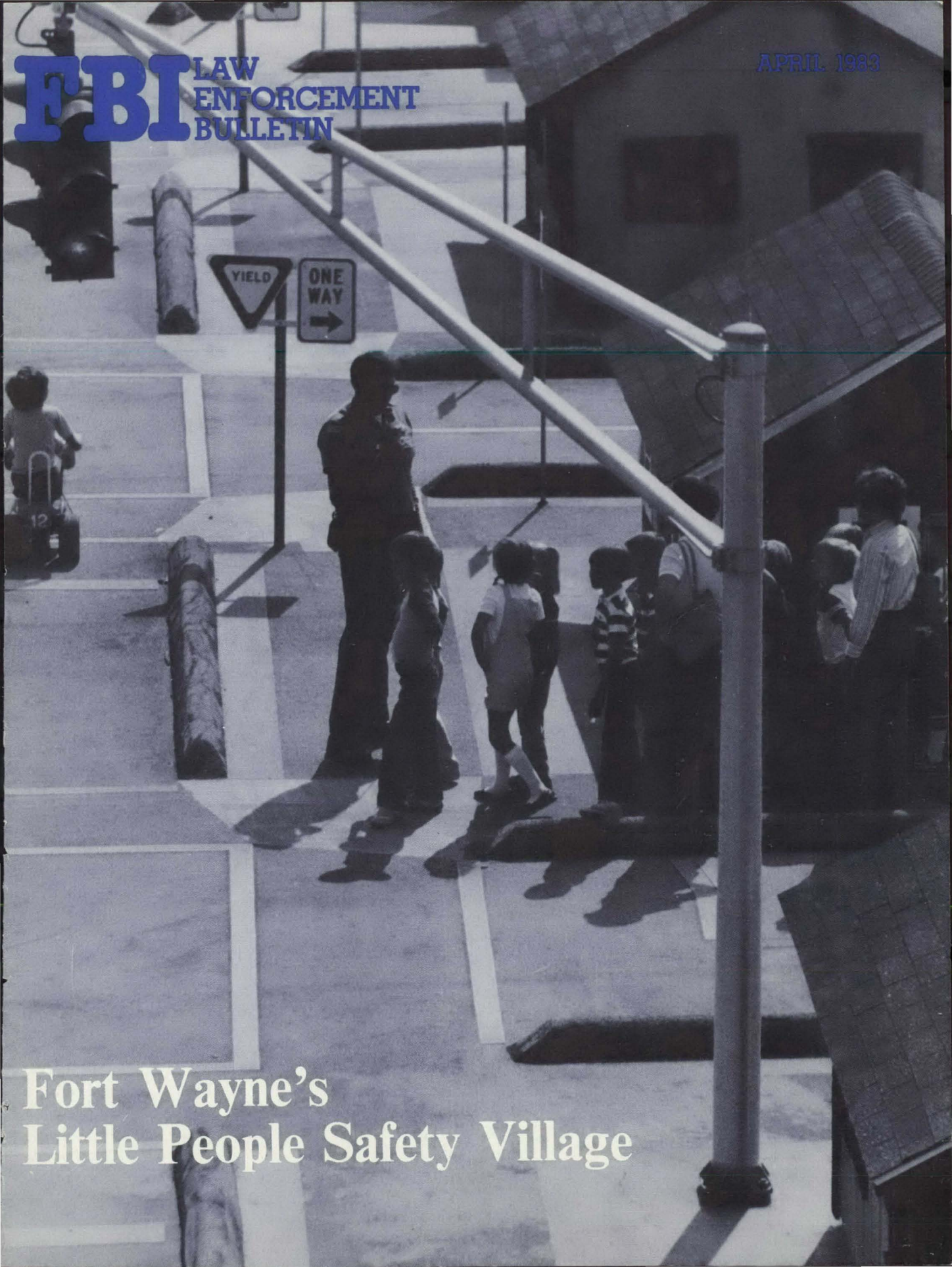
FBI LAW ENFORCEMENT BULLETIN

APRIL 1983



Fort Wayne's Little People Safety Village

FBI LAW ENFORCEMENT BULLETIN

APRIL 1983, VOLUME 52, NUMBER 4

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The Cover: Teaching children traffic safety during their formative years appears to be effective in reducing traffic accident deaths. See article p. 16.

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

William H. Webster, Director

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

Published by the Office of Congressional and Public Affairs,
Roger S. Young, *Assistant Director*

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
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Reprints—Marlethia S. Black

ISSN 0014-5688

USPS 383-310

Facing Increasing Crime with Decreasing Resources

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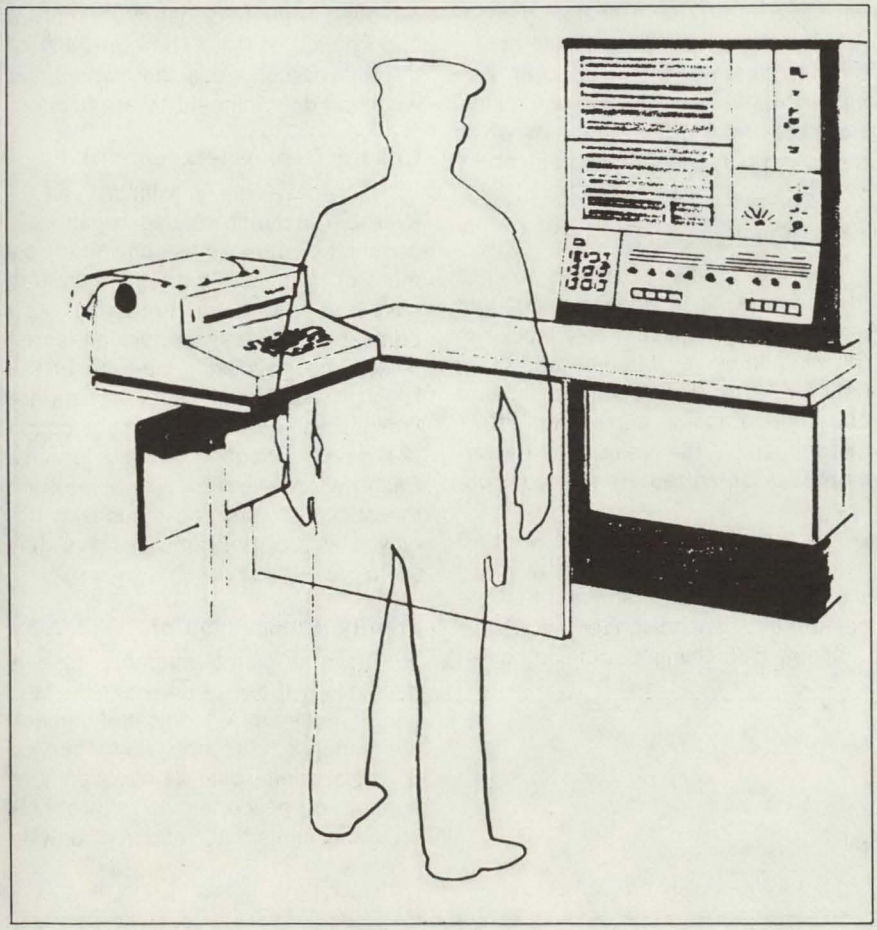

EDITOR'S NOTE: This article is adapted from a presentation made by Deputy Chief Cronkhite to the Canadian Association of Chiefs of Police in August 1982.

Combating increasing crime with static or decreasing resources is a challenge for today's police administrators. This challenge requires us not only to work harder but also to work smarter to reach our mutual goal of providing a safe and comparatively crime-free environment for the public we serve. We can more effectively meet this challenge by sharing our experiences—by sharing information about what works and what does not.

In California, we have experienced a substantial reduction in tax revenue due to Proposition 13, which was approved by our voters in 1978. This proposition limits property tax to 1 percent of market value. The results for the Los Angeles Police Department (LAPD) has been the loss of approxi-

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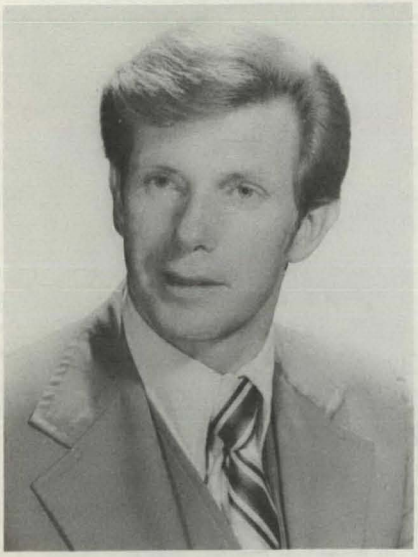


Deputy Chief Cronkhite

Daryl F. Gates
Chief of Police

mately 1,000 civilian and sworn personnel, a 10-percent reduction in our department's personnel strength. Because of this, we have been forced to manage with less, to experiment, and to research what other agencies have found successful.

POLICE RESOURCES

In the broadest terms, our resources as police managers are personnel, equipment, and information.

Personnel is, of course, our largest and most important resource in meeting the crime threat. Because personnel constitutes 80–95 percent of our budgets, when budget cuts occur, they usually result in personnel reductions. However, there are methods by which remaining personnel resources can be stretched to take up the gap.

Team Policing

In the 1970's, LAPD, as well as many other police agencies, adopted team policing, which was effective in reducing crime. While crime was rising nationwide, LAPD was able to stabilize and reduce major crime from 1971 through 1977, the years the department was organized around team policing.

However, with the loss of over 10 percent of our personnel in the last 5 years, it has been determined that the department can no longer afford this concept. Combining patrol, detective, and traffic functions into geographical teams resulted in administrative overhead and inflexibility of personnel assignments. Additionally, many of the community meetings that are fundamental to team policing were being conducted on an overtime basis and were paid from overtime funds that no longer exist. Even so, a minimum number of basic field units assigned to set geographic areas are still maintained.

Neighborhood watch meetings are held on an "as needed" basis with citizen volunteers so that officers are removed from field patrol for only a short period of time. The remainder of the field force is assigned where the workload determines they are needed.

Uniform Deployment Formula

To make the maximum use of available field officers, departments experiencing cutbacks are having to rely more on formulas that usually include calls for service, crime, traffic accidents, property loss, population, street miles, and population density. In the LAPD, a number of patrol officers are "reshuffled" every deployment period (28 days) according to this formula. Each geographic area is evaluated on the above factors and manpower deployed where the formula shows they are most needed.

Priority Management of Radio Calls

Several contemporary studies (particularly those of Kansas City, Mo., and Syracuse, N.Y.) indicated immediate response to all requests for service is not cost-effective. Consequently, a number of police agencies are now providing immediate response only to

requests involving serious crimes in progress or where there is a present threat of death or serious injury. Other responses to calls for service are delayed and scheduled when sufficient radio units are available. In some cases, low priority requests are made on an appointment basis during nonpeak work hours.

In Los Angeles, under a program called System to Optimize Radio Car Manpower (STORM), a specifically deployed small percentage of radio units handle, on a scheduled basis, a large percentage of noncritical, low priority calls for service, e.g., barking dogs, loud radios, etc. Other radio units, therefore, remain available for immediate response to critical calls. Additionally, on all calls where a delay in dispatching occurs, a call-back is made to determine if the citizen still requests a police unit when one becomes available. This has reduced dispatching radio units when they are no longer needed. STORM provides the LAPD with the equivalent of approximately 56 officers in additional field time.

Some agencies, including the San Diego, Calif., Police Department (SDPD), have worked with their city council to establish a prioritized list of activities performed by radio units. By forming an agreement between the city council and the police department as to the desired activities to be performed, appropriate response times, how long each activity should take, and how much available patrol time should exist, they have established the basis for manpower requirements. If requests for service from the public increase, then the city council must provide funding for additional personnel or recognize that response time will increase and lower priority activities will not be handled. By this method, the council directly shares in the responsibility for proper sevice to the community.

Some agencies have strict control over the number of units responding to a dispatched call. Units other than those assigned are not allowed to respond. Additionally, units may not go "out to the station" unless approval is received from the dispatcher. To facilitate this procedure, field sergeants must announce their location by radio periodically so nearby units can meet them for crime report approval in the field. Also, approval for booking is often given by telephone when jail facilities are located some distance from the approving watch commander.

Directed Patrol

Creation of additional patrol time alone does not ensure more police productivity. The Kansas City preventive patrol experiment called into question two widely accepted hypotheses about patrol: (1) That visible police presence prevents crime by deterring potential offenders, and (2) that the public fear of crime is diminished by such police presence. Many police departments, such as South Central, Conn., Kansas City, Mo., and Wilmington, Del., have found that to be productive, use of "free patrol time" must be directed rather than used reactively. They provide directed patrol by:

1) Identifying through crime analysis the places and times crimes are occurring and are likely to occur in the future;

2) Preparing written directions describing in detail the way problem areas are to be patrolled; and
3) Activating these patrol directions through watch commanders and field supervisors and assuring concentrated effort toward specific crime problems.

