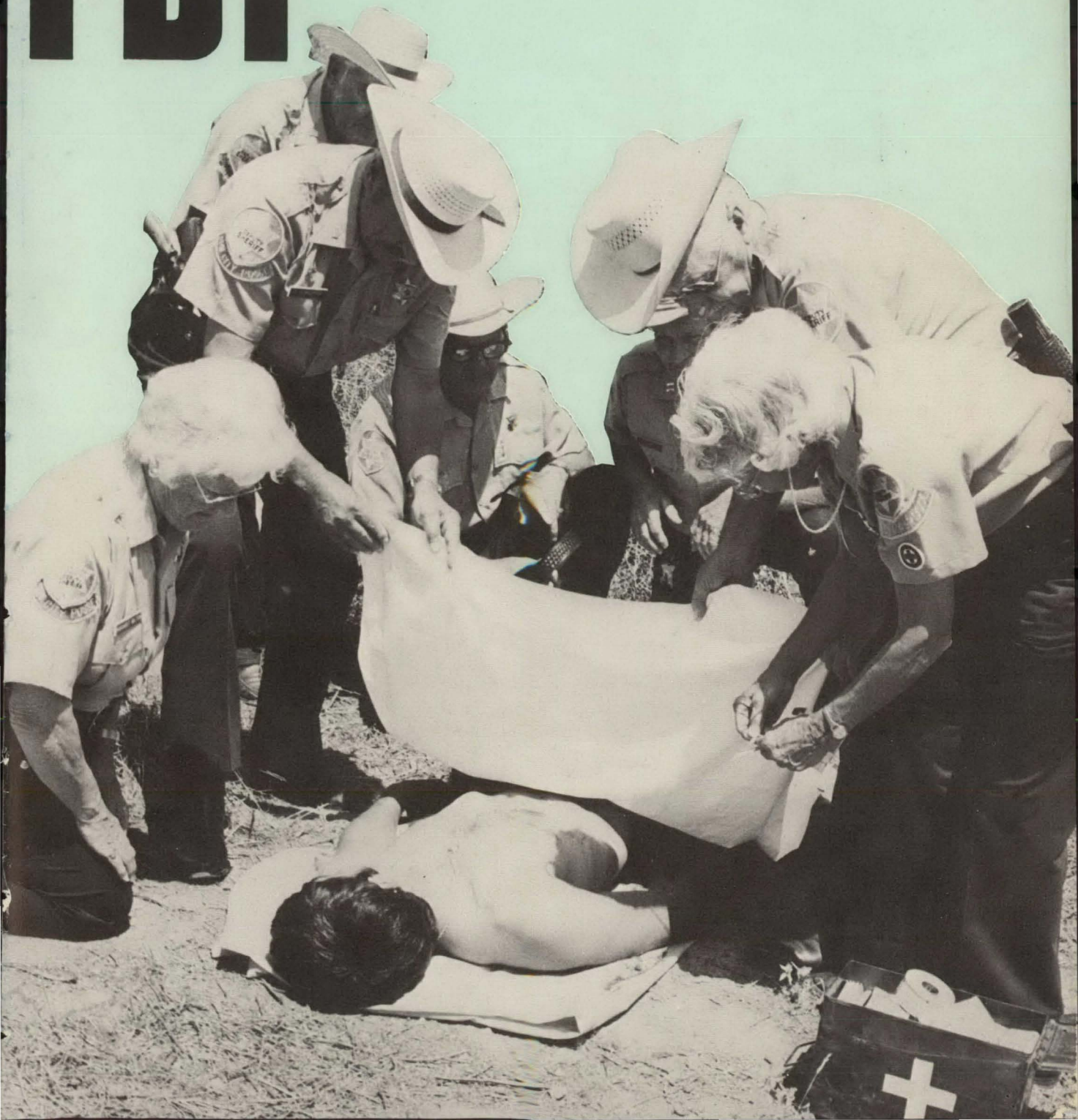
FBI Law Enforcement Bulletin

AUGUST 1976



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CONTENTS

THE COVER

Senior citizens constitute a valuable police asset. This month's cover shows members of the Sun City Posse of the Maricopa County, Arizona, Sheriff's Department during search and rescue training. See related article beginning on page 3. Photo courtesy of the Maricopa County Sheriff's Department.

Message from the Director . . .

Our Nation enters its third century of independence with many citizens tyrannized by the fact and fear of crime. Americans' concern over crime is demonstrated by their increasing willingness to join law enforcement in doing something about it.

Although some measure of encouragement may be drawn from the knowledge that serious crime rose only 10 percent in 1975 as compared with the previous year—which recorded a shocking 18 percent rise over 1973—the vast and growing numbers of citizens victimized by crime surely find little consolation in this statistical comparison.

The grim and inescapable fact remains that crime in the United States continues to occur at an intolerably high level.

Crimes of violence are understandably most feared by the public, yet they compose a relatively small—even though extremely serious and threatening—part of our total crime count. Offenses against property are by far the most common form of criminal activity in this country. During 1975, approximately 10 of every 11 reported serious crimes were of this nature, and among them, those categorized as "larceny-theft" accounted for 53 percent of *all* serious crimes committed.

While it is true that the shoplifter, the pickpocket, and others involved in larceny-theft offenses generally pose no physical danger to the public, they do strike hard at our economic well-being and contribute greatly to our Nation's climate of crime. Although it is impossible to fully assess the damage these crimes inflict upon our society, it is abundantly clear that it has reached staggering proportions.

Theft-incurred losses suffered by businesses have certainly become a critical concern. During the period 1970–75, shoplifting offenses alone soared 73 percent. Increased insurance rates, expenditures for security personnel and systems, loss of business, and other indirect consequences have immeasurably compounded the cost of these crimes to the business world. Ultimately, of course, the individual citizen, as a consumer, shares the heavy burden of these increasing losses.

From a law enforcement standpoint, offenses of this sort represent a formidable challenge. During 1975, an overwhelming 6 million larceny-theft crimes were reported to police. Together with other factors, the absence of witnesses and the difficulty of identifying the goods stolen often thwart the successful investigation and prosecution of these cases.

Despite these problems, much more can be done to reduce the incidence of this costly and serious crime challenge. Without question, many of these offenses could be easily prevented through the adoption of simple precautions and safety measures. Toward this end, law enforcement agencies may provide both leadership and knowledgeable guidance in the development of programs specifically designed to assist all elements of the community in combating these

crimes. In addition to emphasizing preventative measures, these programs should stress the crucial importance of active and sustained citizen cooperation in the investigation and prosecution of these offenses.

A noteworthy example of such a productive approach is a Crime Resistance Program dealing with thefts which is currently being conducted by the FBI and local police authorities in Birmingham, Ala. Under this Program, the development and implementation of property identification techniques were undertaken. Particular attention was given a type of property experiencing a high rate of theft. The results attained were most promising—a marked increase in police effectiveness in handling the offenses and returning the recovered property to the rightful owner.

Through such endeavors as the Crime Resistance Program, a powerful alliance of law enforcement and concerned citizens, acting individually and collectively, can provide much of the impetus needed to counter the oppressive growth of crimes against our property.

CLARENCE M. KELLEY
Director

AUGUST 1, 1976

The Older American— Police Problem or Police Asset ?

By
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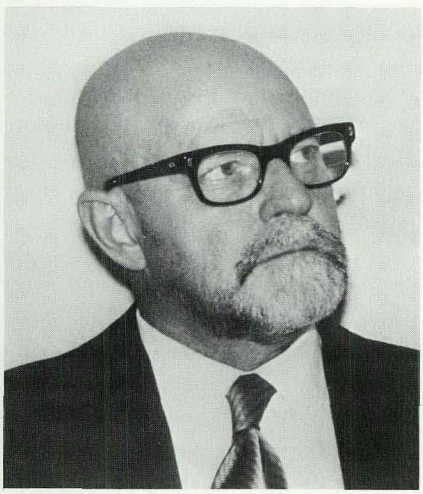
Senior Coordinator
Crime Prevention Program
***National* Retired Teachers Association-American Association of Retired Persons (NRTA–AARP)**
Washington, D.C.



* Mr. Sunderland retired in 1966 as captain of the White House Police, culminating 32 years of service in municipal, Federal, and military law enforcement fields. He has also retired as captain in the U.S. Coast Guard Reserve, a service in which he qualified in the specialties of port security, intelligence, training, and aviation. He became affiliated with the NRTA–AARP in 1972 to develop and implement programs and activities that would be responsive to increasing needs and concerns of older persons as they relate to crime.

In American society the number of older persons is increasing fast, and managers—especially police agency managers—will find it increasingly necessary to consider carefully factors associated with persons comprising this age group. In 1974, there were 21 million of us 65 years of age or over. Forty-two million Americans were 55 years of age or over. By the year 2000, it is projected that in excess of half of our population will be over the age of 55.

Most law enforcement officers demonstrate compassion and consideration for others in performance of their duties, especially in contacts with the very young and the very old. However, during the past 4 years or so, during educational seminars regarding the elderly which have been conducted for law enforcement officers by the National Retired Teachers Association and American Association of Retired Persons, a fundamental fact has emerged—law enforcement officers have not until recently been getting much help in understanding older persons and learning how to deal with them more effectively.

Our associations' original effort in the crime prevention area was to establish a program on this topic for elderly persons. The nature of this program led us eventually into contact and involvement with law enforcement officers. We then assisted them to conduct similar programs with older persons. During these proceedings, we noted that law enforcement officers were generally well informed in many job-related technical subjects, but were lacking in basic information of value about the elderly and how to conduct programs beneficial to them and the police. As a result, a decision was made to collect information enabling us to develop an intensive training program to help law enforcement officers to better understand and more effectively deal with older persons.

Mail Inquiries Conducted

In 1972, the associations' Crime Prevention Section mailed out more than 2,000 individually typed inquiries to every State director of law enforcement training, every State planning administrator, numerous police

agencies, and several teaching institutions. Our objective was to gather pertinent and available educational material with which to structure such a course. A high percentage of responses were received; however, we were surprised to learn that our efforts uncovered virtually nothing that would help us in this effort.

Again, in 1973, we mailed out more than 2,000 individual inquiries to similar addressees. Once more we received a high percentage of responses, most of which expressed interest in the topic of our inquiry but provided no detailed data that could be used as the basis for the development of the training program we envisioned. We attributed our very high positive response rate to the fact that our letters were brief, the information sought was simply described, and we invited long-distance phone responses at our expense, if necessary.

By 1974, we had gained a substantial amount of experience on our own in conducting programs with older persons and further reinforced our conclusion that law enforcement officers generally lack know-how in handling older people effectively. A year later, we were presenting over 500 programs to elderly groups throughout the country and had conducted approximately 100 seminars for law enforcement officers on dealing with the elderly. Based primarily upon these experiences and contributions, NRTA–AARP have been awarded a grant from the Police Section of the Law Enforcement Assistance Administration to develop a model training program on law enforcement and the elderly.

Including appropriate matching funds from the NRTA–AARP, the total grant is for $224,000. It is anticipated that this project will require about 18 months to complete. It will be developed with the cooperation and assistance of the staff of the FBI National Academy, officials of the National Crime Prevention Institute (NCPI), and other cooperating police agencies and universities. Upon completion and appropriate testing, this course will be offered to over 700 police academies, the more than 2,000 FBI police instructors, and to faculty members of interested educational institutions.

The Aspects of Aging—and Myths

If police are to deal more effectively with older persons, they must first correctly understand them. The law enforcement officer often views the older person in the same (frequently erroneous) stereotyped image as does much of the rest of society. Even though basically a sympathetic image, it is often nonetheless a negative one.

What are some of these myths about aging? Is senility inevitable? Do old age and the decline of mental capacity go hand-in-hand? Is the older worker productive? What are his physical disabilities? Can he stay on the job regularly or does he have a high rate of absenteeism? Is the older person rigid—intractible? Does he live out his "golden years" thinking more of his past than his future?

". . . a decision was made to collect information . . . to help law enforcement officers to better understand and more effectively deal with older persons."

First, gerontologists (scientists studying the process of aging and problems of aged people) are now speaking of three phases of aging. These are categorized as the "young-old," the "middle-old," and the "old-old." In our associations, an individual may become a member at age 55, whether retired or not. Most persons of this age are considered to be young-old. As a further general guide, many persons in the age bracket of 65–75 are thought of as being middle-old. Due to variances in aging, no hard and fast definitions of these categories are possible.

While many young-old and middle-old persons lead vigorous lives and pass unnoticed in the daily rounds of the law enforcement officer, often it is the old-old person who comes to his attention in the course of his duties. This tends to leave the officer with the impression that members in this latter category represent all older persons in society.

Now, let's answer the questions posed earlier.

Senility and Aging

Senility is not inevitable in aging. In fact, the term is falling into disuse. With the advances of medical knowledge, many signs and symptoms formerly ascribed to a state of "senility" are, in fact, being more accurately diagnosed as precise conditions, many of which are either curable or alterable. Moreover it is now known that cerebral arteriosclerosis (hardening of the arteries of the brain), widely associated with the elderly in the past, can actually develop as a health condition at any age in life. Many older persons respond positively to therapy for such a condition.

What about mental ability? Up until recent years, it was "conclusively proved" that older persons did not test as high in IQ tests as younger age groups did. Then it was discovered that the cross sectional tests used to reach this conclusion were invalid as familiarity with taking tests of this nature was found to have given younger testees an unfair advantage over older ones. After Duke University and others began employing the more accurate longitudinal testing methods (testing of same survey groups at regular annual intervals),

it was found that, barring various health problems, an individual can expect not only to retain his mental resources and ability, but even to increase them with age. This includes such areas as vocabulary, ability to reason, and skill specialties. The key is for the older person to *continue* to use his or her mental capacity, with steady development a prime objective. Disuse can diminish capabilities in this area as it does in others.

While it is true that the onset of physical disabilities often brings a reduction in the general capability of older workers, quite often there is an increase in productivity over younger workers, owing to older workers' possessing more experience and job knowledge. Moreover, studies by some State agencies reveal that the rate of absenteeism of older workers still capable of working full time is frequently lower than that of younger workers.

It likewise is true that, as we age, we experience a tendency to develop infirmities and a diminishment of physical capabilities. The most prominent in this latter respect apply to visual and aural acuity—seeing and hearing. The preponderance of older Americans, however, (as high as 85 percent) learn to cope with minor infirmities and continue to lead active and productive lives in spite of them. Rather than "living in the past," many spend their "golden years" engaging in new interests, activities, and careers, traveling widely, and continuing to plan ahead. All the while, they draw from and build upon their past experience, knowledge and ability. And for the elderly, change is not new or shocking—it is a familiar, maybe even welcomed, development in many cases.

These and many other factors must be considered by the police trainer, the crime prevention officer, and the community relations officer (especially), as well as others in law enforcement. Analysis of, and comments on, the myths and realities of aging will be important segments of our proposed training program.

Dealing with the Elderly

Now, let's take a look at the five situations in which the law enforcement officer may have contact with the older person in the performance of his duties. The older person may be encountered:

(1) as an offender;
(2) as a victim;
(3) as a witness;
(4) in a noncrime circumstance such as in an accident, due to injury, being lost, etc.; or
(5) as a police asset.

Older Offender

As an offender, the older person is, indeed, a police problem, just as all offenders are police problems. Statistically, however, he is not very much of a problem. Our studies indicate that the elderly are not committing very much serious crime. We offer the following examples in support of this conclusion: In an associations' commissioned survey conducted in Michigan in 1974, it was determined that the over-55-year age group represented 17.3 percent of the State's population, but accounted for only 1.3 percent of the total arrests during that year. Even this figure does not give the true picture, unless it is explained that most of these arrests were for misdemeanors such as drunkenness.

