at a later date. If the applicant fails the second test, his file is administratively closed, and he will not be given an opportunity for further examinations.

When an applicant passes the written test, he is advised that the next phase of the process is the completion of the physical agility test. He is informed of the various segments of the test and is advised when and where the test will be conducted.

Agility Test

The physical agility test is given two times, one day a week. Applicants are immediately advised whether they have passed the test. If they fail, they may be retested at the next regularly scheduled time. There is no limit to the number of times an applicant may take this test.

Personal History Form

If an applicant passes the physical agility test, he is furnished a personal history form. Upon completion of this form, the applicant is scheduled for a polygraph interview. Failure to return the personal history form within 2 weeks will result in the applicant's file being administratively closed.

Polygraph Interview

The polygraph interview, conducted at the PASS office, takes approximately 2 to 3 hours to administer. Before the creation of PASS, there was no uniformity regarding the use of the polygraph in the preemployment screening process. In some instances, Pinellas County police departments used their own departmental polygraph examiners for the screening process. In other cases, police departments chose not to use the polygraph, while still others employed private polygraph examiners. With the creation of PASS and the employment of a single highly qualified polygraph examiner, uniformity and quality control were assured. In addition, there are now standardized polygraph questions.

Once the polygraph examination is completed, the findings are forwarded to the advisory council, and the applicant is fingerprinted and photographed. The fingerprints are then forwarded to FBI Headquarters in Washington, D.C.

Review of Applicant's File

The advisory committee of the Pinellas County Police Standards Council meets once a month and reviews all applicant files to determine whether the PASS office should continue its screening process. If an applicant is deemed unacceptable, he is so informed. If the applicant is acceptable, notification is sent to him, advising him when to appear for an oral board interview. If it is determined that an applicant does not meet selection standards, he may appeal the advisory committee's decision by writing a letter to the chairman of the Pinellas County Police Standards Council who will arrange to reintroduce the applicant's case, along with the applicant's appeal comments, to the advisory committee. If the appeal is granted, the advisory committee will order PASS to continue processing the applicant.

Oral Board

The oral board, which meets once a month, usually consists of a member of the Pinellas Police Academy staff, two sergeants, and two patrol officers. Each police officer must be from a different Pinellas County police agen-

"The system is advantageous to the applicant because he no longer has to contact a large number of agencies to get information about entrance requirements, salaries, and availability of positions."

cy, and oral board members may vary each month. Board members are selected from a list of suitable personnel provided by each police department. All police officers on this list are volunteers who have at least 3 years of law enforcement experience.

Members of the oral board grade the applicants independently. If applicants are determined to be unacceptable—a passing score of 60 has been set—they are informed, in writing, by the PASS office.

If the applicant is deemed acceptable by the oral board, arrangements are made to schedule the applicant for a medical examination.

Background Investigation

The background investigation is expensive and time-consuming. Prior to PASS, there was usually not a particular individual within an agency specifically assigned to perform this function. The task might have been given to a detective who had other responsibilities or perhaps even to a patrol officer who was advised to conduct the background investigation when not on an assignment. This type of hit-and-miss approach to background investigations may result in the employment of officers who are not suited for police work.

Background investigations are, in every respect, as specialized as other types of police investigations, making it essential that the person responsible for conducting the investigation be both experienced and knowledgeable.

Completion of Investigation

When all phases of the preselection process are completed, applicant information is assembled in a permanent file which is placed in the candidates' pool. These applicants are available for review for prospective positions by members of the council or their authorized representatives.

If an applicant specifies a preference for a particular agency, a memo indicating agency preference is placed in his file. In some cases, an applicant is referred to the PASS office by a particular law enforcement agency; however, if the applicant is deemed acceptable, he is not obligated to go to work for the agency making the referral.

It is important to note that some Pinellas County law enforcement agencies impose additional steps to the preemployment screening process for those applicants they are interested in employing. For example, some agencies require their applicants to take psychological tests; others use their own oral board. This allows maximum freedom to be retained by the law enforcement agencies in the selection process.

Voluntary Participation

Law enforcement agencies in Pinellas County are not compelled to participate in the PASS program and may decide to take advantage of only a portion of the service. At this time, however, all agencies participate in PASS, either completely or quite extensively. Even if a law enforcement administrator decides not to participate, representatives from that department may still sit on the advisory council.

Funding

One of the many positive features of the PASS program is that it is free to the participating law enforcement agencies, taxpayers, and applicants. The entire program is funded from a $1 surcharge imposed on all traffic fines and misdemeanor offenses in Pinellas County. All monies emanating from this source are used exclusively for the financial needs of PASS.

Conclusion

The PASS program has considerable merit for those parts of the country which have many law enforcement agencies in a relatively close or contiguous geographic region. The concept works to the advantage of both the applicant and the participating law enforcement agencies.

The system is advantageous to the applicant because he no longer has to contact a large number of agencies to get information about entrance requirements, salaries, and availability of positions. Additionally, he does not have to take numerous entrance examinations, polygraph examinations, or oral board interviews required in the preemployment screening process.

There is general agreement that PASS is much more cost effective than having individual agencies complete their own selection process. In the past, each police agency had to absorb the total cost of the salaries of investigative personnel, staff support, clerical workers, office space, and all of the other administrative costs associated with the process.

With the development of PASS, agencies can now consolidate and coordinate the police personnel selection process. **FBI**

Footnotes

[1] L. Territo, C.R. Swanson, Jr., and Neil C. Chamelin, *The Police Personnel Selection Process* (Indianapolis, Ind.: Bobbs-Merrill Educational Publishing, 1977), p. vii.

[2] Considerable differences were found in the background investigation practices of Pinellas County police departments in a study conducted by L. Territo. See L. Territo, *A Study of Police Personnel Character Investigation Practices of Municipal Departments in the State of Florida.* (Tampa, Fla.: Unpublished Master's thesis, University of South Florida, Tampa, 1971).

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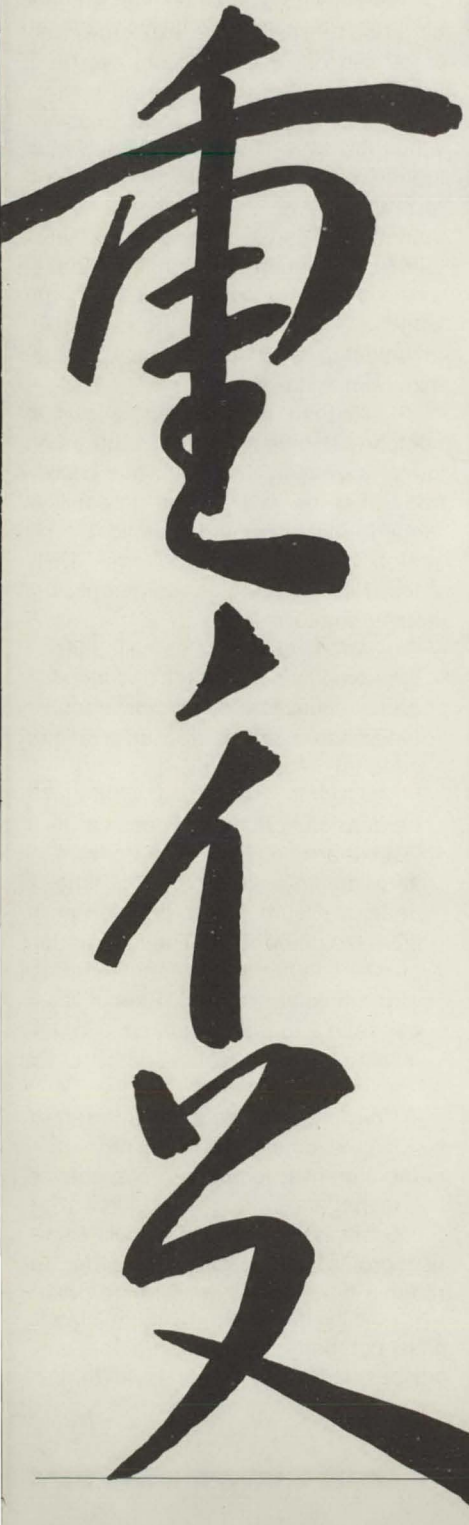

Can Japanese Management Principles Be Used in American Police Departments?

By
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The atom bomb attack on Hiroshima and Nagasaki ended World War II and brought Japan to its knees. The period since that time can be considered nothing less than a miracle in terms of Japanese economy. When the U.S. occupation of Japan ended in 1952, Japan's total production was about one-third that of Great Britain and France. By the late 1970's, its gross national product was as large as both nations combined and more than one-half of the United States.[1]

Today, Japan, a country with little or no resources to speak of, is threatening to, and in many cases, has cornered the market on manufactured products. Its intrusion into motorcycle manufacture virtually eliminated the British as viable competitors; it has overshadowed the Swiss in watch production; the quality cameras and lenses produced by the Japanese have all but destroyed the demand for the formerly competitive German products. The list could go on and on.

But, perhaps the most significant intrusion by the Japanese into the marketplace can be felt right here in the United States. The American automobile industry is facing declining demand by consumers who desire quality-built cars. At a time when U.S. automobile manufacturers are closing plants, 35 workers at a highly automated Japanese assembly plant, aided by industrial robots, produce 350 car bodies every 8 hours, seven times the productivity rate of competing U.S. automakers.[2]

Many would like to attribute the Japanese success to character traits within the Japanese people, but the experts tend to disagree. In his book, *Japan As No. 1, Lessons For America,* Ezra Vogel states: "The more I examined the Japanese approach to modern organization, the business community, and the bureaucracy, the more I became convinced that Japanese success had less to do with traditional character traits than with specific organizational structures, policy programs, and conscious planning."[3]

Peter Drucker, the 71-year-old business strategist, believes that there is really nothing mysterious about where the Japanese learned their innovative techniques. "All Japanese concepts of managing people and labor relations are not in the Japanese tradi-

Lieutenant Brennan

Donald J. Dilworth
Police Commissioner

tion, but in the model of I.B.M. And they are only doing what I.B.M. has been doing since 1930."[4] And what has I.B.M. been doing since 1930? The answer is simple—dealing with people as human beings and as a valuable resource.

