FBI LAW ENFORCEMENT BULLETIN

JANUARY 1985

Police in a Violent Society

FBI LAW ENFORCEMENT BULLETIN

JANUARY 1985, VOLUME 54, NUMBER 1

Contents

The Cover: Confrontations with irrational, violent individuals are day-to-day occurrences which threaten the safety of police officers everywhere. (Staged training photo.) See article p. 1.

Federal Bureau of Investigation
United States Department of Justice
Washington, DC 20535

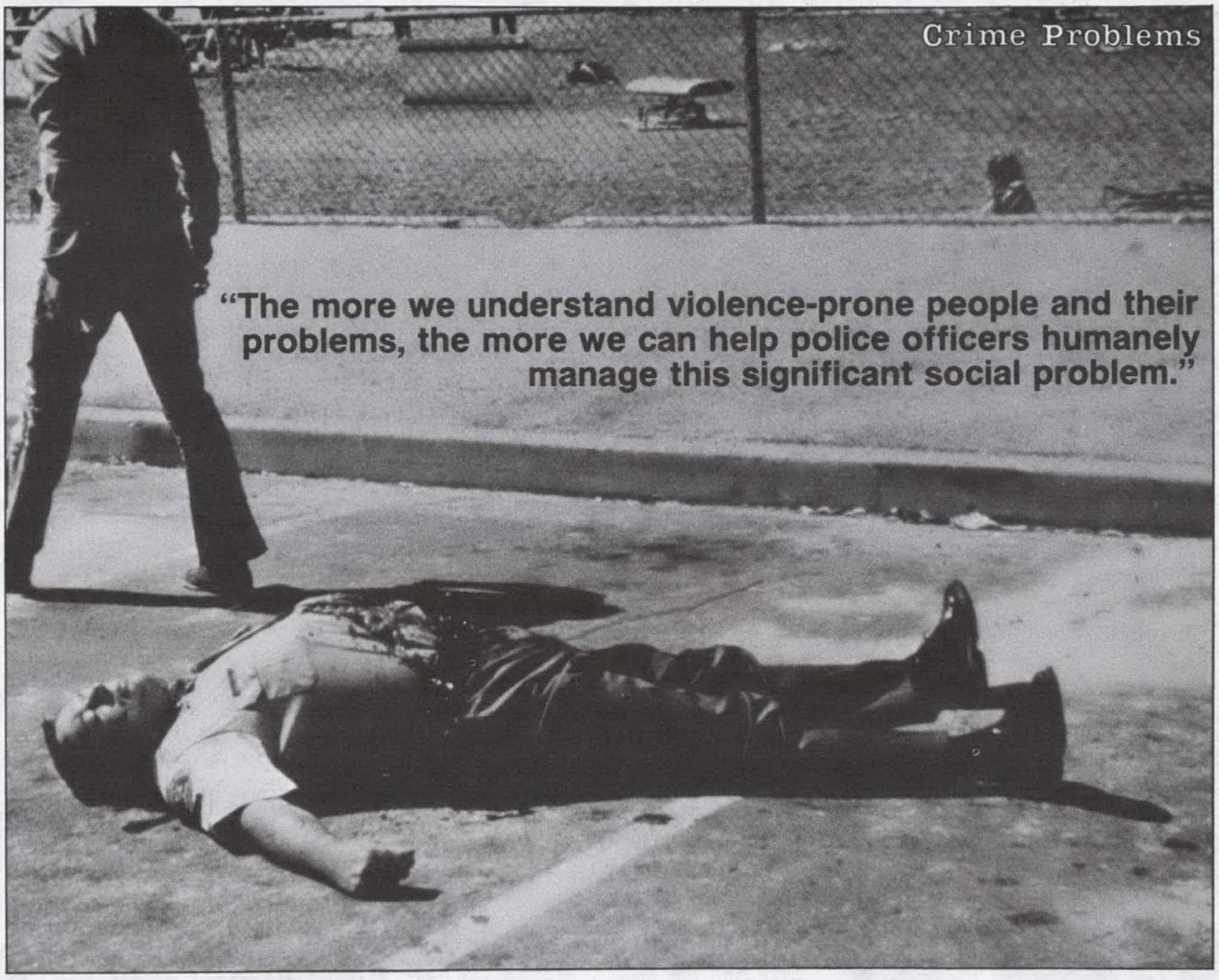
William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

Published by the Office of Congressional and Public Affairs, William M. Baker, *Assistant Director*

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Kevin J. Mulholland
Writer/Editor—Karen McCarron
Production Manager—Jeffrey L. Summers
Reprints—Regena E. Archey

ISSN 0014-5688 USPS 383-310



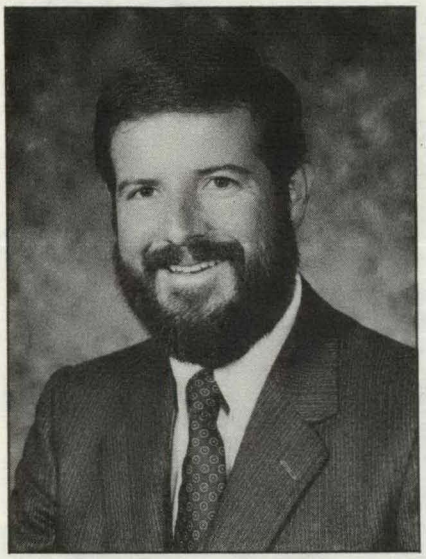
Police in a Violent Society

By
JOHN G. STRATTON, Ph.D
Director
Psychological Services
JOHN R. SNIBBE, Ph.D.
Clinical Psychologist
and
LT. KENNETH BAYLESS
Advanced Training Officer
Los Angeles County Sheriff's Department
Los Angeles, CA

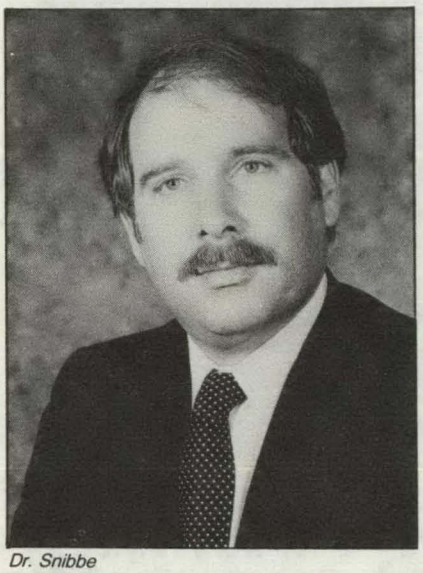
Misunderstandings or overactions by psychologists and others about the police and their actions can occur for many reasons. Biases, negative attitudes, and distorted views are often fueled by negative and slanted news and fictional portrayals of the police and their behavior. Yet, it is very easy to see how these misconceptions occur.

The police experience, firsthand, the violence that mental health professionals learn about through books or other sources. The police view psychologists as people with their heads in clouds viewing the world from ivory towers, while the police work with their feet on the ground, dealing with divergent realities in their complex world. Yet, there are some similarities which must be recognized.

Psychologists and the police share a common "idealistic" view of society. Both strive to make society well by working with a small percentage of its ill or problem members. And



Dr. Stratton



Dr. Snibbe

while the methods used differ, the same basic motivation remains—a desire to help people.

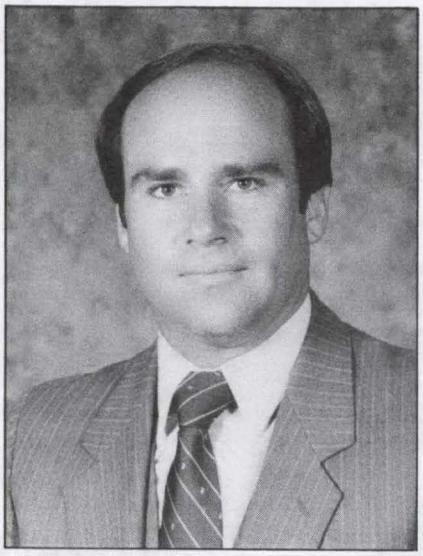
Both professions are basically governed by similar ethical and social responsibilities. People, in their time of need, turn to each profession seeking help. According to respective "codes of ethics" and "social responsibilies," each provides aid and service to those in need. It is this "service ethic" that brings us to our third commonality—frustration, the frustration shared in trying to perform our respective jobs. Therefore, while we may appear, at times, as being on "opposite sides of the fence," we are actually *partners* in an ever-increasing effort to make society and the world a better place for all of us.

A common perception of the role of police in society is that of a three-ring circus complete with screaming sirens, unholstered guns, and violent action. Most often highlighted in the media and fictional accounts of police work and the news are the shocking, violent, and often tragic occurrences that police encounter daily. The dramatic focus is invariably on officer shootings, serious and notorious criminal cases, and other events that sell newspapers or raise audience ratings.

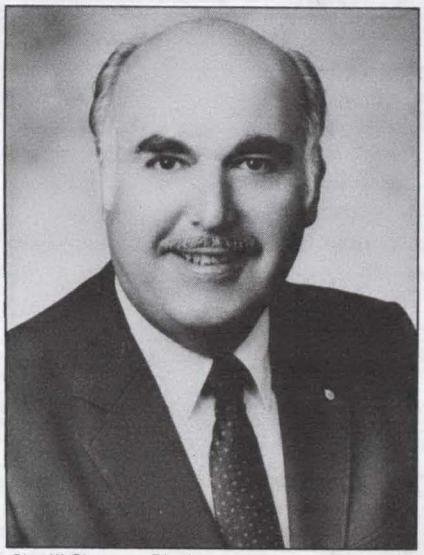
Many members of society expect the police to act in the way they are portrayed in the media. Although it is true that many situations require swift and dramatic action, the public believes basically that this is the sum and substance of police work. When such things as S.W.A.T. teams are considered, it is easy to see how views can be slanted by the media. For example, in the late 1970's, a popular dramatic T.V. series was entitled S.W.A.T., which presented a special police unit routinely performing their duties. Yet, in almost every episode, numerous people were killed and/or injured by this unit. From this, the public believed that S.W.A.T. officers in their community would do the same things they have seen done on television.

The community reaction, although warranted by TV experience, is tragic, since actual statistics do not concur with what is portrayed on television. For example, from 1973 to 1982, the Los Angeles County Sheriff's Department deployed its Special Weapons Team 591 times. These incidents are often the most dangerous and difficult assignments given to law enforcement. Weapons were fired on only 11 occasions (a mere 1.8 percent of all deployments), 5 people (.08 percent) died, 3 people (.05 percent) were wounded, and 3 shootings resulted in no injuries. These figures reveal that modern S.W.A.T. teams belie the common media image and are actually dedicated peace officers with exceptional discipline.

The concept of special weapons teams is valuable in Los Angeles County and a safety to the communities, law enforcement personnel, and the suspects. No officer or innocent person had been killed during 591 deployments. In the 54 hostage situations, only 1 victim was killed by the suspect after S.W.A.T. was deployed; all other victims were rescued by the efforts of this team and hostage negotiators. Less than 2 percent of all deployments involved shooting situations, and less than 1 percent of all deployments involved the death of a suspect. Only 3 people were injured, and these deployments resulted in the safe arrest of 937 dangerous felons. In other incidents, the S.W.A.T. de-



Lieutenant Bayless



Sheriff Sherman Block

ployments furnished sufficient time and safety to allow for nonviolent, tactical alternatives, such as hostage negotiations and psychological emergency teams.

When regular, routine police assignments in the field are considered, the statistics are even more startling. There are an estimated 400,000 police officers in the United States,[1] and if each one works approximately 250 days (a 5-day week for 50 weeks a year), they would be working 100 million days, or shifts, per year. If during an 8-hour shift, the police have an estimated 10 interactions with people each day, whether it be traffic stops, providing assistance, family disturbances, pursuits, dealing with the mentally ill, or those under the influence of drugs, there would be 1 billion people contacts per year. In those 1 billion contacts, approximately 300 people are killed by the police each year.[2]

We live in a violent society and we employ police and give them weapons to use deadly force for everyone's safety. It is shocking to realize that in 1980, handguns killed 8 people in Great Britain, 24 people in Switzerland, 8 people in Canada, 18 people in Sweden, 23 people in Israel, 4 people in Austria, and 11,522 people in the United States.[3] Our country has 480 times more people killed by handguns than any other country mentioned.[4] Those in law enforcement are attempting to do what they can to reduce the level of violence. Unfortunately, they can't do it alone. The public, schools, churches, courts, mental health experts, politicians, and the media share responsibility for what is happening in our society today.

The police officer who stands alone in the street facing the reality of irrational violence is neither the cause nor the cure for societal ills. As governmental budgets continue to dwindle, more hospital beds are closed to the mentally ill, dangerous criminals are released earlier from jails and prisons because of overcrowding, and the use of dangerous drugs increases, the extent of criminal activity becomes unpredictable.

To the citizens of every community, the police represent the last line of defense when it comes to issues of potential violence. When someone is being assaulted, robbed, raped, or is otherwise the victim of a violent crime, there is only one place to turn—the police. And when the call for help is made, there is *no one else* to handle the policeman's job if he fails to perform his task. Consequently, the policeman has an obligation to *"confront"* and *"handle to conclusion,"* no matter what form of crime or violence he may encounter.