According to local police records, during the first 6 months of 1975, in Huntington, W. Va., where the older age group represented almost 20 percent of the population, they accounted for only 6.4 percent of the total arrests. Again, almost 9 out of 10 of these elderly offenders were picked up for public drunkenness, and many of them were arrested more than once.

Our conclusion is also supported by comprehensive data accumulated in connection with FBI Uniform Crime Reports (UCR). During 1974, for example, UCR data from 4,237 U.S. cities revealed that only 2.6 percent of all persons arrested for various major and minor offenses were over 60 years of age.

So, notwithstanding the socioeconomic, racial, or ethnic backgrounds of the present generation of older persons, they are not committing very much serious crime, especially the kinds of crime that bother us the most—the fear-provoking crimes which are causing many of our metropolitan areas to become deserted at night.

Older Victim

The older victim is a police problem in a much different sense. If we look at the victimization rates of older persons, we are immediately drawn into a controversy—is the older person the most frequently—or the least frequently—victimized? Well, this depends. A National Crime Panel Survey Report issued in 1975 on "Criminal Victimization in the United States" included the statement that the highest rates of personal victimization were recorded for those in the 12- to 19-year-old age group. Persons in the over-65-year age group were mentioned as being the least frequently victimized. It should be noted, however, that victimization patterns for specific crimes could differ from this overall pattern which is based on cumulative statistics for the various categories of crimes against persons.

In our studies, we find very low victimization rates of the elderly in the three most serious crimes—homicide, rape, and aggravated assault. However, in crimes of purse-snatching, strong-arm robbery, and criminal

fraud, older persons have very high rates of victimization. In our view, the reason for this difference of victimization in varying crimes is one important factor—natural lifestyle. By this is meant that most older persons do not hitchhike, pick up strangers in taverns, or settle their problems with violent outbursts and assaults. Many older persons are retired and are not employed in situations requiring them to leave work at late night hours, as do nurses or waitresses, for example, to find their way home alone over sparsely traveled or dimly lighted streets. All of these enumerated situations contribute significantly to the vulnerability of certain categories of crimes. On the other hand, factors such as widowed older women living alone and the loneliness of many older people are significant to their high victimization by swindlers and bunco artists.

The fear of being victimized often imposes a different lifestyle upon the older person, who imprisons herself or himself at home and severely limits any outside travel owing to such fears. In addition to increasing efforts to help older persons reduce the risk of criminal victimization, the law enforcement officer must also try to reduce perceived crime fears to realistic levels so that this imposed lifestyle is not unnecessarily restrictive.

Police agencies must develop an accurate crime picture as it relates to older persons by conducting crime analyses that produce valid and useful information. As an example, the Center on Administration of Criminal Justice at the University of California, at Davis, in a 1974 report entitled "The Prevention and Control of Robbery," set forth some interesting data about purse-snatchings and robberies in the city of Oakland over a 3-year period. During this period, Oakland reportedly had one of the highest robbery rates in the country. The data accumulated disclosed that the variance of this crime within Oakland was particularly great, and during the survey period two-thirds of the half-block-sized areas surveyed had no robberies or purse-snatches at all. For those older persons living and traveling in and through these "safe" areas, this information would be vital in reducing perceived fear which many develop through hearsay, the media, and other sources. They could also make efforts to avoid those areas identified as having a high incidence of purse-snatches and robberies.

It is distressing indeed that, in contemporary times, the individual suffering most from a crime—the victim—often receives the least attention from authorities. The President's Commission on Law Enforcement and the Administration of Justice, in fact, has stated that the victim is the forgotten element of the criminal justice system. We all have a duty and responsibility to take whatever action is indicated to remedy this undesirable situation.

Unfortunately, the older person often suffers more physically and psychologically as a crime victim. Due to age and its attendant frailty, physical injuries received are frequently more serious and slower healing, and psychological trauma experienced is more lasting and intensely felt. As a result of limited financial resources and reduced earning potential, prevalent among many older citizens, economic losses suffered as crime victims are often not easily replaced, resulting in severe deprivation in some instances.

Older Witness

If the older victim is a police problem, the older witness is even more so. The older witness upon receiving a subpena to appear in court is expected to wind his or her way through what appears to be a befuddling maze of a complex system, often to be told at the end of the day, "You are not needed today, come back another day." We cite the case of one elderly male witness who dutifully found his way to court to be ready to testify on eight occasions, necessitated by repeated continuances. He was ill and incapacitated on the date of the ninth scheduled hearing and could not appear. The judge dismissed the case due to the absence of this necessary witness.

In some areas, the police have initiated special programs for assisting older witnesses. These consist of telephonically contacting such witnesses when their testimony is considered imminent and, thereafter, transporting the witness to the courthouse. Upon arrival, the witness is briefed on the layout of the facility and proceedings that will occur relevant to him or her. Following testimony, the witness is returned to his or her residence by the police. Programs of this nature, in addition to assisting the elderly, also contribute to successful criminal prosecution by insuring necessary witnesses are present when called. Law enforcement agencies should analyze their own situations in this regard and consider establishing programs of this nature if none exist at present.

Noncrime Situation

The noncrime situation is the one in which most law enforcement officers have the greatest contact with the elderly. These situations include giving directions to groups of older people, responding to "crank" calls, intervening in a noncriminal family situation, responding to the call "man down in the street," and others. Indeed, handling situations of this nature often occupy a sizable amount of an officer's time and attention. We believe that through better understanding, the officer will be more qualified to deal more effectively with persons in this age group in these situations.

Older Person as Asset

A category of involvement which appears to be largely overlooked by law enforcement is the older person as an asset—not only as a cooperative witness or law-abiding citizen within the community, but also as an aid to law enforcement in discharging some of its responsibilities and functions. Often, the police officer, like the rest of society, has great difficulty gaining access to the busy executive. And yet, the day following that busy executive's retirement, he is frequently eliminated from the mainstream and considered no longer useful. When he is now the most accessible, has he lost his wealth of experience and knowledge overnight? Why is this valuable resource so frequently overlooked?

Examples abound of situations where housewives who, never having been employed or engaged in operating a business, upon being freed from domestic responsibilities with the growth of their children, or for other reasons, emerge as successful businesswomen or leaders in their communities. Studies of the police and demands on their time reflect that as much or more than 80 percent of their assignments while on duty relate to responding to complaints and calls for assistance which are noncriminal in nature. Why, then, is it not possible during these days of increased police demands and reduced budgets, to find partial solutions to pressing problems through the use of what, in our view, is the richest community resource—the talent, training, and experience of the retired population?

Over the past 4 years, during the NRTA–AARP Crime Prevention Section's programs and seminars, we have highlighted case studies demonstrating to police administrators and middle-management supervisors ways in which they can be assisted by older persons. It should be emphasized here that while some commercial agencies are using retired persons to "tote pistols" as watchmen, security guards, etc., certainly this is not the most desirable function on our list of possibilities. It is our observation that the major problem in not using older persons to assist law enforcement is not the lack of volunteers but, rather, what we describe as the "Jack Webb" attitude—"This is police work, Ma'am!"—which bars potentially valuable community help as full-time partners. When I first went into police work, back in the thirties, there were only two ways to get into the police stationhouse—by being a sworn officer carrying a badge, or by being an "invited guest" in handcuffs. In my view, police agencies were closed societies in those days. Everyone including the telephone operator, the desk clerk, and the wagon driver, were sworn officers who did not take kindly to outside "interference" by the citizenry. This has changed to some extent, but not nearly as much as some consider necessary to help us cope not only with the crime problem, but with other increasingly burdensome community demands on the police.

At a seminar not too long ago in the State of Florida, involving chiefs, sheriffs, and middle-level police supervisors, we asked the question (in summarizing the discussions of the day), "What can we do—NRTA–AARP—to help you in these areas?" One participant quickly shot back, "The best thing you can do for us is to get these old people off our backs!" This attitude, which is not unusual, needs to be changed if older persons are to be encouraged to cooperate and participate in this effort to any significant degree.

Older Volunteers

Those agencies which have demonstrated a positive attitude toward the involvement of older persons as full partners in assisting law enforcement have produced noteworthy results. For example, the Sheriff's Office in Maricopa County, Ariz., has been receiving assistance from more than 3,000 volunteers, 1,400 of whom are in the older age span of which many are retired and in their sixties or older. These older volunteers—men and women—are totally integrated into some 42 working groups which are performing 17 police functions. These include such activities as conducting safety patrols on lakes and along rivers, comprising scuba diving teams for use in recovering persons drowned, performing traffic and crowd control measures at major gatherings, effecting transfer and transportation of prisoners, participating in air and surface search-and-rescue missions, serving as members of disaster control, paramedical and health services units, counseling jailed offenders on personal or family problems, and acting in many other capacities.

An officer in Jacksonville, Fla., working under the Duval County Sheriff, within 6 months after attending one of our seminars organized three groups of older volunteers and acquired more than $1 million worth of support equipment to assist them to perform a variety of duties. These include searching for lost persons, enforcing safety regulations, searching for physical evidence, and providing support for efforts to apprehend escaped prisoners. Groups organized include four-wheel-drive, river, and offshore water units.

A further illustration highlights another use for older volunteers. The chief of police in Huntington, W. Va., was puzzled about what to do with a 72-year-old woman apprehended for shoplifting a $2 item. She had no prior arrest record. He turned this problem over to one of his older volunteers who was able to give considerable time to satisfying the merchant in-

volved and counseling the offender to deter her from future activity of this nature. A group of selected volunteers is always on call to this chief to handle similar troublesome cases of this nature. How much dispatcher time, cruiser time, report-writing time, and court time have been saved by this simple technique? Quite a bit. This does not mean that this chief condones shoplifting or that he excuses elderly offenders, but recognizing that incarceration is not likely to follow conviction in such cases, he has chosen to divert such an offender from the judicial process, while at the same time contributing to rehabilitation and gaining the cooperation of the initial complainant. His action in this or any other diversion matter is done, of course, with the full advance concurrence of the local prosecutive officials.

In an article in the October 1974, FBI Law Enforcement Bulletin, entitled "Determining Police Effectiveness," Superintendent James M. Rochford of the Chicago, Ill., Police Department stated that his department initiated a survey of victims and complainants receiving police service to gather opinions of how well the police were performing their duties. Several significant findings were reported by Superintendent Rochford in this article. The survey, which cost an estimated $75,000, prompted the superintendent to set out seven important steps to improve police operations in delivering services. The second step listed was to "provide officers with preservice and inservice training in dealing with the elderly." This conclusion, based on the survey conducted by the Chicago Police Department, certainly coincides with our recommendations for filling a need in many of our law enforcement agencies.

In connection with a segment of the FBI's Crime Resistance Program, the FBI, the Police Foundation, and the Wilmington, Del., Police Department, combining in a joint venture, are targeting on crimes against the elderly in that city. This study has already produced significant findings helpful to all of us interested in this area. The final results of the Wilmington project may well become a model for crime resistance programs regarding older persons.

A group of experts stated in 1975 that crime would get worse, and they were pessimistic about what could be done to prevent it. I do not share this pessimism, and I could relate numerous cases where significant endeavors to deter crime are being effectively undertaken—often with little or no funding. The key in most of these instances involved using segments of the community's human resources as full partners in crime reduction efforts.

Doing the Practical NOW

We must not be deterred from doing practical things that can be done NOW, nor by the complexity of the problem, nor by our constant search for the elusive and ever-changing "causes" and "roots" of crime. For too long, action has been delayed awaiting the magic "breakthrough" which may never come. We have often heard poverty and disadvantage being blamed for crime, yet some recent surveys indicate that affluent families may produce at least as high a percentage of delinquents as poor families do. For a considerable time many followed the theory that the criminal was "sick," but this belief has now been abandoned by many psychiatrists concerning most criminals. Still another theory suggests that crime is a product of boredom. Elsewhere, permissiveness and lack of religion are listed as causes. The true causes of crime are most likely combinations of all of these factors. The prestigious President's Commission on Law Enforcement and the Administration of Justice states:

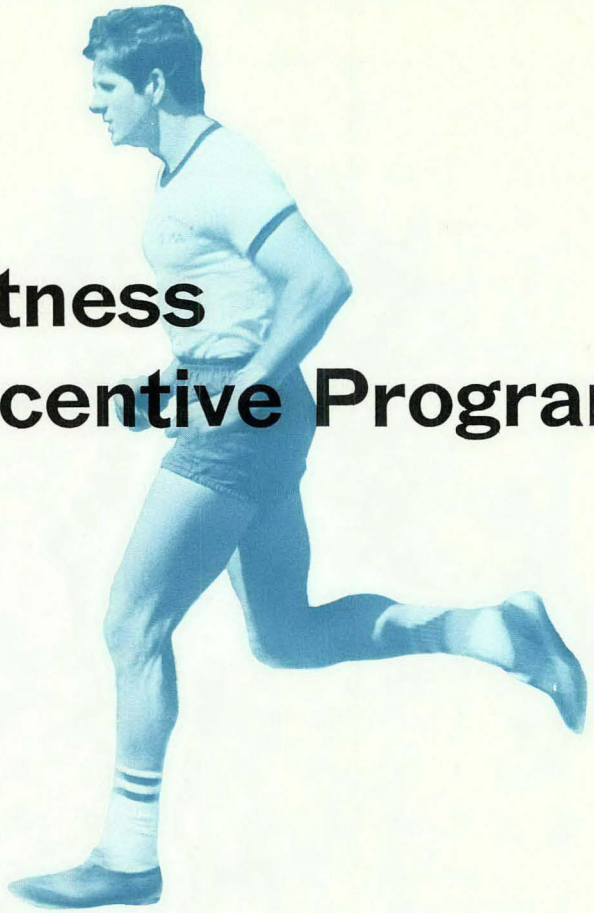
> "The most natural and frequent question people ask about crime is WHY? They ask it about individual crimes and about crime as a whole. In either case, it is an almost impossible question to answer. Each single crime is a response to a specific situation by a person with an infinitely complicated psychological and emotional makeup who is subject to infinitely complicated external pressures. Crime as a whole is millions of such responses. To seek the 'causes' of crime in human motivation alone is to risk losing one's way in the impenetrable thickets of the human psyche. . . ."

But all of this is of little consolation to the older crime victim. For the older person, the present is more important than the hopes and expectations of the next generation.

Conclusion

In conclusion, it is necessary to acknowledge that the older person sometimes is a problem to the law enforcement officer—but not very much of a problem proportionately when compared with other age groups. Based upon our extensive experience, we submit that the talents, wisdom, and past experience in a diverse range of career fields of many older Americans are potential resources often overlooked by police agency administrators. Popular misconceptions and myths about the abilities, dependability, and usefulness of the "elderly" often create a veil through which it is at times difficult to see their truly tremendous potential for service to law enforcement and the communities where they reside.

Have you considered locating and tapping these hidden assets within your own community? The results of such efforts could produce substantial positive returns for the police, older persons, and the overall community itself.



Physical Fitness Incentive Program

By
GEORGE P. TIELSCH

Chief
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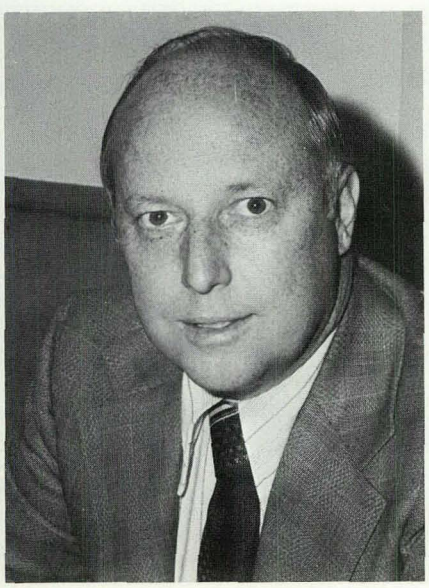


A physical fitness incentive program was initiated by the Santa Monica, Calif., Police Department on January 6, 1976. The original idea was conceived by two officers in the department. The program was presented on the premise that, while many police departments encourage marksmanship by offering extra pay for marksmanship proficiency, no incentive is offered to police officers to keep themselves in good physical condition—an attribute that is required on a daily basis if an officer is to perform his duties at peak efficiency and best protect himself and the public.