Expanded Use of One-Officer Radio Units

The San Diego Police Department conducted a comparative study of 22 one-officer and 22 two-officer units to determine the difference in terms of performance, efficiency, safety, and officer attitudes. Although the two-officer units cost 83 percent more to field than one-officer units, the study found that one-officer units performed as well and were substantially more effective. Additionally, the study reported that one-officer units had better safety records.

Motorcycle Response for Congested Areas

Response time to priority calls in congested areas can be enhanced by assigning motorcycle units to respond to nontraffic as well as traffic calls for service in congested areas during peak traffic hours. Because of their maneuverability in heavy traffic, they can respond faster than radio cars.

"Call A Cop First" Program

Studies have shown that many people call someone else (a friend, employer, spouse) before they notify the police of a crime. James Elliot, in his book *Interception Patrol*[1] found that in 70 percent of crime-related service calls, citizens waited 10 or more minutes before notifying police.

Other studies (such as those conducted by the National Advisory Commission on Criminal Justice Standards and Goals) have determined the success of solving a crime is greatly increased if the police arrive within several minutes after the event, or better yet, while it's occurring. In response to these findings, a campaign to remind the public of the importance of "calling a cop first" can be productive. Radio, television, and billboard advertisements (sponsored by local businesses and the media), wherein the chief of police, mayor, or entertainment personalities make the appeal, can be instrumental in spreading the word. More productive use of officers' radio time can result.

Eliminate "Property Damage Only" Traffic Accident Investigations

Some police agencies have found it necessary to cease taking most "property damage only" traffic accident reports. This practice has saved the Los Angeles Police Department the equivalent of approximately 20 officers in field time. Units are only dispatched to the scene of such accidents to eliminate traffic hazards and verify that a correct exchange of information has been made between involved parties, but no reports are taken.

Increased Use of Search Dogs and Mounted Crowd Control

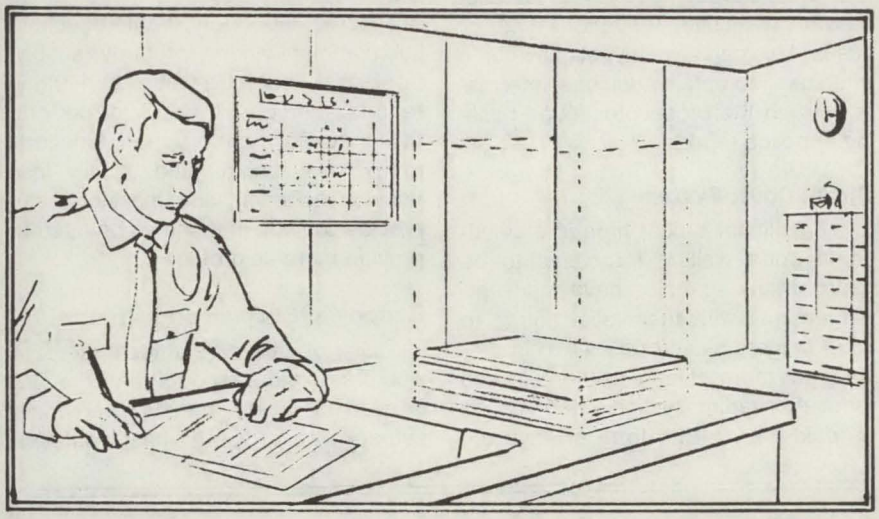
Besides using specially trained dogs for bomb and narcotics searches, these animals can be a great manpower saver when searching for suspects in large areas such as warehouses, department stores, and outdoor field searches. In a 2-month study of LAPD's program, a team of dogs engaged in 165 searches, apprehended 54 suspects, and saved time equivalent to that of 11 officers per month.

Likewise, a few officers on horseback can provide crowd control equivalent to that of many officers on foot.

LAPD has recently returned to the use of horses—something we learned from our Canadian colleagues many years ago.

Minimizing Report-taking Time

Many agencies are being forced to reevaluate their telephonic reporting procedure. It may be found that some agencies must limit their onscene investigation to those incidents where the suspect is still at the scene or very recently left, where recoverable evidence may be present, or where the nature of the crime or incident requires immediate response, e.g., major violent or potentially violent crimes against person and major traffic accidents. The San Diego Police Department now handles a monthly average of 45 percent of its calls for service telephonically with no adverse community feedback.



With cutbacks confronting many agencies, an evaluation of reporting requirements could be in order. Information required on reports that is "nice to know" may no longer be affordable and could be eliminated. Arrest, crime, evidence, and booking reports may have to be combined. The Los Angeles Police Department and Los Angeles County Sheriff's Department use a consolidated booking form packet which contains eight other reports, including a standardized front sheet for the arrest report. The information from the booking form is transferred by carbon paper to the other report forms. Also, some agencies are using "incident reports" to record only statistical information for minor crimes where little or no information is available that may lead to the apprehension of the suspect.

Followup time can be saved by allowing victims of theft-related crimes to list additional property taken (which was not included on the original crime report) on a separate report which is mailed to the police station. Use of this form eliminates the necessity of detectives having to complete followup investigation reports to list the additional items stolen.

Interagency Crime Task Forces

Criminals do not often confine their activities to one jurisdiction. Combining investigative efforts with surrounding police agencies can often reduce duplication in investigations involving multioccurrence crime trends.

Detective Case Assignments

Many police departments, including Rochester, N.Y., Long Beach, Calif., and Los Angeles, Calif., are having detective supervisors classify cases to allow detectives to focus their immediate efforts on the more serious, solvable cases. The procedure of the Los Angeles Police Department includes detective supervisors classifying and assigning cases as follows:

Category 1: Require Followup Investigations
Cases that have significant investigative leads and/or circumstances which require a followup investigation. A followup investigative report is generally due within 10 working days.

Category 2: Additional Investigation Required
Cases that do not have significant leads initially but which, with additional investigation, may provide significant leads. A followup report is required within 30 days. If significant leads are discovered, the case is reclassified to category 1.

". . . the future holds for us an exciting opportunity to make constructive changes through legislation that can strengthen the judicial system and through innovative uses of our shrinking police resources."

Category 3: No Citizen Contact Required
In cases that do not contain apparent leads in the initial report, detectives are expected to investigate when category 1 and 2 cases have been handled. These cases are reviewed by detectives and their supervisors to ensure knowledge of crime trends in their areas of responsibility. Detectives are not required to routinely contact category 3 victims.

Cases that involve in-custody arrestees are, of course, given top priority.

The positive impact of classifying cases is further complemented through the use of a form given victims by uniformed officers when crime reports are made. This form informs victims that a detective will not contact them unless additional information is required. This strategy thus tends to reduce the number of phone calls to detectives from curious victims only wishing to know how things are going on their case.

Detective Deployment Formula

A number of agencies have developed "work units" for the time it takes a detective to handle a crime, arrest, complaint, or petition filing. The average time to complete these work units varies and are established by periodic surveys. Detective staffing can be determined by calculating this information with the number of crimes in each geographic area and applying the percentage of work load in each area. Los Angeles, for example, uses this system to redeploy detectives semiannually.

Detective Complaint Officer

Significant timesaving may be achieved by having only one detective file cases with the prosecuting agency. This practice can eliminate wasted hours spent by detective personnel traveling to, and waiting for, available filing deputies. Other agencies have been fortunate enough to have district attorney and/or city attorney staff assigned to their police stations.

Another aid in the area of filing cases is to construct a filing manual that details what is required for successful prosecution for various types of cases. This can save investigative time often used to obtain additional information which the prosecutor found missing in police reports.

Oncall Court System

Significant officer time is expended in court waiting for cases to be heard. Many agencies have made arrangements with their local courts to have officers placed on call. This provides for more officers in the field and reduces overtime which often has to be paid back in the form of days off. Police personnel usually have to be assigned at court to coordinate notifying officers when they are needed. The return in manhours saved, however, is usually worth more than the manpower expended. LAPD, for example, estimates that their oncall system saves the equivalent of over 100 officers in field time annually.

Civilian Personnel

Most departments are expanding the replacement of sworn personnel with civilians, particularly in the areas of records, laboratory, traffic direction, jail, communications, property, supply, front desk, detective aide, and traffic reports. Persons trained to perform these auxiliary and support functions require less salary (and usually less pension benefits), and therefore, can provide savings that should be used to provide more field officers.

Manpower Supplements

Use of citizen volunteers, student workers, explorer scouts, and the like is even more important as personnel cutbacks occur. LAPD has created a

reserve officer program that involves three types of reservists. First, there are the traditional reserve line officers who receive extensive training and are qualified to work in radio cars. There are also technical reserve officers who require less training and work the desk, community relations, investigative followup, and other such jobs. Specialist reserve officers are volunteers who have special talents useful to the department, such as chemists, technical writers, and computer system analysts, and are only required to receive several days of training.

Many departments are using volunteers to file reports, fill out telephonic crime reports (after officers determine what type of report should be taken), and conduct crime prevention training. LAPD has found that advertising in local newspapers is a successful method of recruiting volunteers.

As manpower continues to be reduced, some agencies are exploring the possibility of store security and campus police handling more police functions in their jurisdictions. This includes preliminary investigations, completion of appropriate reports, and the transportation of arrestees.

Increased Crime Prevention Efforts

A common tendency of police organizations in contending with budget cuts is to regard crime prevention personnel as nonessential. Thus, the reduction or elimination of a crime prevention staff is considered an appropriate economy measure. A more productive approach, however, may be to use these individuals as leverage in making the best use of available manpower. A few crime prevention personnel involved in an effective program can prevent crimes that would require the work of many officers.

In meeting today's management challenge, many police administrators are finding that economical crime prevention efforts are most effectively applied through programs involving volunteers. Under the direction and supervision of crime prevention officers, volunteers can:

1) Conduct crime prevention meetings in the selected target areas;
2) Conduct security surveys of residences in the target areas;
3) Distribute crime prevention literature in the target areas; and
4) Conduct an identification program that assists residents in marking their property for later identification if stolen and recovered.

Through these programs, a few officers can use the assistance of volunteers to amplify crime prevention efforts.

Even a large crime prevention staff can contact only a small percentage of the public. Television, radio, and the printed media, however, communicate daily with a very large segment of the population. By using the news media, a department can capitalize on the concept of manpower leverage (obtaining a comparatively large result through a process that amplifies the efforts of a small amount of manpower).

A recent U.S. Department of Justice National Crime Survey found that over half of the burglaries nationwide were committed against unlocked dwellings. If the public could be reminded of this fact through the news media, many crimes could be prevented. The chief of the Los Angeles Police Department, for example, recently made a number of 30-second videotaped messages on crime prevention. The videotapes show various crimes in progress. The chief is "chroma keyed" (superimposed) over the crime scene activity as he tells how these crimes can be prevented. These messages have been aired by many television stations in Los Angeles County.

Another idea is to obtain the services of motion picture, television, and sports celebrities in making television and radio crime prevention messages. Many well-known personalities are willing to volunteer their services. The idea is to make these public service messages "grab" the interest of the viewer or listener long enough to get the crime prevention message across.

The victim of a crime is likely to be more receptive to crime prevention suggestions than other persons. His or her experience as the victim causes the realization that "it can happen to me." The uniform police officer taking the crime report is usually the first law enforcement representative to contact the victim. This officer is in an ideal position to provide the victim with suggestions on how to prevent a recurrence of the crime. Field officers should be given special crime prevention training and handout material for these victim/officer contacts.

Figure 1

This formula is used by the LAPD to assign black-and-white radio cars to its 18 stations.

V=.5 (n) (m) (d) (r) (a) + .5L.

V=Number of vehicles required in the patrol fleet.

m=Maintenance factor (1.10) based on repair statistics.

d=Deployment factor (1.25) for variations in day-of-week deployment. This factor considers a 25-percent variation between weekends (heavy deployment) and weekdays (light deployment).

r=Standard relief factor (1.6).

a=Watch deployment factor (.45) for variations in number of personnel assigned to the heavy watch and light watch.

n=Total uniformed field forces including sergeants minus nonfield positions (desk, bail auditor, etc.).

L=Sergeants cars on heavy watch.

Crime prevention efforts can be greatly enhanced by the enactment of local ordinances that require "target hardening" construction in residential and business structures. It should be part of a police administrator's crime prevention program to encourage the enactment of this type of legislation.

Arrangements should be made for building permits to be reviewed by crime prevention personnel to ensure proper construction that will prevent crime. Another idea is to encourage insurance companies to give reduced rates on structures that have built-in crime prevention-type construction.

Task Force Organizations

As personnel reductions occur, there is a tendency to reduce planning and staff personnel in order to maximize the number of officers assigned to field duties. The resulting reduction of planning and administrative functions can cause great harm to the future of law enforcement. One approach to this dilemma is to form a planning committee composed of all top managers. The planning entities are reduced to a minimum number of experts. As the planning committee determines needs for planning and other administrative research, task forces are appointed.

The task force members are selected from areas of the agency that have the experience needed for the particular task. They are assigned to the experts from the planning entities and return to their regular duties when the task is completed. This type of organization reduces the number of personnel permanently assigned to staff functions, yet provides for planning activities on an "as needed" basis.