The policeman's perception of danger in these situations and his ability to handle the situation according to the law, department policy, and training will obviously play a major role in the outcome of such incidents. These factors become the "tools of his trade."

Law Enforcement and Use of Force Policy

The policy on the use of force and firearms in the Los Angeles County Sheriff's Department, as in most law enforcement agencies, is very simple. *In essence,* the policy prohibits the use of deadly force except in cases where someone's life is in immediate danger. This means they do not shoot misdemeanants, or even fleeing felons, unless the "immediate threat to life" criterion is met.

"The police officer who stands alone in the street facing the reality of irrational violence is neither the cause nor the cure for societal ills."

Obviously, with such a stringent deadly force policy, law enforcement officers must be armed with a number of alternatives to deadly force in order to handle the number of confrontations they face almost daily.

Police officers are taught from their first day on the force that deadly force is used only as a last resort. Therefore, courses in conflict resolution and handling disturbance cases, including procedures for the mentally ill and PCP abusers, are regular elements of their training in the basic, as well as inservice, levels. Good training programs stress violence prevention and conflict resolution through a process referred to as *incremental escalation.* Incremental escalation means that when confronted with violence, the police do not immediately respond in kind. If possible, they defuse the situation through a graduated series of steps which begin with listening or talking to the violent person. If this step is unsuccessful, officers are trained to escalate their response with appropriate weaponless defense tactics, baton techniques, and/or less than lethal weapons. If all other efforts fail, or if the incident escalates rapidly, officers must use deadly force to protect themselves and the public.

There are times when deadly force is not only appropriate but demanded by the circumstances. The cold reality of our violence-ridden society is that there is an ever-increasing number of these life and death scenarios unfolding in urban centers. Therein lies the divergence between *intervention theory* and its direct application by the policeman on the street.

Fortunately, all potentially violent street confrontations do not result in deadly consequences. In fact, while the number of potentially violent confrontations between the police and criminals has increased over the years, the number of officer-involved shootings in the Los Angeles County Sheriff's Department decreased nearly 31 percent since 1978. The decrease in officer-involved shootings is due, in part, to law enforcement's training in the incremental escalation of force *and* the development of a number of less lethal devices.

The era of less lethal devices began about 1978 when our department and others in major metropolitan areas began to experience a tremendous rise in the incidence of PCP abuse. With this increase came the realization that traditional police methods of restraint were totally ineffective against PCP users. Both officers and suspects were being injured at an alarming rate because, short of deadly force, the only effective arrest technique was the "swarm" technique, which entailed six or more officers "swarming" a suspect and physically overpowering him. However, this method could not be used if the suspect was armed with a knife, club, or similar weapon. As a consequence of these factors and the growing inclination of officers to employ deadly force against these suspects, the sheriff's

The Capture Net

department and other law enforcement agencies began an exhaustive effort to develop devices that are effective but less lethal.

Nonlethal Devices

There are five criteria that must be met to ensure viability of a new device:

1) It must be reliable and accurate in all environments and weather conditions.
2) Performance must be trouble-free with low maintenance.
3) Officers must have trust and confidence in its use.
4) The device must be easy to use so that training and proficiency is easily maintained.
5) It must provide a means of instantaneous deescalation of life-threatening situations

Over the last 6 years, our department has been vigorously searching for alternatives to lethal force. In the area of existing devices, one of the first things looked at was the tranquilizer dart. While there was a problem with accuracy, the primary risk was the unknown side effects that could be triggered when the tranquilizer mixed with a number of other drugs that may be in the person's system. Therefore, the idea of using a tranquilizer dart was discarded.

The feasibility of using a high-pressure stream of water to subdue suspects was also examined. Both 2-inch and 4-inch hose lines were used to try to knock down or disarm a suspect. Neither line proved to be effective. Also, there were several logistical problems in getting a hose line into all the possible places a person could be.

Another item tested was the aluminum ladder which is currently carried in the field supervisor's vehicle. The ladder was to be used by two officers to pin the suspect against a wall or car. Unfortunately, the ladders were in 4-foot sections so that they could easily fit into radio cars. This length was too short to afford officers a safe distance from the suspect, and attempts to link more than one section of the ladder together proved unworkable.

Experiments were also conducted with the bola, an entanglement device used in South America, which has two heavy balls tied to the ends of a thong and is thrown at the feet of the target to disable it. The major problem with this device is that it requires an extraordinary amount of practice to maintain proficiency. Consequently, it also was rejected.

A jail mattress, which is sometimes used by jail deputies for protection when subduing violent inmates, was also tested. The mattress, however, was too bulky, even when handles were attached, and the suspect could easily outmaneuver the deputies if the mattress was used in places that were not confined.

The department also has experimented with shooting a suspect with a tear gas blast dispersion cartridge. This device dispenses a cloud of powdered tear gas from a special gun.

The Immobilizer

This alternative also had its drawbacks. First, the tear gas seems to disable only police officers and not drug-crazed or mentally ill offenders. Second, hospital emergency room personnel would suffer the effects of tear gas when they treated tear-gassed patients.

In the area of new developments to meet the less lethal need, several other items were examined. One development was called "the extended body noose." This item was composed of an 8-foot pole with a padded noose and drawstring at one end. It was designed to be slipped over a person's head and shoulders and drawn tight. This device could be easily side-stepped and proved to be ineffective.

In the area of weaponry, two modifications of traditional weapons appeared to have promise. The first was a device referred to as the "sting ray." This was an M16 rifle with a barrel modification which allowed it to fire a donut-shaped gas cloud. In theory, the cloud of air was to deliver more than sufficient force to knock the suspect to the ground. It was a good idea, but was never perfected.

Another device considered was rubber bullets. The intent of this weapon is to deliver a stunning and temporarily disabling blow to the adversary without doing permanent harm. Accuracy and the potential for a lethal blow remain the major concerns.

Other devices have been and continue to be tested by law enforcement around the Nation. However, there are currently only three devices that have satisfactorily passed testing by our department. Each of these have been deployed throughout 20 stations and in jail facilities. Additionally, they have been deployed and used by dozens of law enforcement agencies across the Nation.

The capture net is a 10-foot by 14-foot nylon mesh net encircled by drawstrings. It envelopes the suspect much like a tobacco pouch when the drawstrings are pulled after the net is thrown. A relatively harmless dry chemical fire extinguisher is sprayed at the subject to distract him just before the net is thrown, and when manpower is available, two men, each

"To the citizens of every community, the police represent the last line of defense when it comes to issues of potential violence."

armed with 6-foot aluminum poles, attempt to keep the subject contained in a given area, so that the net may be successfully thrown on the subject.

Next is the immobilizer. This device is composed of a pair of 6-foot nylon poles that have a strong chain interlaced between them. Two officers are used to handle the poles, while another is used to deploy the fire extinguisher as a distractor. As the fire extinguisher is fired, the officers rush the subject, placing the poles behind the person's feet. The officers continue running past the subject, thereby trapping and immobilizing the person in the chain mesh.

The third less lethal weapon deployed widely by law enforcement is the taser. This is a handgun-type device that fires two dart-like electrodes into the subject. The darts are connected to the taser gun by tiny wires. When the trigger of the gun is pulled, a pulsating current of 50,000 volts and 3.5 amperes is delivered to the body, thereby causing temporary immobilization.

Although these devices are effective and used by law enforcement, we certainly do not believe we have all the answers and continue to search for additional devices and procedures that will enhance our effectiveness in controlling potentially violent persons.

Summary

In today's society, because of various social, cultural, and legal factors, the police are called upon to cope with a large number of disturbed, violent, and substance-abusing individuals. Because of recent legal trends enforcing civil rights for all citizens, including the alcoholic populations, the disabled, drug-influenced individuals, and the mentally ill, numerous disturbed individuals have been released into the streets and have flooded into major metropolitan areas. What appears to be happening is that large numbers of distressed individuals are now in the streets, both victimizing and becoming victims of violent society.

Economic pressures have also contributed significantly to the increase of violence in our streets. Jails and prisons are overcrowded, calling for early release of dangerous criminals and probation in the community rather than incarceration. There are fewer beds in psychiatric hospitals today and their cost is significantly higher than it was in the past. This again puts large numbers of distressed individuals on the street and police officers end up intervening when these people become overly psychotic, violent, or suicidal. This cost-cutting has had a substantial impact on the amount of violence in our society.[5]

There have also been cutbacks in emergency psychiatric teams, community mental health centers, and staff for these facilities. Again, the consequences on the police are significant. Police officers are asked to provide basic mental health services for a large number of disturbed individuals in our community. They have become reluctant managers of many of society's rejects.

Another significant issue associated with the increase of violence in our society is the epidemic use of various mind-altering or hallucinogenic drugs. The epidemic increase in the use of PCP has increased the number of explosively violent and basically unmanageable situations that the police are asked to manage. Individuals on PCP are very unpredictable and they often can become violent, extraordinarily strong, confused, and disoriented. The police have considerable difficulty in controlling these individuals when attempting to restrain them humanely.

Meaningful training programs for police officers need to be developed so that they can manage disturbed and addicted individuals more adequately in the field. There also needs to be continued development of new nonlethal weapons to help cope with the disturbed, aggressive, or violent individuals who are currently being released into our communities.

The police will always be involved with violent individuals, whether they be psychotic, influenced by drugs, or involved in criminal activity. The more we understand violence-prone people and their problems, the more we can help police officers humanely manage this significant social problem.

FBI

Footnotes

[1] N. Katzenback, *Challenge of Crime in a Free Society,* Report by the President's Commission on Law Enforcement and the Administration of Justice, U.S. Department of Justice, 1967.

[2] K. Matulia, *A Balance of Forces,* International Association of Chiefs of Police, 1982.

[3] 1983 Handgun Facts, Handgun Control, Inc., Washington, DC.

[4] Ibid.

[5] A. Lehman and L. Linn, "Crimes Against Discharged Mental Patients in Board and Care Homes," *American Journal of Psychiatry,* vol. 141, 1984, pp. 271–274.

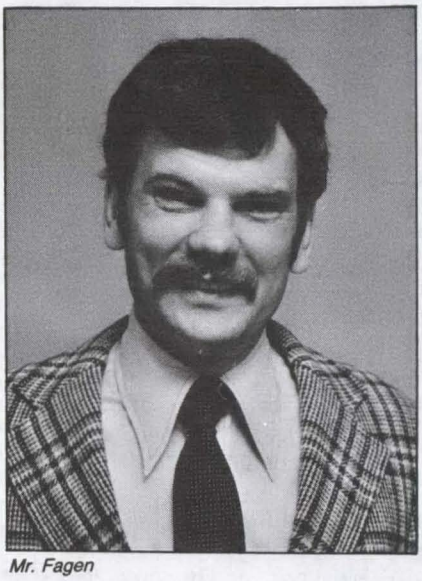
By
M. MICHAEL FAGAN
Associate Professor of Psychology
and
KENNETH AYERS, JR.
Assistant Professor of Criminal Justice
Department of Behavioral Sciences
Kentucky Wesleyan College
Owensboro, KY

Professors of the Street
Police Mentors

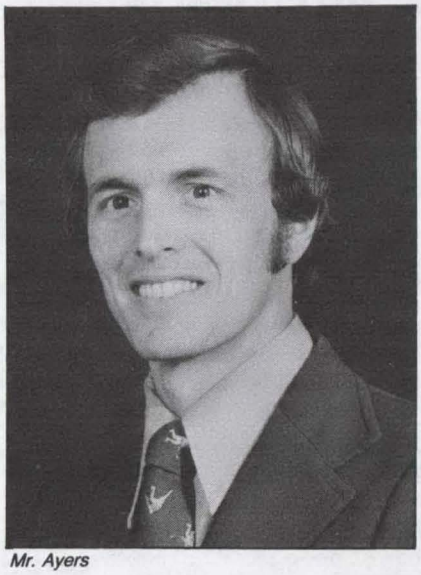
"Although police cadets train extensively for their occupation, training is not complete until they work the streets under the guidance of a seasoned veteran."

In Greek legend, Mentor was a loyal friend and wise advisor to Odysseus. In modern times, "mentor" has come to mean any wise advisor, especially an older, more experienced one. Although mentoring is an ancient practice, the concept has received a great deal of recent attention from two different circles. In developmental psychology, researchers who have studied the process of adult development have found that mentors facilitate the psychological growth of young adults.[1] In business management, researchers and practitioners have noted that beginning managers need mentors to succeed in the business world.[2]

Mentoring is also important in law enforcement. Although police cadets train extensively for their occupation, training is not complete until they work the streets under the guidance of a seasoned veteran. As one experienced patrolman advised, ". . . forget everything you learned in the Academy, 'cause the street is where you learn to be a cop.'"[3] Certainly this



Mr. Fagen



Mr. Ayers

advice is overstated, but the point is valid—classroom preparation is not enough. On-the-job experience, guided by a wise mentor complements good training.

Case Study

In *The New Centurions,* Joseph Wambaugh describes a good mentoring relationship.[4] Gus Plebesly, the young rookie, is paired with Andy Kilvinsky, a 20-year veteran. After meeting each other, they walk toward their patrol car, and Kilvinsky, pointing to the pictures of policemen killed in the line of duty, offers the following advice: "See those pictures, partner? These guys aren't heroes. Those guys just screwed up and now they're dead. Pretty soon you'll get comfortable and relaxed out there, just like the rest of us. But don't get too comfortable. Remember the guys in the picture." [5]

A few hours later Kilvinsky demonstrates the kind of knowledge that cannot be learned from a textbook. While the two officers investigate a forgery, a drunk woman says she was offered $10 to pass a bad check by a middle-aged black man of average size, wearing a red shirt. Kilvinsky circles the block twice and stops a man wearing a brown shirt who is neither middle-aged nor of average size. Much to the surprise of the rookie, he is their man.