Approval to initiate the program was received from the city manager and the city council.

The program was made voluntary, and participating officers train on their own time. The incentive portion of the program is similar to the marksmanship program in which participants may earn a monthly bonus of $2, $4, $8, or $16, depending on their skill as marksmen. The tests are administered by the Personnel and Training Division on a quarterly basis. Scores recorded at that time determine the incentive pay for the following 3 months. Injuries incurred during the program are handled as industrial injuries and covered by State compensation insurance.

The tests are based on a maximum score of 500 points and include the

following five events: situps, squat thrusts, pullups, pushups, and 1-mile run.

The only difference in administering the tests between female and male officers is that female officers are allowed to do pushups and pullups in the style normally recommended for females.

To encourage participation of all sworn personnel regardless of age, the following points were added to each event according to the participant's age:

If the participant is	*Add points per event*
35 to 40 years	15
41 to 45 years	20
46 to 50 years	25

Situps (2-minute time limit)

Number	Points	Number	Points	Number	Points	Number	Points
60	100	45	76	30	50	15	25
59	98	44	74	29	48	14	23
58	97	43	72	28	47	13	22
57	95	42	71	27	45	12	20
56	93	41	69	26	43	11	18
55	92	40	67	25	42	10	17
54	90	39	66	24	40	9	15
53	88	38	64	23	38	8	13
52	87	37	62	22	37	7	11
51	85	36	61	21	35	6	10
50	83	35	58	20	33	5	8
49	82	34	56	19	32	4	6
48	80	33	55	18	30	3	5
47	79	32	53	17	28	2	3
46	77	31	52	16	27	1	2

Squat Thrust (1 1/2-minute time limit)

35	100	26	74	17	49	8	23
34	97	25	72	16	46	7	20
33	95	24	69	15	43	6	17
32	95	23	66	14	40	5	15
31	89	22	63	13	37	4	12
30	86	21	60	12	34	3	9
29	83	20	57	11	32	2	6
28	80	19	54	10	29	1	3
27	77	18	52	9	26		

Pullups

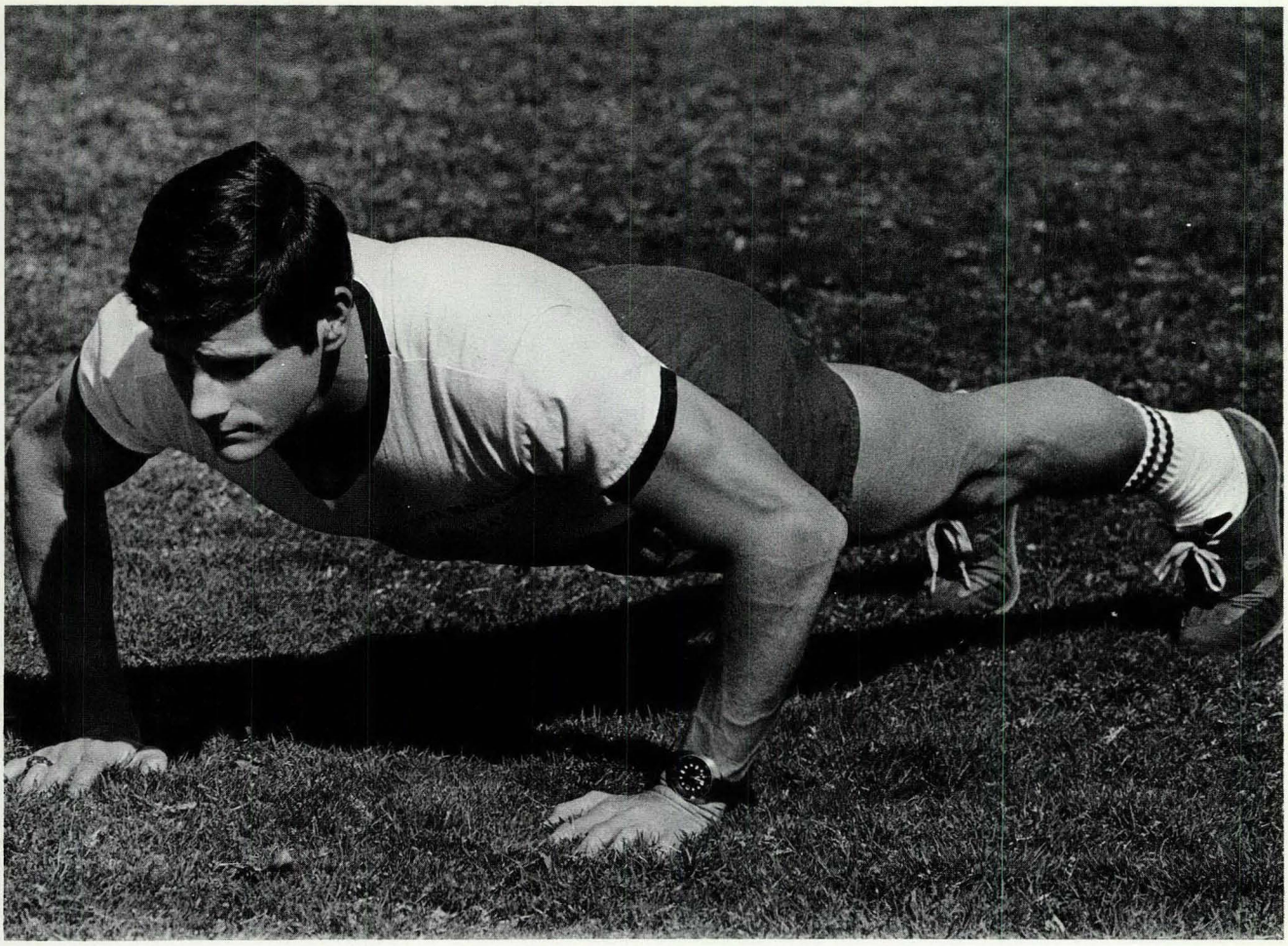
15	100	11	74	7	48	3	22
14	93	10	67	6	41	2	16
13	87	9	60	5	33	1	10
12	80	8	54	4	27		

1-Mile Run

In the 1-mile run test, 100 points are given for 7 minutes and under. For each second over 7 minutes and up to 7 minutes and 50 seconds, 1 point is deducted. From 7 minutes 51 seconds to 8 minutes 10 seconds, 35 points are accrued; 8 minutes 11 seconds to 8 minutes 45 seconds, 20 points; and 8 minutes 46 seconds to 9 minutes 15 seconds, 10 points.

Pushups

Two points are given for each pushup for a total of 100 points or 50 pushups.



Pushups are included in the physical fitness incentive program.

51 to 55 years	35
56 to 60 years	50

The incentive pay was established as follows:

Points	*Bonus*
300 to 329	$2 per month
330 to 399	$4 per month
400 to 464	$8 per month
465 to 500	$16 per month

Twenty-five police officers, including one female, out of 133 sworn personnel participated in the initial program. The officers were weighed and then taken to a nearby high school facility for testing. Eight of the officers obtained a maximum score of 500, while 15 qualified for top bonus money. A complete breakdown of scores is as follows:

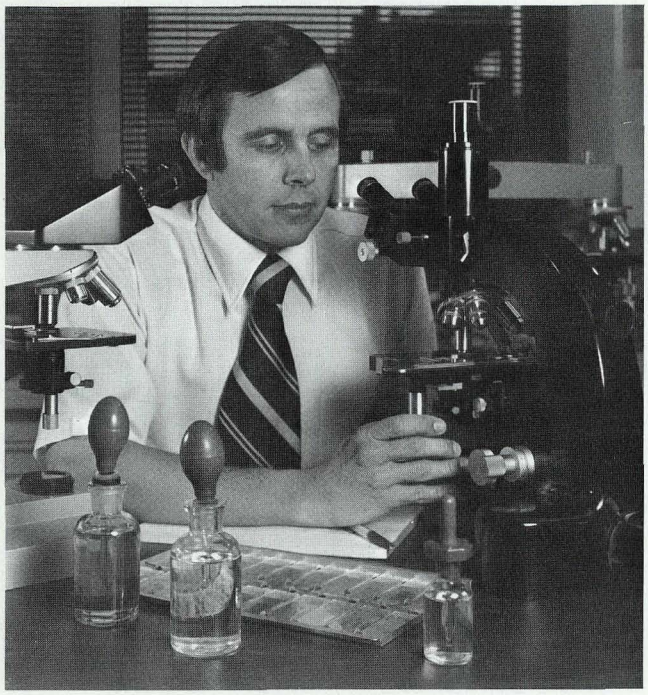
Bonus	*Number of officers*
$16	15
$8	4
$4	3
$2	1
Failed to qualify	2

The initial high scores were anticipated in that officers who already maintained a high degree of physical fitness were expected to participate and do well in the first tests. The number of participants is expected to increase substantially when officers who did not feel confident of scoring high in the inaugural tests complete a 3-month, self-imposed training program to insure a better performance in the next testing program.

In order to further encourage participation, a perpetual trophy has been established to honor the officer who achieves the highest score each year. A different scoring system or additional tests will possibly have to be evaluated and utilized to separate the officers who achieve a maximum score for all four quarters. Three individual awards will also be presented to the top three officers.

Although this physical fitness incentive program is relatively new to the department, officers already have been encouraged to initiate and expand physical training activities on an individual basis. Hopefully, the program will result in long-term benefits to each officer and the police department by fostering better health and job performances.

Hairs and Fibers Prove Valuable in Hit-Run Cases



Hit-and-run cases are a serious and challenging problem. The task confronting the officer in the investigation of this crime is exceedingly difficult. Very often he finds no witnesses and very little physical evidence. The FBI Laboratory, however, can render substantial assistance in such cases, but the officer must be thorough in his search to assure the complete collection and the proper preservation of what evidence is available.

This article, first printed in the January 1961 issue of the BULLETIN, has been revised and brought up to date. Because of its basic value in scientific crime detection, it is being reprinted for BULLETIN readers.

Hairs, fibers, and fabrics oftentimes comprise some of the major bits of evidence found during the investigation of a hit-and-run case. These are frequently accompanied by other evidence of value such as blood, paint chips, broken glass, metal fragments, and soils.

In one case, the body of a young woman, an apparent hit-and-run victim was found at the edge of a rural road. The autopsy showed injuries typical of those produced by a car but also revealed that she had died from manual strangulation. Apparently she had been run over after being strangled in an effort to conceal the true cause of death. Investigation led to her estranged husband as a suspect. Debris from under his car was submitted to the FBI Laboratory and was found to include nylon filaments like those composing her panty hose and green woolen fibers like those composing her coat. Human blood was also identified on some of the nylon filaments. The husband was subsequently convicted of this murder.

Criminal evidence assumes many forms, some minute and indistinct. This is often the case with hair and fiber evidence which is oftentimes difficult to locate, and its location requires a thorough and meticulous search of the crime scene, victim, and suspect vehicle.

Evidence From the Scene

A thorough search can yield valuable evidence which may connect a particular vehicle to the scene of the crime. The surrounding area should be isolated until the search has been completed, and the search should be extended a considerable distance from the point of impact.

Particular notice should be given to the search for blood, tissue, hair, fibers, cloth, and the paint chips. At the scene, mud or dirt shaken loose from the undersurface of the vehicle at the time of impact may be found on the roadway. If these pieces of soil are intact as distinct units, every effort should be made to preserve their form for possible fitting into disturbed areas on the suspect vehicle.

In order to properly preserve the chain of custody of evidence obtained from the victim's person or effects, an officer should accompany the victim to the hospital or morgue. Arrangements can then be made with the attending physician or coroner to preserve any foreign material found on the skin or in lacerated areas of the victim's body. This material along with the victim's clothing should be

marked for identification and preserved for transmittal to the Laboratory. It should not be overlooked that paint and glass particles may be found imbedded in the victim's clothing; therefore, secure wrapping to avoid contamination is of the utmost importance.

Cases have been reported in which ornamental objects and/or the tires on cars have left impressions on the victim's body or clothing. Photographs of these areas on the victim's body should be taken as soon as possible. Impressions found on clothing should be preserved for examination in the Laboratory.

Evidence From the Vehicle

A meticulous examination of the suspect vehicle may yield evidence of contact; i.e., blood, flesh, hair, fragments of clothing, or disturbance of road film or paint. The possibility must be considered that after the initial impact additional injury to the victim may have been caused by other parts of the vehicle.

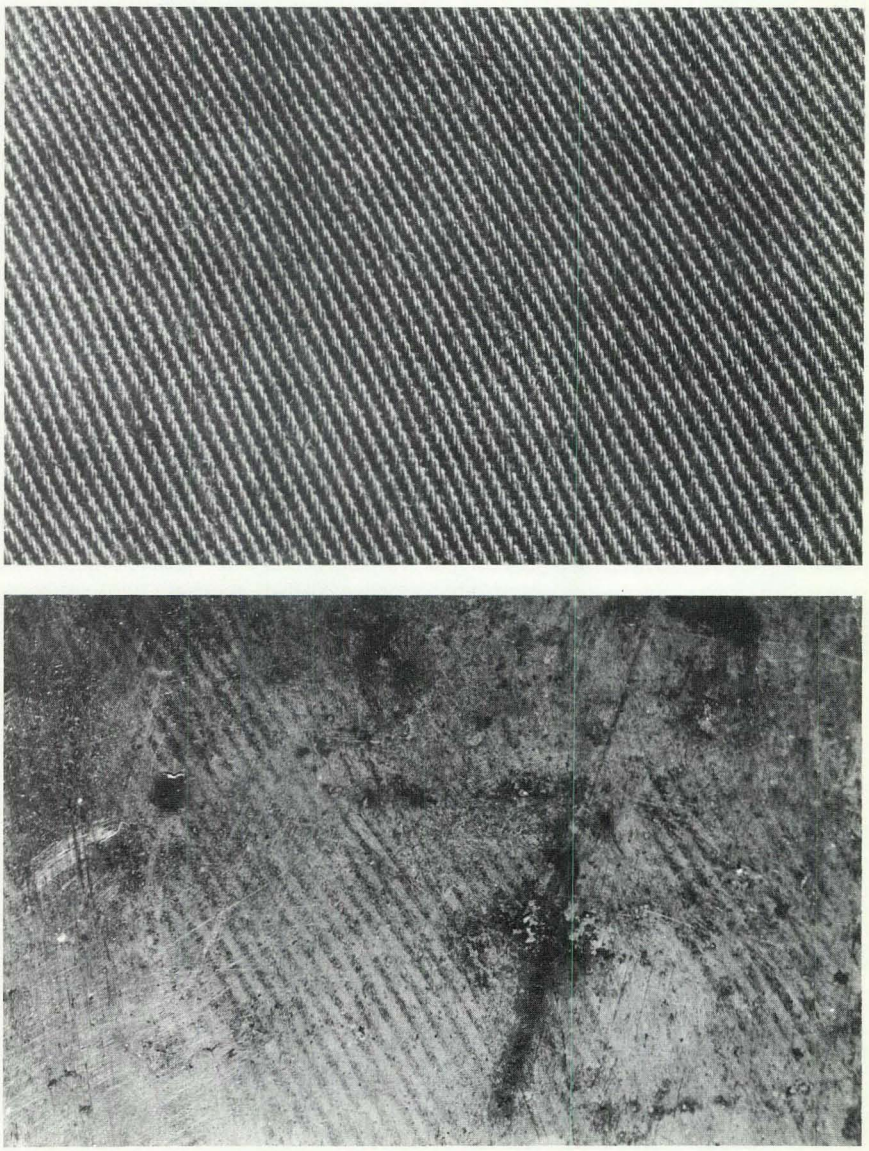
The suspect car should be placed on a lift or over a grease pit and searched thoroughly with an oblique light working from undercarriage to top. The entire circumference of the tires should be checked with particular attention to any material that may be wedged between the treads.