EQUIPMENT

Reduced finances also cause a cutback in equipment, requiring judicious use of existing equipment. Additionally, the purchase of certain manpower-saving equipment may be cost-effective in coping with reduced personnel.

Nonlethal Weapons

There is a growing need for effective nonlethal weapons because of the increase in violent mentally disturbed individuals and violent drug users. These persons do not respond usually to normal police restraints. Nonlethal weapons are needed to reduce the manpower required for incarceration of these persons. Additionally, they are needed to prevent officer injury which often reduces available manpower. Prime examples are the tazer gun and chemical irritants.

The tazer gun is now carried by all LAPD field supervisors. It shoots two barbs on electrical lines 15 feet, uses a low amperage, high voltage (50,000 volts at 7 amps) that pulsates at 28–30 pulses a minute and immediately totally incapacitates 80 percent of suspects. It causes no lasting effects, even on persons with pacemakers, and is usually effective on PCP suspects.

Chemical irritants are also carried by all LAPD field officers. They can be used up to 15 feet and cause vertigo, disorientation, and inability to act in 70 percent of cases. They have no lasting adverse effects, but may not be effective against persons under the influence of PCP.

Figure 2

This formula is used by LAPD to distribute plain vehicles.

$V = (N + .2F + .5G + 5T + .75P + R) - B\ M$

V = Total vehicles recommended for each entity by formula.

N = Personnel that do not need a vehicle, such as detective desk personnel.

F = Nonfield fixed-post personnel, such as staff workers. They receive one vehicle to five personnel.

G = Field fixed-post personnel, such as noncaseload-carrying detective supervisors. They receive one vehicle for every two personnel.

T = Personnel working two-man units on a full-time basis, such as narcotics and personnel investigators. One vehicle is provided for every two personnel.

P = Personnel carrying a full caseload, such as field detectives. The ratio is three vehicles to four personnel.

R = Personnel working one-man units and require a vehicle 100 percent of the time, such as narcotics investigators, supervisors.

B = Average number of pool vehicles used per day.

M = Maintenance factor of 1.05 as established by repair statistics.

Vehicle Deployment Formulas

Cost-effective deployment of automobiles, like the appropriate deployment of personnel, can be an effective "economizer" of existing equipment. The following vehicle formulas are based solely on personnel deployed and their vehicle requirements. The use of these formulas requires an honest look by management into vehicle needs vs. vehicle wants. For example, the factors in the formulas reflect different requirements for different assignments, ranging from officers who do not require a vehicle to officers requiring a vehicle 100 percent of the time. These types of formulas can ensure that personnel have vehicles readily available, thereby reducing down time or idle time waiting for transportation. (See figs. 1 and 2.)

Leasing vs. Buying Equipment

Some agencies are finding that funds are no longer available for the outright purchase of equipment and the building of police facilities. Leasing is often a way of avoiding the initial cash outlay and a means of surviving temporary cutbacks.

Hand-held Radios

Many police agencies, including Los Angeles, Calif., Seattle, Wash., and Chicago, Ill., have equipped their officers with out-of-car radios so that they are in constant contact. The cost of the radios has been more than compensated for by the added ability to call officers from nonpriority calls (such as report taking) to priority calls (such as robbery). As an alternative, some departments do not show their units "off the air" until they arrive at the scene rather than when the call is broadcast. This is accomplished by officers notifying the dispatcher when they have arrived and are exiting their vehicles.

INFORMATION

Alvin Toffler states in his newest book, *The Third Wave,*[2] that we are moving from an industrial society to a global society, which uses data to compensate for dwindling resources. Police administrators must capitalize on this trend and make use of information, particularly automated information, in meeting the challenge of the crime threat with less resources. We in law enforcement can make good use of automation in helping us to become more effective. Automated information can provide more rapid police response to citizen calls and faster access to information that assists uniformed officers to perform their jobs more effectively.

The Automated Want and Warrant System

In the past, officers have had to detain persons in "field situations" as long as 20 to 30 minutes while clerical personnel searched manual warrant files at the station house. Now it takes only seconds to determine if a person is wanted or a vehicle or other property is stolen. This rapid response comes through automated access to local, State, and national law enforcement files. This reduces inconvenience to innocent citizens and saves valuable field time for officers.

The Emergency Command Control Communications System

These computerized communications systems provide "instant cops" by:

1) Remote out-of-vehicle radios for every field officer that make officers available for response to citizen needs at all times;

". . . together, we can stem the rising crime with decreasing resources."

2) Mobile digital terminals in patrol cars that provide field officers direct access to computerized information; and
3) Computer-aided dispatching of police units that provide faster police response to citizen calls for service.

The Electronic Sherlock Holmes

Two law enforcement systems are examples of how automation is used to communicate essential information and to reduce the time it takes detectives to conduct criminal investigations:

1) Automated Field Interview Systems—These systems link the thousands of daily observations made by field officers with crimes investigated by detectives. The computer connects suspects by location, description, vehicle, and activity to reported crimes.
2) Modus Operandi (MO) Correlation Systems—These computer programs process large volumes of data from crime and arrest reports and correlate incidents that may have been committed by the same suspect. By linking these reports through MO patterns, a conglomerate of information can often be compiled that provides valuable assistance in identifying crime perpetrators.

The Automated Police Manager

There are systems that assist police managers to use police personnel more effectively.

1) Automated Deployment of Available Manpower Programs—By computerizing information on calls-for-services from citizens, activity initiated by officers on patrol, and crime trends, these systems predict how many police cars should be assigned each area of the city by day-of-the-week and hour-of-the-day. They also give police managers information on the timeliness and effectiveness of patrol services in each neighborhood.
2) Computerized Traffic System—This system compares when and where traffic accidents are occurring and the causes with when and where officers are issuing traffic citations and for what violations. The comparisons are used to deploy traffic officers and evaluate their effectiveness.
3) Crime Statistics Systems—Through computer analyses of all crime and arrest reports, crime trends are reported weekly, monthly, quarterly, and yearly.
4) Training Management Systems—Officers' personal data, such as language skills, special occupational experiences, hobbies, physical fitness, training examinations, shooting proficiency scores, etc., are maintained in computer files so that training needs can be assessed and personnel talents and abilities can be properly used. Additionally, video communication is being extensively used in academy training and at daily training sessions. Computerized shooting simulators are also assisting in training officers when and where not to use firearms.

Minicomputer and Electronic Word Processors

Computers are following the trend of many mechanical and electronic devices that have proved to be helpful to mankind. Mass production is increasing their availability while decreasing their cost. Already the cost of minicomputers is within the financial reach of most police agencies. Today's minicomputers have the capabilities of larger computer systems of a decade ago.

Small law enforcement departments should consider purchasing minicomputers to supply most of their automation needs, and large police agencies should be evaluating minicomputers as replacements for their precinct station filing systems. In the near future, each commanding officer may be able to have a small computer for his use and the use of his personnel.

Word processing computer terminals should replace typewriters in most police agencies in the future as they are now doing in private industry. Crime reports should be "typed" on terminals. Computer systems can strip off information and send teletype messages, plus extract and transmit appropriate information for detectives, prosecutors, and the courts. Additionally, information for statistical and management purposes can automatically be transmitted to appropriate files.

Much of the duplication that now occurs can be eliminated. After the information is once entered into the computer, the computer can take care of the manipulation of information that now is often done by many persons. These types of systems have already been put to use in some police agencies, but it will be some time before they are a common police tool.

Much of the processing time now consumed in the pyramid organization structures of police departments for correspondence, research projects, budget requests, and activity reports can be reduced by word processing systems. Currently, these documents are sent up the chain of command and returned for retyping when corrections or changes are desired by persons higher up in the organization. Often, they are completely retyped a number of times before they reach the chief of police. With a computerized word processing system, they can be entered on a terminal once and stored. When changes are necessary, the text is recalled on a terminal screen and only that portion to be changed is redone. When finally approved, the computer prints out a final report. Likewise, the text of routine correspondence can be kept in computer storage. When required, it can be called up on a terminal screen and appropriate names and text changes made to "personalize" the letter before being printed for signature.

THE FUTURE OF LAW ENFORCEMENT—SOMETHING TO LOOK FORWARD TO

When we talk about cutbacks, reduced resources, and managing with less, we often do so with a pessimistic air. We are going to have to deal with reduced resources for some years to come, but in the overall history of our societies, this will be but a short period. As we look back 10 to 15 years from now, we will probably reflect on this period as a period of reevaluation and refinement—refinements to meet economic and cultural changes. Review of our histories discloses many periods of reduction—a time for cleansing the systems, removing excess fat, firming up our objectives, and assuring that they meet the expectations of the public we serve. It is indeed a time of challenge, a challenge that we should look forward to with optimism, for the future holds for us an exciting opportunity to make constructive changes through legislation that can strengthen the judicial system and through innovative uses of our shrinking police resources. As professional law enforcement officers, we can help provide a safe environment where our citizens can exercise their individual freedoms with a minimum of disruption. And together, we can stem the rising crime with decreasing resources. **FBI**

Footnotes

[1] James Elliot, *Interception Patrol* (Springfield, Ill: Charles C. Thomas, 1973).

[2] Alvin Toffler, *The Third Wave,* 2d ed. (New York City: Bantam Books, 1981).

"Discipline is becoming . . . a more difficult and painful task for the police executive."

Discipline: The Need for a Positive Approach

By
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Without exception, discipline is one of the most controversial managerial issues today. During discussions with law enforcement managers, it is not uncommon to hear them vent a great deal of frustration about the management of discipline. Although the amount of frustration increases or decreases based on the particular aspect discussed, little consensus exists regarding the appropriate methods of or approaches to discipline.

Managers in general, and law enforcement managers in particular, have always considered disciplining employees a basic management prerogative. Traditionally, managers have been relatively free to impose penalties without concerns about being challenged. Managers disciplined whenever employees violated organizational rules or when employee performance appeared to deteriorate. In the past few years, however, statutory law and other legal developments have steadily reduced management's traditional "rights" to discipline.[1] For example, employees now under investigation for possible disciplinary action are afforded more protection from arbitrary managerial actions. Legislation and court decisions have affected, and in many cases, reduced the law enforcement manager's discretion; the inclusion of a "police officer's bill of rights" in collective bargaining agreements at city, county, and State levels has also impacted management's right to discipline.[2]

Discipline is becoming, therefore, a more difficult and painful task for the police executive. Some managers unfortunately respond to this difficult task by working hard to avoid it. Because of this, disciplinary matters are handled inconsistently and ineffectively and result in more grievances being filed and even more serious personnel problems, including:

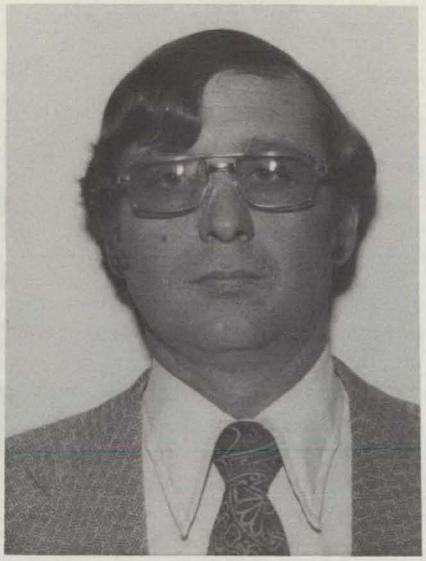
1) Loss of employee respect for law enforcement managers;
2) Loss of employee trust and consequent increased hostility toward law enforcement managers;
3) Increased employee dissatisfaction, resulting in decreased productivity;
4) An increased number of employee grievances going to binding arbitration for final disposition; and
5) Increased employee turnover, resulting in additional recruitment, selection, training, and other personnel costs.[3]

Traditional Approach

In most law enforcement agencies, the term "discipline" has a negative connotation and implies punitive action. Most agencies emphasize and communicate clearly written rules of conduct which management views as the basis for equitable disciplinary policy. Strict adherence to these rules and other legal principles is recognized as essential to equitable disciplinary action. In spite of the time and effort management spends in an attempt to be fair, however, the punitive aspects of traditional discipline remain permanently fixed in the minds of most employees.

The traditional and most commonly used approach to handling discipline is viewed as one of structure and law. A review of the text, *Managing for Effective Police Discipline,* and the article, "Police Agency Handling of Officer Misconduct: A Model Policy Statement," delineates this structural approach. The major emphasis in each text is the establishment of a system for managerial control which incorporates the following steps as significant actions in a responsible disciplinary process:

1) Setting standards and rules of conduct;
2) Developing mechanisms for detecting violations;
3) Providing for the receipt of misconduct complaints;
4) Establishing responsibility for handling complaints;



Special Agent Asher

5) Providing for temporary and emergency suspensions; and
6) Setting policies and procedures for investigating, charging, resolving, and imposing sanctions and appeals.[4]

Traditional discipline has sometimes been referred to as "progressive discipline." Zach and Bloch point out in their definition, however, that progressive discipline is, in reality, actually negative. Progressive discipline is defined as:

> "A system of escalated penalties made known to employees in advance and imposed with increasing severity for repeated infractions. Such a system relies on the recognition that repetition of infractions with escalating penalties will ultimately lead to termination. . . ."[5]

Unfortunately, this definition accurately describes the disciplinary system most often used in many law enforcement agencies. Under certain circumstances, progressive discipline is appropriate. Isolated incidents of employee misconduct may be cause for the application of progressive disciplinary actions. It is also important, however, to recognize that in many instances, progressive discipline is not effective and has severe limitations.