Drucker goes on to say that the greatest weakness of American businesses is people, while management of people is the greatest strength of the Japanese.[5]

As a police supervisor, I wonder whether Japanese management techniques could be applied to a police setting? Granted, we don't operate an assembly line or produce a product, but still, we deal with people. Our people perform a vital community service, many times without immediate supervision. Could we improve the work performance of officers with their cooperation? Would a new management concept help to tap a hidden store of enthusiasm within the American police system?

Before these questions can be answered, we must determine the ingredients that make up the Japanese management system. Japanese management is characterized by six basic elements:

1) Permanent employment,
2) Long term perspective,
3) Company loyalty,
4) Identification with the company,
5) Bottoms-up management, and
6) Consensus by compromise or nemawashi.[6]

When a Japanese worker is hired by a Japanese firm, he expects never to be laid off, even in economic hard times. This policy tends to stabilize the Japanese work force, and mobility within the work force is minimal. In an interview with *Fortune* magazine, Yotaro Kobayashi, executive vice president for Fuji Xerox, commented: "I was told in my young days that we have three important decisions. One is to select a good university; the second is to select a good company; and the third is marriage."[7]

Permanent employment allows a company to invest heavily in the training of a worker, secure in the knowledge that he will, in all probability, remain until retirement. Toshio Ozeki, senior manager, International Divisions, Nikko Securities, comments on lifetime employment:

> "In Japan we have a so called lifetime-employment system. Workers, and executives too, typically spend their entire working life with a single company. Accordingly, a person tends to think in terms of what can be done during his business career. People are not judged on performance during a short period of time, under pressure, say to produce an increase in earnings. They are under pressure to produce, but not in terms of the next year or two. Executives can take a longer perspective in guiding the organization, which is considered perpetual."[8]

This longer perspective referred to by Ozeki seems to be the general rule in the Japanese company. The goal of the managers is long term survival of the company. The company will sacrifice profits, if necessary, in order to reach a more stable, long range goal.

Loyalty is important in the Japanese company. Not only are the employees expected to be loyal to the

" 'If we look at the United States, there is a very strong tendency . . . to underestimate the potential of harnessing worker cooperation to raise productivity and to improve quality.' "

company, but the company must reciprocate. The Japanese company is people-oriented. "Employees in Japan view their company as an extension of their family life. Indeed many of them equate the importance of their company with that of their own life," says Ryutaro Nohmura, the owner of a tent-making firm in Osaka.[9]

This loyalty also takes the form of mutual trust between union and management. The union, as a representative of the employee, is treated with respect, and every effort is made to resolve grievances before they reach a confrontation stage. The result has been fewer strikes and less labor unrest in Japan as opposed to other major industrial powers. Japan lost 1.4 million workdays in 1978 because of strikes; the United States, on the other hand, lost 39 million.[10]

Kenji Takitani, director and general manager, Hitachi Metals, describes what he calls the *wa* spirit:

> "When I was in charge of a company in the U.S., I emphasized the *wa* spirit. You know the meaning of *wa*? Harmony. Harmony leads to strength, and this was very difficult to explain to the American executives and employees of that company. But gradually—and I was happy about this—they did understand. The *wa* spirit makes a great difference in the attitude of businessmen or employees in Japan, compared with Americans. The lifetime-employment system comes from the *wa* spirit. We try to keep good relations with the union; again this comes from the *wa* spirit. *Wa* means a kind of love. We have to have patience, sacrifice, affection in every segment of the enterprise or the operation." [11]

Identification with the company seems to go hand-in-hand with loyalty. When new employees are hired into the company, elaborate ceremonies are held annually in order to make the occasion memorable. In order to strengthen the bond between employee and company, the employee may be required to take up residence in a dormitory during his training period, even if it means separation from his wife and family.[12] A similar type of program is used in this country by the FBI while training New Agents or National Academy students.

Further identification with the company is fostered by certain rituals that vary from company to company. Identification may take the form of the company motto being recited or a chorus or two of the company song, so that everyone can get into the proper working spirit. At Nissan Motor, every shift begins with a warm-up period of calisthenics on the shop floor.[13]

Bottoms-up management and nemawashi (consensus by compromise) are very closely linked. As a general rule, workers in Japanese plants are not only encouraged but actually expected to make quality control their top priority. To accomplish this, a device called a quality control circle was instituted. A quality control circle is where workers and their supervisors discuss ways to improve output and standards on the job.[14] Furthermore, employees are encouraged by the company to become involved in company decision-making. In reality, however, this invitation is most often extended to middle management, rather than reaching the lowest rung on the hierarchal ladder.

In July 1980, the House Committee on Science and Technology held a seminar on the role of research in economic performance. Robert E. Cole, a sociologist at the University of Michigan, was one of the panelists. He had been studying Japanese management for approximately 15 years and he told the committee:

> "If we look at the United States, there is a very strong tendency among industrial engineers, economists, and management and government officials to underestimate the potential of harnessing worker cooperation to raise productivity and to improve quality. In so doing, I think we underestimate the contribution to be made by the social sciences." [15]

Cole believes that in America, we tend to be locked into an adversary relationship between union and management, whereas in Japan, the Japanese manager seeks to bring about cooperation between the two forces. Japanese managers encourage workers to approach their jobs with ingenuity and commitment.[16]

The Japanese system of reliance on group decisionmaking is pretty much summed up by Hajime Sasaki, director and general manager, Foodstuffs Division, Nissho-Iwai:

> "The central difference between American business and Japanese business lies in decision-making. Japanese decision-making is the gathering of Japanese wisdom. The *ringi* system (a procedure in which a document proposing a decision or course of action is passed along for approval by the persons concerned) allows everyone who is likely to be involved in implementation to participate in the making of the decision. This feeling of participation

" 'If the Japanese could learn from us with such profit in the past, perhaps there is something that we now need to learn from them.' "

is very important for the spirit of *wa*." [17]

We in America might find this concept a very difficult one to understand. Usually decisions are made at the top and flow down to the lowest levels through the chain of command. To allow many to become involved in the decisionmaking process sounds too cumbersome and time-consuming.

Yotaro Kobayashi counters this argument by saying:

> "It is true that in the U.S. a decision can be made faster than in Japan, but then it may take a long time to carry out the decision. In Japan, it takes longer to get agreement on a decision, but once it is agreed to, the rest is very quick—those who will be carrying out the decision have already been consulted." [18]

One wonders at this point whether the system of management is a device peculiar only to the Japanese and unworkable in the American industrial environment. Are American workers less ambitious and less concerned with quality than their Japanese counterparts? Can Japanese management principles affect American workers in the same way that it affects Japanese workers?

We will not know the answer to that question without more study, but D.L. Coutu, a *Time* magazine correspondent, decided to take a look at the Sony television manufacturing plant in San Diego where Japanese executives help supervise 1,800 workers. Here is what she found.

Workers at Sony do not punch a time clock. Everyone in the plant is on a first-name basis and eat together in the company cafeteria. They are briefed once a month on sales production goals and are encouraged to air their complaints. They attend company paid parties four times a year. One person working on an assembly line remarked that working for Sony is like working for your family. This camaraderie is apparently shared by many of her coworkers.

The plant manager at the San Diego location, Shiro Yamada, believes that there are few differences between workers in the United States and Japan. "Americans are as quality conscious as the Japanese. But the question is how to motivate them," says Yamada. Yamada finds that bathing his employees in personal attention does the trick.[19]

The end result of Yamada's effort has been productivity approaching that of Sony's Japanese facilities. This year the plant will manufacture 700,000 color television sets, one-third of Sony's total world production. During the recession that occurred in the United States between 1973 and 1975, sales of television sets dropped and production went down significantly. However, no one was fired from the San Diego plant. Since the plant opened in 1972, no one has been laid off.

Several attempts to unionize the plant have been rejected overwhelmingly. It appears that problems can be worked out between labor and management without the need for an adversary relationship. The Japanese style is still confusing to some Americans. One worker at Sony complained, "There is a lot of indecision." [20] Could this "indecisive" type of management build more self-reliance on the part of the individual worker?

Could the Japanese style of management be applied to police departments throughout the United States with the ultimate goal being to increase cooperation between labor and management, reduce police strikes, improve relationships with the public, and improve police service in general, with a reduction in costs? I think that it is worth a try at least on an experimental basis.

In my own police department in Suffolk County, N.Y., hiring requirements are very strict and approximately 5 percent of those applying for the job are ultimately hired. This is also true in many other areas of the country. Like the employee of the Japanese company, policemen generally have lifetime employment. We have a seniority system of wage increases, not unlike the Japanese, and through our oath of office, uniforms, and badges, we have generally identified ourselves with our individual police departments.

If we were to place emphasis on improving the four remaining principles used by the Japanese, would there be an overall benefit to labor and management alike? The Japanese look for the long term perspective rather than reacting to events of the moment. Would anticipation of problems improve our organization? Mutual loyalty between labor and management breeds trust. Couldn't departmental problems be ironed out more easily if we were all committed to the same goals? And finally, bottoms-up management and consensus by compromise might improve both morale and efficiency.

In police work, productivity is difficult to measure at best. Many

employee evaluation programs have degenerated into personality contests and caused a subsequent decrease in employee morale. It is relatively easy for a plant manager to determine the productivity of an assembly-line worker as compared to his fellow workers or workers doing the same type of work in another plant. But how do you measure police service?

I do not want to confuse the issue by bringing up such a controversial topic as employee evaluation; volumes could be written on this subject alone. The point I am trying to make, however, is that if Japanese management principles can increase productivity, increase motivation, and improve relationships for assembly-line workers, perhaps we in law enforcement should take a closer look at these principles. Would we not be better off having a police officer, who operates under minimal supervision, feel the same strong sense of loyalty toward his department, supervisors, and the public that the Japanese assembly-line worker does?