After booking the suspect, Gus asks his partner how he knew, and the veteran gives the following explantion: "I don't honestly know how I knew. But I knew. At least I was pretty sure. The shirt wasn't red, but it wasn't green, either. It was a color that could be called red by a fuzzy-eyed drunk. It was a rusty brown. And Gandy (the suspect) was standing a little too casually there in the parking lot. He was too cool and he gave me too much of an 'I got nothing to hide' look when I was driving around eyeballing everybody that could possibly be the guy. And when I came back around he had moved to the other side of the lot but when he sees us he stops to show he's not walking away. He's got nothing to hide. I know this means nothing by itself, but these are some of the little things. I just *knew,* I tell you." [6]

Eventually Kilvinsky retires and rarely sees his former partner, but part of Kilvinsky remains with Gus. Wambaugh quotes Gus, now a veteran, explaining police work to his new partner. "You can't exaggerate the closeness of our dealings with people." said Gus. "We see them when nobody else sees them, and when they're being born and dying and fornicating and drunk. Now Gus knew it was Kilvinsky talking and he was using Kilvinsky's very words; it made him feel a little like Kilvinsky was still here when he used the big man's words and that was a good feeling." [7]

Wambaugh described the process of identification, an important part of mentoring. The protégé wants to be like his mentor and will eventually adopt some of his traits.

Research Study

For our study, we constructed a survey that asks subjects about their experiences as a protégé and as a mentor. (See fig. 1.) We sent the survey to about 150 police officers in Kentucky, Texas, and Pennsylvania. About 70 subjects returned usable

Figure 1

Sample Items from the Mentoring Survey

1. How do you feel about your current occupation? (check one)
   - ____A. I am very satisfied with my occupation.
   - ____B. Most of the time I like my work, but sometimes I get dissatisfied with my work.
   - ____C. Most of the time I am dissatisfied with my work.
   - ____D. I am very dissatisfied with my work.
   - ____E. Other: (If none of these statements come close to expressing how you feel about your occupation, please tell us in your own words.) ____
2. Think back to when you were first starting in your current occupation or beginning to train for the job. Which of these statements best describes your mentoring experiences? (check one)
   - ____A. When I first started this occupation, I became friends with a more-experienced person who took me "under his wing" and helped me out.
   - ____B. When I first started this occupation, I became friends with several experienced people who helped me out and one of them was especially influential.
   - ____C. I became friends with several experienced people who helped me get started, but no one person was especially influential.
   - ____D. None of the experienced people took a special interest in me.
   - ____E. Other: ____.
3. Did you "pick-up" or learn any of your mentor's characteristics? In other words, did you incorporate any of your mentor's traits into your own personality? (Check any trait(s) that you feel were learned from your mentor or strengthened by his/her example.) Check as many as appropriate.
   - ____A. Honesty
   - ____B. Frank and outspoken
   - ____C. Disciplined and hard-working
   - ____D. Dedication to job
   - ____E. Dedication to family
   - ____F. Patience
   - ____G. Persistence
   - ____H. Shrewdness
   - ____I. Political sophistication
   - ____J. Independence
   - ____K. Neatness
   - ____L. Tactfulness
   - ____M. Other: ____.

surveys. We also administered the survey to 87 nurses and 107 public school teachers to use as a comparison group.

The results of this study indicated that almost all (91 percent) rookie police officers had some mentoring, and about half of these received guidance from several veterans with no one person being especially influential (diffuse mentoring). Nurses and teachers did not differ from police in this respect. Most police mentors (80 percent) were veteran patrolmen, not high-ranking officers. Nurses, but not teachers, differed in this respect—head nurses had mentored on a regular basis.

Components

The literature suggests there are three components to a strong mentor/protégé relationship: 1) Coaching, 2) identification, and 3) friendship. Our survey included questions related to these components.

As coaches, the veteran police officers helped the rookies in the following ways:

1) Most protégé (76 percent) indicated that their mentor helped them gain self-confidence;
2) About 40 percent said that their advisor had listened to their ideas and encouraged their creativity;
3) About two-thirds said their coach helped them learn the technical aspects of police work; and
4) Almost half of the rookies said that their mentor helped them understand the administration of the department and taught them how to "work with people."

To measure the degree of identification, we asked, "In the early stages of your relationship, did you look up to this person and want to be like him (her)? Check one: A. Definitely yes, B. Somewhat, C. No." The majority (78 percent) of those police officers who had a mentor gave an A or B response, and 21 percent of this total identified strongly (A response). Nurses identified more intensely with their mentors than did police officers or teachers.

Responses to the survey indicated that 10 particular traits were strengthened through identification.

"'. . . forget everything you learned in the Academy, 'cause the street is where you learn to be a cop.'"

Some of those mentioned more frequently were dedication to the job, tactfulness, patience, independence, and honesty.

Thirty-six percent of the officers who had mentors considered them "very good friends," and another 37 percent said they were "rather friendly" with their mentors. Twenty-five percent indicated that they did not have a close personal relationship with their mentor. Although 73 percent of the police officers were friendly with their mentors, only 24 percent saw them socially. This pattern existed also for nurses and teachers.

Correlational Data

Using the Chi Square Test of Association, we correlated having a mentor with job satisfaction, rank, being a mentor, and job burnout. (We had to group the three occupations together for this analysis to eliminate empty cells.) The relationship between having a mentor and job satisfaction was significant, indicating that subjects who had a definite mentor were more satisfied with their work than those who either had no mentoring or diffuse mentoring. The relationship between having a mentor and being a mentor was also significant; those who had a mentor were much more likely later in their career to befriend and guide a novice.

There was no relationship between having a mentor and rank, and the relationship between having a mentor and job burnout was not in the predicted direction—those who had more than one mentor were more likely to burn out than those who had only one mentor or none at all.

The fact that many professionals from diverse settings reported similar mentoring experiences suggests that mentoring is flourishing. Among our sample, veteran police officers helped all but a small number of the newcomers. The remaining officers received either diffuse mentoring or the guidance of a special mentor.

We were concerned that the tough, independent image of the police officer hindered his receiving and giving help. However, in our study, mentoring was as prevalent in the police profession as it was in the two professions noted for their nurturing ability.

The positive relationship between mentoring and job satisfaction suggests the value of this process. The data on identification lends additional support to the value of mentoring. Any relationship that increases dedication, tactfulness, honesty, persistence, and independence should be encouraged.

In spite of these optimistic findings, there is still a need for improvement. For example, our data indicates that fewer supervisors are mentoring young officers (significantly more nursing supervisors are mentoring). Sergeants and lieutenants should take a more personal interest in their patrolmen.

Although more research is needed to clarify this point, we suspect that just "on-the-job mentoring" is not as beneficial as a more complete mentoring experience—one that includes professional, personal, and social influence. Therefore, we encourage a well-rounded mentoring approach that includes more than just professional matters.

Finally, there is that small, but vocal, minority in our police departments who have never had a mentor, do not want one, and do not intend to be one. This attitude was expressed by one of our subjects: "I've never really had a mentor, don't want one. I self-educated myself to this point, with problems, but I feel a more since (sic) of pride and the habits I have are my own and not related to the mentor process." This minority needs further attention.

Although most rookies are guided by mentors, some miss out on this process, and there is a great deal of inconsistency even among the best police mentors. In an effort to correct these two problems, many police departments have developed Field Training Officer (FTO) Programs.

FTO Programs

In a typical FTO program, the graduating cadet leaves the academy to ride with a veteran FTO who volunteers to "break in" the rookies on a regular basis. Most FTO's train for this position and receive incentive pay. The novice officer works with the FTO for a specified time period, usually between 3 to 6 months. The veteran teaches and evaluates his understudy on points of law, driving skill, departmental procedure, etc. At the completion of field experience, the FTO recommends termination from the department, another FTO experience, or advancement to solo officer status.

Although the FTO concept seems like a reasonable way to ensure good mentoring, there is always something lost when an organization formalizes a social experience like the mentor/protege relationship. In a preliminary study of five FTO Programs—Houston, TX, Jefferson County, KY, Fresno, CA, Fairfax County, VA, and

"Although some have critical police mentoring because it 'guarantees that the organization will not change over long periods of time,' we believe that mentoring is the culmination of good training."

Dade County, FL—three threats to good FTO mentoring were revealed, including too much standardization, too much evaluation, and too much authority.[8]

Consistency

There is a "catch-22" to the FTO concept. Police departments adopt FTO programs for various reasons, but two of the goals are somewhat conflicting. FTO programs are designed to standardize field training and to take advantage of the personal one-to-one relationship between a recruit and his FTO. If a department emphasizes the former, mentoring suffers; if the administration encourages a strong personal relationship and individual tutoring, field training is less consistent.

Some programs expect the FTO to take an individual approach. Although they expect a reasonable amount of consistency in field training, they encourage the FTO to use his unique, personal style and they emphasize the importance of personal discretion and expect the FTO to model sound decisionmaking. Other programs stress the development of skills and the learning of policies and procedures.

Evaluation

FTO programs must find a balance between evaluation and teaching. One of the purposes of the FTO program is to weed out incompetent police officers while they are still on probation. Every police chief knows how difficult it is to prove incompetence and fire the negligent officer. The FTO program provides the evaluation and documentation needed to do this; however, if this aspect of the program is emphasized, mentoring suffers. An observation made in the Fresno study was that "the evaluations and monitoring of the trainees' performance frequently precedes training. Trainees have stated that often when they are evaluated, they are not given the training needed to rectify errors. They perceive this activity as defeating the purpose of the Field Training Programs." [9]

If the FTO is perceived as a critical evaluator who can terminate a career before it really begins, the atmosphere is too tense for teaching or good mentoring. In a good mentoring relationship, the protege feels comfortable enough to ask questions.

The five FTO programs analyzed required at least weekly evaluations; all of the evaluations were thorough, covering driving skills, report writing, rapport with citizens, etc. The Jefferson County Department provides a 1-week "limbo period" with no written evaluation, with formal written evaluations beginning in the second week.

The Houston Police Department has modified their procedure to correct the evaluation problem. Initially, the Houston FTO's trained and evaluated their rookies for a 3-month period before recommending retraining, advancement, or termination. Most of the FTO's found the role of teaching incompatible with the role of evaluation, so the department trained a group of FTO's especially for evaluation. After 3 months of FTO teaching, the rookie rides with a new FTO who evaluates the trainee's performance for 2 weeks and then recommends retraining, advancement, or termination. This procedure enables the original FTO to work with the trainee in a more relaxed environment—one that is more conducive to mentoring.

Authority

The best mentor is between a parent figure and a peer—perhaps like a "big brother" or "big sister." [10] If the mentor is too much like a parent, the young adult does not have the freedom to grow.[11] By surveying police officers, nurses, and teachers, we found that senior colleagues served as mentors much more frequently than supervisors.[12]

Theoretically, this philosophy seems consistent with the FTO program where rookies are assigned to fellow patrol officers. But in practice, some FTO's wield too much authority over their understudy. This is partly due to over-emphasis on evaluation and screening and partly due to the personality characteristics of some FTO's. In any case, the result is poor mentoring.

The "inferior/superior syndrome" was seen as a serious problem in the evaluation of the Fresno FTO program. Although most FTO's were reasonable in their use of authority, some were not. Graduates of the FTO program have indicated the following:

1) "The field training officer/trainee relationship does not allow for much freedom of intercourse as the trainee is always subservient to the FTO who may or may not be on a power trip. . . ."
2) "Some (FTO's) were overbearing with God-like attitudes."
3) "FTO is very knowledgeable, however is very reluctant to help his 'inferior' trainee. I felt that his whole thing was to keep this trainee in constant turmoil, possibly to see if you could cut it." [13]

In summary, there are three major threats to the mentoring potential of the FTO program: An overemphasis on standardization, too much evaluation, and authoritarian FTO's.

Conclusion

Although some have criticized police mentoring because it "guarantees that the organization will not change over long periods of time," [14] we believe that mentoring is the culmination of good training. Police departments should encourage good mentoring by either facilitating informal mentoring or by developing sound FTO programs.

Some researchers and practitioners believe that mentoring cannot be forced or contrived. Therefore, some departments may choose to promote mentoring but not through an FTO program. Police administrators can improve informal mentoring in several ways, including:

1) Teach novice and veteran officers the importance of good mentoring. Provide them with good examples like Wambaugh's Kilvinsky.
2) Reinforce veterans who show a sincere interest in helping beginners. Praise, extra training, time off, and pay raises might be effective reinforcers.
3) Arrange the working environment so that it is conducive to veteran and rookie officers becoming friends. Promote after-work social activities, such as a bowling league, fishing trips, etc., where young officers can become friendly with veterans.
4) Sergeants and lieutenants should take a more personal interest in their rookies.

Although "chemistry" is important in mentoring, formal mentoring programs have worked well in many organizations, including police departments. Therefore, we recommend experimentation with FTO programs.