It is not uncommon to find impressions of the victim's clothing left on the car (see fig. 1). In the case illustrated in figure 1, evidence examined in the Laboratory and the subsequent testimony in court by the examiner left little, if any, doubt in the minds of the jurors that the subject was responsible. It can readily be seen that the bumper from the suspect vehicle bears telltale impressions matching the victim's trousers.

An example of the minute character of vital evidence can be illustrated in the case where the submission to the Laboratory consisted of a strand of yarn, approximately 11/32-inch long, taken from the fender of the suspect's car and the multicolored shirt of the victim (see fig. 2). The report returned to the submitting agency identified the questioned yarn as having come from the shirt. This identification was based on color sequence, strand length, yarn construction, and fiber type.

A number of cases have been examined in the FBI Laboratory with the purpose of determining which of two persons was the driver of a car. Usually in such cases a passenger is killed in a wreck involving a drunk driver who survives or victims in another car are killed and later there is dispute between two persons in the suspect car as to who was driving. In these cases where hairs are recovered from each side of the damaged windshield of the suspect car, they may be submitted along with known head hair samples from both persons. Many times, the dispute can be resolved by microscopic hair comparisons.

Figure 1. (Top) Fabric from victim's trousers. (Bottom) Impression on bumper of suspect car.

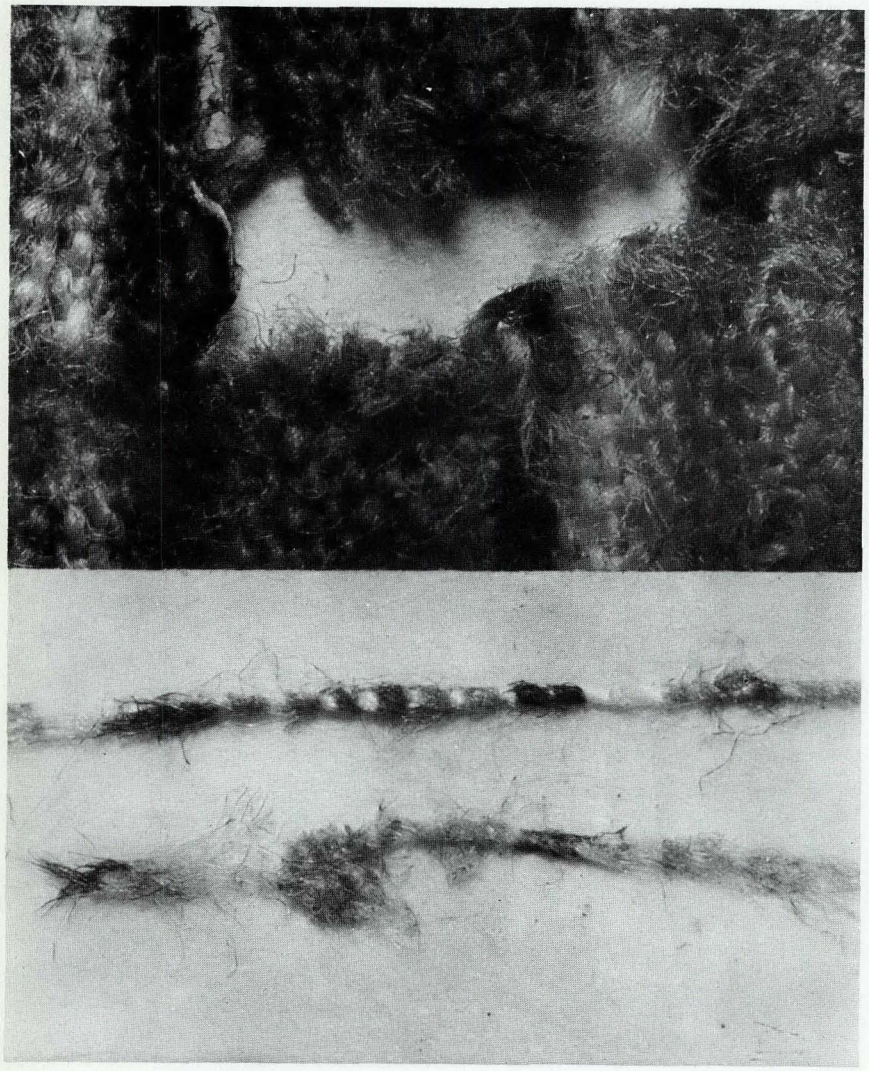


The proper collection and preservation of evidence prior to its submission to the Laboratory are an important link not to be lightly regarded. The following suggestions are made to assure that such evidence is properly handled:

1. Place hairs, fibers, or fabrics in folded paper: seal edges with cellophane tape. Adhesive should not contact evidence. Then put it in an envelope.
2. Wrap each article of evidence separately and mark for identification.
3. Masking tape may be used to remove minute fibers from fenders, hoods, etc., when it is not feasible to remove and ship such items.

At the time evidence is recovered, it should be marked for identification in order to preserve the chain of custody. This is the time to record proper identification—not after the evidence has been repeatedly handled and quite possibly mixed with known samples and items from other parts of the crime scene. It is also suggested that the number of persons handling the evidence be kept to a minimum.

Figure 2. (Top to Bottom) Torn area of victim's shirt; sample strand of yarn from the shirt; strand of yarn from fender of suspect car.



For presentation in court, it is helpful to know the location on a car where hairs and fibers were found. For this reason, do not place such evidence found in different locations in one common container. Place evidence located on a particular part of the vehicle in a separate container and mark as to where found.

Hair can be identified as being of human or animal origin. If the hair is of human origin, the race, whether Caucasoid, Negroid, or Mongoloid, can be determined. Hairs from the vehicle and hairs of known origin can be compared to determine their similarity or dissimilarity. Hairs of animal origin can be classified as to the particular type of animal involved.

The basic instruments used for hair and fiber identifications are the research and comparison microscopes. The individual characteristics of the known and questioned hairs are compared and, if similar, indicate that the questioned hairs may have originated from the known source. Except in unusual instances, however, hairs do not possess sufficient individual characteristics to be identified as originating from a particular person to the exclusion of all others.

Fiber and fabric evidence is examined to determine type, composition, and color. Macroscopic, microscopic, and chemical tests are used to differentiate and classify fibers. Data from the above tests leads to the identification of the fibers and constitutes pertinent corroborative evidence.

Sometimes actual pieces of torn fabric rather than individual fibers are found on the suspect vehicle. In such instances, it is possible to positively identify a piece of fabric as originating from the victim's clothing. This can be accomplished by fitting the piece of fabric into the corresponding torn area in the clothing and accounting for the position and sequence of each individual yarn in the weave of the piece of fabric and of

the fabric surrounding the torn area in the victim's garment.

Aid to Investigation

The force of the impact of an automobile striking a person may cause extensive damage to the automobile necessitating repair. There are many stratagems to which the driver of a hit-and-run vehicle may resort to cover his deed, such as making a false auto theft report or purposely wrecking his automobile.

The damage to a hit-and-run vehicle might well be comparable to the damage resulting from striking a deer or similar animal; however, extensive damage may not always be the case. Sometimes, the driver may swerve his car to avoid head-on impact, thus causing only minor damage to the car yet inflicting penetrative wounds upon the victim with the side-view mirror, radio antenna, or door handle.

An immediate check of automobile supply establishments and repair garages may provide a valuable lead.

Aid to Prosecution

In some instances, the defendant, when confronted with pertinent physical evidence, will realize the futility of persistent denial and plead guilty to the charges.

In another case, a young man was standing in his front yard talking with friends when a car swerved off the road, struck the young man, and killed him. From the description of the victim's friends, a suspect car with a damaged fender and broken headlight was recovered. The fender, pieces of the headlight, the victim's clothing, and a hair sample from the victim were submitted to the FBI Laboratory. A fabric impression in the fender was consistent with test impressions of the victim's trousers. Numerous fibers like those composing the victim's trousers were found embedded in the paint in the area of the fabric impression. Several head hairs which micoscopically matched the victim's head hairs were found wedged under metal trim on the fender. Particles of paint like that on the fender and glass particles consistent with headlight glass from the car were recovered from the victim's clothing.

Faced with such evidence, the defendant entered a plea of guilty.

Laboratory technician uses metal spatula to scrape debris from surface of garment.

Conclusion

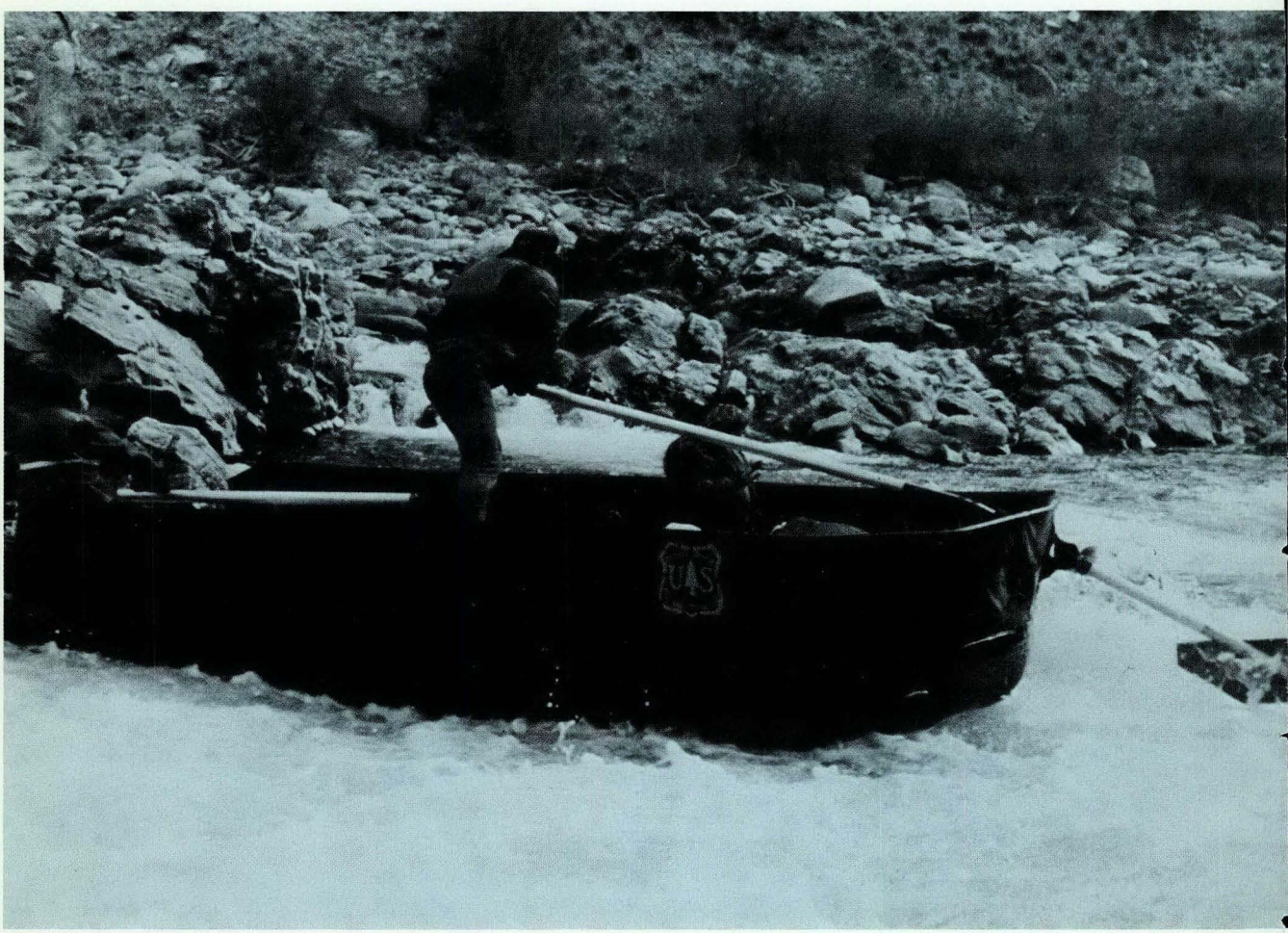
Hit-and-run cases continue to be of concern to law enforcement and to the public. The examination of hairs, fibers, fabrics, and related material has greatly aided in the solution of crimes of this type.

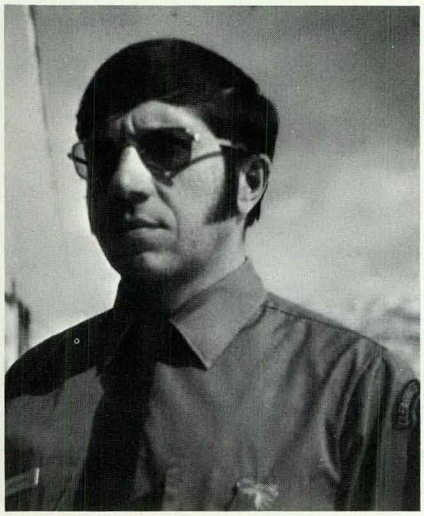
Hair and fiber evidence in hit-and-run cases does not usually effect positive identifications but contributes to the circumstances indicating that a particular vehicle was involved. Positive identifications are possible in cases involving fabric evidence.

The investigator must conduct thorough searches and assure the collection of all available evidence. The evidence must then be properly preserved, marked for identification, and transmitted to the Laboratory.

Laboratory examinations reveal vital evidence enabling the expert to testify regarding his findings and to aid the court and jury in their determinations.

POLICING THE RIVER OF NO RETURN





"The Wild and Scenic River and Primitive Area designations establish by law that this river [the Middle Fork] and surrounding area will be kept in a natural condition."

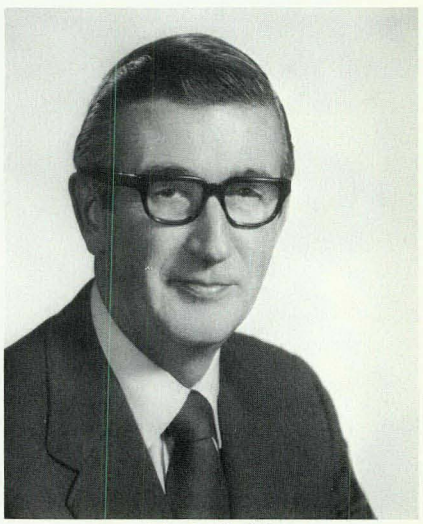
By
CHARLES S. SORENSON
Administrative Officer
Challis National Forest
Challis, Idaho

Snaking its way through the Idaho Primitive Area in central Idaho is the Middle Fork of the Salmon River. This mighty stream flows through one of the deepest gorges in North America. Born at the confluence of Marsh and Bear Valley Creeks some 20 miles northwest of Stanley, the Middle Fork plunges northeast 106 miles to join the main Salmon River. From this origin, the Middle Fork flows through the Boise, Challis, Payette, and Salmon National Forests. The administration of the Middle Fork, however, has been given solely to the Challis National Forest.