Furthermore, has the police officer or patrol sergeant nothing to offer upper management in the form of innovative ideas? Is there an untapped source of ideas out there waiting to be brought forth? When I first joined the police department in 1963, it was not unusual to spend at least one of your days off in court. Many of us at the lower level asked informally why couldn't it be arranged so that we would only have to go to court on the day shift. Perhaps if someone were to schedule court dates for officers, the inconvenience to patrol officers could be avoided. The answer was always the same, "When you become a cop, that's what you have to put up with." Amazingly enough, years later, when paid overtime for court became a reality, a scheduling system went into effect which scheduled officers for court only on the day shift, unless some emergency directed otherwise.

Theoretically, a Japanese manager's concern for his employees would motivate him to rectify a problem without waiting for the union to put his back to the wall. By seeking out problems before they reach the crisis stage and solving them, the employee believes that you really care about him as a person and that you are interested in his welfare. An administrator that follows such a policy has every reason to expect that his employees will be loyal to him and the department.

Conclusion

We have seen Japan emerge from the rubble of war into one of the most powerful industrial nations on earth. Edwin O. Reischauer, the Ambassador to Japan during the postwar period, suggests that we take a lesson from Japan: "Unquestionably, Japan today has a more smoothly functioning society and an economy that is running rings around us. . . . If the Japanese could learn from us with such profit in the past, perhaps there is something that we now need to learn from them." [21]

Perhaps the police administrator today should look down for the answers to his problem—down into a sea of blue uniforms who are only waiting to be asked. They will not always come up with the answer he would like to hear, and in all probability, it will mean more work to follow through on their ideas, but perhaps in the long term perspective, he will be rewarded with a more efficient and cohesive department. **FBI**

Footnotes

[1] James Reston, "Pearl Harbor Plus 38," *New York Times*, December 9, 1979.
[2] Ezra F. Vogel, *Japan as No. 1, Lessons For America* (Cambridge, Mass.: Harvard University Press, 1979).
[3] Ibid.
[4] James Flanigan, "The Wrong Bottom Line," *Forbes*, May 25, 1981, pp. 42–46.
[5] Ibid.
[6] William Bowen, "Panel Discussion, Japanese Managers Tell How Their System Works," *Fortune*, November 1977, pp. 127–138.
[7] Bowen, p. 129.
[8] Bowen, p. 127.
[9] Christopher Byron, "How Japan Does It," *Time*, March 30, 1981, p. 58.
[10] Ibid.
[11] Bowen, p. 127–128.
[12] Vogel, p. 146.
[13] Byron, p. 59.
[14] Byron, p. 57.
[15] Luther J. Carter, "Industrial Productivity and the Soft Sciences," *Science*, July 25, 1980, p. 476.
[16] Ibid.
[17] Bowen, p. 131.
[18] Ibid.
[19] D. L. Coutu, "Consensus in San Diego," *Time*, March 30, 1981, p. 58.
[20] Ibid.
[21] Reston, *New York Times*.

Cults: A Conflict Between Religious Liberty and Involuntary Servitude? (Part I)

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On a busy street in a midwestern metropolitan area, businesses are about to open for the day. One employee arrives in the alley behind a local shop. Before he is able to get out of the car, the passenger's door is jerked open and he is hauled unceremoniously out of the car by two men. A third man opens the driver's door, and ignoring the driver, reaches in, pulls the keys out of the ignition, and throws them down the alley among boxes and barrels of trash. The passenger is muscled into one of two waiting cars. Resistance is easily overcome. He is spirited away, taken against his will across many State lines to a retreat in the mountains of an eastern State. He is kept there for weeks in seclusion.

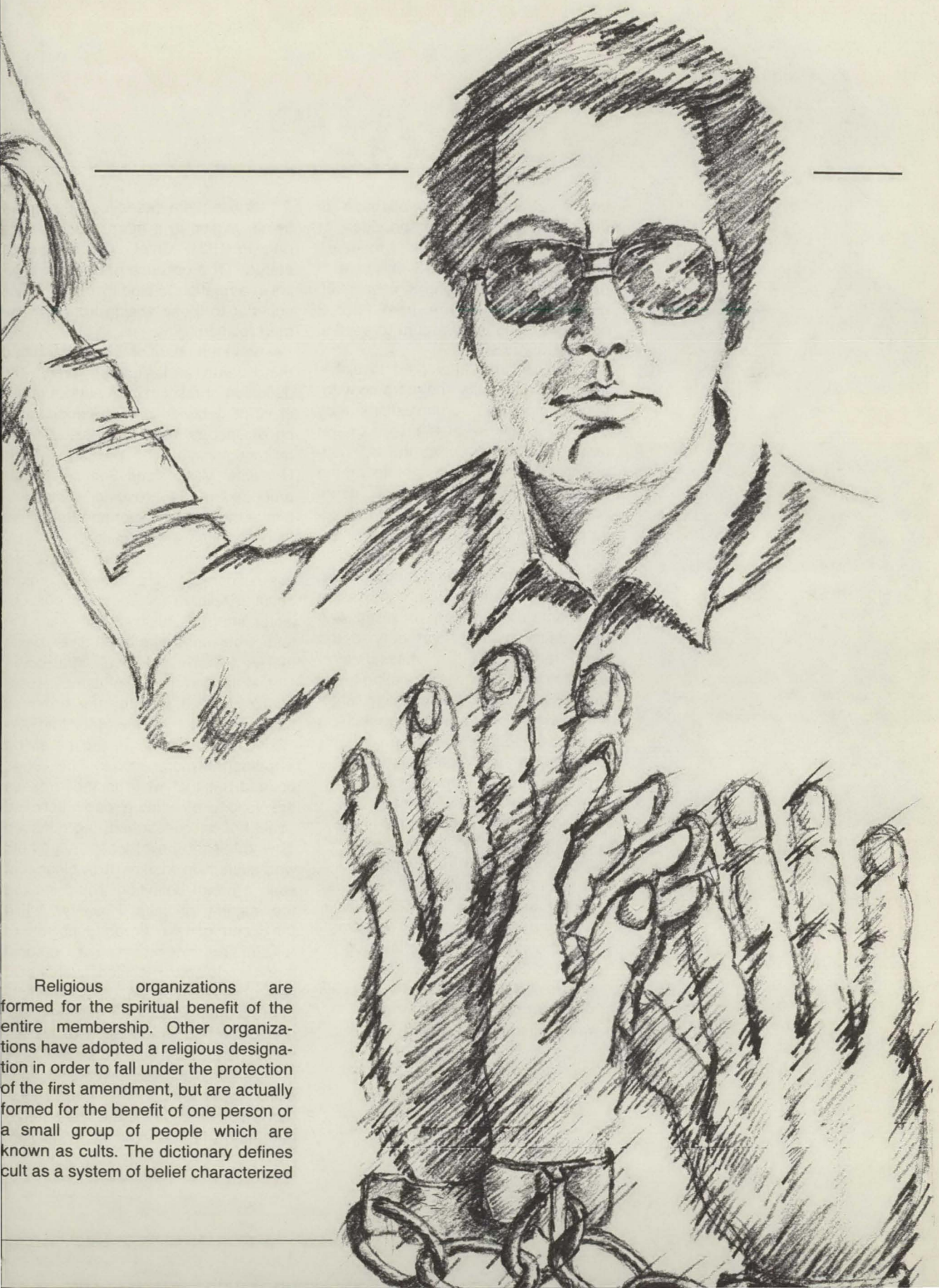
A few months later, a college student home for the holidays is forcibly kidnaped by four people who conceal themselves in the family garage. Eventually, he too is transported across State lines, handcuffed to one of his abductors. He is slapped and kicked by the people who hold him. His every attempt to escape is thwarted by his abductors. He is moved from place to place to avoid detection. On one such move, the kidnapers make a mistake. They commit a simple traffic violation. While stopped by local police, the police discover the victim and he is freed. To return to his home and family? No! His parents believe they will never see him again!

Both of these incidents are actual cases which occurred within 3 months and 10 miles of each other. In the first case, the abductors kept the victim until they were finished with him and his family rejoiced. The second abduction was interrupted by the police. His family believes this interruption was a tragedy. Both victims, members of religious cults, were kidnaped for "deprograming." The first victim was reunited with his family; the second rejoined his cult.

This article explores some of the legal problems confronting law enforcement in dealing with cults. Part I discusses freedom of religion, found in the first amendment to the U.S. Constitution; part II centers on the manner in which some cult members impose their will on impressionable youths; and part III focuses on the parents and deprogramers who attempt to rescue cult members and return them to their families. Underlying these discussions are the difficulties facing law enforcement in investigating and prosecuting cult members or deprogramers.

Defining Cult and Religion

There are hundreds of recognized religions throughout the United States. Most are organizations of people bound together by a common belief in a deity and protected from governmental infringement of their religious belief by the first amendment to the U.S. Constitution.[1] Indeed the desire for freedom of religion was one of the reasons for the founding of the United States and one of the basic reasons the colonies originally balked at ratification of the Constitution until the Bill of Rights was added.