FTO programs strive for goals other than good mentoring and administrators must consider these factors. However, the following recommendations deserve serious consideration:

1) Do not stress standardization to the point where FTO's are unable to contribute their unique personality and style to the training of their understudy.
2) Do not overemphasize evaluation. Allow the trainees at least a one month "grace period" without a written, formal evaluation, or consider Houston's procedure—bring in new FTO's to do the formal evaluation at the end of the training period.
3) Do not allow authoritarian overbearing police officers to become FTO's.
4) Develop a battery of instruments to measure Erickson's [15] trait of generativity (a concern for the younger generation), and use this personality variable—along with other factors—to select FTO's.
5) Try to match FTO's with similar trainees. Experiment with an adjective checklist or an activities checklist. Pair a trainee with an FTO who responds in a similar manner on the checklist.
6) Trainees who represent a minority need *two* strong FTO's. For example, a female cadet should be assigned to a female FTO who can sympathize with her particular situation and to an understanding male FTO who can inform the rest of "the boys" that she is "ok."
7) Arrange and encourage outside social activities for FTO's to relate in an informal way with their trainees.

Something is always lost when one formalizes and structures a social phenomenon, like mentoring, but the loss need not be fatal. Sensitive administrators can operate FTO programs that capture many of the benefits of good mentoring.

FBI

Footnotes

[1] D. Levinson, et al., *The Seasons of a Man's Life* (N.Y.: Ballantine Books, 1978); G.E. Vaillant, *Adaptations to Life: How the Best and Brightest Came of Age* (Boston: Little, Brown and Co., 1977); A. Burton, "The Mentoring Dynamic in Therapeutic Transformation," *The American Journal of Psychoanalysis,* vol. 37, 1977, pp. 115–122.

[2] G.R. Roche, "Much Ado About Mentoring," *Harvard Business Review,* vol. 57, January–February 1979, pp. 14–28; E. Collins and P. Scott, "Everyone Who Makes It Has A Mentor: Interviews with F.J. Lunding, G.L. Clements, and D.S. Perkins," *Harvard Business Review,* vol. 56, July–August 1978, pp. 89–101; M.F. Cook, "Is the Mentor Relationship Primarily A Male Experience?" *The Personnel Administrator,* vol. 24, No. 11, November 1979, pp. 82–86.

[3] J. Van Maanen, *Wharton Magazine,* Fall 1976, pp. 49–55.

[4] J. Wambaugh, *The New Centurions.* (Boston: Little, Brown and Company, 1970).

[5] Ibid., p. 64.

[6] Ibid., p. 80.

[7] Ibid., p. 170.

[8] We studied the FTO Programs of Houston, TX, Jefferson County, KY, Fresno, CA, Fairfax County, VA, and Dade County, FL.

[9] *Fresno Police Department Field Training Program Evaluation* Accession No. 0990.00.063855 (Rockville, MD: National Criminal Justice Reference Service, 1979).

[10] Levinson, supra note 1 .

[11] Ibid.

[12] M. Fagen, and K. Ayers, *The Adult Development of Police Officers.* Paper presented at the meeting of the Academy of Criminal Justice Sciences, Oklahoma City, OK, April 1980.

[13] Supra note 9, pp. 26, 163–164.

[14] Supra note 3.

[15] E.H. Erickson, Childhood and Society (New York: W.W. Norton, 1950).

Interstate Identification Index

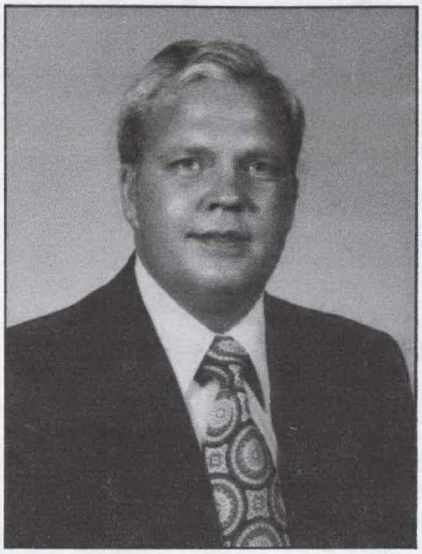
"Establishing a national system to provide automated criminal history information requires considerable effort and close coordination with many agencies."

By
EMMET A. RATHBUN
Supervisory Management Analyst
National Crime Information Center
Federal Bureau of Investigation
Washington, DC

Criminal arrest records concerning 9 million individuals are presently accessible through the FBI's National Crime Information Center (NCIC). In most cases, the requested records are provided in minutes. This rapid availability is proving to be invaluable to investigators, prosecutors, courts, and other users of NCIC. A cooperative Federal/State effort known as the Interstate Identification Index (III) is making possible this record exchange. The III concept would decentralize the FBI's record keeping responsibility by making the States primarily responsible for record maintenance and dissemination. Agencies using the relatively new system have acclaimed it as one of the greatest new assets since NCIC was initiated in 1967.

Twenty State identification bureaus are either participating in III by assuming responsibility for dissemination of their records or are actively working toward participation. When NCIC receives an online request for a record originated in one of these States, NCIC automatically sends a message to the State computer so the State can respond directly to the requesting agency. The State identification bureaus are located in California, Colorado, Florida, Georgia, Idaho, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wyoming. The FBI provides records for all other States, Federal agencies, the District of Columbia, and U.S. possessions. Limited data from some foreign countries are also provided.

Establishing a national system to provide automated criminal history information requires considerable effort and close coordination with many agencies. The records originate from more than 17,000 arresting agencies in the United States, as well as from some foreign countries (which submit data to the FBI when a U.S. citizen is arrested). Records are supported by information on a criminal fingerprint card completed at the time of arrest. In the 20 participating States, the fingerprint cards are first submitted to a State identification bureau for processing and the assignment of a State identification number. Two cards are forwarded for each individual so that one can be retained at the State level while the other is sent to the FBI Identification Divison. If no prior record is on file, the FBI assigns an FBI number and a new record is established in the Identification Division computer. A corresponding index record also is created in the NCIC III identifying the State of origin that will provide the record upon request. For arrests in other than the 20 participating States, a III record is established with the FBI as the agency responsible for providing the record.



Mr. Rathbun

The use of III has increased by more than 25 percent during the last year as Federal, State, and local agencies become more familiar with the system's capabilities. Over 500,000 inquiry transactions are processed each month. The majority of these are "name checks" used to determine if a person has a criminal history. On the average, a positive response is provided for one out of four inquiries. The responses include identification information such as an individual's name, aliases, place of birth, physical description, scars, marks, and tattoos, identifying numbers, and fingerprint classification. Based on this data, the person making the inquiry determines whether the record can be associated to the individual being inquired upon. (About 9 percent of the positive responses will contain multiple records with similar names, birth dates, sex, and race.)

Inquiry transactions are processed at a remarkable rate by the NCIC computer. The time required to search the 9 million records (more than 20 million names and aliases) is about ¼ of a second.

In addition to inquiry capability, the III provides a means for authorized NCIC users to obtain criminal history records by using a computer terminal. Record requests must contain the unique FBI number or State identification number assigned to an individual. NCIC users obtain these numbers either from a III "name check" or from criminal records previously obtained in response to a fingerprint card submission. More than 50,000 criminal histories are provided monthly through the III.

For an NCIC user, requesting a record is simply a matter of transmitting a message from a terminal and waiting for the response to be returned (usually within a few minutes). The actual process of providing the record is more complex and involves as many as seven or more computers located in various parts of the country. (See fig. 1.)

The Concept

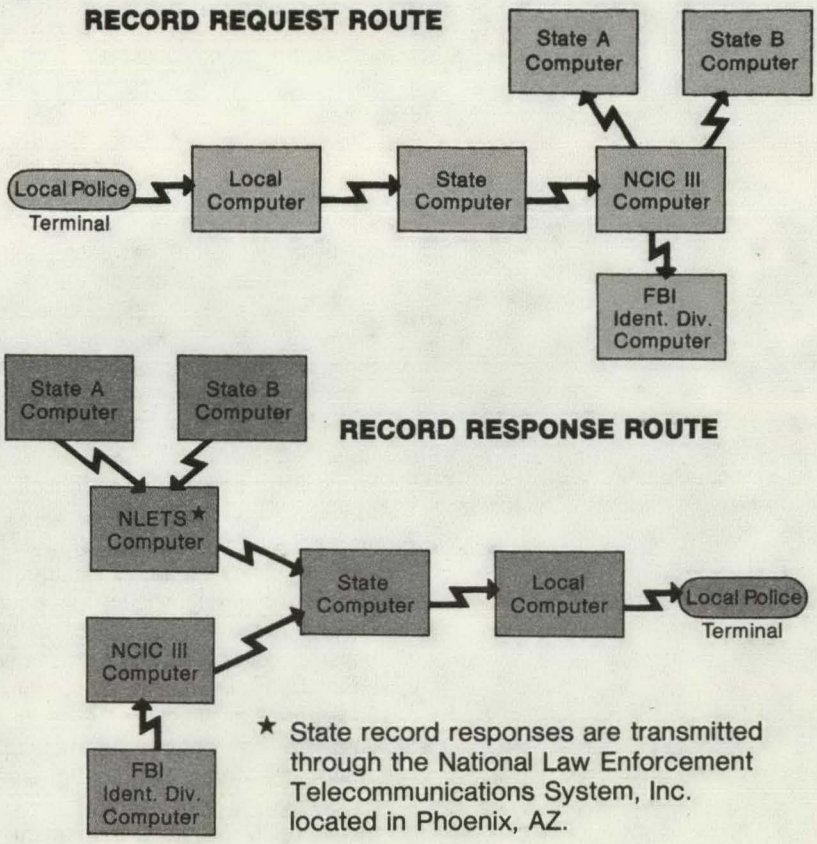
The FBI's involvement with III began in April 1978, when a formalized concept was developed by a "working group" of NCIC users. The group met to discuss a means of eliminating the FBI arrest records that duplicated those kept at the State level.

With the NFF, fingerprint contributors would channel fingerprints through State identification bureaus for processing. Two cards would be forwarded when the contributor was uncertain whether the person had a prior record established with the FBI. One card would be retained at the State level and the other sent to the FBI Identification Division. When the contributor was certain that an arrestee had a prior record with the FBI, only one set of fingerprints would be submitted to be used for updating the State file. Thus, the States would become the primary record holders with the FBI serving as a national index. The III system would provide for the interstate exchange of records.

Three phases were eventually developed to test the feasibility of the III concept; two phases have now been completed. The first phase tested the exchange of single-state records (representing persons arrested in only one State); the second phase tested the exchange of multistate records (representing persons arrested in more than one State); and the third phase to be tested will be the Nation-

al Fingerprint File (discontinuing the sending of fingerprints to the FBI for the second and subsequent arrests). At the end of phases one and two, an evaluation was made concerning the operational/technical, fiscal, managerial, and political impacts of the program.

Figure 1



PHASE I

Phase I began in June 1981, using records of persons arrested only in Florida. The test was expanded in February 1982, to include five additional States with about 1.25 million records being made available in the test file. These records had previously been available from the NCIC computerized criminal history file. This testing demonstrated that State records could be exchanged interstate through the use of a central index in NCIC.

Existing systems and resources were used during the first phase to minimize the fiscal impact. Summarized criminal records were provided online by the States. Since Congress had prohibited the use of NCIC for relaying messages from State to State, these records were provided to the requesting terminal via the National Law Enforcement Telecommunications System, Inc. (NLETS). When requested, more detailed records were provided by mail. About 80 percent of the user agencies expressed satisfaction with the service provided during this first phase.

PHASE II

Based on user comments during the first test and other test findings, a plan was devised to conduct a second phase test of III. The online summary record was replaced with an NCIC III response providing only identification information and the location of the criminal history. A separate transaction was used to request records from the State and Federal files. Participating States were required to respond with records of sufficient detail to satisfy the majority of agency needs. A revised Federal record was developed to serve the same purpose.

PHASE II testing began in February 1983, with records being provided by 14 State agencies and the FBI. A greatly enlarged III data base was created by merging the index records from phase I with additional index records computerized in the FBI Identification Division. More than 7 million individuals were initially represented in the test file. A revised name matching technique was installed in III to accommodate the enlarged file and to increase responsiveness to inquiries.

Through an extensive computer matching process, the index records were correlated with corresponding State records. About one-half of the records available during this phase could be provided automatically by the NCIC or State computers. The remainder could be requested online with an NCIC transaction, but the response was mailed by the FBI and two of the State participants. The mailing of records was considered to be an interim procedure pending the test results and completion of additional automation capabilities.

Among the questions to be answered by this test was whether users would be satisfied with receiving parts of multistate records from different sources at different times in different formats. During May and June 1983, the FBI sent more than 2,000 survey messages to agencies receiving the III multistate record responses. About one-half of the surveys were returned. According to the survey results, most of the records (73 percent) were requested for criminal investigation pur-

poses. The second greatest use (7 percent) was for bail/bond hearings. Ninety-six percent of the users reported their needs were satisfied by the record responses.[1] Generally, the user comments were overwhelmingly favorable regarding the information being obtained via III.

One user stated that "the III system is the greatest help that NCIC has come up with. I, as well as others in my department, appreciate it very much."

Two side benefits became apparent during the second phase that exceeded all expectations. First, there was improved data quality made possible by the computer matching of State and national records. Discrepancies between the files were identified, studied, and resolved improving the quality of thousands of records. Second, there was substantial cost savings realized by State agencies participating in the program. The State computer interface with III provided automatic update capability of the State file for newly assigned FBI numbers. This feature replaced the mailing of forms and eliminated the manual matching and data entry previously performed by State personnel.