The Middle Fork of the Salmon River was designated by Congress, in 1968, as a part of the National Wild and Scenic River System. This designation provides that the river shall be preserved in a free-flowing condition, and the river in this immediate environment shall be protected for the benefit and enjoyment of present and future generations.

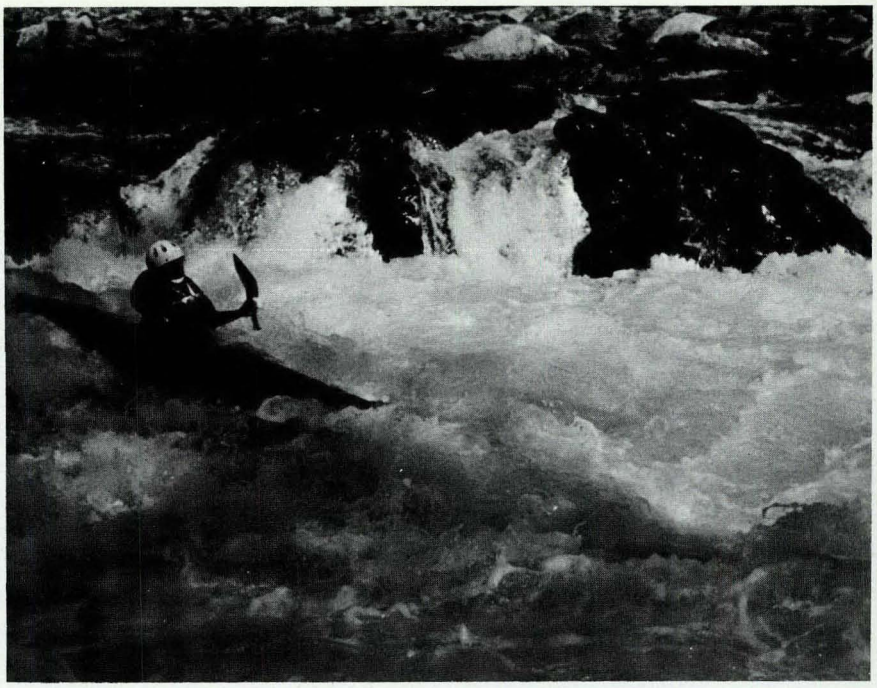
Law Enforcement

In addition to managing the natural resources, the Forest Service is also given the responsibility for enforcing the Federal laws, regulations, and policies concerning National Forest land. The combination of the Wild and



John R. McGuire
Chief
Forest Service

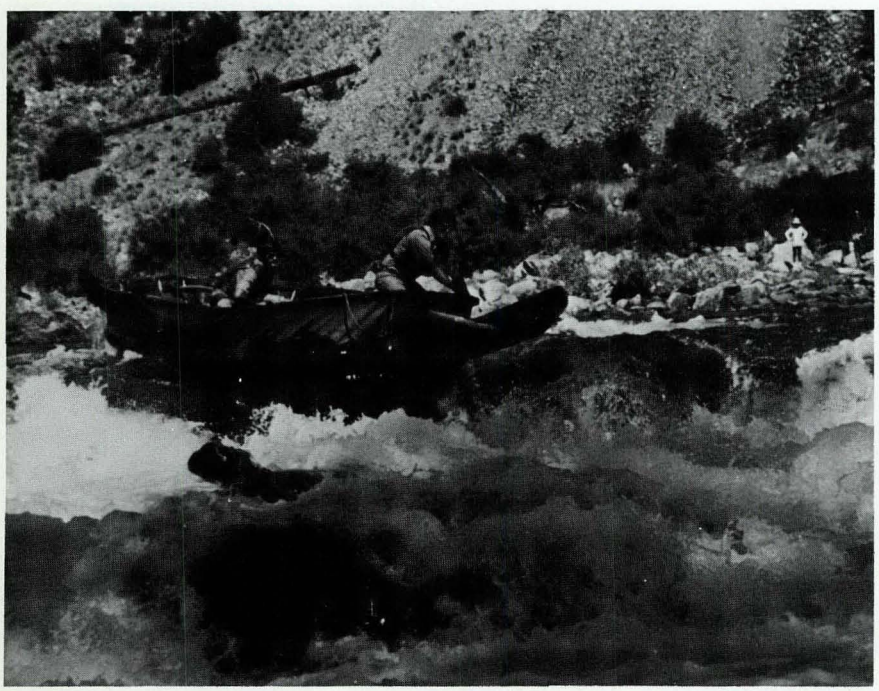
Scenic River and Primitive Area designations has added to the complexity of this responsibility. Our law enforcement activities in the past have been primarily directed to the enforcement of the policies and regulations set forth by the Secretary of Agriculture, particularly those regulations involved with the proper use of the physical natural resources. We now find the need to get more involved in the people-management phases of law enforcement. The Wild and Scenic River and Primitive Area designations establish by law that this river and surrounding area will be kept in a natural condition. There will be no roads, campgrounds, or other improvements, and the use of motorized equipment is prohibited. Add to this several hundred people on the river each day and the problems increase.



Two kayaks make up the kayak patrol and generally run the river each week.

In the past few years, we have encountered law enforcement problems ranging from simple littering and camping in nondesignated areas to the violation of fish and game regulations, defacing historical artifacts, the setting of fires, attempted rape, destruction or theft of Government property, the use of drugs and controlled substances, and the list could go on and on. The isolated area makes it more difficult to cope with these kinds of problems. Communication is by two-way radio only. Travel is primarily by floatboat, kayak, or horse. There are seven primitive airfields along the river, but flights to them are often not possible because of turbulence or the lack of air density.

A Forest Service boat drops into a chute during a successful run through the rapids of the Middle Fork.



The basic law enforcement responsibility for the Middle Fork of the Salmon River falls on the shoulders of the district ranger. He has on his staff the river manager who supervises the day-to-day activities on the river.

"With the use of a reservation system, we are able to control the number of people on the river at any one time."

Reservation System

Because of the large number of people using the Middle Fork, it has been necessary to initiate a permit or reservation system. With the use of a res-

Because of the rugged terrain and inaccessibility, forest fires are fought by air with smokejumpers, helicopters, and retardent bombers.

ervation system, we are able to control the number of people on the river at any one time. This permit allows us to issue each party a specific campsite for each night they are on the river.

If one party fails to use their designated campsite, it means they are using one assigned to someone else. Fifty people in an area where there is only space for 30 can cause many problems. The permit system has added another dimension to our law enforcement activities. Permits are divided between private parties and commercial outfitters. Private party permits are free, but guides and outfitters must pay a fee to use the river for commercial trips. We are now faced with "bootleg" outfitters who operate under the guise of private noncommercial parties.

River Patrols

The Middle Fork District generally has two crews on the river at all times, one operating by floatboat (rubber raft) and the other by kayak. The floatboat crew covers 106 miles in either 5-day or 10-day trips, depending on the work scheduled for them. The kayak crew normally makes the trip in 5 days but can make it in about 2 days if an emergency arises. These crews receive training each year in law enforcement and wild fire investigation techniques. In addition to their normal duties of public safety, recreation cleanup, management, and fire prevention, these crews are normally the first to encounter any law enforcement problem on the river, regardless of what agencies hold final jurisdiction. These crews are trained to make these initial contacts and handle the minor violations through the issuance of notices of violation or citations. The more serious problems are referred to the river manager, the district ranger, or the Forest Service law enforcement officer. These problems are then handled at the Forest level, referred to one of our special agents, or to the cooperating agency having jurisdiction. For example, all theft of Government property cases are referred to the local FBI office. The ensuing investigation is then conducted under their guidance and advice, with either the FBI, the Forest Service, or both parties doing the field work. Crimes of theft or violence between private individuals are referred to the Custer County sheriff. Other problems may be referred to the Idaho fish and game officials.

Cooperation with other law enforcement agencies is essential. On occasion, representatives from agencies closely associated with problems which can arise are given a trip into the area. Such a trip gives the other agencies a better understanding of the law enforcement problems on the Middle Fork of the Salmon River.

With proper enforcement of regulations and policies governing our national forests and by careful management of these areas, hopefully, we will be able to preserve these scenic recreation centers for everyone to enjoy for many years to come. FBI

TRAFFIC INVESTIGATION: A NEW APPROACH

By

LT. CLEMENT KAONOHI, SR.

Honolulu Police Department
Honolulu, Hawaii

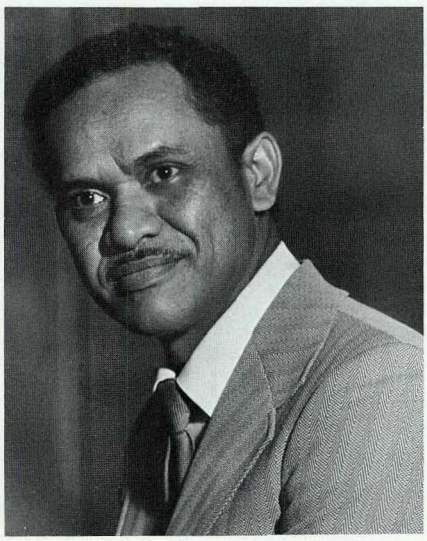
Minor traffic accidents are administrative headaches for police departments everywhere. They can tie up already overworked police officers for hours and also be a nuisance to motorist victims who may have to go to court to collect compensation.

The Honolulu Police Department, however, has been able to minimize the problem by streamlining its handling of such minor traffic accidents. By taking an entirely new look at the situation, the department has reduced the time spent by officers on common accidents, freeing them to concentrate on more serious accidents and other police work.

The Honolulu Police Department's new plan was launched last year with the help of two new policies:

Starting in March 1974, the department stopped issuing traffic citations to persons involved in traffic accidents unless violations were actually witnessed by an officer. This ended the need for officers to spend much time determining who was at fault in each accident.

The State of Hawaii's new no-fault insurance law, one of the first in the country, went into effect in September 1974. The law automatically provides for the payment of medical cost of injured victims, eliminating the need for accident victims to collect compensation for injuries.



"The Honolulu Police Department . . . by streamlining its handling of . . . minor traffic accidents . . . has reduced the time spent by officers on common accidents, freeing them to concentrate on more serious accidents and other police work."

Background

The Honolulu Police Department is responsible for the entire island of Oahu—some 604 miles with about 3,600 miles of roads and highways. The bulk of the island's 678,000 population and police manpower is concentrated in the capital city of Honolulu.

In 1973, before the new procedure was incepted by the department, a total of 22,606 traffic accidents was investigated, an average of 62 accidents each day.

A study showed that an average of 45 minutes was spent at the scene to investigate each accident; additional time was spent on report writing after completing the investigation at the scene. The policy at that time was for at least two officers to participate in the investigation except in the most minor "fender-bender" type.

Old Procedure

The officers were required to interview all the victims, drivers, and witnesses to the accidents, which often required the assistance of an additional officer at the hospital where the injured persons were taken.

For each accident, an officer had to prepare a report consisting of no less than five pages, including personal information on the witnesses, victims, and drivers, the affirmation that constitutional warnings were given, statements from all persons involved, and separate injury reports.

The officer also wrote up the description and his observations of the case, checked a multiple block report for statistical purposes, and prepared a detailed diagram of the accident scene.

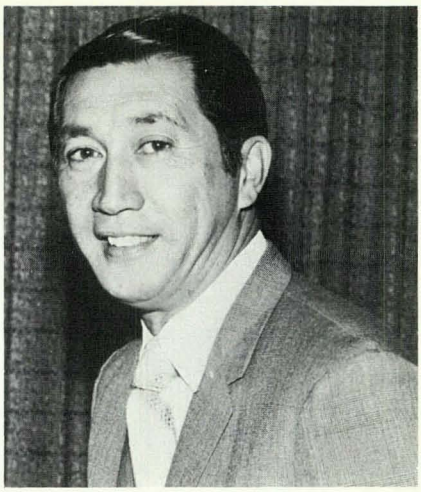
The total number of man-hours spent investigating traffic accidents in 1973 was 16,955. At an average salary of $6 per hour, the annual budget for investigating traffic accidents was $101,730.

Not included in the estimate is the cost of paper, duplicating machines, storage space to handle all of the necessary paperwork, and the clerical staff to perform the work.

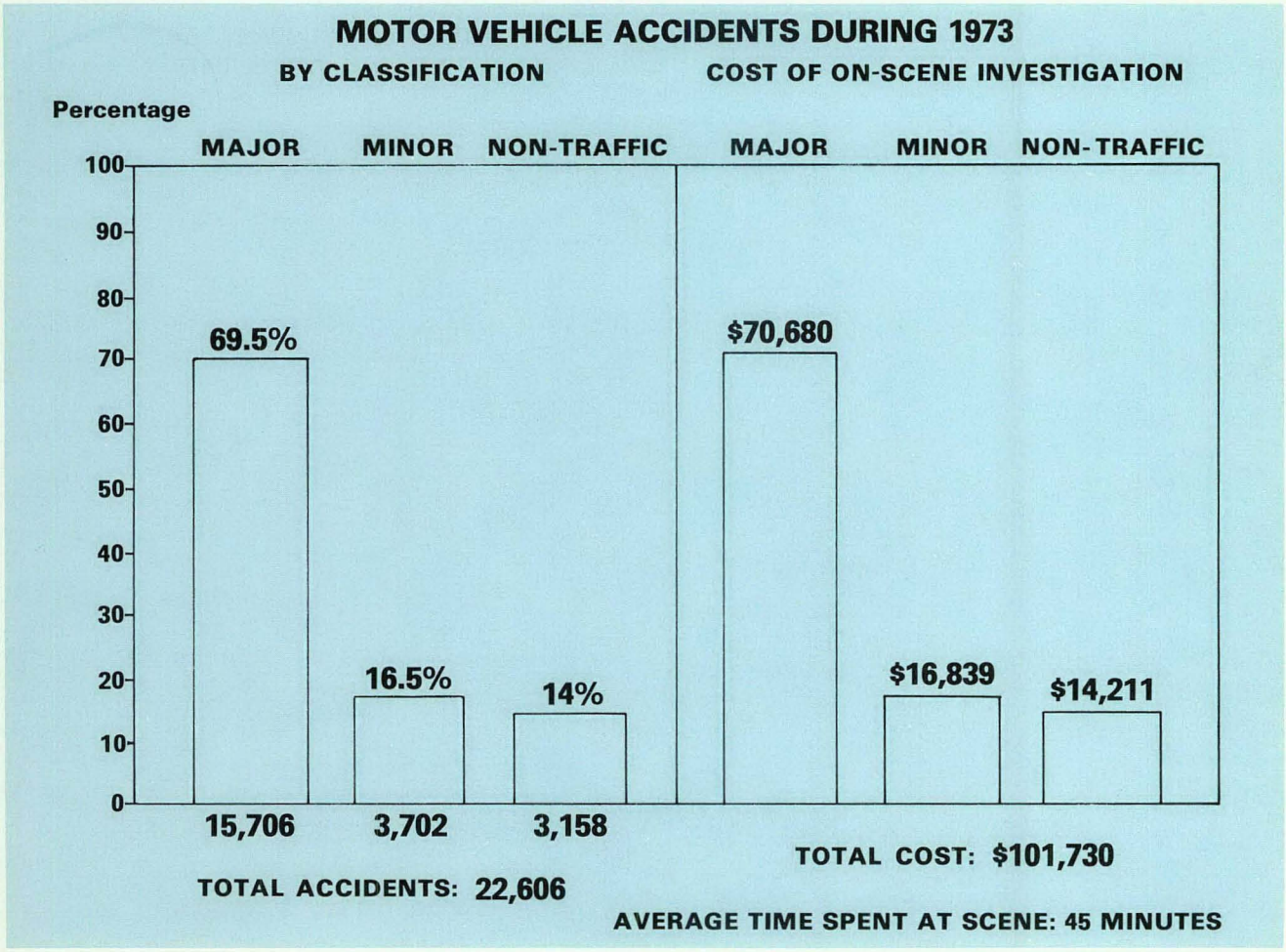
Court Time

The time spent at the scene of the accident is only the tip of the iceberg when determining the cost and time spent on them.