Religious organizations are formed for the spiritual benefit of the entire membership. Other organizations have adopted a religious designation in order to fall under the protection of the first amendment, but are actually formed for the benefit of one person or a small group of people which are known as cults. The dictionary defines cult as a system of belief characterized

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by "great or excessive devotion or dedication to some person, idea or thing." [2] Estimates of total U.S. membership in cults vary from 3 million to 8 million people belonging to over 3,000 groups ranging in size from 2 or 3 members headed by a guru to several hundred thousand.[3]

The law has attempted to distinguish between cults and more conventional spiritual organizations by defining exactly what is meant by the term "religion." In 1890, the U.S. Supreme Court upheld a statute of the territorial legislative body of Idaho, which forbade bigamists or polygamists from voting and required an oath by every voter that he was not a member of an order that taught, counseled, or encouraged the commission of bigamy or polygamy. In discussing their decision, the Court defined the term "religion" as ". . . having reference to one's view of his relation to his Creator . . ." and clearly distinguished it from worship by a particular sect. "It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter." [4]

The Court went on to say:

> "With man's relations to his maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, *no interference can be permitted,* provided always the laws of society, designed to secure its peace and prosperity and the morals of its people, are not interfered with." [5] (emphasis added)

Subsequent cases focused on defining religion in a more precise manner. In 1931, Chief Justice Hughes stated: "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation." [6]

With the onset of World War II and the Korean and Vietnam Wars, the definition of religion came under greater scrutiny because of the increase in conscientious objector resistance to military service. The passage of the Universal Military and Service Act, as amended in 1948, revealed a substitution of the phrase "Supreme Being" for "God" in Hughes' definition.[7]

The Supreme Court discussed this refinement in a series of cases defining religion for conscientious objector status. [8] Justice Clark said the test of belief is "whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God." [9] This definition excluded religious belief based merely on a personal moral code. The Court pointed out that while in these cases the validity of what a party believed could not be questioned, the question of whether the belief was "truly" held was subject to inquiry. It is clear that such a broad definition would include the majority of cults. However, while the Court gave a broad definition of religion (but not including a personal moral code) and decided such belief could not be questioned, the sincerity of the professed believer may be questioned through examination of his action in connection with those beliefs.[10]

This distinction between religious belief and action becomes more important when we examine the first amendment and the free exercise of religion,

". . . the freedom to believe is protected absolutely, while the freedom to act upon religious motives is not free from Government interference when there is a compelling State interest."

particularly in light of the fact that the substantive rights interpretation of the Due Process Clause of the 14th Amendment opened the way for recognition of religious liberty as a Federal right protected against State interference.[11]

Religious Freedom under the First Amendment

Basically, the Freedom of Religion Clause of the first amendment has two provisions. First, Congress may not establish a religion, and second, Congress may not prohibit the free exercise of religion.[12]

In the words of Thomas Jefferson, the clause against the establishment of religion is said to provide a "wall of separation between church and state."[13] Subsequent Supreme Court decisions have upheld this view. As a result, the Government is prohibited from establishing a religion or interfering with a religion,[14] from spending money in aid of religious activities or institution,[15] from requiring a belief in God as a test of public office,[16] and from endorsing any form of governmental advancement or inhibition of religion.[17]

While the establishment clause focuses on the purpose and primary effect of legislation barring either Government advancement or inhibition of religion, the Free Exercise Clause protects the religious liberty of the individual against interference by the State.[18]

This free exercise of religion protected by the first amendment is not an absolute guarantee. For example, the framers of the Constitution did not intend to protect cults advocating the necessity of human sacrifices.[19] Moreover, when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury.[20]

Thus, the freedom to act, even where religiously motivated, is not entirely free from restriction.[21] When confronted with religiously motivated conduct, the courts use a balancing analysis in which the interest of the religious group is weighed against the State's interest in prohibiting activity harmful to individuals or institutions.[22] Courts have afforded a lesser standard of protection to a religious group when the underlying belief was found to be insincere or only incidentally religious or when the religious activity involves fraud or deception.[23]

An interesting criminal case which illustrates court efforts to balance these conflicting interests is *United States* v. *Ballard.*[24] In *Ballard,* the defendant was accused of fraudulently using the mails to solicit funds for his system of religious belief. In affirming his conviction for using and conspiring to use the mails to defraud, the Supreme Court agreed with the district court's decision to withhold from the jury any questions relating to the truth or falsity of the beliefs, since the first amendment forbade inquiry into such matters.

Such cases illustrate that the freedom to believe is protected absolutely, while the freedom to act upon religious motives is not free from Government interference when there is a compelling State interest. The rationale is that religious belief alone poses no great threat to the rights of others, but when those beliefs are translated into action which obstructs the rights of others, the State may interfere.

The problem arises that almost any public act motivated by religious belief can be labeled "action" and ordinary State interference could unduly restrict religious activities. In 1963, the Supreme Court attempted to resolve this problem in the case of *Sherbert* v. *Verner.*[25] In *Sherbert,* a member of the Seventh-day Adventist Church had been fired from her job because of refusing to work on Saturday, the Church's Sabbath. Unable to find other employment that did not require Saturday work, she filed for unemployment compensation. The South Carolina courts affirmed a decision of a State agency which turned down her unemployment claim because she "failed to accept without good cause, available suitable work offered her by her employer."[26]

When this case reached the U.S. Supreme Court, Justice Brennan, speaking for the majority, pointed out that the sincerity of the religious belief was not questioned[27] and that the State interfered with the practice of her religion by forcing her:

> ". . . to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work on the other hand."[28]

Justice Brennan then sought some compelling State interest which justified the infringement on free exercise of religion by South Carolina's statute. He observed: "Only the gravest abuses, endangering paramount interests, give occasions for permissible limitation [on first amendment rights]."[29]

". . . since religious beliefs alone pose no threat to the rights of others, there can be no State interference with these rights."

In *Sherbert,* he found no such grave abuse. Thus, the Free Exercise Clause required the State to afford substantial deference to the religiously motivated.

Case law after *Sherbert* [30] defines a three-pronged test to determine the constitutionality of State interference with the actions of the religiously motivated. The following factors will be considered:

1) Is there a sincere religious interest?
2) Is there State interference with the religion?
3) Is there a State interest which may justify such interference?

These problems were addressed in *Wisconsin* v. *Yoder,* [31] when the question before the Court was whether a State, under its compulsory school attendance law, may punish members of religious sects whose doctrines forbid conventional postelementary school education. Chief Justice Burger examined at length the fundamental belief of the Amish faith and found a sincerely held religious belief. After determining that there was State interference through Wisconsin's statute of compulsory formal education after the eighth grade, the court concluded that there was no State interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Therefore, the State under its compulsory school attendance law could not punish members of the Old Order Amish and Conservative Amish Mennonites community for adhering to its dogma forbidding conventional postelementary school education.[32]

As a result of the above, since religious beliefs alone pose no threat to the rights of others, there can be no State interference with these rights. However, when such beliefs are translated into action, the sincerity of those beliefs, whether the activity is harmful to individuals or whether the activity involves fraud or deception, may be scrutinized by the State and limited constitutionally. Ultimately, the question of where freedom of religion begins and ends with respect to cults can only be answered by examining cult activity with these factors in mind. This will be the focus of part II of this article.

FBI

Footnotes

[1] First amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Article VI: ". . . but no religious test shall ever be required as a qualification to any office or public trust under the United States."

Fourteenth amendment, Section 1: ". . . nor shall any state deprive any person of . . . liberty . . . without due process of law. . . ."

[2] Webster's New International Dictionary of the English Language, unabridged (1976), 552.

[3] Briggs, "New Spiritual Organizations Considered Likely to Last," *N.Y. Times,* June 22, 1977, at A15, col. 1.

[4] *Davis* v. *Beason,* 133 U.S. 333, 10 S. Ct. 299, 33 L.Ed. 637 (1890), at 342.

[5] *Id.*

[6] *United States* v. *Macintosh,* 283 U.S. 605, 51 S. Ct. 570, 75 L.Ed. 1302 (1931).

[7] 62 Stat. 604, 50 U.S.C.A. App. Sec. 456.

[8] *United States* v. *Seeger, United States* v. *Jakobson, Peter* v. *United States,* 380 U.S. 163, 85 S. Ct. 850, 12 L.Ed. 2d 733 (1965).

[9] *Id.* at 166.

[10] But see recent dissent of Justice Rehnquist in *Thomas* v. *Review Board of the Indiana Employment Security Division, et al.,* 101 S. Ct. 1425 (1981) wherein he noted an even broader extension of "religious belief" by the Supreme Court to include a personal philosophical choice.

"The court's failure to make clear whether it accepts o rejects this finding by the Indiana Supreme Court, the highest court of the state, suggests that a person who leaves his job for purely personal philosophical choice 'will be constitutionally entitled to unemployment bene fits.' " Note 1, p. 1435.

Thomas had terminated his job because of his religious beliefs after he was transferred from a foundry department to a department producing tanks and tried to collect unemployment benefits.

[11] *Meyer* v. *Nebraska,* 262 U.S. 390, 43 S. Ct. 625, 6 L.Ed. 1042 (1923); *Pierce* v. *Society Sisters,* 268 U.S. 51 45 S. Ct. 571, 69 L.Ed. 1070 (1925); *Stromberg* v. *Califo nia,* 283 U.S. 359, 51 S. Ct. 532, 75 L.Ed. 1117 (1931).

[12] First amendment, *supra* note 1, at 2.

[13] VIII Works of Thomas Jefferson, 113 (H.A. Washington ed. 1884).

[14] *Walz* v. *Tax Commission of the City of New York,* 397 U.S. 664, 90 S. Ct. 1409, 25 L.Ed. 2d 470 (1970).

[15] *Everson* v. *Board of Education,* 330 U.S. 1, 67 S. C 504, 91 L.Ed. 711 (1947) where State statute which authorized reimbursement to parents for bus transportation of Catholic parochial schools held unconstitutional.

[16] *Torcaso* v. *Watkins,* 367 U.S. 488, 81 S. Ct. 1680, L.Ed. 2d 982 (1961).

[17] *School Dist. of Abington* v. *Shempp,* 374 U.S. 20 the test being "what are the purpose and the primary effect of the enactment. If either is the advancement of inhibition of religion, then the enactment exceeds the scope of legislative power." Under this test the Supreme Court held that no State law or school board could requir Bible reading or recitation of the Lord's prayer at the beginning of each school day.

[18] *Id.* at 233.

[19] *Davis* v. *Beason,* 133 U.S. 333 (1890).

[20] *Cantwell* v. *Connecticut,* 310 U.S. 296, 60 S. Ct. 900, 84 L.Ed. 1213 (1940).

[21] The classic case being *Reynolds* v. *United States* 98 U.S. 145 (1878) in which the Supreme Court held Mormon practice of polygamy was not protected by the Free Exercise Clause.

[22] *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972); *Prince Massachusetts,* 321 U.S. 158 (1944) (child labor); *United States* v. *Kuch,* 288 F. Supp. 439 (D.D.C. 1968) (possession of illegal drugs).

[23] *People* v. *Woody,* 61 Cal. 2d 716, 394 P. 2d 813, 4 Cal. Rptr. 69 (1964) belief that religious value of peyote ingestion was aid to spiritual experience; *Founding Churc of Scientology* v. *United States,* 409 F.2d 1146 (D.C. Cir. religious group engaged in marketing "E-meters" as religious devices must expressly holdout a religious purpose in dealings with the public in order to receive constitutiona protection and escape regulations.