Present Status

After the favorable evaluation of the second III test, the FBI invited all other States to join the III program and begin furnishing their State records. So far, Idaho, Ohio, and Oregon have become active participants. During September 1984, the records of the FBI Identification Division were made accessible online, eliminating the mail delay. Of the two States that still mail records in response to a III request, one State should be able to provide automated records later this year.

System Security

The FBI shares NCIC management responsibilities with control terminal agencies that service users under their supervision. An example of such an agency would be a State police organization which connects many local departments to NCIC through a State computer. Control terminal agencies sign written agreements with the FBI which state they will conform to the rules, policies, and procedures governing III operations. These agencies, in turn, prepare and execute similar agreements with users they service. All agencies are thereby bound to a set of guidelines regulating who may access III, the authorized uses of the system and derived data, the required minimum security measures, etc.

Computerized access tables are maintained in the NCIC and the systems operated by control terminal agencies. The tables are used to restrict agencies from accessing III if there is not a signed agreement and to allow access only through authorized communication lines.

There is written and/or computerized logging of all transactions to assist in the auditing of user agencies and in the investigation of alleged system misuse. Whenever there is a known violation of either security or record dissemination requirements, the offending agency's ability to access III is suspended. Reinstatement may be made upon satisfactory assurance that the violation has been corrected.

At least twice a year, records in III are synchronized and validated with the corresponding State records. To accomplish this process, the FBI provides a computer tape to each State which contains the III records indexed for the State. The State then compares and validates its records accordingly.

Restricted Use of the System

During the first two phases of III testing, the use of records was restricted to only criminal justice and criminal justice employment purposes. This restriction was necessary because of conflicting State laws and policies regarding the dissemination of records for other employment and licensing purposes. Uses of III along with the feasibility of the National Fingerprint File, are to be addressed in the phase III, due to begin in 1985. Two contractors to the FBI are performing the preliminary analysis of State and Federal agency use of criminal records for noncriminal justice purposes.

Conclusion

The III concept for the interstate exchange of criminal records has been tested successfully through two phases of development. Local, State and Federal use of the system is increasing. Pending the design of a third phase test, the III will continue to provide records for authorized NCIC users.

Each month, more than 60,000 new records are added as persons are arrested for the first time. At this rate, the File will represent about 13 million individuals by the end of 1990 and will include everyone age 34 or younger with an arrest record identified by fingerprints on file with the FBI.

FBI

Footnote

[1] A report on the findings and recommendations concerning the second phase test may be requested from the FBI, National Crime Information Center, Washington, DC 20535.

Criminal Codes and Ciphers
What Do They Mean?

By
JACQUELINE TASCHNER
Cryptanalyst
and
ARTHUR R. EBERHART
Special Agent
Laboratory Division
Federal Bureau of Investigation
Washington, DC

Cryptology, the study of secret writings, covers a broad spectrum of human activity. As long as man has been able to read and write, he has wanted or needed to keep some of these writings secret. Whatever can be written can be encrypted, abbreviated, over simplified, or just plain mangled. However, the services of a cryptanalyst may be required to determine the meaning of these writings.

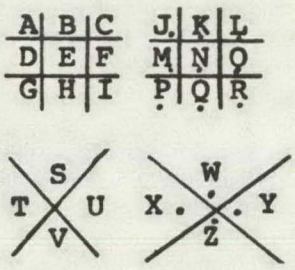
The FBI Laboratory examines such puzzles, ranging from highly sophisticated cipher systems to documents containing "meaningless" cryptic notations. Laboratory personnel apply the principles of cryptanalysis not only to clandestine business records related to gambling but also to suspected criminal documents from prostitution, loansharking, and drug cases. These specialized examinations are a blend of cryptanalysis and analysis based on specific knowledge of different illicit business transactions.

Examination of Criminal Documents

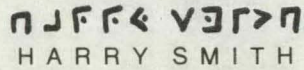
Most "bookie codes" are simple substitution codes. The bookmaker disguises the true meaning of his records by simply substituting an abbreviation, symbol, and/or shortened form of the word or words. For example, a horse bookmaker may record wagers placed on different horse races at New York's Aqueduct Racetrack by merely using the horse's numbers, race numbers, and the letter "A." The notation "3A7 2 JD" would represent a $2 wager made by John Doe on Horse #7 running in the third race at Aqueduct. (See fig. 1.)

Sports bookmakers often record sports wagers using the team numbers printed in different sports publications. For example, the notation "14–500" seen in figure 2 means a $500 bet was placed on the Philadelphia Stars.

Bookmakers have also relied on a very old "masonic cipher" to disguise important information as unintelligible symbols. This system uses two tic-tac-toe diagrams and two "X" patterns to represent the letters of the alphabet:



When a bookie enciphers the name "Harry Smith" using this system, it appears as:



While an investigator may be baffled by these symbols, a trained cryptanalyst could decipher it with little effort.

Besides these simple substitution ciphers, gambling jargon, which itself is a form of code, can be decrypted by a cryptanalyst. Solving these simple codes is based on the common characteristics of gambling records, fundamentals of cryptanalytic procedure, and the use of reference materials, such as the *Daily Racing Form* and sports schedules.

Concealing bettors' and other bookmakers' telephone numbers has long been a major concern of illegal bookmakers. If most of the telephone numbers are from the same town having a single telephone prefix, deleting the first two digits of the telephone number may be enough to fool the untrained eye of the investigator. For example, Harry Smith's telephone number, 752–0321, in Wellstown will be recorded as "20321." The bookmaker knows that all the Wellstown prefixes are 752.

A more complex telephone number cryptosystem uses an additive (a series of numbers added to one or all of the digits in the telephone number). For example, a series of 1's

"As long as man has been able to read and write, he has wanted or needed to keep some of these writings secret."

Figure 1 Horse race bets

JD

3 A7 2

John Doe (Bettor)

Wager
3rd race at Aqueduct
Horse #7
$2.00 to win

MS

4 B3 44

5 B1 222

7 B9 XX2

(16)

Mary Smith (Bettor)

Wagers
4th race at Bowie
Horse #3
$4.00 to win, $4.00 to place

5th race at Bowie
Horse #1
$2.00 to win, place and show

7th race at Bowie
Horse #9
$2.00 to show
(no win or place bets)

$16.00 total wager

can be added to the telephone number given for Harry, making the notation in an address book "Harry 863-1432." However, that number could be nonexistent, and the investigator would not easily associate this phony number with the true bettor, Harry Smith, without the help of a cryptanalyst.

The telephone itself provides a simple substitution system which the bookie can use to record telephone numbers. One of three letters printed above a digit may be used to represent that particular number. However, since "1" and "0" have no such designations, the letters "Q" and "Z," respectively, are used as cipher equivalents for these digits. (See fig. 3.) This system provides variants which help disguise the substitution process. Thus, Harry's telephone number, 752-0321, would be recorded as "PJAZECQ."

A more-sophisticated telephone number encryption system uses a 10-letter keyword having no repeated letters. One letter is substituted for each digit from 1 through 0. Using the keyword "CUMBERLAND," the bookie will encipher Harry's telephone number as "LEUDMUC:"

Keyword	C U M B E R L A N D
Digits	1 2 3 4 5 6 7 8 9 0

752-0321	Harry's true telephone number
LEU DMUC	Encrypted number found in the bookie's notes

The cryptanalytic attack on records containing such enciphered telephone numbers involves identifying the 10 letters, LEUDMC plus ABNR (developed through other tele-

Figure 2

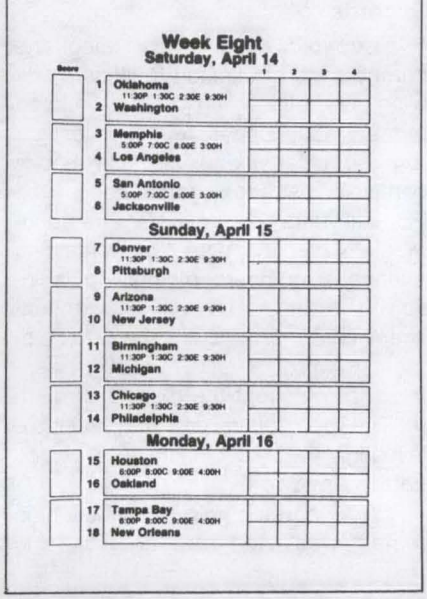


Figure 3 Telephone dial and letter equivalents

(Q)	ABC	DEF
1	2	3
GHI	JKL	MNO
4	5	6
PRS	TUV	WXY
7	8	9
	(Z)	
	0	

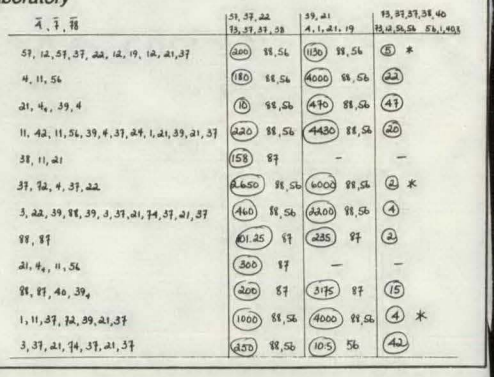
Harry's telephone number:

752-0321

Encrypted numbers:

PKA ZFCQ
RJB ZEBQ
SLC ZDAQ
PJA ZDAQ, etc.

Figure 4 Portion of evidence seized in PCP laboratory



phone numbers). These 10 letters are then anagrammed (rearranging the letters to form a readable word or words) by pairing letter combinations frequently used in the English language, such as ER and AND. Through trial and error, the cryptanalyst will anagram the correct keyword. Proof of the accuracy of the keyword comes from the criss-cross directory [1] and local telephone books.

Examination of Drug-related Records

Keyword systems for telephone numbers are not limited to illegal gambling operations. In a drug-related money laundering scheme, investigators sent telephone address books containing strange notations to the FBI Laboratory for analysis. The documents were suspected of containing telephone numbers of individuals involved in the operation. Subsequent examination determined the letters of the keyword, MONEYTALKS, were used to represent the digits 1 through 0. The decryption provided valuable investigative leads useful in breaking up this operation.

A more-complex substitution system was used in a drug case in which a chemist tried to disguise the records of his clandestine phencyclidine (PCP) laboratory. When Drug Enforcement Agency agents raided the laboratory, they located notebooks containing page after page of one- and two-digit numbers. (See fig. 4.)

From the decryption, a chart could be constructed showing the relationship between the numerical cipher text equivalents and the plain text letters. This substitution chart was:

1	3	11	19	37	55	87	4	12	20	38	56	88
A	B	C	D	E	F	G	H	I	J	K	L	M
21	39	57	89	22	40	72	23	41	73	24	42	74
N	O	P	Q	R	S	T	U	V	W	X	Y	Z

With this information, the cipher is readable, but the analysis was only partially completed. The reconstruction of the key (used to remember the system) was then required. Analysis of the substitution numbers revealed a pattern when the numbers were regrouped as follows:

1
3 4
11 12
19 20 21 22 23 24
37 38 39 40 41 42
55 56 57 72 73 74
87 88 89

With these types of patterns, the cryptanalyst must focus on the case to determine why they occur. Since this was a drug case involving a chemist, chemistry or chemicals would be a good starting point. With a little research into basic chemistry, the pattern was found to resemble the structure of the standard Periodic Table of Elements. The "atomic numbers" of the elements in the first column are the same as the first seven equivalents in the cipher alphabet:

Atomic Number	1	3	11	19	37	55	87
Letter	A	B	C	D	E	F	G

The atomic numbers for the first six columns of the periodic table were used as the key for the ciphers. (See fig. 5.) A periodic table hanging on the wall by the chemist's workbench supported this hypothesis.

Even so, examination of this material had yet to be completed. The decrypted notebooks contained detailed records concerning the scope and financial picture of the illegal PCP manufacturing operation. These documents revealed:

1) The various chemicals used to make PCP,
2) The actual quantities of each chemical needed per batch,
3) Notations indicating that one batch of PCP was made per week,
4) The current inventory of chemicals,
5) Calculations of how long the supply of each chemical would last,
6) What chemicals were "on order" and from which chemical suppliers,
7) Dates that chemical orders were sent and anticipated delivery dates,
8) A cost breakdown per batch of PCP (by individual chemical price),
9) Notations for "rent" ($100) and the chemist's "minimum salary" ($1,000), and
10) Profit calculations per batch, based on a minimum sale price of $800 per lb.

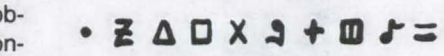
These financial records were also compared to other accounting records found during the investigation. The common notations were traced through three separate accounts, indicating a conspiracy.

As can be seen, a drug importer or dealer disguises the true meaning of his records in the same way as a bookie—by simply substituting an abbreviation, symbol, and/or shortened form of a word or words. The record of a drug sale usually would not contain the clearly incriminating message, "One kilogram of cocaine sold to John Doe for $58,500 on January 1, 1983." The record might more commonly be written "1k JD 58.5 1/1."

Cryptanalysts are able to derive a wealth of information from the jottings of a drug dealer or trafficker. They can tell what kinds of drugs are involved in the operation, the extent of the operation (the quantity of drugs involved, the number of people involved, and the amount of profit obtained), possible evidence of a conspiracy, and other information that may be useful to the investigator.