In discussing the limitations of progressive discipline, the following concerns are identified:

1) The burden for improvement is left almost entirely to the employee;
2) Discipline is currently little more than a way of getting rid of people;
3) Supervisors generally provide only negative feedback pertaining to employee's performance;
4) Supervisors and managers tend to let employees' problems drag on until the problem is so serious that there is almost no hope of solving it;
5) Supervisors frequently define a problem as "a poor attitude" or "low morale" or some other state of mind;
6) Managers tend to label employees rather than describe their unacceptable behavior; and
7) In progressive discipline, the employee appears as the sole source of the problem.[6]

These difficulties suggest the need for a more positive or corrective approach to the management of police discipline.

Positive Approach

Positive or corrective discipline is based on the premise that the majority of employees are willing and able to accomplish their assigned duties. The essence of positive or corrective discipline is the positive use of employee training and development rather than as a last resort disciplinary technique. As Asherman has noted, corrective discipline is based on the assumptions that the employee's behavior will improve for a time when disciplinary action is taken, and that if the manager rewards the improved behavior, the employee will continue to improve rather than regress.[7]

Corrective discipline, therefore, has the following advantages over progressive discipline:

1) Both employee and supervisor share responsibility for solving the problem;

"Although many of the issues surrounding discipline have not changed a great deal, employee expectations have."

2) Supervisors begin to work on the problem as soon as it appears;
3) Supervisors identify poor performance in terms of specific behavior;
4) Supervisors make clear to employees exactly what is expected;
5) Supervisors tell the employee whether they are meeting expectations;
6) Supervisors reinforce all improvements; and
7) Supervisors measure employee performance.[8]

These advantages demonstrate that police discipline should be corrective in nature so that desired future individual behavior is achieved within the organization.

Even though most law enforcement managers agree that it is necessary to have a systematic approach to handling disciplinary matters and a knowledge of the legal issues concerning disciplinary actions, police managers continue to have problems properly handling disciplinary matters. Managers must continue to control, but with a new emphasis on the human aspects of discipline. Police discipline need not be a frustrating, unrewarding experience for the manager. The manager can administer positive discipline by keeping in mind the basic elements of a disciplinary process and by including open communication, a positive attitude toward discipline, a good managerial example of behavior, and an appropriate organizational environment in his bag of managerial tools.

What is communicated to employees depends on managerial actions. It is important, therefore, that the manager know what his values are and whether his values help or hinder in accomplishing organizational goals. He must consider what he is communicating to employees. If managers are going to try to manage more effective organizations, they must emphasize developmental, not retributive, approaches in dealing with personnel.

It is virtually impossible to monitor and control the behavior of personnel on the job, let alone behavior off the job. More rules and regulations stringently enforced do not necessarily mean that an organization runs better. The question is not whether positive or corrective discipline is better than negative or progressive discipline, but how can managers better assist employees to develop within the organization. Managers are given positions of authority and responsibility and are expected to accomplish organizational goals by effectively using human resources. A substantial part of management is the development of employees, and part of the developmental process requires the appropriate use of discipline.

Many managers have, perhaps, simply lost sight of their responsibilities. If we accept, however, that organizational goals are important and worth achieving, it follows that we must achieve these goals through the use of employees' talents and energy. Management remains an art form that includes the ability to deal effectively with either individuals or groups. Formal power and authority are less important than effectively handling personnel. For law enforcement managers, therefore, the structure and the system may be less important than the individual manager's actions.

Managers must accept that they are responsible for employee behavior and must, therefore, be concerned with their own managerial attitudes. The law enforcement manager with a positive attitude toward the internal discipline system, a sound set of values, and a conscientious effort to communicate can be a major asset in making an organization effective. Conversely, a manager with a negative attitude can actually contribute to an organization's ineffectiveness.

Although many of the issues surrounding discipline have not changed a great deal, employee expectations have. Increasingly, employees expect to be treated fairly and insist upon positive or corrective approaches to discipline rather than merely punitive discipline systems. If organizational goals are to be accomplished and employees' expectations met, employees must be treated as mature, responsible, thinking, worthwhile adult human beings. These expectations seem reasonable; managers who are unable to provide supportive environments are becoming liabilities in modern organizations. For example, authorities have begun to examine the issue of employee rights and the disciplinary process and have suggested different types of rights—rights that have a basis in law and tradition, and more importantly, rights that are freely given because of the positive impact on accomplishing organizational goals.[9]

In keeping with these trends, law enforcement managers must reevaluate their positions and the effects of their behavior on the disciplinary process within their organizations. The manager must be willing to accept the responsibility for discipline and must also accept the responsibility for pro-

viding an example of professional behavior to his employees.

The positive approach defines discipline as part of the control process directly related to the impact of a particular type of behavior on job performance. Actual performance is measured against a planned standard. Disciplinary action or actions are taken to bring job performance up to the desired standard.[10] Because of the emphasis on job performance, immediate supervisors must be more than passively involved in the disciplinary process.

The training and development of employees should include the setting of an example of professional behavior by the manager. Attempts to motivate or to discipline are useless if the manager is unmotivated or undisciplined. Communicating organizational values is a total process. Most employees listen less intently to what is said than to what is meant. The total organizational environment becomes the manager's medium of communication. How the manager expresses his own values and how he projects his professional behavior communicates as much to his employees about his expectations as the written rules and standards for disciplinary action.

If law enforcement managers are to communicate organizational values to employees effectively, the managers themselves must believe in those values. If there is to be any credibility in the communication process, employees must perceive that managers have a basic faith in the disciplinary process. Managers can more easily communicate a positive or corrective approach toward discipline if they sincerely believe that most employees desire to conform to reasonable organizational standards. A positive approach to discipline requires a positive attitude toward employees, including the basic belief that most employees are willing and able to be productive organizational members.

Conclusion

No one familiar with the role of the law enforcement manager argues that it is an easy job. It is unfair, however, and irresponsible for law enforcement managers to deny their accountability for and control over the behavior of employees. All managers should be responsible for the proper disciplining of their employees.

Managers need, therefore, to rethink and redefine what goals they want to accomplish through disciplinary policies and procedures. It is necessary for managers to determine their own values, however, and how the examples they set affect their employees prior to considering organizational needs. Law enforcement managers must be aware of their own professional values. They must present professional demeanor and behavior worthy of emulation. When employees respect the system and the manager, they demonstrate appropriate job behavior for organizational development.

Managers must also learn to communicate with employees during conflict situations often caused by differing expectations. Therefore, it is time for law enforcement managers to begin evaluating their own actions in order to assess what they are communicating to employees. How that communication is effecting organizational behavior should determine what changes may be necessary in their managerial approach to discipline. Managers must continually strive to meet organizational goals with reasonable harmony.

Organizations can no longer afford managers who communicate only personal interest and/or negativism. Increasingly, managers must be held accountable for the accomplishment of organizational goals. In order to accomplish these goals, managers must strive toward establishing organizational environments that are conducive to human resource development. Those environments, by necessity, must include a positive or corrective approach to discipline rather than the negative or progressive system with which law enforcement systems have traditionally lived. An environment in which the manager demonstrates professional behavior and values and communicates an expectation of professional behavior from his employees allows for positive, corrective discipline to become a reality. **FBI**

Footnotes

[1] Edward L. Harrison, "Legal Restrictions on the Employer's Authority to Discipline," *Personnel Journal*, vol. 61, No. 2, February 1982, p. 136.

[2] Paul B. Weston and Philip K. Fraley, *Police Personnel Management* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1980), p. 153.

[3] Ira G. Asherman, "The Corrective Discipline Process," *Personnel Journal*, vol. 61, No. 7, July 1982, p. 528.

[4] *Managing for Effective Police Discipline*, International Association of Chiefs of Police, 1977, p. 45; "Police Agency Handling of Officer Misconduct: A Model Policy Statement," Police Executive Research Forum.

[5] Arnold M. Zack and Richard I. Bloch, *The Arbitration of Discipline Cases: Concepts and Questions* (New York: American Arbitration Association, 1979), p. 11.

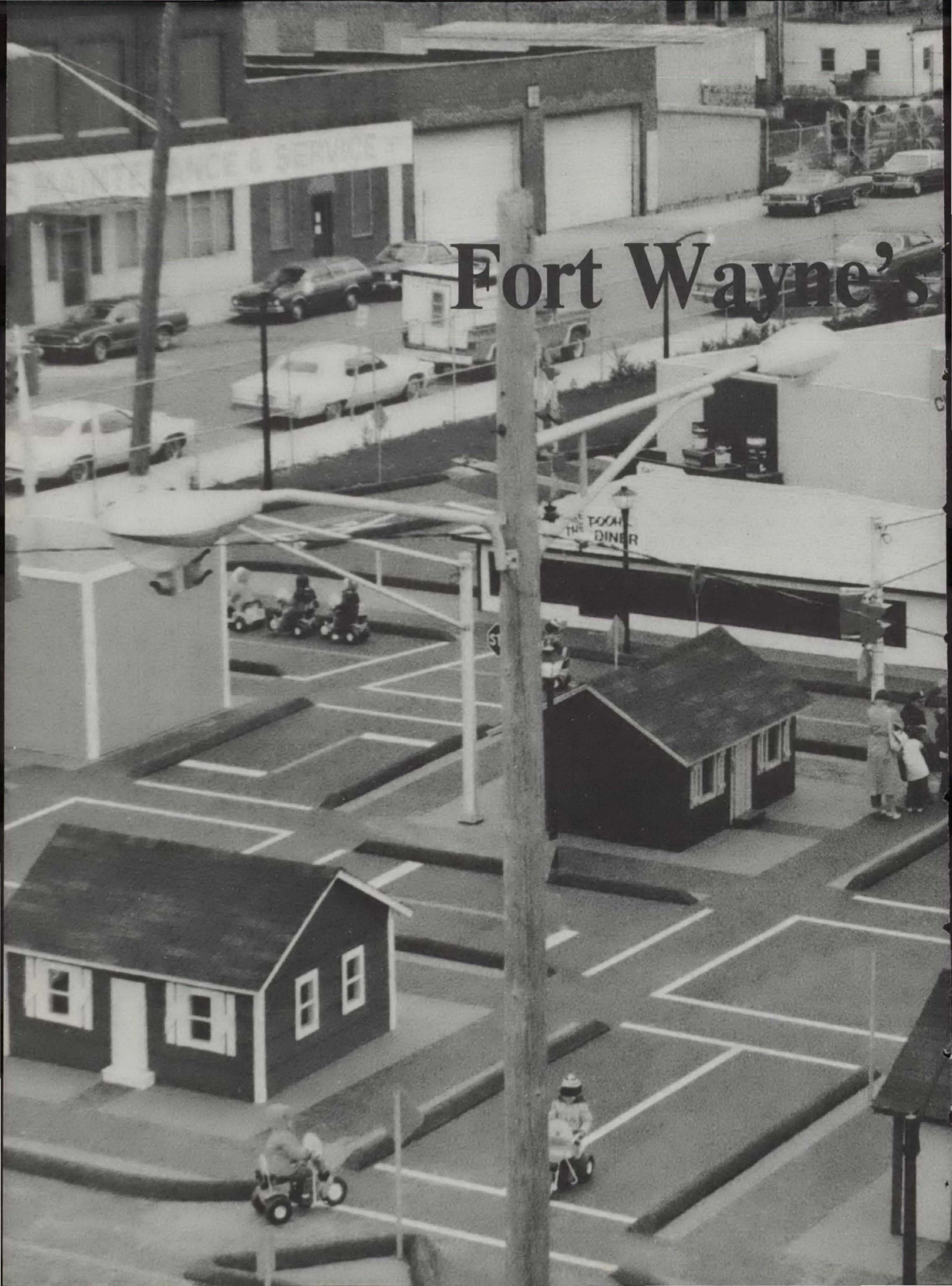
[6] Asherman, p. 529.

[7] Asherman, p. 530.

[8] Asherman, p. 530.

[9] Donal E. J. MacNamara, "Discipline in American Policing," *Modern Police Administration*, ed. Donald O. Schultz (Houston: Gulf Publishing Company, 1978), p. 132.

[10] David A. Tansik, Richard B. Chase, and Nicholas J. Aguiland, *Management: A Life Cycle Approach* (Homewood, Ill.: Richard D. Irwin, Inc., 1980), p. 384.


Fort Wayne's
DINER

ittle People Safety Village

By
CAPT. KENNETH E. VAN RYN
Director of Training
Police Department
Fort Wayne, Ind.