[24] *United States* v. *Ballard,* 322 U.S. 78, 64 S. Ct. 882 88 L.Ed. 1148 (1944).

[25] *Sherbert* v. *Verner,* 374 U.S. 398, 10 L.Ed. 2d 965 83 S. Ct. 1790 (1963).

[26] 240 S.C. 286, 303-304; 125 S.E. 2d 737 (1962).

[27] 374 U.S. 398 at 399.

[28] *Id.* at 404.

[29] *Id.*

[30] *Kennedy* v. *Meacham,* 540 F.2d 1057, 1061 (10th Cir. 1976), *American Friends Serv. Comm.* v. *United States,* 368 F. Supp. 1176, 1182-1184 (E.D. Pa. 1973). *People* v. *Woody,* 61 Cal. 2d 716, 719-726, 394 P. 2d 81 816-821, 40 Cal. Rptr. 69, 72-77 (1964). See also variou commentators: *Religious Cults,* 1978, N.Y. Univ. L. Rev. 1260-1265; Marcus, *The Forum of Conscience: Applying Standards Under the Free Exercise Clause,* 1973 Duke L.J. 1217, 1239; *Abduction, Religious Sects and the Free Exercise Guarantee,* 25 Syracuse L. Rev. 623, 634 (1974

[31] *Wisconsin* v. *Yoder,* 406 U.S. 205, 32 L.Ed. 2d 15 92 S. Ct. 1526 (1972).

[32] *Id.* at 214.

Assessing the Potential for Community Disorder

A Management Strategy

By
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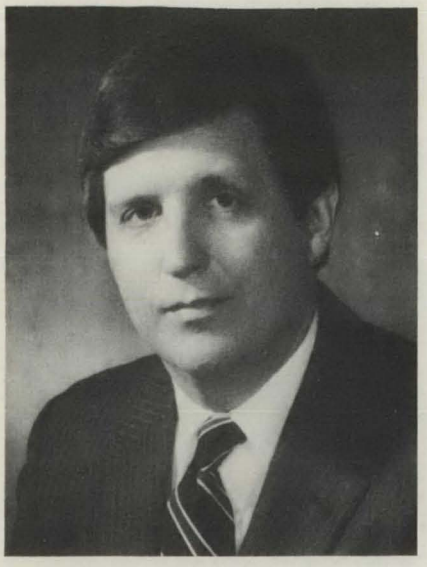
The civil disorders which began on May 17, 1980, in Miami, Fla., drew considerable and protracted attention primarily because of the absence of such disorders in this country for almost a decade. The analysis and debate of the causative factors, the law enforcement response, and the aftermath are still alive in the media and academic and professional forums. The important question is, "Has anything been learned from the Miami riots?" The answer is obviously, "Yes," and this article attempts to treat the development of a management strategy which was learned from one analysis of the situation.



Superintendent Brzeczek

In August 1980, a report prepared by the Enforcement Division, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, U.S. Department of Justice (hereinafter referred to as the Justice Department Report) was issued.[1] It contained an analysis of the conditions in Miami leading up to the disorder, an overview of the disorder, and some very succinct and cogent recommendations for disorder planning and management. In my opinion, it was one of the best law enforcement-related reports ever published.

My interest focused upon the disorder control planning and management chapters. As a result, a committee consisting of approximately 20 high-ranking Chicago Police Department officers was formed. Their collective experience ranged from disorder management, planning, communications, law, and community relations to conducting investigations of excessive force allegations. They were given the initial task of reviewing the Justice Department Report and determining areas of potential applicability to the City of Chicago. A second committee meeting was held to identify the viable portions of the report. There was unanimous agreement in three areas:

1) The development of a *contemporary* disorder control plan,
2) Training for disorder prevention and control, and
3) The establishment of a community assessment center.

The Disorder Control Plan

The Chicago Police Departmen issued its first formal disorder contr plan in 1969. Contained in two thic volumes, it was not only comprehen sive and detailed but also complex cumbersome, and virtually never imple mented except during training exer cises. The manpower mobilizatio procedures became archaic becaus unit strengths were drastically altere over the past decade to be respon sive to new demands for manpowe allocation.

The new plan is simpler and repre sents, at most, approximately 20 per cent of the previous voluminou material. Included in the response pla are two mobilization procedures—on using available onduty personnel, th other describing the recall of off-dut personnel. Each mobilization plan ha two phases to provide for an incre mental buildup of police personnel, i necessary.

The response plan includes a treatment of various principles in dis turbance control, e.g., the objective and offensive, economy of force, ma neuvers, and the unity of command and the characteristics of disturbanc control operations, such as psychologi cal factors in crowds and mobs, meth ods used to incite crowds or mobs, an techniques employed by rioters an dissident leaders, to name just a few The plan also gives considerable at tention to staff and command actions information handling and effectiv communications, command post an assembly area activities, dispersal op erations, disturbance control forma tion, methods necessary to counte aerosal weapons, and most important ly, postincident debriefing procedure and reporting. The new plan deals wit

"More positive conduct on the part of the police will reduce negative perceptions of police behavior by the public."

specific problems common to most civil disorders, while maintaining sufficient flexibility to permit command personnel to adjust control operations contingent upon the nature and scope of the disturbance.

Training

Training to familiarize personnel with the concepts and maneuvers contained in the emergency response plan is the logical sequel to plan development. The Chicago Police Department's inservice training program in this area has been established as a 3-day block of instruction. Courses designed for the purpose of familiarization with the response plan include hostage/barricade situations, weapons operations, operation of protective equipment such as gas masks, and practicums involving the development of platoon and company responses, squad formations, and new concepts in crowd control techniques.

The inservice training program is undoubtedly the core of virtually every other similar training program designed for disorder control. But in the Chicago Police Department program, there is a substantial amount of time devoted to subject areas designed for the purposes of disorder prevention.

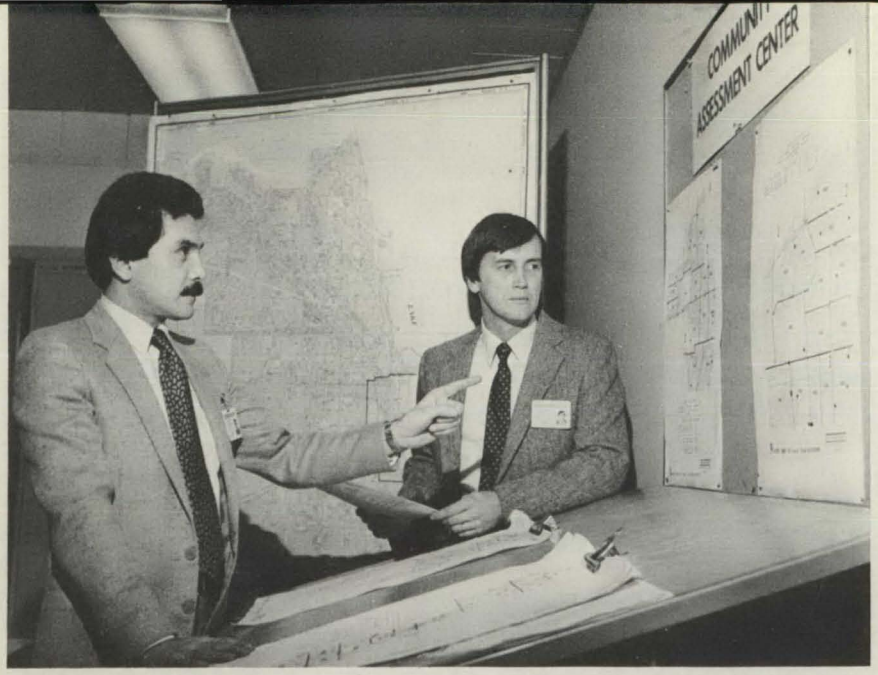
Regardless of the nature or number of identifiable causative factors leading to a civil disorder, the catalyst, all too often, is some police action usually involving the use of force, especially deadly force, directed at one or more members of a minority group. Not every such police action precipitates a civil disorder, but an inordinate number of civil disorders are ignited by some isolated police action.[2]

Law enforcement or the police as an institution has little, if any, control over the socioeconomic, educational, unemployment, or demographic characteristics of the community it serves. These characteristics are most probably affected by the political environment generally prevailing in a given community at any time. Yet, the police must operate in that political environment, facing daily tasks complicated in many instances by negative considerations such as employment, recession, inflation, etc.

Police do have an inherent responsibility in public service. The historical duties of saving lives, protecting property, and enforcing laws still exist. But the foremost and primary mandate of the police is to protect the rights of all persons. Included in this command is that the police themselves do not infringe upon the rights of citizens. The public's perception, real or imagined, of persistent and patterned abusive practices brings the social woodpile very near its kindling temperature. Then, it takes only an isolated incident of some notoriety involving at least the perceived abuse of authority to ignite the situation, or as experience has taught us, actually ignite blocks and blocks of urban areas.

Because the perceived conduct of police is so important as a factor leading to civil disorder, the Chicago Police Department's inservice training program places significant emphasis on police behavior. Special attention is given to State statutes and department policy delineating guidelines regarding the use of deadly force and the use of nondeadly force. Also included in the "use of force" emphasis are classroom and range participation sessions involving the "shoot/don't shoot" concepts, review of department proce-

Police officers of all ranks receive the same classroom instruction.



Police officers discuss potential community trouble spots.

dures concerning the investigation of firearms discharges by police officers using, among other materials, actual case studies, discussion of use of force reporting procedures, and an overview of the philosophy and necessity of internal affairs operations.[3]

One can readily observe that training focused upon the preventive aspects is basically nothing more than a reinforcement of acceptable police conduct standards. The more management can reinforce those standards through clear policy statements, training, and sanctions (when deviations occur), the more disciplined the organization will be and the less likely police officers will act beyond the scope of their authority. More positive conduct on the part of the police will reduce negative perceptions of police behavior by the public.