Prosecutors also benefit from this information as well. In one case, a man accused of dealing heroin claimed he was only a user. When the transaction records were submitted to the FBI Laboratory for examination, the cryptanalyst determined that the accused had bought over 7,000 "bindles" of heroin, worth almost $500,000, in just a 6-month period. Thus, the cryptanalyst's testimony in court was helpful in successfully prosecuting the man as a dealer, not a mere user.

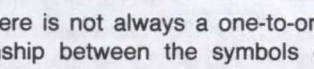
Sometimes ledgers and records cannot be identified as drug-related because they are incomplete or sparse. For example, three encrypted ledger pages were sent to the FBI for examination. The ledgers contained a simple substitution cipher, where the digits in the ledger were replaced by symbols in the following manner:



1 2 3 4 5 6 7 8 9 0

While the cryptanalyst was not able to say that the records were the type found in a cocaine-trafficking operation, subsequent testimony revealed the clandestine nature of the records and the criminal intent (by concealment) of the defendant.

There is not always a one-to-one relationship between the symbols or letters in a ledger and the digits they represent. Sometimes, a character can represent a specific amount. For example, figure 6 shows a piece of paper seized in a prostitution investigation. When decrypted, the following equivalents were found:



50 20 15 10 5 1

Figure 5 The periodic table of the elements

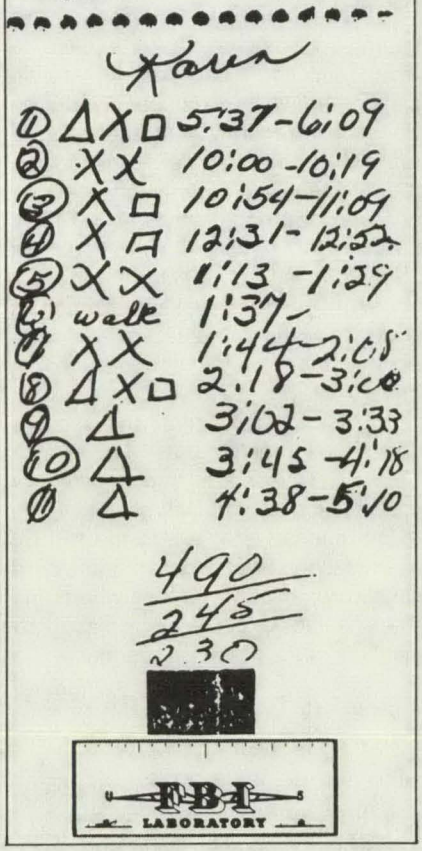
Representative Elements

IA																	O
H												IIIB	IVB	VB	VIB	VIIB	He
1	IIA					Transition Elements											2
Li	Be											B	C	N	O	F	Ne
3	4											5	6	7	8	9	10
Na	Mg						VIII			IB	IIB	Al	Si	P	S	Cl	Ar
11	12	IIIA	IVA	VA	VIA	VIIA						13	14	15	16	17	18
K	Ca	Sc	Ti	V	Cr	Mn	Fe	Co	Ni	Cu	Zn	Ga	Ge	As	Se	Br	Kr
19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
Rb	Sr	Y	Zr	Nb	Mo	Tc	Ru	Rh	Pd	Ag	Cd	In	Sn	Sb	Te	I	Xe
37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54
Cs	Ba	*	Hf	Ta	W	Re	Os	Ir	Pt	Au	Hg	Tl	Pb	Bi	Po	At	Rn
55	56	57–	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86
Fr	Ra	†															
87	88	89–	104	105													

Inner Transition Elements

*	La	Ce	Pr	Nd	Pm	Sm	Eu	Gd	Tb	Dy	Ho	Er	Tm	Yb	Lu
	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71
†	Ac	Th	Pa	U	Np	Pu	Am	Cm	Bk	Cf	Es	Fm	Md	No	Lr
	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103

Figure 6 Scrap of paper seized in prostitution investigation



The remaining records were analyzed to determine the scope of the business, the number of employees, their roles, and the gross and net revenues. The "490" shows the amount of money earned by "Karen," half of which was given to the "house." From the $245 Karen earned that day, $15 was paid to rent the room, a notation that consistently appeared in the records.

Occasionally, mysterious notations are completely innocent. When investigating a theft of valuable antiques, police found the following strange notation on the front door of the house adjacent to the burglary location:

HFIOIR
ATMHCE
OPLOLS
ETC-TI
ISN$G6
50

Some clever paperboy almost became implicated in the crime. However, when deciphered by rearranging the letters, the note read: HI I AM COLLECTING FOR THE POST—IS $650 (sic). This is a variation of the "rail fence" cipher, so named because the plain text resembles the slats of an old rail fence when completely written out.

Conclusion

Investigative personnel are encouraged to consult with a cryptanalyst regarding dubious records or documents. Cryptanalysts do more than work on the conspicuous, unintelligible jottings of a criminal. Major conspiracy networks, like all organizations, depend on communications. Because of the illegal nature of the work, the correspondence may be disguised by a cipher system, and the cryptanalyst could help an investigator to get the full value of evidence obtained.

Because of the unique nature of the examinations and services provided by the FBI Laboratory and the variety of evidence which may be encountered, it may be appropriate to contact the Laboratory to resolve any questions which arise by writing:

Director, FBI
Attn: Laboratory Division
Document Section
Washington, DC 20535

The services of the FBI Laboratory are available to all Federal agencies, U.S. attorneys, and military tribunals in both criminal and civil matters. These services are also available to all duly constituted State, county, and municipal law enforcement agencies in criminal investigative matters. Expert witnesses are also available to testify in judicial proceedings.

FBI

Footnote

A criss-cross directory is a book which lists information on published telephone subscriptions. The directory is often organized in three parts: By telephone number, subscriber, and address. These three sections can easily be cross-referenced to yield other investigative information.

Finetuning *Miranda* Policies

". . . officers should be advised that once they have decided that an arrest is going to take place, they should not continue with the questioning without first complying with *Miranda*."

By
CHARLES E. RILEY, III*
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, VA

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

In 1966, the Supreme Court ruled in *Miranda* v. *Arizona* [1] that before a confession obtained through custodial interrogation could be used at trial, the government first had to prove that the defendant had been advised of, and waived, certain specified rights.[2] Although the holding in *Miranda* was limited to situations where both custody and interrogation existed simultaneously, it was uncertain in 1966 how the courts would define custody for purposes of applying the rule. Because of this uncertainty, many law enforcement agencies adopted broad warning and waiver policies that require compliance with *Miranda* prior to any interview of a suspect in a criminal case, regardless of whether the suspect is under arrest or otherwise deprived of his freedom of action at the time of the interview.

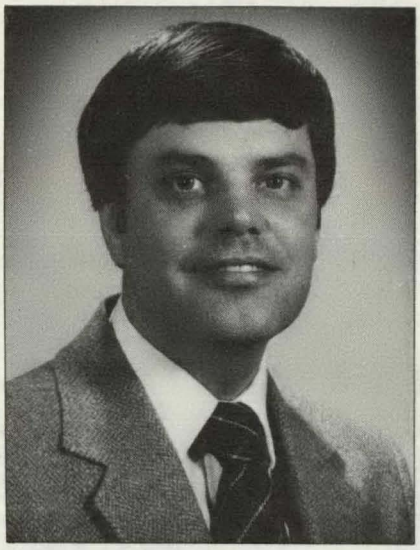
Broad warning and waiver policies, like the one described above, were justified in the late 1960's and early 1970's because of the uncertainty surrounding the proper parameters of the *Miranda* rule. However, in light of a series of Supreme Court decisions spanning the last 8 years, it is now clear that such policies are much broader than the law requires.

Post-*Miranda* Cases Defining Custody

In *Beckwith* v. *United States*,[3] agents of the Internal Revenue Service interrogated the defendant, a taxpayer who was the "focus" of a tax fraud investigation. Prior to the questioning, he was advised that he had a right to remain silent, that any statement made could be used against him, and that he was free to consult with counsel before the interview. He was not told that he had a right to an appointed attorney. He declined to exercise those rights, furnished incriminating statements and records, and was subsequently convicted. On appeal to the Supreme Court, he alleged that the IRS agents failed to comply with *Miranda* in conducting the interview.

The Court found that the agents were not bound by *Miranda* and that to apply the *Miranda* rule in those circumstances would separate the rule from its own explicitly stated rationale. *Miranda* application depends on *custodial* police interrogation, questioning in a coercive, police-dominated atmosphere. The idea that interrogation in a noncustodial setting, where the investigation has focused on a suspect gives rise to the *Miranda* requirement, was rejected. Moreover, the Court quoted with approval the view of a Federal appellate court that it is

*Special Agent Riley is now assigned to the Chicago Office.



Special Agent Riley

the compulsive aspect of custodial interrogation, and not the strength of the government's suspicions, which governs the application of *Miranda.* Thus, it is not the status of the interviewee—whether subject, suspect, or focus—but rather the coercive circumstances of the questioning that controls.[4]

In a 1977 *per curiam* opinion, the Court further emphasized that something more than suspicion or focus is necessary before *Miranda* applies. In *Oregon* v. *Mathiason,*[5] the defendant was asked to come to the State patrol office for an interview with an officer investigating a burglary. The suspect was told he was not under arrest but was believed to have participated in the burglary. He was not given *Miranda* warnings. He confessed and was convicted. On appeal, the Oregon Supreme Court reversed the conviction, finding that the defendant was interviewed in a "coercive environment" (i.e., custody) and *Miranda* applied. The court concluded that since the officer failed to give the warnings and obtain a waiver, the confession should have been inadmissible. The U.S. Supreme Court disagreed. The Supreme Court pointed out that the defendant was not formally arrested, nor was his freedom of action restrained in any significant way, and that without such factors, *Miranda* simply does not apply. Part of that decision is especially pertinent:

> "Any interview of one suspected of a crime by a police officer will have coercive aspects to it simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited." [6]

More recently, the Supreme Court again addressed the issue of custody for purposes of *Miranda.* In *California* v. *Beheler,*[7] the defendant, Jerry Beheler, and several acquaintances attempted to steal a quantity of hashish from one Peggy Dean, who was selling the drug in the parking lot of a liquor store. Dean was killed by Beheler's companion and stepbrother, Danny Wilbanks, when she refused to relinquish the drugs. Shortly thereafter, Beheler called the police, who arrived almost immediately, and told the police that Wilbanks had killed the victim. Later that evening, Beheler voluntarily agreed to accompany the police to the station house and was specifically told that he was not under arrest.

Beheler was interviewed at the station house and told the police what had occurred that day. The interview, which was not preceded by a warning and waiver of *Miranda* rights, lasted approximately 30 minutes. At the conclusion of the interview, Beheler was permitted to return home with the understanding that his statement would be reviewed by the district attorney. Five days later, Beheler was arrested for aiding and abetting first-degree

". . . in determining where custody is present for purposes of *Miranda,* the inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest."

murder. He was advised of his *Miranda* rights, which he waived, and gave a taped confession. Both confessions were used against him at trial, and he was convicted.

The California Court of Appeals reversed Beheler's conviction, holding that the first interview with police at the station house constituted custodial interrogation, which activated the need for *Miranda* warnings. In finding custody, the court noted that the interview took place in the station house, Beheler had already been identified as a suspect in the case, and the interview was designed to produce incriminating responses.

In reversing the California Court of Appeals decision, the Supreme Court, in a *per curiam* opinion, followed its previous holding in *Oregon v. Mathiason* [8] and ruled that in determining whether custody is present for purposes of *Miranda,* the inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. Holding there was no such restraint in this case, the Court noted that *Miranda* warnings are not required simply because questioning takes place in the station house or because the questioned person is one whom the police suspect. Finally, the Court stated that the amount of information the police have concerning a person who is to be questioned, and the length of time between the commission of a crime and a police interview, are not relevant to the issue of whether custody exists for purposes of *Miranda.*

Although the above decisions establish that *Miranda* was not intended to apply to all interrogation situations, they create somewhat of a dilemma for law enforcement agencies. On the one hand, broad warning and waiver policies are easily understood and applied by law enforcement officers. These positive features are enhanced by the fact that confessions are never suppressed because *Miranda* warnings are given too early—just too late. On the other hand, law enforcement officers understand that certain crimes may go unsolved and criminals unpunished if suspects are advised of their rights in situations where persons are not legally entitled to the protections afforded by the *Miranda* rule.

Law enforcement administrators, in conjunction with agency legal advisors and prosecutors, must balance the above factors before deciding on an appropriate departmental warning and waiver policy. Some agencies have weighed these factors and decided to retain broad warning and waiver policies, while others have decided to modify their policies to bring them more in line with *Miranda* and its progeny. The remainder of this article discusses legal issues concerning interrogations that law enforcement agencies should consider when promulgating or modifying warning and waiver policies. It also suggests approaches that can be used to help minimize legal problems that may subsequently arise in connection with these policies.

Formulating a *Miranda* Policy for Interrogations

Establishing a warning and waiver policy that conforms with the post-*Miranda* cases discussed above appears on its face to be a simple task. A policy that provides for compliance with *Miranda* only when a suspect is to be interrogated after he has been formally arrested or otherwise significantly restricted in his freedom of movement meets the standard enunciated by the Supreme Court in *Beckwith, Mathiason,* and *Beheler.* It does not, however, provide practical guidance to police officers who must apply the policy to varying fact situations. A *Miranda* policy should never be written in such detail that it becomes overly cumbersome and therefore difficult to remember and apply. But, it should address with some specificity how the policy applies in the most commonly recurring fact situations faced by officers.