Every person charged with a traffic violation has the right to contest it in traffic court, and many of them



Francis A. Keala
Chief of Police



do. Officers are subpenaed to testify on each case in which they are involved and charges are placed. Department statistics show that the average time spent by a police officer in court on a traffic case is 3 to 4 hours.

> "When a department study in 1973 showed that nearly $400,000 was spent annually in investigating and testifying on traffic accidents, it was decided that a change must be made."

Some of the testifying officers are on their regular working shifts while in court thereby taxing the uniformed patrol manpower. But many men spend off-duty time in court, meaning large overtime expenses.

A Review

When a department study in 1973 showed that nearly $400,000 was spent annually in investigating and testifying on traffic accidents, it was decided that a change must be made.

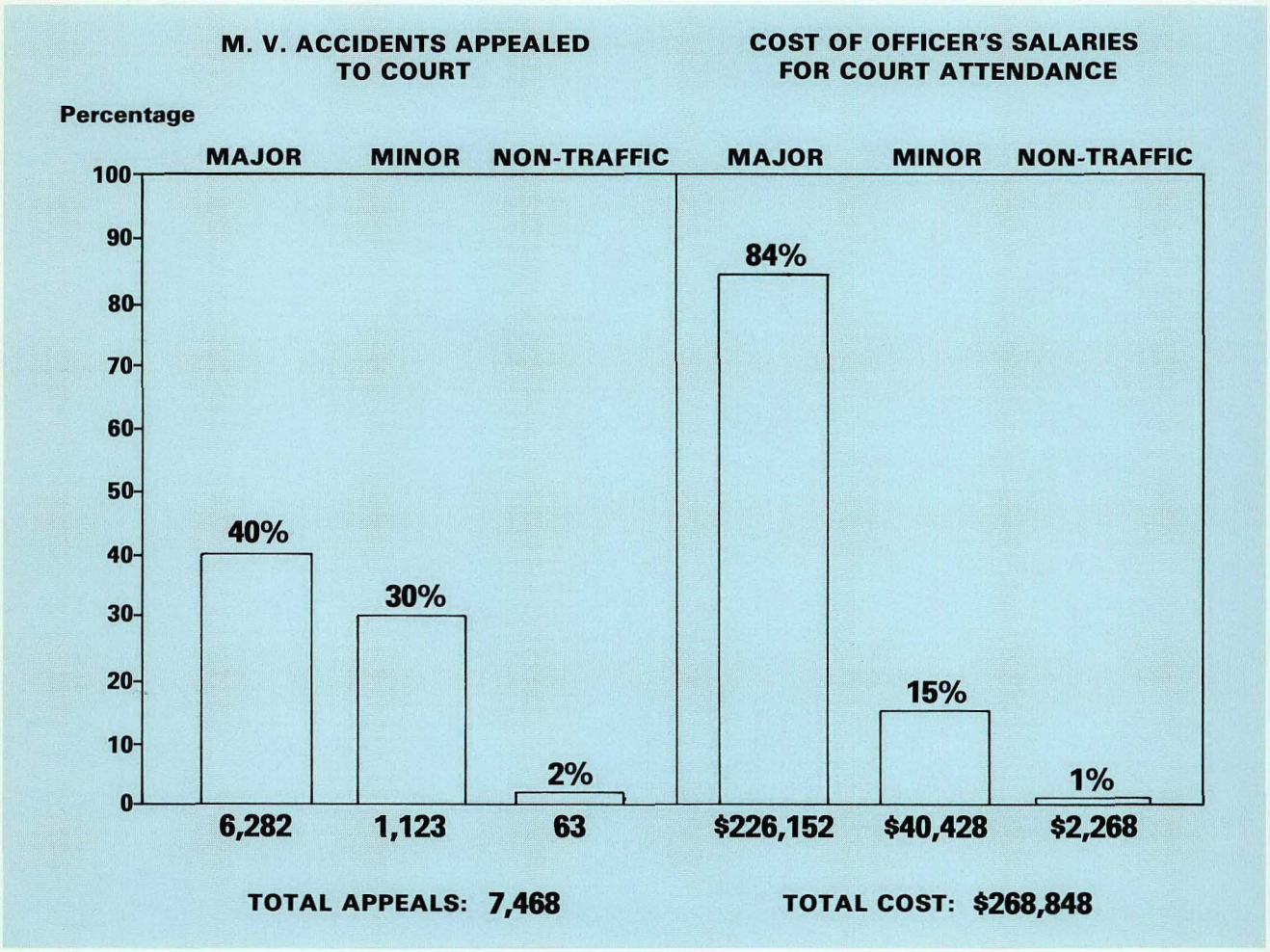
Also affecting the decision was the impending passage of a no-fault insurance law by the 1973 State legislature, which became effective the following year.

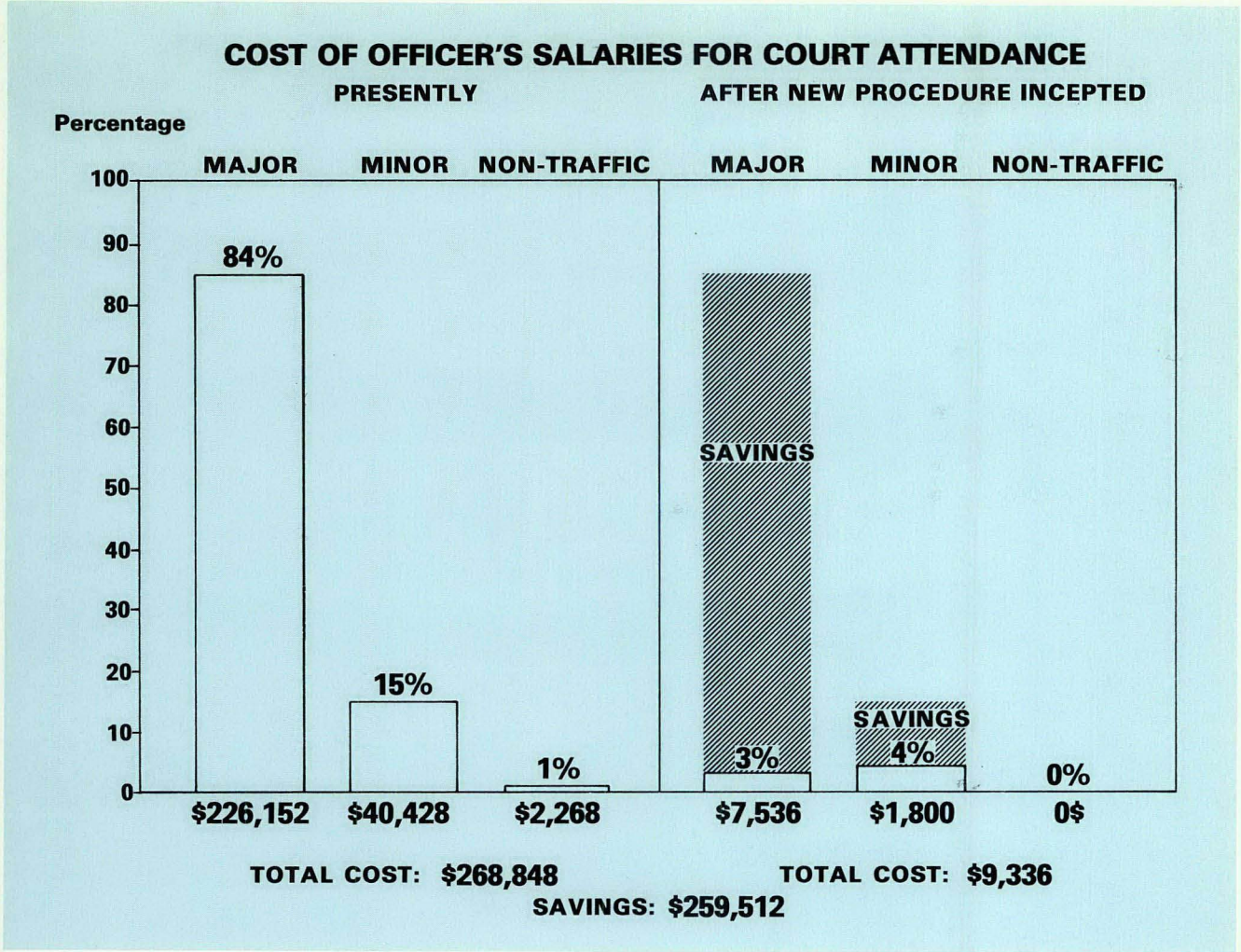
The law was expected to drastically reduce the number of traffic injury cases taken to court because it made medical payments automatic, no matter who was at fault.

Much of the information then being compiled in the police traffic accident reports was for court use in civil cases. With the impending passage of the no-fault insurance law, the department saw the necessity for re-evaluating its old system of accident handling.

The Honolulu police chief appointed a committee to study the old procedures and determine areas in which procedural changes could be made or were deemed necessary.

The objectives of the committee were to determine ways to increase the effectiveness of the field patrol units for the prevention of crime; develop a better reporting system of traffic accidents without detracting from providing the essential public





services requested; reduce the amount of time spent in investigating accidents at the scene, in followup investigations, and in judicial proceedings; and meet the present requirements relating to traffic accident reporting as specified by State statutes and Federal standards.

Exhaustive studies were made and many discussions were held to plan a methodology to accomplish the outlined objectives.

As committee vice chairman and head of the Accident Investigation Section of the Traffic Division, I was also sent to the Northwestern University Traffic Institute to gather information for this purpose.

Upon my return, the committee submitted a report outlining a totally new concept of investigating and reporting traffic accidents.

The committee report recommended a complete departure from the traditional standards of reporting accidents and further recommended that no citation be issued in an accident unless the accident was witnessed by a police officer. The only exceptions were in accidents that were of such a serious nature and/or with substantial evidence to prove probable cause. In these accidents, an immediate or eventual arrest was made or citation issued.

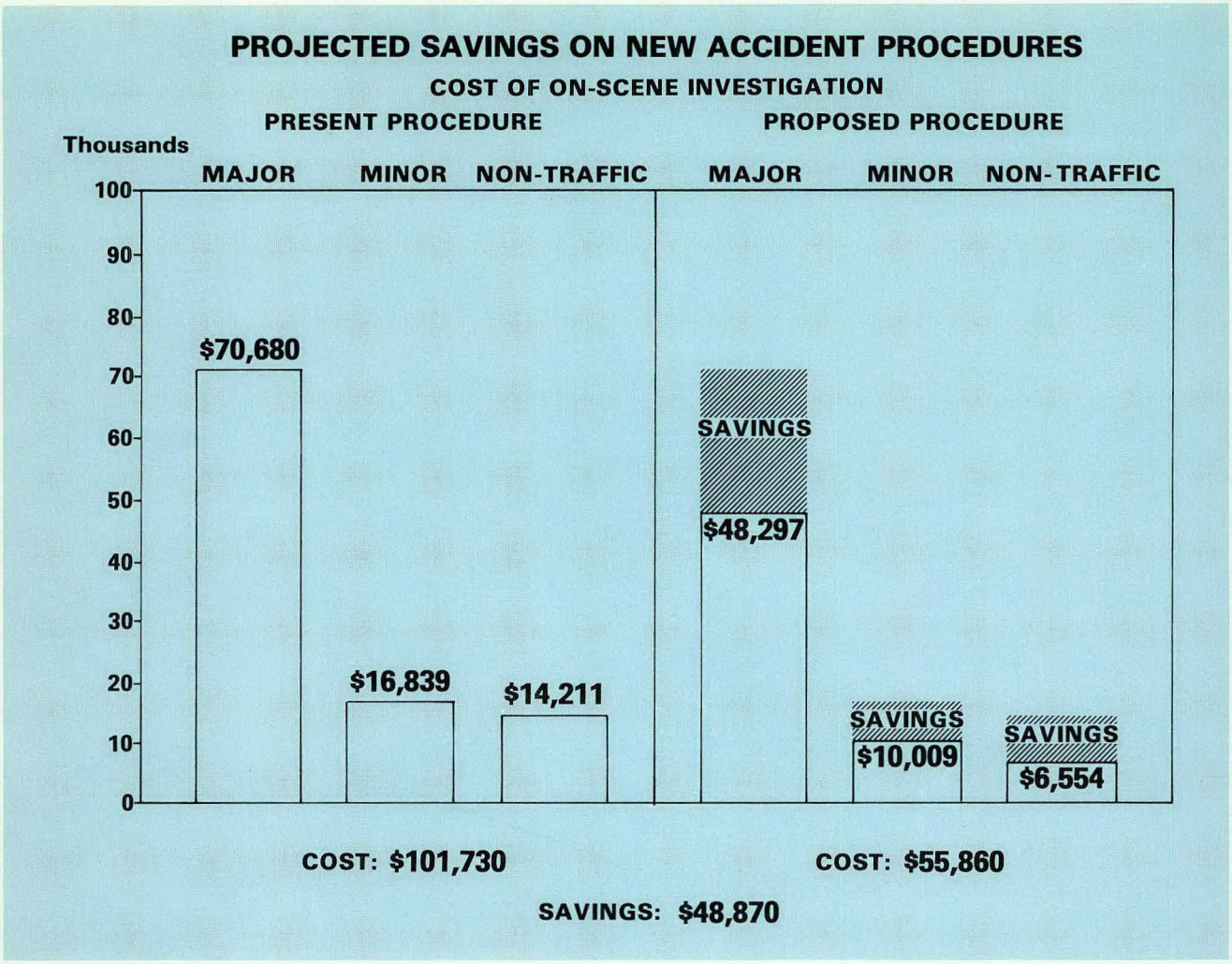
New System

Instead of handling all traffic accidents in the same manner, whether it is a routine "fender-bender" or a fatal collision, the department divided all accidents into the following categories:

Minor Accidents are those causing no injuries and less than $300 damage. They are handled by beat patrol officers who enter only basic information as who, when, and where on a two-page form. The forms are completed in about 20 minutes—less than half the former time—with all the work done at the scene.

Major Accidents

1. If an accident is slightly more serious and involves slight injury or more than $300



damage, a diagram of the accident scene is prepared by the officer. No statements are required from either witnesses or those involved.

2. This is contrasted to accidents where a severely injured person is taken directly to the hospital or medical facility by an ambulance for treatment by a physician. In these cases, statements are obtained by witnesses and all others involved.
3. Accidents involving critical injuries or fatalities and "hit-and-run" accidents that are felonious in nature are investigated by the officers of the Traffic Investigation Section. Their thorough investigations encompass all of the work formerly done under the old system.

As a result of the new procedure, the time spent by the Traffic Accident Investigation Section to review all accident reports has been cut in half, as

> **"The time spent by officers testifying on accident cases in court has been sliced to a minute fraction of the previous time. . . ."**

have reproduction expenses and required storage space.

The time spent by officers testifying on accident cases in court has been sliced to a minute fraction of the previous time, leaving them to concentrate on more important aspects of police work such as preventative patrol in crime and traffic.

Conclusion

The streamlined accident procedure illustrates the importance of adequately forecasting the effects of new laws, such as no-fault insurance laws, and properly preparing for them.

The Honolulu Police Department is continuing to work to further streamline its new procedure and has found that the new system is far more compatible with modern operational techniques.