Community Assessment

The overabundance of litigation filed in the past decade challenging police intelligence activities has resulted in an examination, redefinition, and a new limited application of those formerly acceptable practices. The litigation has put restraints on intrusive police behavior directed at constitutionally protected activity. However, nothing in any of those law suits has diminished law enforcement's responsibility to be aware of the indicators or predictors of future criminal or disruptive conduct. Therefore, law enforcement officials can monitor certain indicators of community tension without engaging in conduct violating anyone's privacy or other right protected by the Constitution.

The Justice Department Report has a 5-page chapter entitled "Assessing the Potential for Disorder."[4] In my opinion, this chapter is the highlight of the report. It succinctly points out the following factors that each urban department must consider if it is to be prepared for the potential disorder:

1) Disorders rarely happen spontaneously but are generally the culmination of long-standing tension in the community.
2) Some departments may not be sensitive to or even aware that community tension exists.
3) There are certain indicators of community unrest and tension, although this list is not all inclusive:
   —disturbance calls involving conflicts between groups,
   —incidents in which the responding police officer finds himself herself the target of abuse ov what is considered routine po lice action,
   —incidents of stoning police or fire vehicles responding to cal for service,
   —assaults between groups,
   —assaults against police,
   —citizen complaints of excessiv force by police officers,
   —changes in media coverage o police events or incidents,
   —lack of citizen willingness to a sist police in routine matters.
4) Many times, no single person o unit in a department has the responsibility for collecting and analyzing these indicators of un rest.
5) Information concerning commun ty tension must be disseminated both within the agency and to appropriate and responsible com munity leaders.

While these considerations ar not exhaustive, they do represent a important basic framework from whic one can build an assessment functio

As mentioned previously, the Ch cago Police Department comman staff committee studying the Justic Department Report identified the com munity assessment function as an i dispensable ingredient in disorde prevention. This decision led to th establishment of a community asses ment center within the department Bureau of Community Services and th issuance of a department directive de lineating the philosophy, function, an procedures of the center.

No proactive intelligence gathe ing is employed. All reports coming int the center are reports generated b other units in the normal course

"Preparation is fundamental. Plans are indispensable. But prevention is only accomplished by working together with the community . . . to foster an understanding that we need each other."

business. Each unit having primary responsibility for preparing the reports is identified in the directive, along with the type of incident it is required to report. Examples of these are:

1) Shooting of/at police officers/firefighters/paramedics,
2) Assaults on police officers/firefighters/paramedics,
3) Damage to police/fire vehicles, facilities, or property,
4) Citizen attempts to remove arrestees from police custody,
5) Demonstrations directed against public figures, agencies, or facilities,
6) Looting incidents,
7) Hostage/barricade/terrorist incidents/threats,
8) Bomb/arson incidents/threats/patterns,
9) Attacks on other governmental personnel, vehicles, or facilities,
10) Large-scale school disturbances,
11) Volatile recreational areas,
12) Gang conflict,
13) Racial, religious, or nationalistic incidents,
14) Calls by police for assistance,
15) Shootings of civilians by police,
16) Excessive force allegations,
17) Media reports focusing on police, identifying community tensions and projections of future unrest, or of criminal proceedings of specific concern to the community,
18) Conflict between community groups.

While the list of categories is probably never complete, it is believed that review and monitoring of the items listed gives us a fairly accurate profile of the degree of tension and unrest in any given community or neighborhood.

In addition to monitoring the reports generated within the department, every other department head in the City of Chicago has been briefed on the concept and is requested to assist the police department in examining the indicators. Complaints of poor service, such as in garbage pickup, street repair and cleaning, or any one of the hundreds of other categories, could very well be clinical symptoms of tension and unrest in the community.

As the analysis process takes place, information is disseminated to Patrol Division command personnel for specific attention to the potentially difficult areas. The Bureau of Community Service works with community leaders on the analytical reports to garner community support and assistance to diffuse a potentially dangerous situation. Other support units, such as the Detective Division, Youth Division, and Field Tactical Services, have a responsibility for reacting to the analytical reports. While being informed on a daily basis as necessary, the mayor receives a monthly summary report which can be used to assess the quality and deployment of all government services.

There is no formula, set of plans, or technique which will guarantee that, if implemented, a civil disorder of any magnitude will not occur. Disorder prevention is a sought-after goal but can never be regarded as absolute. In past generations, the likelihood of a civil disorder occurring was minimal and police management paid little attention to planning the tactics. Even when we were forced to react to actual disorders, as in the 1960's, we didn't do a very good job and looked even worse trying to deal with them. The Miami riots of 1980 resurrected some of those horrible memories of ineptitude and lack of preparedness. With the public and media accounts that the frustrations caused by socioeconomic policies and unemployment may be tangibly manifested in the streets of our urban areas, we as the leadership of law enforcement cannot sit idly, hoping that any storm heading in our direction will change its course and bypass our community. Preparation is fundamental. Plans are indispensable. But prevention is only accomplished by working together with the community, on a daily basis, to foster an understanding that we need each other. **FBI**

Footnotes

[1] *Prevention and Control of Urban Disorders: Issues for the 1980's,* U.S. Department of Justice, Law Enforcement Assistance Administration, University Research Corporation, August 1980.

[2] In July 1980, almost 2 months after the Miami riots broke out during a hot weather spell and with the editorial analysis of Miami still in the headlines, three Chicago police officers were accused of beating to death a black man subsequent to his arrest for smoking on a subway train. The officers were immediately suspended without pay, and several days later, indicted for murder by a county grand jury. Many speculated about the incident as a potential catalyst to ignite a disorder. Swift action by department officers and prosecutors was received favorably, including complimentary and supportive editorial comment. Two of the officers were subsequently convicted of involuntary manslaughter and official misconduct.

[3] The implementation of the training program in late 1980, along with a modification of the deadly force and weapons policies in December 1980, and the requirement that the deadly force and weapons policies be discussed at rollcall training at least once a month, has contributed to a substantial reduction in the number of persons shot by Chicago police in 1981. More importantly, in only one case were administrative charges filed against an officer for violating the department policy. No officers were charged criminally during 1981.

[4] Supra, note 1.

CONFESSIONS AND INTERROGATION: THE USE OF ARTIFICE, STRATEGEM, AND DECEPTION

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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.

The constitutional standard for the admissibility of a confession in a criminal prosecution is voluntariness.[1] This article identifies examples of artifice, strategem, and deception that have been employed by law enforcement officers in procuring confessions and analyzes how courts have viewed these tactics as affecting the voluntariness, and hence admissibility, of the resulting confessions.

The Applicable Standard

As it pertains to the admissibility of confessions, the concept of voluntariness is not easily defined because it has been modified and molded by the courts over the years to accommodate applicable rules of evidence and developing constitutional principles. Some of the factors underlying the voluntariness doctrine include:

1) Rules of evidence which require that confessions, like other evidence, be reliable;
2) The fifth amendment requirement that no person "shall be compelled in any criminal case to be a witness against himself";[2] and
3) The 14th amendment, which provides, *inter alia,* that no "State [shall] deprive any person of life, liberty, or property, without due process of law."[3]

Numerous legal articles and textbooks explaining the development, interplay, and goals of the many legal theories that make up the modern concept of voluntariness have been published.[4] However, for purposes of this article, it is sufficient that the three paramount principles underlying the voluntariness doctrine be identified and then discussed in terms of whether a confession obtained through the use of deception violates these principles.

Principle I: A Confession Is Not Admissible Unless Reliable

Because of the impact the introduction of a defendant's confession can have on the trier of fact and the final outcome of a criminal trial, it is recognized as a fundamental requirement of due process that in order to be admissible, a confession must be reliable. In deciding the issue of reliability, the courts review all the facts and circumstances surrounding the confession, paying particular attention to the interrogation methods or techniques employed by the law enforcement officers who questioned the defendant. With respect to interrogation methods and techniques, the question of what effect their use has on the reliability or trustworthiness of the confession is usually framed in terms of whether the methods used were calculated to produce, or were inherently capable of producing, an untrue statement.[5] In other words: Is the method or technique such that its use is likely to induce an individual to confess to a crime he did not commit?

This approach has resulted in the courts identifying certain interrogation tactics which require close judicial scrutiny because of their inherent capability of producing untrue statements;[6] however, the use of artifice, strategem, and deception has not been placed in this category. The reasons appear to be twofold. First, it is doubtful that many, if any, interrogators use deception for the purpose of obtaining an untrue confession. Second, and more importantly, the courts have generally

Special Agent Riley

refused to accept the argument that the types of deception litigated are so inherently coercive that their use is likely to result in innocent men confessing to crimes they did not commit. Thus, methods such as those falsely advising a defendant (1) the weapon used in the crime has been recovered,[7] (2) he has been identified by witnesses,[8] (3) his polygraph test shows he was lying,[9] (4) his partner has given a confession,[10] or (5) his fingerprints or other evidence were found at the scene[11] have not been found to render an otherwise voluntary confession inadmissible.

Even though the courts have found that as a general rule the use of artifice, strategem, and deception by law enforcement officers does not, standing alone, render a confession inadmissible on the grounds that it is unreliable, the readers should not discount the probability that certain extreme examples of deceptive tactics would be viewed in this manner. For example, in *Miranda* v. *Arizona,*[12] the Supreme Court described an interrogation practice known as the "reverse lineup." In this technique, a defendant is placed in a lineup and identified by several fictitious witnesses as being the perpetrator of numerous offenses. It is hoped that the defendant will, in desperation, confess to the crime under investigation in order to escape prosecution for the additional offenses. While the *Miranda* Court did not formally rule on the lawfulness of this technique because it was not directly at issue in the case, the Court was highly critical of the method. Since the technique is such that an innocent man presumably could be induced to confess to a crime he did not commit in order to avoid prosecution for additional offenses, it could be difficult for a prosecutor to argue, and a court to find, that a confession obtained in this manner is reliable.

Principle II: Even Reliable Confessions Should Be Inadmissible When Obtained By Methods Inconsistent with Basic Notions of Fairness

It has long been argued that certain interrogation techniques and methods, regardless of whether the confessions they produce are reliable, are so repugnant to the constitutional doctrine of "fundamental fairness" that they should be judicially condemned through implementation of *per se* rules of inadmissibility. The argument for such *per se* rules of exclusion has generally been advanced on the theory that it is patently unfair and a violation of due process to allow law enforcement officers to benefit from illegal acts or official misconduct. While this argument has found acceptance in those cases where it is shown that the confession was obtained through such illegal and indefensible tactics as physical brutality and extended incommunicado interrogation,[13] the courts have not been sympathetic to the argument that the use of artifice, strategem, and deception is similarly inconsistent with basic notions of fairness.