Arrests

The logical starting point for a warning and waiver policy is the statement that officers must comply with *Miranda* before they interview a suspect who is under arrest or otherwise incarcerated. However, even this clearly worded policy leaves unanswered several questions frequently raised by police officers. For example, does this policy apply where the purpose of a custodial interview is to elicit statements concerning crimes other than those for which the interviewee was arrested? Must State and local officers comply with *Miranda* when the person to be interviewed has been arrested by Federal authorities and vice-versa? Does it apply in emergency situations where the police need quick answers to questions in order to prevent possible harm to themselves, fellow officers, or members of the public? Finally, does this policy apply to all arrests, or only those where the suspect has been arrested for a felony? All of these frequently asked questions have been addressed by the Supreme Court, and the answers should be incorporated into departmental *Miranda* policies.

". . . the availability of the [safety] exception does not depend on the motivation of the individual officers involved, but is limited by the emergency circumstances that justify it."

In *Mathis* v. *United States,*[9] the defendant was convicted by a jury in a U.S. district court on two counts of knowingly filing false claims against the Government in violation of Federal law. Part of the evidence on which the conviction rested consisted of documents and oral statements obtained from the defendant by a Government agent while the defendant was in prison serving a State sentence. Before eliciting these statements, the Government agent did not warn the defendant of his rights. Appealing his conviction to the Supreme Court, Mathis argued that his statements were used against him in violation of *Miranda.* The Government countered by arguing that *Miranda* did not apply because the defendant had not been put in jail by the officers questioning him, but was there for an entirely separate offense. Finding these distinctions "too minor and shadowy to justify a departure from the well-considered conclusions of *Miranda,"* the Court reversed Mathis' conviction. As can be seen from this decision, in applying *Miranda,* the Supreme Court is not concerned with why a person has been arrested or by whom. It is the coercive aspect of custody itself, when coupled with police interrogation, that triggers the protections afforded by the rule.

With respect to emergency situations and the applicability of *Miranda,* on June 12, 1984, the Supreme Court recognized a "public safety" exception to *Miranda.* In *New York* v. *Quarles,*[10] a New York officer entered a supermarket to locate an alleged rapist who was described by the complainant as having a gun. The officer located the suspect, Quarles, in the store. Upon seeing the officer, the suspect ran toward the rear of the store. The officer lost sight of him, and upon regaining sight of him, ordered the suspect to stop and put his hands over his head. The officer frisked him and discovered he was wearing an empty shoulder holster. After handcuffing the suspect, the officer asked him where the gun was. Quarles nodded in the direction of some empty cartons and stated, "The gun is over there."

After the gun was located, Quarles was advised of his rights, waived those rights, and was questioned. Responding to this questioning, Quarles admitted ownership of the gun. In the prosecution for criminal possession of a weapon, the New York courts suppressed the gun and the statement concerning its location on grounds that the officer's failure to first advise the subject of his rights and obtain a waiver violated *Miranda.* Furthermore, Quarles' admission concerning ownership of the gun was suppressed as a fruit of the original *Miranda* violation.

Reversing the New York Court of Appeals, the Supreme Court agreed that Quarles was subjected to custodial interrogation without prior advice of his rights and waiver of those rights. The Court ruled, however, that the statement concerning the location of the gun and the gun itself were admissible under a "public safety" exception to the *Miranda* rule.

Explaining the exception, the Court held that a statement obtained as the result of custodial interrogation in the absence of the warnings and waiver is admissible so long as the statement is voluntary under the traditional due process/voluntariness test and the police questions that result in the admission are reasonably prompted by a concern for the public safety. In this case, there was no claim that Quarles' will was overborne by the actions of the officer, and thus, the Court did not address whether Quarles' statement concerning the location of the gun was voluntary under the due process/voluntariness test. The Court found that inasmuch as the gun was concealed somewhere in the supermarket, it posed a danger to the public safety. Consequently, the Court ruled that prior *Miranda* warnings and waiver had not been required and the New York Court of Appeals had erred in suppressing the gun, the statement concerning its location, and the later statement concerning ownership of the gun.

In creating this exception to *Miranda,* the Court ruled that the availability of the exception does not depend on the motivation of the individual officers involved, but is limited by the emergency circumstances that justify it. Therefore, police officers who rely on the exception must be able to later articulate specific facts and circumstances evidencing a need for the questioning in order to protect themselves, fellow officers, or the public. Furthermore, since this is a narrow exception to the *Miranda* rule, police officers should be instructed that once the emergency ends, any further custodial questioning should be preceded by the warnings and waiver.

The question of whether *Miranda* applies to nonfelony arrests has been the subject of controversy in the lower courts for several years. On July 2, 1984, the Supreme Court settled this controversy by ruling in *Berkemer* v. *McCarty*[11] that *Miranda* applies to interrogations of arrested persons regardless of whether the offense being investigated is a felony or a misde-

meanor. Refusing to distinguish between misdemeanors and felonies for purposes of *Miranda,* the Court found that such a distinction would dilute the clarity of the rule because in many cases it is not certain at the time of arrest whether the subject is to be charged with a misdemeanor and/or a felony offense.

In light of the Supreme Court's stated purpose behind the *Miranda* rule and the holdings in the above cases, a more definitive *Miranda* policy might begin by advising officers that before they question a subject who is in Federal or State custody, or the custody of a foreign government, they must comply with *Miranda* and that this policy applies regardless of whether the subject has been arrested for, or is being questioned about, a felony or a misdemeanor. Additionally, while *Miranda* warnings need not be given in custodial interrogation situations where an emergency exists and the police officer's questions are prompted by a concern for the safety of the officer, fellow officers, or the public, any further custodial interrogation should be preceded by the warnings and waiver as soon as the emergency ends.

Investigative Detentions

In 1968, the Supreme Court ruled in *Terry* v. *Ohio* [12] that law enforcement officers are constitutionally justified in detaining persons against their will for short periods of time in order to investigate, and hopefully resolve, suspicious circumstances indicating that a crime has been, or is about to be, committed. Investigative detentions, or "Terry stops" as they have become known, are seizures within the meaning of the fourth amendment, and therefore, must be reasonable in order to be constitutional. But, since a temporary detention is less intrusive than a full custody arrest, the courts do not require police officers to establish that they had probable cause to justify the seizure as reasonable. Instead, a lower burden of proof, reasonable suspicion, is all that police officers need show to justify the detention as constitutional.

Investigative detention cases are closely scrutinized by the courts to ensure that this valuable investigative tool is not abused. One important factor in the reasonableness of a "Terry stop" is the length of the detention. The longer a person is detained, the more likely it becomes that a reviewing court will find that the seizure was actually an arrest requiring probable cause. Hence, officers who investigatively detain a suspect must resolve the suspicious circumstances that give rise to the detention as quickly as possible.

Police questioning of a detained person can be an effective method of resolving suspicious activities and circumstances so that the detaining officer can quickly make a decision to either release the suspect or subject him to a full custody arrest. The effectiveness of police questioning under these circumstances could very well be diminished if officers are required to first warn the suspect of his rights and obtain a waiver. Hence, the applicability of *Miranda* to investigative detentions is an important issue that should be addressed in departmental *Miranda* policies.

In *Berkemer* v. *McCarty,*[13] discussed briefly above, the Supreme Court squarely addressed this issue. On March 31, 1980, an Ohio State trooper observed McCarty's car weaving in and out of a lane on an interstate highway. After following the car for 2 miles, the trooper forced McCarty to stop and asked him to get out of the vehicle. McCarty complied; however, he had difficulty standing, and the trooper concluded that McCarty would not be allowed to leave the scene as he would be charged with a traffic offense. McCarty was not told that he would be taken into custody. While at the scene of the stop, McCarty was asked to perform a "balancing test," which he was unable to do without falling. Additionally, McCarty was asked whether he had been using intoxicants, to which he replied that "he had consumed two beers and had smoked several joints of marijuana a short time before." McCarty's speech was slurred, and the trooper had difficulty understanding him. At that point, McCarty was formally arrested, placed in the patrol car, and transported to the county jail.

At the jail, McCarty was given an intoxilyzer test which did not detect any alcohol in his blood. The trooper then resumed his questioning in order to obtain further information for his report. McCarty admitted that he had been drinking, and when asked if he was under the influence of alcohol, stated, "I guess, barely." McCarty also indicated in writing on the report that the marijuana he had smoked did not contain angel dust or PCP. At no point in the above scenario was McCarty advised of his rights.

McCarty was charged with operating a motor vehicle while under the influence of alcohol and/or drugs, which is a first-degree misdemeanor under Ohio law. He moved to have his incriminating statements excluded, arguing that introduction of his state-

ments would violate *Miranda* since he had not been informed of his rights prior to the questioning. The trial court denied the motion, and McCarty pleaded "no contest" and was found guilty. McCarty appealed his conviction and the Ohio State courts ruled that his rights had not been violated since *Miranda* does not apply to misdemeanor arrests.

McCarty then filed a petition for a writ of habeas corpus in Federal court. The district court denied the writ and held that "*Miranda* warnings do not have to be given prior to in custody interrogation of a suspect arrested for a traffic offense." The Court of Appeals for the Sixth Circuit reversed, holding that *Miranda* applies to custodial interrogations regardless of whether the offense being investigated is a felony or a misdemeanor. Applying this principle to the facts of the case, the sixth circuit held that McCarty's postarrest statements at the jail were clearly inadmissible since he had not been afforded the protections guaranteed by *Miranda.* Since inadmissible evidence had been used against him, the sixth circuit reversed his conviction. The sixth circuit, however, did not clarify whether all of his statements would be inadmissible at a second trial or only those statements obtained at the jail after he was formally arrested.

This case then went to the Supreme Court, and two questions were presented for review. As noted earlier, one question was whether *Miranda* applies to misdemeanor arrests. Concluding that it does, the Supreme Court ruled that McCarty's statements at the jail, after he had been formally arrested, were the result of custodial interrogation. Thus, the Court concluded that the admissions he made at the jail were improperly used against him since the police had not complied with *Miranda.* This finding resulted in the Supreme Court affirming the court of appeals decision to reverse McCarty's conviction; however, the Supreme Court did not stop there. The Supreme Court went on to discuss whether the roadside questioning in this case—resulting in damaging admissions made before McCarty was formally arrested and transported to the jail—also constituted *custodial* interrogation requiring the protections of *Miranda.*

Citing *Terry* v. *Ohio,*[14] the Supreme Court noted that investigative detentions constitute fourth amendment seizures and therefore must be reasonable in order to be constitutional. The Court ruled, however, that they do not constitute "custody" for purposes of bringing the *Miranda* rule into operation since they are brief in duration and relatively nonthreatening in character when compared with a formal arrest. Likening the traffic stop in this case to a "Terry stop," the Court found no reason to treat the traffic stop differently for purposes of *Miranda* since McCarty was not told he was under arrest at the outset of the stop, the stop was made in public, and no other restraints comparable to those associated with a formal arrest were present until McCarty was formally arrested and transported to the jail. Although finding that custody for purposes of *Miranda* did not exist until McCarty was formally arrested, the Court made it clear that the custody determination must be made on a case-by-case basis taking into account all of the coercive factors, or lack thereof, present in a given case.

Based on this holding in *Berkemer*, it is recommended that departmental warning and waiver policies instruct officers that as a general rule, *Miranda* rights should not be given before an officer questions a suspect who is being investigatively detained. However, the policy should also instruct officers that if the detention is prolonged or other highly coercive factors are present (e.g., large number of officers present, restraining devices or weapons are involved, or the suspect must for some reason be moved from the location of the initial stop), then officers should administer the warnings and obtain a waiver before proceeding further with the questioning. An important aspect of this portion of the policy is to ensure that it allows for *Miranda* warnings and waivers in investigative detention situations where, although highly coercive factors are present, no formal arrest has been made. This will aid in rebutting subsequent arguments that by giving *Miranda* warnings, the officer impliedly admitted that the suspect was under arrest.

Other Factors Bearing on the Custody Issue

In the absence of a formal arrest or prolonged coercive investigative detention, defendants generally have a difficult time convincing courts that their confessions should be suppressed because of a failure to comply with *Miranda*. Some defendants, however, have successfully argued that they were in custody for purposes of the rule even in the absence of these factors.

In *United States* v. *Lee,*[15] the defendant was questioned by two Federal agents in a Government car parked in front of his home, concerning the death of his wife. Lee agreed to answer questions, and when he en-

tered the vehicle, was told he was free to leave or terminate the interview at any time. Lee was not afforded *Miranda* rights, and after approximately 60–90 minutes of questioning, which included the agents advising him of the incriminating evidence they had collected in the case, he admitted that he had choked his wife. The interview was ended, and Lee was not arrested until the next day when he voluntarily appeared at the police station for further questioning.

Relying on the above facts, the Ninth Circuit Court of Appeals ruled that "considering the totality of the circumstances a reasonable person could conclude that Lee reasonably might feel he was not free to decline the agent's request that he be interviewed." Consequently, the appeals court agreed with the trial court that Lee was in custody for purposes of *Miranda* during the questioning, and therefore, his confession was not admissible against him.