"SO THAT YOUR CHILDREN MIGHT LIVE TO BE ADULTS"

Captain Van Ryn

Chief David C. Riemen

Safety Village, a tiny town enveloped by a high chain-link fence, is a bustling metropolis within a metropolis. Little people in their tiny vehicles move through intersections on busy streets. The smooth flow of traffic inside the fence should cause the "big people" outside of the fence to be envious.

This scene is a familiar one in Fort Wayne, Ind. It is an integral part of the Fort Wayne Police Department's child safety program. Experienced traffic officers teach hundreds of children the fundamental points of traffic safety, with special emphasis being placed on pedestrian and bicycle safety. The goal of this project is to reduce the pedestrian and bicycle accident rate by 20 percent.

All students in this Indiana region who are in kindergarten thru fifth grade receive instruction on traffic safety before visiting Safety Village. This preliminary indoctrination is conducted by two officers in the department's Child Safety Bureau. Both officers have broad experience in teaching traffic safety to children. They teach approximately 15,000 children in Fort Wayne each year.

Prior to the students' visit to the village, their teacher instructs them in basic bicycle and pedestrian safety. When the students arrive at the village, they go directly to the classroom for an introduction of the "Safety Village" concept. The introduction will familiarize students with the police officer conducting the Safety Village lessons. The students will then be divided into two groups, with one staying in the classroom while the other goes to the laboratory.

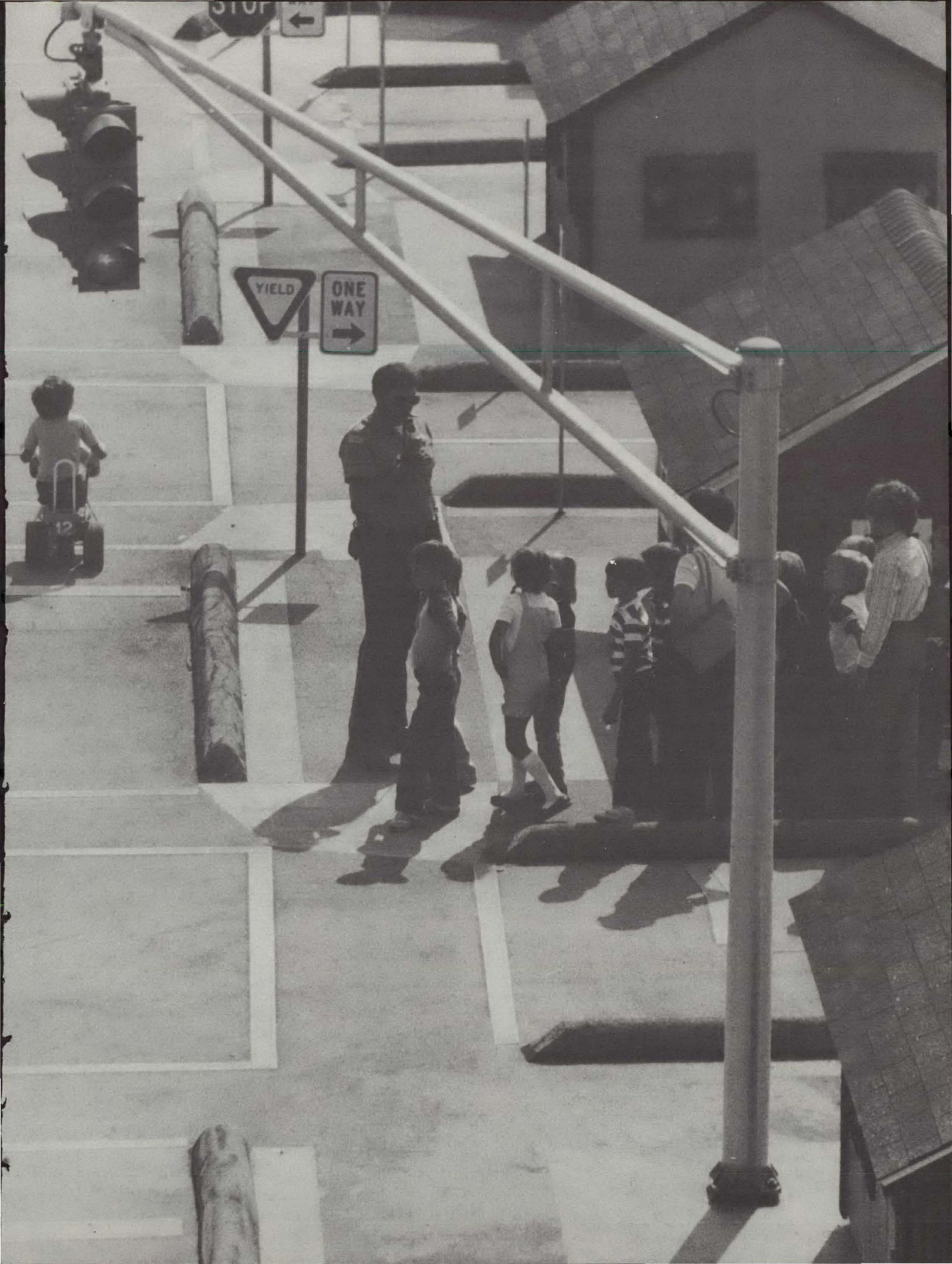
The second phase of the "Safety Village" curriculum is the actual classroom instruction. This phase is conducted in the Fort Wayne Police Department's Academy classroom which is equipped to hold up to 30 students.

During one-half hour of classroom instruction, the instructor presents basic pedestrian and bicycle safety information, including:

1) Definition of terms;
2) Traffic signs and various other traffic devices;
3) Slide presentation for *discussion* by the students, showing children correct and incorrect pedestrian safety habits; and
4) A story of "Carol and Tommy" walking to the skating rink, encountering possible pedestrian and driving hazards.

The students also have an opportunity for a question-and-answer period. The two groups then rotate areas.

The third phase of the program is the laboratory. The group of children walk through the village to familiarize themselves with the actual physical layout of the streets, traffic signals, vehicles, and other traffic control devices. The students are divided into two groups—drivers and pedestrians. At this time, the students will be shown a course to follow so that the instructors and his aides can constructively criticize the students' bad pedestrian and bicycle habits. The student will be told to begin at the starting point and walk only on the sidewalks to the school building, for example. The students are given


YIELD
ONE
WAY


WALK


TRAFFIC
PATROL

"Safety Village . . . [places] emphasis on individual responsibility and awareness whenever a child is riding a school bus, pedaling a bicycle, or crossing an intersection."

immediate help or praise. The bicycle group exercise is constructed in basically the same procedure as the pedestrian group. After the students have had the opportunity to be a pedestrian, they will then proceed to the bicycle phase and vice versa.

The village is complete with an 8-foot police station, a restaurant, and the town's main industry, a chocolate factory. Seven-foot homes dot the 3½-acre village, and there is a city/county building and a movie theater built by students of the Regional Vocation Center. The theater, complete with ticket window, is conveniently located in the middle of the village. Park benches and picnic tables cover the neighborhood across from an avenue of homes. Every village needs an educational facility, and as the children soon find out, their village is no exception. Safety Village has a school—the largest and only functional building in the complex.

Besides the buildings, this tiny town has every imaginable safety feature. Three-foot-wide pedestrian crossways mark where the little visitors may cross the street, and there are four "walk-wait" crossings and eight traffic lights located at busy intersections throughout the village. These lights instruct both motorists and pedestrians on whether they should stop or proceed. Near the chocolate factory, a railroad crossing is marked by two railroad signals.

Bright yellow lines indicate to the motorists that they must stay on their side of the two-way highway. Other dotted lines allow the tiny vehicles to pass on the main thoroughfares. Curbing is found everywhere in the village, street signs indicate one-way streets, and the village even has a T-intersection. Every conceivable traffic situation is incorporated within the village.

The mode of transportation used by children is minicars and three-wheeled motorcycles. These vehicles are knee-high to the police officers, who literally "oversee" the traffic jams and who can attest to several severe bruises by errant drivers.

Recent statistics have revealed that traffic accidents are currently the leading cause of death among school-aged children. Safety Village is designed to help reduce that unfortunate figure by placing emphasis on individual responsibility and awareness whenever a child is riding a school bus, pedaling a bicycle, or crossing an intersection. Further, it is an attempt to develop a pervading attitude toward traffic safety that will remain with the individual throughout his driving experience.

The slogan of this program—SO THAT YOUR CHILDREN MIGHT LIVE TO BE ADULTS—says it all. It is believed that the number of young lives saved through this experience cannot be calculated. The impact that this program has on this particular age group is great. These children, who are in their formative years, never forget the experience, and hopefully, will carry the lessons into adulthood.

In preparing our children for adulthood, we cannot afford to overlook the importance of safety education. We must begin this preparation as early as possible to ensure the safety of all our children both now and in the future.

FBI

OVER-REACTION—THE MISCHIEF OF *MIRANDA v. ARIZONA**

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*This article was originally published in *The Journal of Criminal Law and Criminology,* vol. 73, No. 2, 1982, pp. 797–810.

EDITOR'S NOTE: Articles published in the FBI Law Enforcement Bulletin are for the information of the criminal justice community and do not necessarily reflect the official position of the Federal Bureau of Investigation.

Immediately after the attempted assassination of President Ronald Reagan in Washington, D.C. on the early afternoon of March 30, 1981, Secret Service agents and the District of Columbia police arrested John W. Hinckley, Jr. and took him to the local police headquarters, arriving there at 2:40 p.m. They wanted to question Hinckley not only as to his motive but also about the possible involvement of accomplices. Before doing so, however, they dutifully read to him the warnings of constitutional rights that the Supreme Court in 1966 mandated in its five to four decision in *Miranda v. Arizona*.[1] The warnings given to Hinckley, as we shall see, contained embellishments of the ones specified in *Miranda,* and they were read to him on *three separate occasions* within a *two hour period.* After receiving the third set of warnings Hinckley was presented with a "waiver of rights" form on which he responded "yes" to the questions whether he had read his rights and understood them. Then he was asked whether he "wished to answer any questions." At this point Hinckley answered, "I don't know. I'm not sure; I think I ought to talk to Joe Bates [his father's lawyer in Dallas]." Hinckley added: "I want to talk to you, but first I want to talk to Joe Bates."[2]

Following the D.C. police "booking procedure" (identification data and fingerprints), and while the police were attempting to contact Joe Bates, two FBI agents arrived and arrested Hinckley for violation of the Presidential Assassination Statute.[3] They were informed of all that had transpired and then took Hinckley to the FBI field office at approximately 5:15 p.m. He received the *Miranda* warnings for the fourth time, at the field office. He was also presented with another waiver form, supplied by the FBI. Hinckley signed his name to it; however, "it was clearly understood that he did not waive his right not to answer questions before consulting counsel." Nevertheless, he did answer various "background" questions asked by FBI agents.

The "background" information was suppressed by the D.C. District Court. It reasoned that the information was elicited from Hinckley in violation of *Miranda,* which prohibits the interrogation of a custodial suspect after he announces or indicates he wants to have a lawyer present.[4] As already quoted, Hinckley had said he wanted one, although he did so rather hesitatingly.

The district court ruling was affirmed by the Court of Appeals for the D.C. Circuit.[5] Both courts rejected the government's contention that the questioning of Hinckley at the FBI office was merely "standard processing procedure" of an "essentially administrative nature." The courts concluded that Hinckley had, in fact, been interrogated and that the purpose of the questioning was to obtain personal background information from Hinckley which would negate an anticipated insanity plea at the time of the trial. It was obvious that Hinckley could not

Professor Inbau

deny he did the shooting, so the only conceivable defense would be that of insanity. That was, in fact, the plea at his trial, which began on April 26, 1982.[6]

In view of the court rulings declaring the "background information" inadmissible at trial, whatever value that information may have been to the prosecution was irretrievably lost. The government decided not to seek Supreme Court review of the appellate court's decision. Reliance had to be placed, therefore, upon independent evidence of Hinckley's sanity.

Before proceeding to discuss several other cases to illustrate the mischief occasioned by *Miranda,* the writer reiterates that Hinckley had received the prescribed warnings *three* times within a two-hour interval, and that a *signed* waiver was sought from him at the D.C. police station when he was asked if he *wished* to answer any questions. Nowhere in the *Miranda* opinion is there anything requiring such a repetition of the warnings, or the need for a signed statement, or the ascertainment of any other kind of waiver than an indicated willingness to be questions. Why, then, the mischief?

The mischief in the *Hinckley* case resulted from a concern on the part of law enforcement officers—and an understandable concern—that whatever they say to a suspect by way of *Miranda* requirements might later be considered inadequate by a judge or appellate court. Hence, they overreact; they embellish the warnings or add new ones. Each time someone wants to talk to the suspect, or the same interrogator wants to resume his interrogation, the warnings are repeated. The repetitive warnings are followed by a request to sign a legalistically shrouded waiver form. As a consequence of all of this, suspects who might otherwise have been willing to talk are far less apt to do so.