". . . the courts have found that there must be other coercive factors present in a case, in addition to artifice and strategem, before they will find the defendant's right of 'free and rational choice' was violated."

For example, in *Moore* v. *Hopper*,[14] the defendant was arrested for murdering his girlfriend's husband. The girlfriend was interviewed and advised authorities that she had been with the defendant after the murder and had observed him throw the murder weapon, a gun, off a bridge. During questioning, the defendant was advised that the girlfriend had given a statement. Additionally, he was told that the murder weapon had been recovered, when in fact it had not. Finding no problem with the ruse used in this case, the court noted that the nature of criminal activity is such that artifice and strategem are necessary tools of the law enforcement officer. The court also cited Supreme Court cases in the field of entrapment law which uphold the use of deception to identify individuals engaged in criminal enterprises and argued by analogy that it is no less proper or unfair to use these methods during the interrogation process.

Although having the opportunity, the Supreme Court has never held that the use of artifice, strategem, or deception, standing alone, violates the constitutional doctrine of "fundamental fairness." In *Spano* v. *New York*,[15] the court reviewed a case where the defendant, after having been first indicted and then arrested for first degree murder, was subjected to persistent and continuous police interrogation in an effort to obtain a confession. When the interrogation produced only repeated requests by the defendant to see his attorney, which requests were denied, the interrogators resorted to what is commonly referred to as the "false friend" technique. The technique involved a newly commissioned police officer named Bruno who was a close friend of the defendant. Officer Bruno was instructed by his superiors to tell the defendant falsely that he (Bruno) would be "in a lot of trouble" if the defendant did not confess. On the fourth attempt, the ploy worked, and Spano made a confession which was used against him at trial.

The Supreme Court reversed Spano's conviction on grounds that his "will was overborne by official pressure, fatigue and sympathy falsely aroused. . . ." Furthermore, in addressing the interrogation methods that were used, the Court stated:

> "The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from criminals themselves." [16]

In cases following *Spano,* defendants have argued that the Supreme Court, as a result of its language in *Spano,* ruled that any confession obtained through artifice, especially if it involved use of the "false friend" technique, was inadmissible as a matter of law. One such case in which this argument was made is *United States ex rel. Latham* v. *Deegan.*[17] The defendant, Latham, while on furlough from the Army, was arrested for burglary. While in custody and after having confessed to the crime for which he was arrested, he was questioned concerning an unrelated homicide. Latham denied involvement in the crime; however, the following day a police detective visited him and introduced himself as an officer in the Army. After the detective had advised Latham that "the Army and I want to help you," Latham made incriminating admissions and ultimately a detailed confession which was entered into evidence against him at trial.

Citing *Spano,* Latham moved to set aside his conviction on grounds that his confession had been obtained through deception. The court rejected this argument, finding that the Supreme Court had reversed Spano's conviction based on a number of factors present in that case and not solely on grounds that the law enforcement officers had employed deception to obtain the confession. The court found that deception by an interrogator, *ipso facto,* does not invalidate a confession, absent other compelling circumstances, and that while other such factors were present in *Spano* (e.g., persistent and continuous interrogation by a battery of interrogators), they were not present in the *Latham* case. Therefore, the court affirmed the order of the district court denying Latham's petition for *habeas corpus* relief.

While the courts are in general agreement that an interrogator's use of artifice and strategem is not inconsistent with basic notions of fairness and therefore does not violate the principle of "fundamental fairness," the reader is cautioned that courts likely would find extreme examples of artifice and strategem (e.g., the reverse lineup) to be in violation of this principle.

Principle III: A Confession Is Not Admissible, Even Though Reliable, Unless the Product of Defendant's Free And Rational Choice

This principle is a restatement of the constitutional right of a defendant to decide, in an atmosphere free of undue pressure, whether he is going to provide the authorities with a confession or remain silent.

The Supreme Court has articulated this principle in the following way:

> "Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." [18]

The Supreme Court's explanation underscores the difference between principles II and III. The former focuses on a law enforcement officer's tactics in obtaining a confession, whereas the latter emphasizes the state of mind of the defendant.

In determining whether undue pressure has been exerted on a defendant resulting in his will being overborne, the courts employ a "totality of the circumstances" test, which includes a review of the interrogation techniques used to obtain the confession and an assessment by the court as to what effect these techniques and any other relevant circumstances had on the defendant's decision to confess. Since the effect on the defendant's freedom of choice is what is important, the test requires that the personal characteristics of the defendant (e.g., age, intelligence level, educational level, prior experience with the police, etc.) also be taken into consideration.[19]

A review of confession cases where the "totality of the circumstances" test was employed and where the use of artifice, strategem, and deception was at issue reveals that two general principles have been developed by the courts. First, the use of deception is a factor that the courts will take into consideration under the "totality of the circumstances" test in determining whether the defendant's will was overborne. Second, while relevant, the use of such tactics is not sufficient, standing alone, to warrant a finding of inadmissibility. In other words, the courts have found that there must be other coercive factors present in a case, in addition to artifice and strategem, before they will find the defendant's right of "free and rational choice" was violated. These principles are demonstrated in the cases that follow.

In *Frazier* v. *Cupp,*[20] the defendant was arrested for homicide. During questioning, the defendant admitted that at the time of the crime he had been with his cousin, one Jerry Lee Rawls; however, he denied that he and Rawls had been with the victim or any other third party. At this point, the officer conducting the questioning advised the defendant falsely that Rawls had been arrested and had confessed. Following some additional discussion, the defendant provided a full written confession which was introduced at his trial. Applying the "totality of the circumstances" test in this case, the Supreme Court found:

> "The questioning was of short duration, and petitioner was a mature individual of normal intelligence. The fact that the police misrepresented the statements that Rawls had made is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible." [21]

Similar reasoning has been used by the courts in cases where defendants were told falsely that (1) their fingerprints were found at the scene, (2) they had been identified by witnesses to the crime, or (3) their polygraph examinations indicated they were lying.[22]

In *United States ex rel. Everett* v. *Murphy,*[23] the defendant was convicted of murder in the first degree in State court. In his petition for a writ of *habeas corpus* in Federal court, the defendant argued that the confession used to convict him was involuntary because of the circumstances under which it was obtained. The court found that on July 3, 1959, one Finocchiaro was found unconscious and bleeding on the ground floor of a loft building in Brooklyn, N.Y. Finocchiaro died the following day, and 11 days later Everett was arrested. During questioning, Everett was advised that he had been arrested for assault and robbery. He was then told falsely that Finocchiaro was presently at police headquarters, and while he had not been injured seriously as a result of the assault, he was angry over what had happened. The questioning officer then stated that if Everett confessed, he would speak with Finocchiaro and attempt to calm him down. Everett then confessed, and the statement was admitted at trial.

". . . if artifice takes the form of misrepresentations regarding a defendant's constitutional rights, the law enforcement officer engaged in such a practice may expect that the resulting confession, if challenged, will be suppressed."

After reviewing Everett's confession under the "totality of the circumstances" test, the court found the confession to be involuntary because Everett had been arrested illegally, subjected to extended incommunicado interrogation, and not advised of his rights. Further, the confession followed the use of deception and a false promise of assistance by the police. However, the court noted that it might have ignored the deception of Everett as to Finocchiaro's survival of the attack if that had been the only basis upon which the confession was challenged.

In finding the confession involuntary in *Everett,* the court placed heavy emphasis on the fact that the effect of telling the defendant that the victim had survived the attack was to make more plausible the police officer's promise that if Everett confessed, he would be protected from the angry Finocchiaro. Unlike misrepresentations that the victim of a murder is still alive or that a co-conspirator has confessed when in fact he has not, promises of leniency or assistance, such as a promise that if the defendant confesses he will receive protection, avoid prosecution, or be prosecuted for a lesser crime, are almost always found to render a resulting confession involuntary.[24] Hence, if artifice takes the form of a promise of leniency or assistance or is used to make such a promise more plausible, the chances that the confession will be found involuntary are greatly increased. Interestingly, although a promise of leniency or assistance usually results in an involuntary and inadmissible confession, most courts have distinguished those cases where law enforcement officers merely promise the defendant that his cooperation in providing a confession will be brought to the attention of the prosecutor, probation officer, or court, and hold that such promises will not render an otherwise voluntary confession inadmissible.[25]

Artifice and a Defendant's Legal Rights

In 1966, the Supreme Court issued its famous decision in *Miranda* v. *Arizona.*[26] The purpose of the decision was to create a method for determining the voluntariness of a confession without having to resort to the burdensome and time-consuming "totality of the circumstances" test in each case. The *Miranda* rule, simply stated, is that a confession obtained as the result of custodial interrogation is not admissible unless the government proves that before the confession was obtained, the defendant was advised of his fifth amendment rights and freely and voluntarily waived them. The original purpose of the rule may have been to replace the traditional test of voluntariness with one that was more easily applied; however, it is now clear that even if law enforcement officers comply with *Miranda*, a confession can still be ruled inadmissible if it is found to be involuntary under the traditional "totality of the circumstances" test.[27] At the same time, while a violation of *Miranda* prevents the government from using the confession in its case-in-chief, if the confession is found to be voluntary under the traditional test, it can be used to impeach the defendant's credibility if he takes the stand and testifies contrary to the confession.[28]

It is clear from the above that the *Miranda* decision did not replace the traditional "totality of the circumstances" test for voluntariness. Instead, it created an additional rule that must be followed before a confession can be admitted in evidence against a defendant. Since *Miranda* explicitly requires that a defendant who is subjected to custodial interrogation be advised of his rights, and this advice of rights is critical in proving that any waiver obtained was knowingly given, misrepresentations concerning these rights (e.g., that the confession cannot be used as evidence against the defendant) would clearly violate the rule and result in suppression of the confession. Therefore, if artifice takes the form of misrepresentations regarding a defendant's constitutional rights, the law enforcement officer engaged in such a practice may expect that the resulting confession, if challenged, will be suppressed.