THE "*HARRIS* TO *HASS* TO *HALE*" COMBINATION

By
INSP. CHARLES A. DONELAN
Federal Bureau of Investigation
Washington, D.C.

Introduction

The surnames in the title are those of the defendants in *Harris* v. *New York*,[1] *Oregon* v. *Hass*,[2] and *United States* v. *Hale*[3]—three cases which have more in common than the initial letter in the cognomens of the accused parties.[4] Each case involves police custodial interrogation; each concerns impeachment of the defendant by prior inconsistent statement or act of silence made during that period; and each reached the highest court in the land for determination. Before reviewing these decisions, a note on a few pertinent rules of law and related cases may be of background interest.

Background

The privilege against self-incrimination is protected by the fifth amendment's historic command that "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ." This privilege is a fundamental right, and, therefore, applicable to the States.[5]

The defendant in a criminal case, presumed to be innocent, is competent to testify as a witness in his own behalf.[6] By virtue of the privilege against self-incrimination, however, he need not do so unless he chooses. No adverse inference can be drawn from his failure to testify and no comment thereon can be made by trial judge or prosecutor.[7] When the defendant does testify, he waives the privilege as to the crime for which he is on trial. He is a witness as much as he is a defendant. His testimony, therefore, is evaluated in the same way as that of any other witness, and he is subject to cross-examination. Since he may or may not be credible as a witness, the prosecution has an overriding interest in determining his truthfulness. Inasmuch as he has voluntarily chosen to testify, it is not unfair to require him to submit to those tests ordinarily applied to witnesses. Any other rule would practically give the defendant witness immunity to offer false testimony.

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal advisor. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law, or are not permitted at all.

The rule on the extent of cross-examination in most jurisdictions prohibits inquiry beyond the subject matter of the direct testimony of the witness and, consequently, limits the cross-examination to which he must respond. This rule, however, does not prohibit questions intended to impeach his credibility as a witness, and he may be discredited on a number of grounds. The most frequently employed method of impeaching a wit-

ness is by proof that he made a statement before trial, or engaged in an act, which is inconsistent with or contradictory of his present testimony at trial. "The theory of attack is not based on the assumption that the present testimony is false and the former statement true but rather on the notion that talking one way on the stand and another way previously is blowing hot and cold and raises a doubt as to the truthfulness of both statements." [8] The making of the prior inconsistent statement may be drawn out in cross-examination of the witness himself, or it may be proved by another witness if he denies making it or has failed to remember it.

In *Raffel* v. *United States,* a witness for the prosecution attributed certain statements to the defendant but the latter, relying on his privilege against self-incrimination, declined to testify in his own behalf.[9] The jury failed to reach a verdict, and a second trial was held. At the second trial, the witness testified once again to the same statements he had attributed to the defendant at the first trial. In an effort to refute this testimony, the defendant took the stand and denied he had made these statements. On cross-examination, he admitted he had remained silent in the face of the same testimony when it was adduced at his first trial. He was convicted. The Supreme Court ruled that under the circumstances the defendant's silence at his first trial was inconsistent with his testimony at the second trial and, therefore, it was not error to require him to disclose he had not testified as a witness at his first trial.

In *Grunewald* v. *United States,* a defendant in a conspiracy case refused to answer several questions before the grand jury concerning his acquaintance with other persons involved.[10] He declined on the ground that the answers would tend to incriminate him but repeatedly insisted he was innocent and was pleading his privilege on the advice of counsel. He was indicted with the others. At the trial, he took the stand and, in a way consistent with innocence, answered the same questions he had refused to answer before the grand jury. On cross-examination, the prosecutor brought out the fact that he had pleaded his privilege before the grand jury as to these very questions. Relying on *Raffel,* the trial judge instructed the jury that the defendant's plea of the privilege before the grand jury could be taken as reflecting on his credibility, but no inference could be drawn as to his guilt or innocence. He was convicted.

"The rule on the extent of cross-examination in most jurisdictions prohibits inquiry beyond the subject matter of the direct testimony of the witness and, consequently, limits the cross-examination to which he must respond."

The Supreme Court reversed the conviction and ordered a new trial, holding that the cross-examination was not permissible. The Court declared that the prior statements of a criminal defendant can be used to impeach his credibility, but only if the judge is satisfied that the prior statements are in fact inconsistent. Here, however, the defendant's plea of the privilege before the grand jury was not inconsistent with his trial testimony. If he had admitted before the grand jury that he knew the other defendants, his admission would have constituted a link between him and the conspiracy even though he was innocent, and his friendship with them was above reproach. Therefore, his statement before the grand jury that his answers to the questions asked would tend to incriminate him was not inconsistent with his subsequent trial testimony that his acquaintance with them was free of criminal elements. The Court characterized the issue in *Grunewald* as an "evidentiary matter" with "grave constitutional overtones," but it based its holding on its supervisory power over the administration of Federal criminal justice, a power it drew upon in the famous confession case of *McNabb* v. *United States.*[11]

Unreasonable searches and seizures by law enforcement officers are prohibited by the fourth amendment. In a series of historic cases, the Supreme Court ruled that evidence obtained by officers in violation of this amendment is inadmissible to prove the guilt of the aggrieved defendant in both Federal and State courts.[12] The principal purpose of this constitutional exclusionary rule is to protect the amendment's right of privacy by removing the law enforcement incentive to violate it in gathering evidence for the prosecution. It bars the use of tainted evidence in proving facts directly in issue.[13]

In *Walder* v. *United States,* the defendant was indicted in 1950 for possessing a heroin capsule.[14] He moved to suppress this evidence on the ground that the capsule had been seized by officers in an unconstitutional search of his house. His motion was granted and the case dismissed. In 1952, however, Walder was again indicted for engaging in other narcotics dealings. At the trial, he took the stand and on direct examination denied these later narcotics transactions. He asserted flatly, in a "sweeping claim," that he had never purchased, sold, or possessed narcotics in his life. On cross-examination, the prosecutor questioned him about the heroin capsule unlawfully seized in 1950 in his presence. Walder denied that any narcotics were taken. The prosecution then called to the stand one of the officers who had conducted the earlier, unlawful search and he testified to the seizure of the heroin capsule. The trial judge admitted this evidence but carefully charged the jury it was to be used solely to im-

peach Walder as a witness and not to determine whether he committed the 1952 crimes then charged against him. He was convicted. On *certiorari*, the Supreme Court affirmed, holding that the evidence obtained in the unlawful search and seizure in 1950 was admissible for the purpose of impeaching the testimony given by Walder on his direct examination.

The Supreme Court declared that although the prosecution could not make affirmative use of the evidence it had unlawfully obtained, the defendant could not, on the other hand, turn the illegal method by which the prosecution obtained the evidence to his own advantage and provide himself with a shield against contradiction of his untruths. The Court emphasized that a defendant must be free to deny all the elements of the case against him without thus giving leave to the prosecution to introduce by way of rebuttal illegally seized evidence which is not available for its case in chief. "Beyond that, however, there is hardly justification," the Court said, "for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility." [15]

The *Harris* Case

Under the landmark *Miranda* decision, the constitutional privilege against self-incrimination comes into play during pretrial police custodial interrogation.[16] The Supreme Court declared that interrogation at that time contains pressures which undermine the suspect's will to resist and compel him to speak where he would not otherwise do so freely. As a safeguard of the privilege, the Court turned to the right to counsel.

The Court ruled, as a constitutional prerequisite to the admissibility of any statement obtained from the suspect, that he be warned he has the right to remain silent, that anything he says can be used against him, that he has a right to an attorney, and that if he cannot afford one but so desires, an attorney will be appointed for him prior to any questioning. The suspect may knowingly and intelligently waive these rights and agree to answer questions or make a statement. These warnings are a guarantee against coerced self-incrimination, and the exclusion of a statement made in their absence is aimed at deterring law enforcement officers from the taking of an incriminating statement without first informing the suspect of his rights.[17]

In *Harris*, the defendant was arrested in New York for selling heroin to an undercover police officer on two occasions.[18] After being taken into custody he was questioned by the officers but, in violation of *Miranda*, he was not warned of his right to appointed counsel before the questions were put to him. He gave the officers a statement in writing whose substance was that on both these occasions he had acted as a middleman for the undercover officer and had purchased narcotics for him. There was no claim that the statement was coerced or involuntary.

At trial, the undercover police officer testified to the details of the two narcotics sales. The prosecution did not seek to use the defendant's statement in its case in chief because it was concededly inadmissible under *Miranda* to prove the defendant's guilt of the crimes charged. The defendant took the stand in his own defense. He denied making the first sale. He admitted making the second but claimed that the bags he sold the officer contained only baking powder, and the sale was part of a scheme to defraud him. On cross-examination, he was questioned by the prosecutor concerning the written statement made after his arrest which had partially contradicted his direct testimony. The prosecutor read from the statement the questions the officers had put to him and the answers he gave. The defendant testified he could not remember virtually any of the questions or the answers recited by the prosecutor. The trial judge instructed the jury that the statement attributed to the defendant by the prosecution could be considered only in passing on his credibility and not as evidence of his guilt. He was convicted.

The Supreme Court, relying on *Walder*, held that Harris' credibility was appropriately impeached by the use of his earlier conflicting statement. It declared that it does not follow from *Miranda* that evidence inadmissible against an accused in the prosecution's case in chief is barred for all purposes, provided the trustworthiness of the evidence satisfies legal standards. The Court noted that Walder was impeached as to "collateral matters" included in his direct examination, whereas Harris was impeached as to matters bearing more directly on the crimes for which he was on trial. In *Harris*, the illegally obtained evidence was seized during the investigation of the crime then charged against the defendant; while in *Walder*, the officer contradicted the defendant as to the heroin capsule seized in the independent 1950 offense. The latter circumstance strengthened the chance that the jury would in fact follow the trial judge's instruction to consider the evidence as going to credibility only and not as proof of guilt.

The Court declared, however, that Harris' trial testimony contrasted sharply with what he had told the officers shortly after his arrest. This impeachment process provided valuable aid to the jury in assessing his credibility, and its benefits should not be lost because of the speculative possibility that impermissible police conduct will thereby be encouraged. The Court stated, "Assuming that the exclusionary rule has a deterrent effect

on proscribed police conduct, sufficient deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief."

> **" 'The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.' "**

It concluded by saying: "The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances." [19]

The *Hass* Case

In this case, bicycles were stolen from two residences in Oregon; one from the garage of the Lehman family, and one from that of the Jackson family.[20] The Jacksons were unaware of the theft of their bike, but Mr. Lehman and his son saw the thief riding their bike out the driveway. The Lehmans gave chase in their jeep and overtook a truck driven by the defendant Hass. The son pointed out a passenger in the truck with Hass, one Lee, as the person who had stolen the bike, and Lee returned it. That day Hass was located by a police officer through a license number trace and placed under arrest.

The officer gave Hass the *Miranda* warnings and then questioned him about the Lehman theft. Hass admitted he had taken two bicycles but said he was not sure, at first, which one the officer was talking about. He said he had returned one of the bikes, and the other was at the place where he left it. The officer then requested Hass to accompany him on a further investigation to clear up the matter. Hass agreed but on the way in the patrol car he had misgivings. He told the officer he "was in a lot of trouble" and would like to telephone his attorney. The officer replied that he could make the call "as soon as we got to the office." During the subsequent investigation, Hass brought the officer to the place where the second bicycle was concealed in the brush. He was indicted for the burglary of the Lehman residence and placed on trial.

At an in-camera hearing, in the course of the trial, the arresting officer testified to the above details concerning the arrest of Hass and its aftermath. The trial judge ruled at the conclusion of the hearing that any statements made to the officer by Hass after he said he wanted to telephone his attorney, and the identification of the bicycle's location, were not admissible because of the failure to comply with the *Miranda* rule.

In the prosecution's case in chief, the Lehmans testified to the theft of the bike, the identification of Hass as the driver of the truck from which the bike was recovered and the identification of Lee as the person who had taken it. The arresting officer testified that Hass had admitted to him that he had taken two bicycles because he needed money, that he had given one bike back, and that the other had been recovered.

Hass subsequently took the stand in his own defense. He testified that on the day of the burglaries he and two friends, Lee and Walker, had been "just riding around" in his truck. His two friends left the truck but while he was driving slowly down the street Lee suddenly reappeared, tossed a bicycle into the vehicle, and ducked down on the floor. Hass said he did not know that Lee had stolen the bike at first and that it was his intention to get rid of it. He came across Walker after they had been overtaken by the Lehmans. Walker had another bike with him and put it into the truck. Thereafter, Hass said, they drove off and he had thrown the bike away. He testified he later told the police he had stolen two bicycles. He also stated that he had no idea what Lee and Walker were going to do, that he did not see any of the bikes being taken, and that he did not know "where those residences were located."

After Hass' testimony, the prosecutor recalled the arresting officer on rebuttal. The officer testified that Hass had pointed out to him the two residences from which the bicycles had been stolen. On cross-examination, the officer stated that, prior to his pointing out the houses, Hass had told him that he knew where the bicycles came from but he did not know the exact street address. The officer stated that Lee was along at that time and had some difficulty in identifying the residences until Hass actually pointed them out and then he recognized them. The trial judge, at the request of the defense, instructed the jury that the portion of the officer's testimony describing the statement made to him by Hass could not be used as proof of guilt but that they might consider it only as it bore on his credibility as a witness. Hass then took the stand once again. He stated that the officer's testimony that he had taken him out to the residences and that he had pointed out the houses was "wrong." The jury returned a verdict of guilty.

Two State appellate courts reversed Hass' conviction. They held that the information obtained by the arresting officer when he continued his investigation after Hass indicated he wanted to talk to a lawyer could not be used to impeach his trial testimony. The high State court reasoned that there is an element of deterrence to police officers where the *Miranda* warnings are yet to be given. This is so because they will not take the chance of losing incriminating evidence for their case in chief by not giving adequate warnings. On the other hand, there is no deterrence where they have already given proper *Miranda* warnings because in such a situation they have

nothing to lose and perhaps can gain something for impeachment purposes by continuing the interrogation after the warnings. The Supreme Court of the United States held, on *certiorari*, that the State appellate courts were in error when they ruled that the officer's testimony on rebuttal was inadmissible on constitutional grounds for the purpose of impeaching the credibility of Hass as a witness.

Although it was faced in *Hass* with a variation of the fact situation encountered in *Harris*, the Supreme Court found there was no valid distinction so far as the principles of *Harris* were concerned. In this regard, the Court recalled it does not follow from *Miranda* that evidence inadmissible in the prosecution's case in chief is barred for all purposes provided it is trustworthy and, here Hass' statement was not involuntary or coerced. The Court noted that Hass took the stand after he knew the arresting officer's opposing testimony had been ruled inadmissible for the prosecution's case in chief and stated that the impeaching material in his statement would provide valuable aid to the jury in assessing his credibility as a witness. The Court declared that the effect of the inadmissibility of Hass' inconsistent statement would pervert the constitutional right into a right to falsify free from the embarrassment of impeachment evidence from the defendant's own mouth.

As to the deterrence question, the Court again emphasized that sufficient deterrence exists when the evidence in question is made unavailable to the prosecution in its case in chief. It stated that the deterrence of the exclusionary rule lies in the necessity of giving the *Miranda* warnings. Even though incomplete and thus defective in a given case, this does not mean the warnings have not served as a deterrent to the officer who is not then aware of their defect; and to the officer who is aware of the defect the full deterrence remains. When proper *Miranda* warnings have been given, and the officer continues his interrogation after the suspect asks for an attorney, one might concede that the officer may be said to have little to lose and perhaps something to gain by way of possibly uncovering impeachment material, but this speculative possibility is even greater where the warnings are defective and the defect is not known to the officer. In any event, the Court said, the balance was struck in *Harris*, and it was not disposed to change it now. It concluded by noting that if an officer's conduct amounts to abuse in a given case, that case, like those involving coercion or duress, can be taken care of when it arises measured by the traditional standards for evaluating voluntariness and trustworthiness.