Another illustration of over-reaction to *Miranda* appears in an appellate court case within the District of Columbia that was decided only one month prior to the interrogation of Hinckley. In that case, *United States v. Alexander,*[7] a suspected murderer received the following warnings, as prescribed in a D.C. police department regulation:

> You are under arrest. Before we ask any questions, you must understand what your rights are.
>
> You have the right to remain silent. You are not required to say anything to us at any time or to answer questions. Anything you say can be used against you in court.
>
> You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.
>
> If you cannot afford a lawyer and want one, a lawyer will be provided for you.
>
> If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

Following a reading of the warnings to the suspect, she was presented with a printed waiver form, on which the first three questions were:

> 1. Have you read or had read to you the warnings as to your rights?
> 2. Do you understand these rights?
> 3. Do you wish to answer any questions?

". . . the Supreme Court only intended that the waiver must be knowingly made, but mischief has nevertheless resulted from attempts precisely to satisfy the presumed requirements for waiver."

Alongside each of the foregoing questions the suspect wrote "Yes." The next question was:

> 4. Are you willing to answer questions without having an attorney present?

To this fourth question the suspect wrote "No." The next item on the form was:

> 5. Signature of defendant on line below.

After the suspect's signature, the remaining portions of the waiver document contained space for the time, date, and lines for the signatures of two witnesses.

Following completion of the printed waiver form, a police officer told the suspect, "[w]e know you are responsible for the stabbing," whereupon she confessed and agreed to give a written statement. At this point, the officer issued "fresh *Miranda* warnings."

The trial court in *Alexander* suppressed the resulting confession, for the same reason stated in the *Hinckley* case—the questioning of a custodial suspect after an indication of an interest in having a lawyer present. The suppression order was affirmed by the appellate court. Consequently, the confession could not be used as evidence at trial.

The warnings that were used in the *Alexander* case presumably were the same ones that were given by the D. C. police department to Hinckley. In those warnings and in the waiver forms, the police went far beyond what the Supreme Court mandated in *Miranda,* or in any of its subsequent decisions prior to (or since) the interrogations of Alexander and Hinckley. What the Court stated in *Miranda* was that before a custodial suspect could be interrogated

> [h]e must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.[8]

Following this specification of the *required warnings*, the Court proceeded to advise interrogators that the suspect's "[o]pportunity to exercise these rights must be afforded to him throughout the interrogation," meaning that if he changed his mind and decided to remain silent or wanted an attorney present he should be accorded that privilege.[9] But this was only a warning to interrogators, not something for incorporation into the required warnings to the suspects themselves. The Court also stated that after the issuance of the warnings, "the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement." Finally, the Court added the mandate that "unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."[10]

The embellishments of the *Miranda* warnings and the ritualization of the written waiver, as exemplified in the foregoing *Hinckley* and *Alexander* cases, unquestionably have a tendency to dissuade many guilty suspects from submitting to police questioning.

The practice of police resort to written waiver is another illustration of over-reaction to *Miranda.* The Court in *Miranda* made no mention of written waivers, and in one of its own subsequent decisions, *North Carolina v. Butler,*[11] the Court specifically held that written waivers are not required. In that case the defendant, as a custodial suspect, orally waived his rights to silence and to have an attorney present, but refused when he was asked to sign a written waiver. The Supreme Court ruled that despite the refusal to sign the written waiver, the oral waiver was sufficient.

The message in *Butler* has not "trickled down" to some police departments, and even where it has, overcaution still prevails. Written warnings are still sought, and in some instances they will contain all the embellishments exemplified by the form currently being used by a large state department of law enforcement. (See fig. 1.) Forms such as this are not rare; they, or comparable ones, are in general usage by many police departments.

Most police departments rely upon the oral issuance of both the warnings and the waiver questions. Their officers are supplied with printed plastic cards, on one side of which appear the warnings to be read, and on the other the waiver questions to be asked. Usually the phraseology on the cards is prepared, or at least approved, by the local prosecuting attorney. The warnings on a typical card are as follows:

> 1. You have the right to remain silent.
>
> 2. Anything you say can and will be used against you in a court of law.

Figure 1

CONSTITUTIONAL RIGHTS AND WARNINGS

Date _____ Place _____ Time _____
Name _____ Date of birth _____

1. THAT I HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL.

   I understand this segment (initial)

   _____

2. THAT ANYTHING I SAY CAN AND WILL BE USED AGAINST ME IN A COURT OR COURTS OF LAW FOR THE OFFENSE OR OFFENSES BY WHICH THIS WARNING IS EXECUTED.

   I understand this segment (initial)

   _____

3. THAT I CAN HIRE A LAWYER OF MY OWN CHOICE TO BE PRESENT AND ADVISE ME BEFORE AND DURING ANY STATEMENT.

   I understand this segment (initial)

   _____

4. THAT IF I AM UNABLE TO HIRE A LAWYER I CAN REQUEST AND RECEIVE APPOINTMENT OF A LAWYER BY THE PROPER AUTHORITY, WITHOUT COST OR CHARGE TO ME.

   I understand this segment (initial)

   _____

5. THAT I CAN REFUSE TO ANSWER ANY QUESTIONS OR STOP GIVING ANY STATEMENT ANY TIME I WANT TO:

   I understand this segment (initial)

   _____

I have read or have had read to me the five (5) inclusive segments stipulating my Constitution rights and understand each to the fullest extent.

_____
Signature

witnessed:

_____

_____

3. You have the right to talk to a lawyer and have him present with you while you are being questioned.

4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.

5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

The waiver questions sometimes are:

1. Do you understand each of these rights?

2. Having these rights in mind, do you wish to talk to us now?

Observe, again, the gratuitous inclusion of the fifth warning. As earlier stated, this is not a warning required by *Miranda,* but rather an expression the Supreme Court employed by way of an *admonition to interrogators* regarding their obligation in those instances where a person has already agreed to talk without an attorney being present. It was intended as a guideline in case situations where, during the course of the interrogation, a suspect decides to discontinue the conversation or asks for an attorney. The Court did not indicate that this admonition to interrogators should be included as one of the required warnings to suspects.

The inquiry on the waiver side of the card about "understanding the rights" and "bearing them in mind" is the result of caution deemed necessary by law enforcement agencies to avoid being faulted by the courts for obtaining waivers that were not made "knowingly and intelligently." This was the expression used by the Court in *Miranda.*

The phrase "knowingly and intelligently" prompts the writer to pose the following rhetorical questions for reader consideration. Assume that the person who is about to be interrogated actually committed the crime. He receives the warnings and is asked the waiver questions that have been described. If, after hearing that ritual, he decides to submit to an interrogation, does not that fact in itself display a lack of the intelligence necessary to make an intelligent waiver? With all such red-flag-waving by the interrogator, is it any wonder that many guilty suspects, the intelligent as well as some unintelligent ones, decide to remain silent or to ask for a lawyer? Presumably the Supreme Court only intended that the waiver must be knowingly made, but mischief has nevertheless resulted from attempts precisely to satisfy the presumed requirements for waiver. Why else would a waiver contain the words, *"[h]aving these rights in mind,* do you wish to talk to us now?"

What has just been stated about the plastic card guides for the oral issuance of the warnings, and for the asking of oral waivers, is true to an even greater degree when a printed form is used, such as the one earlier reproduced, which requires name-initialing after each of the five segments of the set of warnings, to be followed by the suspect's signature, witnessed by two persons.

". . . considerable mischief results from the frequently followed police practice of issuing 'fresh' *Miranda* warnings every time an interrogation has been renewed by the original interrogator, or when a different interrogator becomes involved."

In addition to over-reaction with regard to the language of the warnings and waivers, considerable mischief results from the frequently followed police practice of issuing "fresh" *Miranda* warnings every time an interrogation has been renewed by the original interrogator, or when a different interrogator becomes involved. This occurs even after the suspect waived his rights upon the first occasion, and even though only a short time has elapsed since the first set of warnings were given. Then, too, the interrogators usually are not content with an oral waiver; they will also present the suspect with a written one for his signature.

Sometimes the requested signature to a written waiver will not be forthcoming, as illustrated by the previously discussed case of *North Carolina v. Butler.* When this happens, police testimony that the suspect actually made an oral waiver may not be considered plausible at a confession suppression hearing, in light of the signature refusal. Also, defense counsel probably would contend that even assuming an oral waiver, the signature refusal evidences a change of mind, which, of course, would require a termination of the interrogation. A factor that should not be overlooked, however, in any evaluation of a situation of this type, is the natural reluctance of people generally to sign any document, regardless of the truthfulness of its disclosures.

As is implicit in what has already been stated, prosecuting attorneys (and other legal advisors to the police) also participate in the over-reaction process. Prosecutors are concerned, and understandably so, about trial court rejection of confessions, or appellate court reversals of convictions, because of some presumed flaw in the *Miranda* warnings or in the waiver. Even more damaging, however, are the super-cautious warnings and waiver forms that are prepared or approved for police usage, such as the ones already discussed. Prosecutors seem to exercise as much meticulous care with the warnings and waivers as they do in the drafting of jury instructions for the presiding judge. Nothing must be left out!

Not only have the police and prosecutors over-reacted to *Miranda;* the same has been true of lower federal courts and of the state courts at all levels. An early over-reaction by a federal circuit court of appeals concerned the phraseology of the warning about the right to appointed counsel. When the appellant in *Lathers v. United States* [12] was to be questioned while a custodial suspect, the *Miranda* warnings he received included the statement that "if he was unable to hire an attorney the Commissioner or the Court would appoint one for him." This was held by the Fifth Circuit Court of Appeals to be defective because the suspect "was not advised that he could have an attorney present with him before he uttered a syllable." The court said, "[t]he message to him indicated only that a judge or commissioner somewhere down the line would appoint a lawyer for him if he so requested." [13] This ruling prevailed for *thirteen years* in that circuit, which prescribed the law for the lower federal courts (and indirectly, therefore, for federal law enforcement officers) within a six state area.

A recent decision has overruled *Lathers.* The court in *United States v. Contreras* [14] expressed its reluctance to overturn a prior decision in its own circuit, but felt impelled to do so because of the 1981 Supreme Court decision in *California v. Prysock.* [15] In that case the Supreme Court held there was no requirement "that the contents of the *Miranda* warnings be a virtual incantation of the precise language contained in *Miranda.*" Instead, it is sufficient if the warnings convey the basic rights to the suspect. According to the *Contreras* court, this meant, therefore, that the warnings about the right to counsel "need not," as the earlier *Lathers* case indicated, "explicitly convey to the accused his right to counsel 'here and now.'" Ultimately, therefore, the thirteen years of mischief that was created within the Fifth Circuit was finally dissipated.

An even more pervasive misconception with respect to the phraseology of the right to counsel warning developed within the Seventh Circuit. This circuit court of appeals, in two decisions, one in 1969 and another in 1974, decided that the basic philosophy of *Miranda* warranted the requirement that the warnings should be issued whenever a suspect about to be interrogated was the "focus of suspicion." [16] In other words, not only were the warnings to be given when a suspect who was in "custody" or "deprived of his freedom in any significant

way," but also in situations where the investigators wanted to question someone they suspected but had not yet placed in a custodial setting. The rationale for this embellishment of *Miranda* was the circuit court's perception of "focus of suspicion" as "psychological compulsion . . . tantamount to the deprivation of the suspect's 'freedom of action in any significant way,' repeatedly referred to in *Miranda.*"[17] This perception, however, was not acceptable to the Supreme Court. In its 1976 decision in *Beckwith v. United States,* the Court unequivocally declared, with one justice dissenting, that "focus of suspicion" was not the test for determining whether the *Miranda* warnings were required; the test was, rather, whether a custodial situation existed.[18] Nevertheless, the "focus of suspicion" rule had prevailed within the Seventh Circuit, which encompasses three large states, from the time of its imposition in 1969 until the 1976 Supreme Court decision in *Beckwith,* a span of nine years. After *Beckwith,* of course, the issue was resolved for all federal courts and for all federal officers. "Custody," not "focus of suspicion," now definitely prevails as the test throughout the federal system.