Conclusion

As a general rule, the courts have found that the use of artifice, stratagem, and deception by law enforcement officers does not, standing alone, render an otherwise voluntary confession inadmissible. However, the use of certain extreme forms of deception, for example, the "reverse lineup" tech-

nique discussed by the Supreme Court in *Miranda* v. *Arizona*,[29] could result in a finding of inadmissibility by the courts on grounds that they render a confession unreliable, violate the constitutional doctrine of "fundamental fairness," or have the effect of overbearing a defendant's right of "free and rational choice." Additionally, when deception takes the form of a promise of leniency or assistance in return for a confession, or is used to make such a promise more plausible, the chances that the confession will be found involuntary, and therefore inadmissible, are greatly increased. Finally, a misrepresentation of constitutional rights, such as telling a defendant he is required to give a statement, can be expected to result in suppression of the confession.

Although court decisions appear to leave considerable room for the legitimate use of artifice, strategem, and deception by law enforcement officers, the following factors should be considered before such techniques are used.

First, it is important to reiterate that while the use of deception, without more, will generally not result in a confession being found involuntary, the fact that deception was used, coupled with other factors present in a case, could have this result. Therefore, if other circumstances known to the interrogator suggest that a confession, if obtained, could be successfully challenged on voluntariness grounds, deception should be avoided. Such a case would be the questioning of a suspect particularly vulnerable due to age, experience, naivete, or mental or physical impairment.

Second, though a court may find a confession obtained through the use of deception to be voluntary and therefore admissible, the officer who obtains the confession and offers it in evidence at trial must understand that the fact of deception will probably be brought out during cross-examination. This could impact on how much weight the court or jury ultimately places on the confession and the officer's other testimony.

Finally, notwithstanding the fact that a confession obtained through the use of deception has been found voluntary by the trial court, a prosecutor may be reluctant to offer it into evidence unless its admission is deemed essential to obtain a conviction. The reason is that should the confession be found involuntary on appeal, the government is precluded from arguing that the error was harmless. Therefore, the conviction must be reversed even though the other evidence admitted at trial was sufficient to warrant the conviction.[30] **FBI**

Footnotes

[1] *Michigan* v. *Tucker*, 417 U.S. 433 (1974).

[2] U.S. Const. amend. V.

[3] U.S. Const. amend. XIV.

[4] E.g., Y. Kamisar, W. LaFave, & J. Israel, *Modern Criminal Procedure* (4th ed. 1974); W. Ringle, *Searches & Seizures, Arrests and Confessions* (2d ed. 1980); Kamisar, *What is an Involuntary Confession?* 17 Rutgers L. Rev. 728 (1963); White, *Police Trickery in Inducing Confessions*, 127 Pa. L. Rev. 581 (June 1979).

[5] 29 Am. Jur. 2d Evidence §§ 571 and 572; 3 Wigmore, Evidence 281–282 (3d ed.). *See also, Canada* v. *State*, 56 Ala. App. 722, 325 So. 2d 513 (Crim. App.), *cert. denied*, 295 Ala. 395, 325 So. 2d 516 (1976).

[6] *Payne* v. *Arkansas*, 356 U.S. 560 (1958) (deprivation of food); *Ashcraft* v. *Tennessee*, 322 U.S. 143 (1964) (extended incommunicado interrogation); *Brown* v. *Mississippi*, 297 U.S. 278 (1936) (police brutality).

[7] *Moore* v. *Hopper*, 389 F. Supp. 931 (M.D. Ga. 1974), *aff'd.*, 523 F. 2d 1053 (5th Cir. 1975).

[8] *United States ex rel. Caminito* v. *Murphy*, 222 F. 2d 698 (2d Cir.), *cert. denied*, 350 U.S. 896 (1955); *Matter of D.A.S.*, 391 A.2d 255 (D.C. 1978).

[9] *Canada* v. *State*, *supra* note 5.

[10] *Frazier* v. *Cupp*, 394 U.S. 731 (1969).

[11] *Roe* v. *People of State of New York*, 363 F. Supp. 788 (W.D.N.Y. 1973).

[12] 384 U.S. 436, 453 (1966).

[13] *See*, cases cited *supra* note 6.

[14] *Supra* note 7.

[15] 360 U.S. 315 (1959).

[16] *Id.* at 320–21.

[17] 450 F.2d 181 (2d Cir. 1971), *cert. denied*, 405 U.S. 1071 (1972).

[18] *Culombe* v. *Connecticut*, 367 U.S. 568, 602 (1961) (plurality opinion).

[19] *Id. See also, Fikes* v. *Alabama*, 352 U.S. 191 (1957); *Reck* v. *Pate*, 367 U.S. 433 (1961); *Mincey* v. *Arizona*, 437 U.S. 385 (1969).

[20] 394 U.S. 731 (1969).

[21] *Id.* at 739.

[22] *See* cases cited *supra* notes 7–11.

[23] 329 F. 2d 68 (2d Cir.), *cert. denied*, 377 U.S. 967 (1964). *See also, People* v. *Solari*, 349 N.Y.S.2d 31 (App. Div. 1973).

[24] *Brady* v. *United States*, 397 U.S. 742 (1970); *Lynumn* v. *Illinois*, 372 U.S. 528 (1963).

[25] *United States* v. *Fera*, 616 F.2d 590 (1st Cir. 1980); *United States* v. *Perkins*, 608 F.2d 1064 (5th Cir. 1979); *United States* v. *Klein*, 592 F.2d 909 (5th Cir. 1979); *United States* v.*Curtis*, 562 F.2d 1153 (9th Cir. 1977); *United States* v. *Springer*, 460 F.2d 1344 (7th Cir. 1972). *But compare, Hillard* v. *State*, 406 A.2d 415 (Md. 1979).

[26] 384 U.S. 436 (1966).

[27] *State* v. *Kassow*, 277 N.E.2d 435 (Ohio 1971), *modified on other grounds*, 408 U.S. 939 (1972); *United States* v. *Rosa*, 493 F.2d 1191 (2d Cir. 1974).

[28] *Harris* v. *New York*, 401 U.S. 222 (1971).

[29] *See, supra* note 12.

[30] *Jackson* v. *Denno*, 378 U.S. 368 (1964); *Mincey* v. *Arizona*, 437 U.S. 385 (1978).

WANTED BY THE FBI

Photograph taken 1980.

William Claybourne Taylor

William Claybourne Taylor, also known as Michael A. Cauley, Michael Ferris Cauley, Michael Ferris Cawley, Clay Taylor, Wm. C. Taylor, William Clay Taylor, William Claybourne Taylor VII.

Wanted for:

Interstate Flight—Murder, Aggravated Battery

The Crime

Taylor is being sought in connection with the shotgun slaying of a former Immigration and Naturalization Service official and the aggravated battery of another victim who survived three .32-caliber pistol wounds.

A Federal warrant for Taylor's arrest was issued on August 6, 1980, in Jacksonville, Fla.

Description

Age	32, born July 2, 1949, Jacksonville, Fla.
Height	6'4".
Weight	200 pounds.
Build	Medium.
Hair	Blond (has been dyed red in the past).
Eyes	Blue.
Complexion	Fair-ruddy.
Race	White.
Nationality	American.
Occupations	Advertising, convenience store clerk, dance instructor, keypunch operator. painter, trumpet player.
Scars and Marks	Scar at base of right index finger and right middle finger, burn scar on right forearm, scar on left side, halfmoon scar on one knee.
Remarks	Reportedly bisexual; sometimes wears a mustache; frequents adult bookstores; heavy drinker.
Social Security Nos. Used	411-27-5151. 414-80-2662.
FBI No.	554 560 G.

Caution

Taylor, an alleged hired assassin, should be considered armed and dangerous.

Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

Classification Data:

NCIC Classification:

POPMTTCO18040309CI15

Fingerprint Classification:

4 O 25 Wt 18

U 18 U

I.O. 4886

Right index fingerprint.

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FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

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

Name

Title

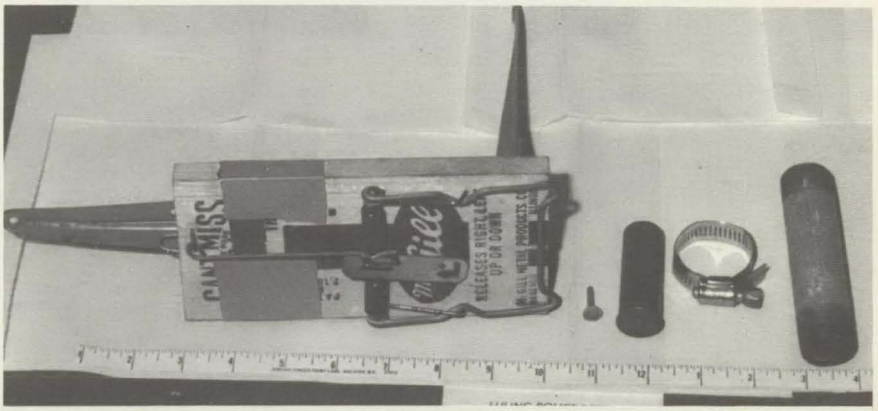
Address

City State Zip

Rattrap Boobytrap

The Luling, Tex., Police Department encountered this boobytrap while executing a search warrant on some marihuana fields. The trap consists of a 6-inch rattrap, a 10-inch shelf bracket, a 1-inch hose clamp, a nail, a ¾-inch by 4-inch pipe nipple, and a 12-gage shotgun shell.

To assemble, the bracket is positioned under the closed end of the trap and a slot is cut in the trap base to accommodate a nail. The nail, which serves as a firing pin, is alined inside the pipe nipple with shotgun primer. The trap is placed in a tree or on the ground with a monofilament trip wire which releases the spring on to the firing pin, detonating the shotgun shell.



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Interesting Pattern

The pattern reproduced this month illustrates the effect that a scar can have on a fingerprint pattern. The pattern at the top depicts a central pocket loop-type whorl before it was scarred. The pattern at the bottom shows the fingerprint impression after it was scarred, causing it to appear as a loop.