The *Hale* Case

In this case, the defendant was apprehended by police officers in the District of Columbia in the wake of an identification by a robbery victim, one Arrington, that he was in a group of men who had taken $96 from him.[21] Hale was arrested in flight from the police and taken to the police station where he was informed of his *Miranda* rights. On a search of his person, he was found to be in possession of $158. Thereupon, a police officer asked him "Where did you get the money?" Hale made no response to this question.

At the trial, Arrington testified that he had stopped to chat with Hale, whom he knew by sight in the neighborhood but not by name, while he was on his way to a store and that Hale had followed him into the shop. When he left the store, he was robbed by a group of men. He immediately reported the crime to the police, stating his assailants had taken $96 from him. He said that while he was waiting for the officers to escort him through the neighborhood in search of the robbers he noticed two men and shouted that one of them was in the group which attacked him. When the officers ran toward the two men, they fled. Upon their capture, he identified Hale to the officers as one of the robbers. The arresting officer testified that at the time of Hale's arrest he had $158 in his possession.

Hale took the stand in his own defense. On direct examination, he testified he had met Arrington on the day of the robbery but after he left him he was approached by three men who asked him if Arrington had any money. He told them he "didn't know." He then said he went to the narcotics treatment center in the city where he remained during the time of the alleged robbery. He left the center with a friend who subsequently purchased narcotics. He said he fled on the approach of the police officers shortly after this purchase because he feared another drug conviction, explaining that his prior conviction had resulted from his arrest in the company of a friend who was carrying narcotics. He testified that his estranged wife had received her welfare check that day and had given him about $150 to buy money orders for her, as he had done in the past. His wife corroborated this particular testimony.

On Hale's cross-examination, the prosecutor in an effort to impeach his explanation as to the possession of the money caused him to admit that he had not offered this exculpatory information to the officers at the time of his arrest. When the prosecutor asked him if he had indicated to the police in any way where the money came from, he replied "No, I didn't." When he was asked further "Why not?" he replied "I didn't feel it was necessary at the time." Immediately following this exchange, the trial judge interrupted the prosecutor and informed the jury that Hale was not required to indicate where the money

came from and cautioned the jurors that the questioning by the prosecutor was improper. He instructed them to disregard it, but he refused to declare a mistrial.

Hale was convicted of the robbery and appealed. He argued that the trial judge committed reversible error in failing to grant his motion for a mistrial after the prosecutor elicited his admission on cross-examination that he had not explained to the police the presence of the money on his person. The court of appeals reversed Hale's conviction holding that the prosecutor's inquiry into his prior silence at the police station impermissibly prejudiced his defense and, also, infringed his constitutional right under *Miranda* to remain silent.

The Supreme Court held, on *certiorari*, that it was prejudicial error under the circumstances of this case for the trial judge to permit the cross-examination of Hale concerning his pretrial silence during police interrogation as its probative value was outweighed by the prejudicial impact of admitting it into evidence. It ruled that Hale was entitled to a new trial. The Court declared, however, that it had no occasion to reach the broader *Miranda* constitutional question which had supplied the alternative basis for the decision of the court of appeals.

"The Supreme Court noted that prior inconsistent statements may be used to impeach the credibility of a witness under the basic rule of evidence, but the trial judge as a preliminary matter must be persuaded that the statements are indeed inconsistent."

The Supreme Court noted that prior inconsistent statements may be used to impeach the credibility of a witness under the basic rule of evidence, but the trial judge as a preliminary matter must be persuaded that the statements are indeed inconsistent. If the prosecution fails to establish a threshold inconsistency between silence at the police station and later exculpatory testimony at trial, proof of silence lacks any significant probative value and must be excluded. The Court explained that silence in most instances is so ambiguous that it is of little probative force. Silence does gain more probative weight where it persists in the face of accusation as it is assumed that the accused would be more likely than not to dispute an untrue accusation. Failure to contest an assertion, however, is considered evidence of acquiescence only if it would have been natural under the circumstances to object to the assertion.

The Court stated that the prosecution had relied heavily on the *Raffel* case and argued that since Hale chose to testify in his own behalf at his trial, it was permissible to impeach his credibility by proving he had chosen to remain silent at the time of his arrest. The Court said, however, that it could not agree with this argument because the assumption of inconsistency underlying *Raffel* was absent here. Hale's situation was very different from Raffel's. This is so because a person under arrest is under no duty to speak and, as in this case, has ordinarily been advised by the authorities only moments earlier that he has a right to remain silent and that anything he does say can and will be used against him in court. At the time of arrest and during custodial interrogation, innocent and guilty alike—perhaps particularly the innocent—may find the situation so intimidating that they may choose to stand mute. The inherent pressures of incustody interrogation compound the difficulty of identifying the reason for silence. Hale's failure, during custodial interrogation, to offer an explanation of the money found on him can as easily be taken to indicate reliance on the right to remain silent as to support an inference that the explanatory testimony was a later fabrication. Thus, there is simply nothing to indicate which interpretation is more probably correct.

The Court found that *Hale* more closely paralleled *Grunewald* than it did *Raffel* and, indeed, appeared to be even a stronger case for exclusion of the evidence of the defendant's silence. The Court concluded that Hale's silence was not so clearly inconsistent with his later exculpatory trial testimony as to warrant its admission into evidence as a prior inconsistent "statement." Its conclusion was based on considerations which had fortified its holding in *Grunewald* and on the following facts relevant to determining whether a person's pretrial silence is inconsistent with his later exculpatory testimony at trial: Just prior to the questioning Hale had been given the *Miranda* warnings; he repeatedly asserted his innocence during the proceedings; he was questioned in secretive surroundings with no one but the police present; he was a potential defendant at the time since he had been the subject of eyewitness identification and was under arrest for suspicion of the robbery, making it "natural for him to fear that he was being asked questions for the very purpose of providing evidence against himself"; [22] and he had no reason to think that any explanation he might make to the police would hasten his release.

As in *Grunewald*, where the Court characterized the issue as an "evidentiary matter" with "grave constitutional overtones," the Court's holding in *Hale* was made in the exercise of its supervisory authority over the lower Federal courts.

Conclusion

In both *Harris* and *Hass*, the pretrial statements of the defendants were inadmissible at trial to prove their guilt of the crimes charged because of

the *Miranda* rule breach. In *Harris*, the *Miranda* warnings were constitutionally defective in that they were incomplete. In *Hass*, the warnings, fully given, were followed by an unconstitutional failure to discontinue the questioning of the defendant after he sought the aid of counsel. Despite these law enforcement errors, the statements were held to be admissible for the limited purpose of impeaching the credibility of the defendants as witnesses since they were inconsistent with their direct testimony at trial. In *Hale*, the *Miranda* warnings were properly given. The officer's question to the defendant in their wake, aimed at eliciting an explanation of a relevant item of real evidence lawfully found on his person, was answered not by a verbal statement but by silence. His silence was held to be inadmissible to impeach his credibility. This conclusion was reached not on constitutional *Miranda* grounds but because under the circumstances his silence was deemed to be insufficiently inconsistent with his trial testimony to warrant its use as a prior inconsistent "statement."

The fact that a defendant's pretrial inconsistent statement, voluntarily made but inadmissible under *Miranda* to prove his guilt, is admissible to discredit his credibility as a witness is cold comfort insofar as the investigative responsibility of the law enforcement officer is concerned.

There is a passage in *Miranda* which seemed to preclude the impeachment use of pretrial inconsistent statements obtained by officers without full compliance with its rules.[23] The Court had observed that statements intended by defendants to be exculpatory are often used to impeach their testimony at trial and thus prove their guilt by implication. The Court said that since these statements are incriminating in any meaningful sense of the word, they required the full *Miranda* warnings and waiver. The *Harris* case, of course, resolved the doubt raised by this dictum, but it did not change in any way the duty of an officer to collect evidence in a manner that is proper, thorough, and in keeping with the letter and spirit of the law.

In a criminal investigation, the officer is charged, in the interest of the public safety, with the duty of discovering the truth in the case. He is, therefore, bent on finding relevant, significant evidence that will determine the identity of the person responsible for the crime, evidence that will be admissible in the prosecution's case in chief to prove beyond a reasonable doubt that he committed it. The collection of evidence of guilt is his main quest and not impeachment material as such which can only be used in the event, often unlikely, that the accused will opt to take the stand in his own defense.

". . . the officer must know the rules of law which govern and control his actions and must apply them correctly no matter how great and many may be the pressures that lay upon him throughout the investigative phase of a criminal case."

Accordingly, in the course of incustody interrogation, following the full *Miranda* warnings and waiver, the officer's aim is to secure from the suspect a confession, made freely and voluntarily, that will constitute direct proof of guilt. The reason is plain. The probative weight of a confession, made in a scrupulously lawful way, is heavy. As the greatest writer on Anglo-American evidence law has said: [24] "[A]ssuming the making of a confession to be a completely proved fact—its authenticity beyond question and conceded—then it is certainly true that we have before us the highest sort of evidence." It is hard to imagine that a truly professional officer would willfully violate *Miranda* and eschew the opportunity to obtain wholly convincing evidence of guilt in the form of an admissible confession in order to secure impeachment evidence that might help make out the prosecution's case by being smuggled in on cross-examination.[25]

These cases highlight the care that must be taken by the officer in giving the *Miranda* warnings in a correct manner initially and, thereafter, in honoring the protective purposes behind them. They teach the lesson once again that the officer must know the rules of law which govern and control his actions and must apply them correctly no matter how great and many may be the pressures that lay upon him throughout the investigative phase of a criminal case.

FOOTNOTES

[1] 401 U.S. 222 (1971).

[2] 43 L. Ed. 2d 570 (1975).

[3] 45 L. Ed. 2d 99 (1975).

[4] There is no relation whatsoever between this combination of *"Harris* to *Hass* to *Hale"* and the immortal baseball double-play combination of "Tinker to Evers to Chance."

[5] *Malloy* v. *Hogan*, 378 U.S. 1 (1964).

[6] *See* Wright, Federal Practice and Procedure: Criminal, 405, 407, 416; McCormick, Evidence, 2d Ed. (1972), 22, 30, 34; 81 Am. Jur. 2d, Witnesses, 467, 468, 471, 476, 478, 480, 481, 482, 483, 484, 495, 523, 525; 4 Jones, Evidence, 26.2 (1972); 3A Wigmore 889, 890 (Chadbourn Rev. 1970).

[7] *Griffin* v. *California*, 380 U.S. 609 (1965).

[8] McCormick, *supra*, 34.

[9] 271 U.S. 494 (1926).

[10] 353 U.S. 391 (1957).

[11] 318 U.S. 332 (1943).

[12] *See Weeks* v. *United States*, 232 U.S. 383 (1914); *Wolf* v. *Colorado*, 338 U.S. 25 (1949); *Mapp* v. *Ohio*, 367 U.S. 643 (1961).

[13] McCormick, *supra*, 178.

[14] 347 U.S. 62 (1954).

[15] *Id.* at 65.

[16] *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

[17] *Brown* v. *Illinois*, 45 L. Ed. 2d 416, 425 (1975).

[18] *Harris* v. *New York*, 401 U.S. 222 (1971); *See* McCormick, *supra*, 163, 178.

[19] *Id.* at 226.

[20] *Oregon* v. *Hass*, 43 L. Ed. 2d 570 (1975). *See* also *State* v. *Haas*, Or. App., 510 P. 2d 852 (1973), and *State* v. *Haas*, Or., 517 P. 2d 671 (1973).

[21] *United States* v. *Hale*, 45 L. Ed. 2d 99 (1975).

[22] *Grunewald* v. *United States*, *supra*, at 423.

[23] *Miranda* v. *Arizona*, *supra*, at 476–477; *See* Wright, *supra*, 408; *People* v. *Kulis*, 221 N.E. 2d 541, 542 (1966).

[24] 3 Wigmore 866 (3d Ed. 1940).

[25] *See Walder* v. *United States*, *supra*, at 66.

WANTED BY THE FBI

Photos taken 1969.

BERNARDINE RAE DOHRN, also known as Marion Del Gado, Bernardine Dohrn, Bernardine Rae Ohrnstein, H. T. Smith

Interstate Flight—Mob Action

Bernardine Rae Dohrn, a self-described revolutionary communist and reputed underground leader of the violence-oriented Weather Underground Organization (WUO), which evolved out of the Students for a Democratic Society, is being sought by the FBI on charges of unlawful interstate flight to avoid prosecution for mob action.

The Crime

Between October 8 and 11, 1969, the militant Weatherman group sponsored a series of violent demonstrations in Chicago, Ill., known as the "National Action" and attended by SDS activists from all over the United States. On October 9th, a women's group of the Weatherman faction held a demonstration which resulted in a violent confrontation with Chicago police and Dohrn's subsequent arrest and indictment.

Following her failure to appear for trial in Chicago on March 16, 1970, a Federal warrant was issued at Chicago on March 17, 1970, charging Dohrn with unlawful interstate flight to avoid prosecution for mob action.

Description

Age	34, born Jan. 12, 1942, Chicago, Ill.
Height	5 feet 5 inches.
Weight	125 pounds.
Build	Medium.
Hair	Dark brown.
Eyes	Brown.
Complexion	Light olive.
Race	White.
Nationality	American.
Occupation	Secretary.
Social Security No. used	395–38–5006.
FBI No.	56,360 H.
Fingerprint classification	20 O 9 R O I O 12 L 17 R O I O
NCIC classification	PO 70 10 PO 12 20 72 10 17 12

Caution

Dohrn, as a member of WUO, has allegedly sent communications to major U.S. newspapers condemning U.S. policies and urging violent revolution and guerrilla warfare to overthrow American society. Dohrn has further stated she is first secretary of WUO which has claimed responsibility for over 25 bombing actions since 1970. She reportedly may resist arrest and has been associated with persons who advocate the use of explosives, and she may have acquired firearms. She should be considered very dangerous.

Right Index Fingerprint.

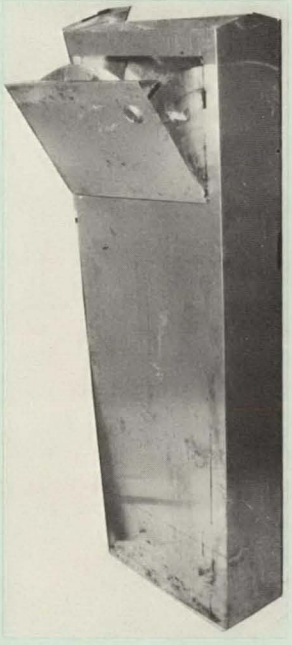
Notify the FBI

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.

Night Depository at Bank a Fake

The device pictured was recently discovered attached to the night depository of a bank in Gainesville, Fla. The false depository had been constructed of sheet metal and aluminum on a wooden frame and was very similar in appearance to the regular after-hours depository. A pullout-type door had been installed on the front of the device which, when in position, replaced the door normally used for depositing bagged money by large depositors such as businesses. A lock of the same brand and appearance as on the regular door, and which would accommodate the keys of depositors, was used in the false door.

The device was very authentic looking and could have been used to effectively divert deposits but, fortunately, it was discovered shortly after its installation and before any deposits had been made.



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THIRD CLASS

INTERESTING PATTERN

The pattern at left presents no problem as to classification. It is classified as an accidental-type whorl with an outer tracing. The presence of a tented arch formation in the center of this whorl pattern with three deltas makes it unusual.