Prior to *Beckwith,* a few state appellate courts had adopted, or viewed with favor, the "focus of suspicion" test. One of them, the Supreme Court of Minnesota, which had adopted the test in 1970,[19] and reaffirmed that position in 1975,[20] has not rendered any subsequent decision upon the subject since the *Beckwith* case. This being so, the police of that state continue to give the *Miranda* warnings whenever suspicion has focused upon the person to be interrogated. Consequently, the mischief persists in that state.[21]

Another state whose courts had adopted the focus test rejected it after *Beckwith,* and the courts there now apply the custody test.[22] The Colorado Supreme Court referred to the "focus test" in a case decided shortly after *Miranda,* but the case actually involved a custodial situation.[23] Since then, and even before *Beckwith,* custody was declared by the courts of that state to be the proper standard for the police to follow.[24]

There is one final example of the mischief of *Miranda* that deserves mention, although there are many others that might be included. In the 1979 California Supreme Court case of *People v. Braeseke,*[25] the police issued the *Miranda* warnings before questioning a defendant in custody for a triple murder. Although he waived his right to silence and to a lawyer, the defendant later refused to talk without having an attorney present when some incriminating physical evidence was pointed out to him. The interrogation ceased, but as he was being booked, he requested to speak "off the record." He then proceeded to admit the murder and told of the location of the gun he had used in the killings. The California Supreme Court, in a 4 to 3 decision, held that the "off the record" request did not constitute a waiver. The confession and the evidence derived from it were held inadmissible.[26]

Up until 1966, the highest courts of over thirty states,[27] and one federal circuit court of appeals,[28] had held that there was no constitutional requirement that criminal suspects be warned of their self-incrimination privilege prior to police interrogation. *Miranda v. Arizona* changed this by declaring that the constitutional privilege mandated the issuance of the warning to all custodial aspects. In the words of Justice Clark, in his dissenting opinion in *Miranda*, the case represented "one full sweep changing [of] the traditional rules of custodial interrogation which this Court has for so long recognized as a justifiable and proper tool in balancing individual rights against the rights of society."[29]

Justice Harlan also dissented in *Miranda*, in an opinion in which Justices Stewart and White concurred. He made the following observation and prediction (writing, of course, even before the embellishments which the original warnings have incurred over the years since 1966):

> There can be little doubt that the Court's new code would markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation.[30]

"The Supreme Court . . . ought to overrule *Miranda,* or else uphold the validity of the test of confession admissibility enacted by Congress shortly after *Miranda,* as part of the 1968 'Omnibus Crime Bill.'"

The presence of counsel at an interrogation scene, alluded to by the dissent, is the most damaging feature of *Miranda's* mandate. Why? Because of the fact that when defense counsel appears, his first act is to advise his client to keep his mouth shut. The writer is not submitting a condemnation of such defense tactics; the lawyer is simply following an unwritten rule subscribed to by all lawyers in similar situations. The traditional concept is that his role is of a partisan nature. His obligation is to his client, and to no one else.[31]

On the trial court level, or whenever the judicial process has begun, a lawyer's advice to his client to remain silent is a practice that reasonable laypersons can appreciate. The burden is on the prosecution to prove guilt beyond a reasonable doubt, and the fifth amendment requires that it must do so without verbal help from the defendant. In practice, therefore, it is considered fair and proper for defense counsel to keep the defendant off the witness stand and force the prosecution to prove its case without asking him to utter a single word. It is an entirely different matter, however, to require the police to invite the presence of counsel into an interrogation room, during the *investigation* of a criminal case. This signals, as Justice Harlan stated, "the end of the interrogation." And indeed it would be, in all but the very exceptional case situation where, for instance, counsel knows of an unassailable alibi.

The Court in *Miranda* formulated the warnings about the right to counsel for the announced purpose of assuring that custodial suspects would be made aware of their fifth amendment self-incrimination privilege. That privilege, however, is unrelated to the sixth amendment right to counsel, although the two rights are sometimes viewed as though in tandem. It is well, therefore, to be mindful of the language of the sixth amendment provision: "In all criminal *prosecutions*, the accused shall enjoy the right . . . to have the assistance of counsel *for his defense.*"[32]

Apart from the lack of sound judicial reasoning underlying *Miranda,* so eloquently expressed by the four dissenting Justices, as well as the practical considerations the dissenters discussed, there is another substantive factor worthy of consideration in determining whether *Miranda* is deserving of vitality. The *Miranda* doctrine did not evolve because of a perceived need to protect innocent persons suspected of crime. It was created as a product of the Warren Court's pursuit of its egalitarian philosophy. Toward that objective the basic consideration was this: the rich, the educated, the intelligent suspect very probably knows from the outset that he has the privilege of silence, whereas the poor, the uneducated, or the unintelligent suspect is unaware of that privilege. Consequently, all persons in custody or otherwise deprived of their freedom, must receive the warnings prescribed in *Miranda.*

As commendable as is much of what the Warren Court attempted or accomplished with its egalitarian philosophy in the area of social inequalities emanating from a disregard of clearly applicable constitutional provisions, the writer suggests that the same egalitarian philosophy does not lend itself to the field of criminal investigation. Foremost is the fact that a very high percentage of the *victims* of crime are from the ranks of the poor, the uneducated, or the unintelligent. It is of little comfort to them to be told that the warnings administered to the person suspected of robbing or raping them, or of burglarizing their homes while they were at work, was for the noble purpose of equalizing humanity, and this is especially so in those instances where the suspect, reasonably presumed to be guilty, accepted the invitation to remain silent, or where his conviction was reversed because the *Miranda* rights were not properly accorded him. The time to show compassion toward a criminal suspect's unfortunate background is *after* a determination of whether or not he committed the offense, not before.

There is no better refutation of *Miranda* philosophy than the opinion of Chief Justice Joseph Weintraub of the New Jersey Supreme Court in a 1968 case, in which he stated:

> There is no right to escape detection. There is no right to commit a perfect crime or to an equal opportunity to that end. The Constitution is not at all offended when a guilty man stubs his toe. On the contrary, it is decent to hope that he will. Nor is it dirty business to use evidence a defendant himself may furnish in the detectional stage.

> Voluntary confessions accord with high moral values, and as to the culprit who reveals his guilt unwittingly with no intent to shed his inner burden, it is no more unfair to use the evidence he thereby reveals than it is to turn against him clues at the scene of the crime which a brighter, better informed, or more gifted criminal would not have left. Thus the Fifth Amendment does not say that a man shall not be permitted to incriminate himself, or that he shall not be persuaded to do so. It says no more than that a man shall not be "compelled" to give evidence against himself.[33]

Conclusion

In Shakespeare's *Henry VI* the suggestion was made that "[t]he first thing we do, let's kill all the lawyers." If we, as lawyers, continue to tolerate the kind of mischief created by *Miranda,* some laypersons may think Shakespeare's idea was not at all bad. The following suggestion is an effort to forestall such an unfortunate event, although, to be sure, there are more realistic reasons for offering it.

The Supreme Court, at the earliest opportunity, ought to overrule *Miranda,* or else uphold the validity of the test of confession admissibility enacted by Congress shortly after *Miranda,* as part of the 1968 "Omnibus Crime Bill."[34] It provides that a confession "shall be admissible in evidence if it is voluntarily given." Congress submitted the following guidelines for determining whether a confession meets the test of voluntariness:

> The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant has been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.
>
> The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

The state of Arizona enacted an identical provision in 1969.[35] A test case should be sought, therefore, either within the federal system or within the state of Arizona, and brought to the Supreme Court as soon as possible. Alternatively, the Supreme Court on its own initiative might avail itself of a suitable opportunity to address the issue in a case that may already be in the process toward Supreme Court consideration. Meanwhile, the police and prosecutors should reconsider their *Miranda* practices, and the state as well as federal trial and appellate courts should moderate their apprehension over possible reversals because of shortcomings in *Miranda* formalities. This three-pronged approach to the problem would help diminish the mischief of *Miranda* until the Supreme Court eliminates it completely or modifies its principles in conformity with the foregoing Congressional enactment.

FBI

Footnotes

[1] 384 U.S. 436 (1966). The basic warnings required before any interrogation may be conducted of a custodial suspect are: (1) he has a right to remain silent; (2) anything he says may be used against him; (3) he has a right to consult with a lawyer before or during the questioning of him; and (4) if he cannot afford to hire a lawyer one will be provided for him without cost. The Court's own general phraseology of the warning will be subsequently discussed.

[2] The above quotations, and the ones which follow, as well as all the case facts reported in this commentary, are from the published opinion of the Court of Appeals for the District of Columbia Circuit, which affirmed the District Court's decision suppressing all the statements made by Hinckley during the interrogation subsequent to his expression of interest in talking to his father's lawyer. United States v. Hinckley, 672 F.2d 115 (1982) (per curiam), *aff'g* 525 F.Supp. 1342 (1981).

[3] Presidential Assassination Statute, 18 U.S.C. § 1751 (1970).

[4] United States v. Hinckley, 525 F.Supp. 1342 (1981).

[5] United States v. Hinckley, 672 F.2d 115 (1982) (per curiam).

[6] For initial newspaper coverage of the insanity issue, see N.Y. Times Apr. 28, 1982, § 1, at 12, col. 3.

[7] 428 A.2d 42 (D.C. 1981).

[8] 384 U.S. at 479. The formulation of the *Miranda* warnings in language which seems adequate was suggested in the first footnote to this comment.

[9] *Id.*

[10] *Id.*

[11] 441 U.S. 369 (1979).

[12] 396 F.2d 524 (5th Cir. 1968).

[13] *Id.* at 535.

[14] 667 F.2d 976 (11th Cir. 1982). This appears as a decision of the Eleventh Circuit Court of Appeals, which was split off from the Fifth Circuit by Congressional action due to the excessive case load in the original Fifth Circuit. Nevertheless, in the *Contreras* opinion the court referred to the *Lathers* decision as one of its own. The present Eleventh Circuit encompasses Alabama, Florida, and Georgia; the Fifth Circuit, Louisiana, Mississippi, Texas, and the Canal Zone.

[15] 453 U.S. 355 (1981).

[16] United States v. Oliver, 505 F.2d 301 (7th Cir. 1974); United States v. Dickerson, 413 F.2d 1111 (7th Cir. 1969).

[17] United States v. Oliver, 505 U.S. at 305.

[18] 425 U.S. 341, 347 (1976). Justice Stevens, who authored the opinion in *Oliver,* took no part in the *Beckwith* case.

[19] State v. Kinn, 288 Minn. 31, 178 N.W.2d 888 (1970).

[20] State v. Raymond, 305 Minn. 160, 232 N.W.2d 879 (1975).

[21] The statement regarding the present police practice of giving the warnings in "focus of suspicion" cases is based upon information received from a number of police officers and from the director of one of the police training schools in Minnesota.

[22] In People v. Martin, 78 Mich. App. 518, 521, 260 N.W.2d 869, 870 (1977), the court stated that "at first blush, it would seem we are bound to follow the mandate of People v. Reed 393 Mich. 342, 224 N.W.2d 867 (1975)," which used the "focus" test, but followed *Beckwith,* as did a subsequent Michigan appellate court case, People v. Schram, 98 Mich. App. 292, 296 N.W.2d 840 (1980).

[23] People v. Orf, 172 Colo. 253, 472 P.2d 123 (1970).

[24] *See, e.g.,* People v. Conner, 195 Colo. 525, 579 P.2d 1160 (1978).

[25] 25 Cal. 3d 691, 602 P.2d 384, 159 Cal. Rptr. 684 (1979).

[26] After the grant of review by the Supreme Court of the United States, the case was remanded to the California Supreme Court "to consider whether its judgment was based on federal or state grounds, or both," California v. Braeseke, 446 U.S. 932 (1980). The California court certified that its judgment was "based upon *Miranda v. Arizona* . . . and the Fifth Amendment to the United States Constitution." It added: "we reiterate [our opinion] in its entirety." 28 Cal. 3d 86, 618 P.2d 149, 168 Cal, Rptr. 603 (1980). Further review was denied by the United States Supreme Court. 451 U.S. 1021 (1981).

The defendant Braeseke was retried and convicted. The prosecution used as evidence incriminating statements Braeseke made while in jail after his first conviction, during an interview with Mike Wallace on CBS's "60 Minutes" T.V. program. Braeseke's defense at his second trial was influence of an hallucinogenic drug ("angel dust") at the time of the killings.

[27] For an alphabetical listing of the state cases, see F. INBAU & J. REID, CRIMINAL INTERROGATION AND CONFESSIONS 169–71 (2d ed. 1967). Included, until 1965, were the state courts of California and Oregon, but the supreme courts of both of those states changed their position and prescribed the warning. *See id.* at 173. They did so because of their broad interpretation of Escobedo v. Illinois, 378 U.S. 478 (1964) and a correct anticipation of what was forthcoming in *Miranda* in 1966.

The only other pre-1965 requirements for the warnings appeared in the Texas Code of Criminal Procedure (Article 727), and in the Code of Military Justice (Article 31).

[28] *See* United States v. Wilson, 264 F.2d 104 (2d Cir. 1959); Heitner v. United States, 149 F.2d 105 (2d Cir. 1945).

Also relevant are two 1958 decisions of the United States Supreme Court about which Justice Clark had this to say in his dissenting opinion in *Miranda:* "To require all [the warnings and rights prescribed by *Miranda*]at one gulp should cause the Court to choke over more cases than Crooker v. California, 357 U.S. 433 (1958), and Cicenia v. Lagay, 357 U.S. 504 (1958), which it expressly overrules today." Miranda v. Arizona, 384 U.S. at 502.

[29] *Id.* at 503.

[30] *Id.* at 516–17. In a footnote Justice Harlan stated that the Court's "vision of a lawyer 'mitigat[ing] the dangers of untrustworthiness' . . . by witnessing coercion and assisting accuracy in the confession is largely a fancy; for if counsel arrives, there is rarely going to be a police station confession." *Id.* at 516 n.12.

[31] Consider the following comment from Justice Jackson's dissent in Watts v. Indiana, 338 U.S. 49, 59 (1949); "[u]nder our adversary system, . . . any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances."

[32] U.S. CONST. amend VI (emphasis added). In other decisions unrelated to the subject matter of the present paper, the Supreme Court has interpreted "criminal prosecution" to extend to the very beginning of the judicial process, such as preliminary hearing or indictment. Even in *Miranda,* however, the Court did not rule that the sixth amendment right was invoked by a custodial interrogation; the right to counsel in that setting, as has already been stated, was considered only as an implementation of the fifth amendment right to silence.

[33] State v. McKnight, 52 N.J. 35, 52–53, 243 A.2d 240, 250 (1968). The case involved a *Miranda* issue.

[34] 18 U.S.C. § 3501 (1969).

[35] ARIZ. REV. STATS. ANN., § 13–3988 (1978).

Correction

The reference sources for the article entitled "A Behavioral Approach to Hostage Situations" were omitted inadvertently from the January 1983, issue. The Bulletin staff sincerely regrets any inconvenience this may have caused our readers.

Footnotes

[1] T. Strentz, *TRAMS Findings on the Stockholm Syndrome.* Unpublished manuscript, FBI Academy, Quantico, Va., 1976; F. M. Ochberg, Prepared remarks presented at the International Symposium on Terrorism, FBI Academy, Quantico, Va., July 1978.

[2] D. Lang "A Reporter at Large," *The New Yorker,* 1974, pp. 56–126.

[3] A. H. Miller, "Negotiations for Hostages: Implications From the Police Experience," *Terrorism: An International Journal,* vol. 2, 1978, pp. 125–146; F. M. Ochberg, "The Victim of Terrorism", *The Practitioner: A Journal of Postgraduate Medicine,* vol. 220, 1978, pp. 293–302; T. Strentz, "Law Enforcement Policy and Ego Defenses of the Hostage," *FBI Law Enforcement Bulletin,* April 1979, pp. 1–11.

[4] T. Stentz, supra note 3; F. M. Ochberg, supra note 1; G. W. Fuselier "A Practical Overview of Hostage Negotiations," *FBI Law Enforcement Bulletin,* June 1981, pp. 2–6; F. J. Lanceley, "The Antisocial Personality as a Hostage-taker," *The Journal of Police Science and Administration,* vol. 9, 1981, pp. 28–34.

[5] R. W. Mirabella and J. Trudeau, "Managing Hostage Negotiations," *The Police Chief,* vol. 48, 1981, pp. 45–47.

[6] C. S. Hall, *A Primer of Freudian Psychology* (New York: New American Library, 1979); A. Freud, *The Ego and the Mechanisms For Defense* (New York: International Universities Press, 1978); M. S. Miron and A. P. Goldstein, *Hostage* (Kalamazoo, Mich: Behaviordelia, 1978); F. M. Ochberg, supra note 3; R. K. Ressler, "Considerations for the Military Hostage Negotiation Program: An Insight Into AR 190–52." Unpublished manuscript, FBI Academy, Quantico, Va. 1979; T. Strentz, supra note 3.

[7] E. K. Morris, "Applied Behavior Analysis for Criminal Justice Practice," *Criminal Justice and Behavior,* vol. 7, 1980, p. 135.

[8] E. H. Sutherland, *Principles of Criminology* (Philadelphia: J. B. Lippencott, 1939); C. R. Jeffrey, "Criminal Behavior and Learning Theory," *The Journal of Criminal Law, Criminology and Police Science,* vol. 58, 1965, pp. 294–300; R. Burgess and R. L. Akers, "A Differential Association-reinforcement Theory of Criminal Behavior," *Social Problems,* vol. 14, 1966, pp. 128–147.

[9] B. F. Skinner, *Science & Human Behavior* (New York: McMillan, 1953).

[10] B. Holm and T. Tjaader, *Personal Communication,* April 12, 1978.

[11] T. Strentz, supra note 3.

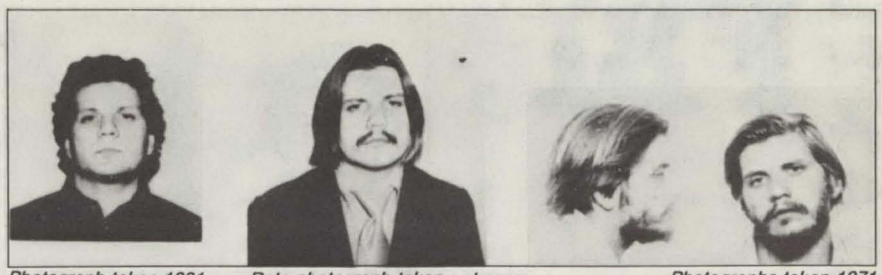
[12] F. M. Ochberg, supra note 3.

[13] C. V. Hassel, "Law Enforcement and Behavior Science: Closing The Gap." Unpublished manuscript, FBI Academy, Quantico, Va., 1979.

[14] B. F. Skinner, *About Behaviorism* (New York: Alfred A. Knopf, 1974).

[15] F. J. Lanceley, *Hostage Negotiation,* Prepared remarks presented at the FBI Hostage Negotiation School, Lawrence, Kans., May 1981.

WANTED BY THE FBI



Photograph taken 1981 *Date photograph taken unknown* *Photographs taken 1971*

Jaan Karl Laaman

Jaan Karl Laaman, also known as Salvatore Bella, David Pierce Keith, John Keith, Carl Laaman, Jaan Laaman, Jaan Carl Laaman, Jean Laaman, Jean Karl Laaman, Karl J. Laaman, Karl Jaan Laaman, Jaan Karl Laamon

Wanted for:

Interstate Flight—Assault with Intent to Murder

The Crime

Jaan Karl Laaman is being sought in connection with the attempted murder of a Massachusetts State trooper. A Federal warrant for his arrest was issued on February 18, 1982, in Boston, Mass., charging Laaman with unlawful interstate flight to avoid prosecution for the crime of assault with intent to murder.

Description

Age	35, born March 21, 1948, Munster, Germany.
Height	5'10".
Weight	200 pounds.
Build	Medium.
Hair	Brown.
Eyes	Brown.
Complexion	Fair.
Race	White.
Nationality	American.
Occupations	Laborer, factory worker, mover, truckdriver.
Scars and Marks	Tips of fingers on right hand missing; scars on right wrist, inner left elbow, palm of right hand, left side of head, and outer right thigh; moles on right cheek and chin.
Remarks	Known to wear mustache and/or beard at times.
Social Security Number Used	133-38-1606.
FBI No.	199 299 F.

Classification Data:

NCIC Classification:
225918PO14195918CI20

Fingerprint Classification:
22 M 9 R 100 14
L 2 R 101

I.O. 4903

Caution

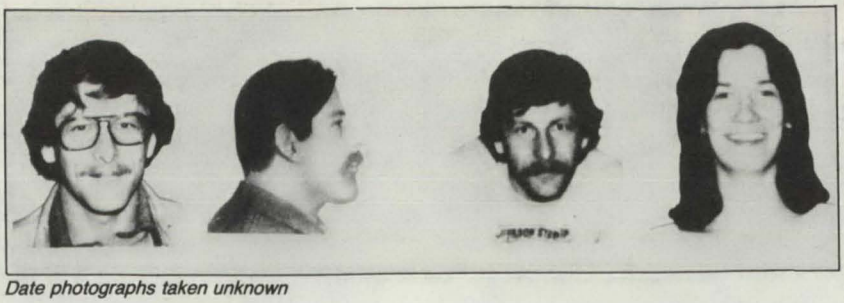
Laaman, a known associate of Ten Most Wanted Fugitives Raymond Luc Levasseur, I.O. 4733, and Thomas William Manning, I.O. 4734, is being sought in connection with the attempted murder of a Massachusetts State trooper. Laaman has been convicted of robbery, disorderly conduct, using explosive devices, and willful damage of public property by use of explosives. He is known to carry a 9-millimeter automatic handgun and wears body armor. Consider Laaman armed and extremely 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.

Right index fingerprint

WANTED BY THE FBI



Date photographs taken unknown

Thomas William Manning

Thomas William Manning, also known as Barry Annese, Barry Collins, Barry Eastbury, Barry A. Eastbury, Barry Easterly, Barry G. Easterly, James Graves, James Peter Graves, Michael Harris, Thomas J. Stockwell, and others

Wanted for:

Bank Robbery; Interstate Flight—Murder

The Crime

Thomas William Manning, the 378th fugitive to be placed on the FBI's "Ten Most Wanted Fugitives" list, is being sought for the brutal murder of a New Jersey State trooper and for bank robbery in Portland and Augusta, Maine.

Traveling with Manning are his wife, Carol Ann, and three children. Manning is reportedly a member of a revolutionary group which has claimed credit for several acts of violence and which allegedly finances its operations through criminal activities.

A Federal warrant was issued in Newark, N.J., charging Manning with unlawful interstate flight to avoid prosecution for the crime of murder. Federal bank robbery warrants were issued on September 30, 1976, and February 23, 1977.

Description

Age	36, born June 28, 1946, Boston, Mass.
Height	5'10" to 5'11".
Weight	150 to 160 pounds.
Build	Slender.
Hair	Brown.
Eyes	Hazel/brown.
Complexion	Fair.
Race	White.
Nationality	American.
Occupations	Handyman, house painter, iron worker, laborer.
Scars and Marks	Scar on nose; pierced left ear; tattoos: heart with a cross on upper right arm, shield with "Tom" and banner on lower right arm, spade on back of left hand, rose and "Donna" on upper left arm, panther's head on left forearm.
Social Security No. Used	023-34-5658.
Remarks	Manning has worn long hair, full beard, and mustache in the past. Manning may be with his wife, Carol Ann Manning, white female, born January 3, 1956, Maine, 5'6", 125 pounds, brown hair, whose apprehension is also being sought by the FBI, and their 8-year-old son, 2-year-old daughter, and infant son.
FBI No.	264 019 G.

Classification Data:

NCIC Classification:

120905130812TT121212

Fingerprint Classification:

12 M 1 U III 8 Ref: U

M 1 T 0I U

I.O. 4734

Right ring fingerprint

Change of Address

Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

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

Name

Title

Address

City State Zip

Caution

Thomas and Carol Manning are being sought in connection with an armed bank robbery. Thomas Manning has been known to possess automatic shoulder weapons, shotguns, and automatic handguns. He has previously been convicted of armed robbery. The Mannings have a close association with Raymond Luc Levasseur, FBI I.O. 4733, one of the Ten Most Wanted Fugitives. Consider all three individuals armed and extremely dangerous.

Notify the FBI

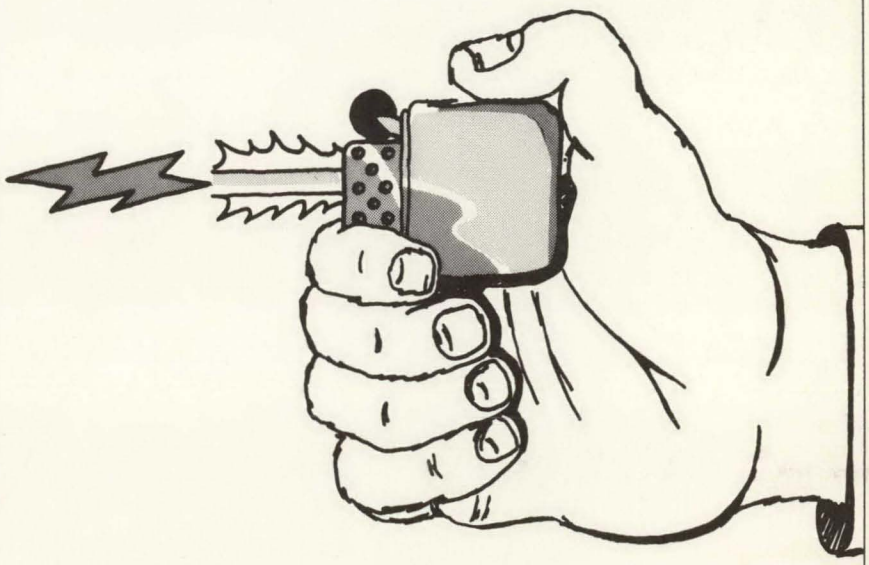
Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of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

Dual-purpose Lighter

This seemingly harmless lighter has a dual purpose. The common lighter case contains both the lighter and a .22-caliber, single-shot derringer.

Shop drawings for this item are available through advertisements in various magazines.

(Submitted by League City, Tex., Police Department.)



U.S. Department of Justice
Federal Bureau of Investigation

Official Business
Penalty for Private Use $300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS–432

Second class

Washington, D.C. 20535

Questionable Pattern

The pattern presented here is classified as a loop with five ridge counts. Because of the appendage on the recurve in front of the left delta, this pattern is referenced to a central pocket, loop-type whorl with a meeting tracing.