Several other courts have adopted the "totality of the circumstances" test for deciding the custody issue, but their results have often been contrary to the decision in *Lee.* For example, in *United States* v. *Dockery,*[16] a 24-year-old female employee of a federally insured bank was interviewed by two FBI Agents investigating a theft of funds from the bank. The interview was conducted in what the court described as a small, vacant office in the bank building. At the outset of the interview, the Agents advised Dockery that she did not have to answer any questions, that she was not under arrest or going to be arrested, and that she was free to leave at any time. During the interview, which lasted 16 minutes, the Agents told Dockery that they believed she was involved in the theft of bank funds and that they had her fingerprints. In fact, the only fingerprints the Agents had were those retrieved from the bank's personnel records. Dockery denied any involvement in the thefts, and the interview was ended. Dockery was asked to wait in the reception area outside the interview room in the event that bank officials wanted to question her.

A few minutes later, while waiting in the reception area, Dockery asked a bank official to find the two Agents because she wanted to talk to them again. The Agents returned and again repeated their warnings that Dockery did not have to talk to them and was free to leave whenever she desired. Dockery began to once again deny her involvement in the thefts, at which point one of the Agents told her that he was busy and was not interested in hearing her repeat what she had already said. He then asked, "Why don't you tell me what happened?" Dockery then gave a signed statement implicating herself in the thefts.

Noting that Dockery was never handcuffed, physically restrained, physically abused, or threatened during the interview, the *en banc* Eighth Circuit Court of Appeals ruled that Dockery was not in custody during the interviews, and therefore, her confession was properly used against her at trial. With respect to the Agent's representation concerning the fingerprints, the court cited *Oregon* v. *Mathiason,*[17] where the Supreme Court ruled that such statements have nothing to do with whether a suspect is in custody for purposes of *Miranda.*

The Fifth Circuit Court of Appeals uses a four-factor test in determining whether custody exists for purposes of *Miranda.* The court considers whether the interrogating officers had probable cause to arrest, the subjective intent of the officer, the subjective belief of the suspect, and the focus of the investigation.[18] Other factors considered by the courts in these cases include the language used by officers during questioning, the physical surroundings where the questioning takes place, and the extent to which the suspect is confronted with evidence of his guilt.[19]

Regardless of which test is used, they all afford defendants the opportunity to argue that based on the factors present in their individual cases, they were justified in believing they were in custody at the time they were questioned, and therefore, should have been advised of their rights. The numerous factors that courts consider when making the custody decision, coupled with the varying weights given these factors by different judges, make it impossible for law enforcement agencies to write definitive *Miranda* policies covering all of these situations. However, a *Miranda* policy can address some of the more basic problems faced by officers in interview situations and offer advice regarding how these situations should be handled.

A good starting point is the situation where an officer questions a suspect with the specific intention of making an arrest at the end of the interview. While it does not necessarily follow that a suspect was in custody during an interview simply because he was arrested at its conclusion, the close proximity of the arrest to the questioning is likely to weigh heavily in a later decision on the custody issue. Therefore, it is recommended that departments instruct officers that when they find themselves in this situ-

"Advising a suspect that he is not under arrest and/or is free to terminate the interview at any time should . . . resolve any doubt concerning the issue of custody for purposes of *Miranda.*"

ation they should, as a matter of policy, comply with *Miranda* at the outset of the interview.

A related situation is where an officer does not begin an interview with the intention of making an arrest, but during the questioning, decides that he is going to arrest the interviewee at the conclusion of the questioning. Again, because of the proximity of the arrest to the questioning, it is recommended that officers be advised that once they have decided that an arrest is going to take place, they should not continue with the questioning without first complying with *Miranda.*

A more troublesome scenario is where an officer has no intention of making an arrest at the conclusion of an interview, but the circumstances surrounding the questioning are sufficiently ambiguous that a reviewing court might determine that custody existed (e.g., where the location or duration of the interview might indicate a highly coercive environment or where the person interviewed is young and inexperienced). In these cases, it is suggested that officers be instructed that such ambiguity can usually be eliminated—thus negating the need for the warnings and waiver—by informing the suspect that he is not under arrest and/or is free to terminate the interview at any time. In cases where such assurances are given, officers should make this fact a matter of record in the investigative file.

Advising a suspect that he is not under arrest and/or is free to terminate the interview at any time should, as in the *Mathiason, Beheler,* and *Dockery* cases, resolve any doubt concerning the issue of custody for purposes of *Miranda.* There could, however, be occasional instances where an officer, after advising an interviewee he is not under arrest, still believes the custody issue sufficiently ambiguous that the rights should be given before any further questioning. While these situations should arise infrequently, it is recommended that *Miranda* policies be written to allow officers to exercise discretion in such situations. This approach allows an officer, who is in the best position to evaluate the "totality of the circumstances," to afford the warnings and waiver, without having his decision later viewed as a tacit admission that the interviewee was in custody.

The Sixth Amendment Right to Counsel

Standard warning and waiver forms, developed in response to *Miranda,* are often used by law enforcement agencies in obtaining waivers of the right to counsel guaranteed by the sixth amendment, in addition to the *Miranda* rights guaranteed by the fifth amendment. Inasmuch as the sixth amendment right to counsel applies in some cases where *Miranda* rights do not, law enforcement agencies that use the same warning and waiver policy for both purposes should ensure that their policies are broad enough to cover those cases where only the sixth amendment right is at issue.

An example of a case in which *Miranda* and the sixth amendment right to counsel do not overlap is where a suspect is arrested for burglary, taken before a magistrate or judge, and then released on bond. If a police officer attempts to interview this defendant while he is free on bond, *Miranda* does not apply because the defendant is not in custody. As discussed above, custody is an essential element of the *Miranda* rule. However, the defendant at this point has been formally charged with burglary, and the officer's goal is to deliberately elicit incriminating statements concerning this charge. Since he has been formally charged, however, the defendant's sixth amendment right to counsel has attached even though he is not in custody, and this right must be waived before an admissible statement can be obtained.

Two very important limitations on the sixth amendment right to counsel deserve mention at this point. First, the sixth amendment right to counsel only applies, and therefore only becomes an issue, where the defendant has been formally charged with a crime. A defendant has been formally charged with a crime when an indictment has been returned, an information filed, or the defendant has had a judicial hearing or appearance on the charge.[20] Second, the sixth amendment right to counsel only applies to those crimes for which the defendant has been formally charged.[21]

Based on the above, it is recommended that agencies include a statement in their warning and waiver policies advising officers that they should give the warnings and obtain a waiver before attempting to interview a defendant about a crime for which he has been formally charged (i.e., where the defendant has been indicted, had a court appearance, or an information has been filed), and that this policy applies *regardless of whether the subject is in custody or not at the time of the interview.*

A Word of Caution

The above recommendations concerning waivers of the sixth

amendment right to counsel assume that a waiver of *Miranda* rights is sufficient to waive the sixth amendment right to counsel. In fact, courts have rarely questioned the general rule that a proper waiver of *Miranda* rights also operates as a waiver of the sixth amendment right to counsel. One Federal circuit court of appeals, however, has ruled that a waiver of *Miranda* rights is not sufficient to waive the sixth amendment right to counsel, at least where the defendant has been indicted at the time of the interview. Holding that "waivers of Sixth Amendment rights must be measured by a 'higher standard' than are waivers of Fifth Amendment rights," the Court of Appeals for the Second Circuit ruled in *United States* v. *Mohabir*[22] that a waiver of the sixth amendment right to have counsel present during a postindictment interview must be preceded by a Federal judicial officer's explanation of the content and significance of this right.

Waiver of the sixth amendment right to counsel has been litigated frequently in recent years, and legal advisors must be alert for decisions like *Mohabir* so that departmental warning and waiver policies can be modified accordingly.

Conclusion

Some have hailed the *Miranda* decision as a positive step toward the protection of fifth amendment rights, while others have viewed it as a serious impediment to effective law enforcement. Regardless of these differing views, the decision stands as a milestone in the history of American constitutional criminal procedure. The unique nature of the decision, coupled with uncertainty as to its meaning and application, was undoubtedly the basis for the development of broad warning and waiver policies by law enforcement agencies beginning in the late 1960's. While recent Supreme Court decisions have reaffirmed the *Miranda* rule, they have also made it clear that it was only intended to apply in custodial interrogation situations. The clarification provided by these cases should make it easier for law enforcement agencies to comply with both the letter and spirit of *Miranda,* without unnecessarily hampering legitimate investigative efforts.

FBI

Footnotes

[1] 384 U.S. 436 (1966).

[2] The warnings required before custodial interrogation are: (1) The accused has the right to remain silent; (2) anything he says may be used against him; (3) he has a right to consult with a lawyer before or during questioning; and (4) if he cannot afford an attorney, one will be provided without cost.

[3] 425 U.S. 341 (1976).

[4] *Id.* at 346, referring to *United States* v. *Caiello,* 420 F. 2d 471, 473 (2d Cir. 1969).

[5] 429 U.S. 492 (1977) (*per curiam*).

[6] *Id.* at 495.

[7] 103 S.Ct. 3517 (1983) (*per curiam*).

[8] 429 U.S. 492 (1977) (*per curiam*).

[9] 391 U.S. 1 (1968).

[10] 81 L.Ed.2d 550 (1984).

[11] 82 L.Ed.2d 317 (1984).

[12] 392 U.S. 1 (1968).

[13] 82 L.Ed.2d 317 (1984).

[14] 392 U.S. 1 (1968).

[15] 699 F.2d 466 (9th Cir. 1982) (*per curiam*).

[16] 736 F.2d 1232 (8th Cir. 1984).

[17] 429 U.S. 492 (1977) (*per curiam*).

[18] *United States* v. *Montos,* 421 F.2d 215 (5th Cir.), *cert. denied,* 397 U.S. 1022 (1970).

[19] *See, United States* v. *Dennis,* 645 F. 2d 517 (5th Cir.), *cert. denied,* 454 U.S. 1034 (1981); *United States* v. *Phillips,* 688 F.2d 52 (8th Cir. 1982); *United States* v. *Chamberlain,* 644 F.2d 1262 (9th Cir. 1980); *United States* v. *Booth,* 669 F.2d 1231 (9th Cir. 1981).

[20] *See,* C. E. Riley, III, "Confessions and the Sixth Amendment Right to Counsel," (Part 1) *FBI Law Enforcement Bulletin,* August 1983, pp. 24–31; (Conclusion) *FBI Law Enforcement Bulletin,* September 1983, pp. 24–30.

[21] *Id.*

[22] 624 F.2d 1140 (2d Cir. 1980). *See also, United States* v. *Payton,* 615 F.2d 922 (1st Cir. 1980); *United States* v. *Durham,* 475 F.2d 208 (7th Cir. 1973).

WANTED BY THE FBI

Photographs taken 1979

Donald Eugene Webb

Donald Eugene Webb, also known as A.D. Baker, Donald Eugene Perkins (true name), Donald Eugene Pierce, Stanley J. Pierce, John S. Portas, Stanley John Portas, Donald E. Webb, Eugene Donald Webb, Stanley Webb, Wilfred Y. Reams, and others

Wanted For:

Interstate Flight—Murder; Attempted Burglary

The Crime

Webb, a longtime professional jewelry thief and master of assumed identities, has been in and out of prison several times. He is being sought in connection with the murder of a police chief who was shot twice at close range after being brutally beaten about the head and face with a blunt instrument.

Federal warrants were issued December 31, 1980, at Pittsburgh, PA, and on December 14, 1979, at Albany, NY.

Description

Age	53, born July 14, 1931, Oklahoma City, OK.
Height	5′9″.
Weight	165 pounds.
Build	Medium.
Hair	Gray-brown.
Eyes	Brown.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Butcher, car salesman, jewelry salesman, real estate salesman, restaurant manager, and vending machine repairman.
Social Security Number Used	462-48-0452.
Scars and marks	Small scar on right cheek and right forearm; tattoos: "DON" on web of right hand, "ANN" on chest.
Remarks	Webb is considered a career criminal and master of assumed identities and specializes in the burglary of jewelry stores. Reportedly allergic to penicillin, loves dogs, is a flashy dresser, and big tipper.
FBI No.	4 513 086.

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, DC 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.

Caution

Webb, one of the FBI's "Ten Most Wanted Fugitives," has been convicted of burglary, possession of counterfeit money, possession of a weapon, burglary tools, and dangerous instrument, breaking and entering with intent to commit larceny, armed bank robbery, and auto larceny. He may be accompanied by Frank Joseph Lach; consider both armed and extremely dangerous.

Classification Data:

NCIC Classification:

0804061308O4TT020906

Fingerprint Classification:

$$\frac{8\ S\ 1\ U\ III\ 8}{S\ 1\ T\ II}\ \text{Ref:}\ \frac{T\ T\ U}{T\ R\ R}$$

I.O. 4873

Left thumb print

Because of the time factor in printing the FBI Law Enforcement Bulletin, there is the possibility that this fugitive has already been apprehended. The nearest office of the FBI will have current information on this fugitive's status.

Change of Address

Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, DC 20535

Name

Title

Address

City State Zip

Interesting Pattern

In the Identification Division of the Federal Bureau of Investigation, this impression is classified as an accidental whorl with a meeting tracing.

U.S. Department of Justice
Federal Bureau of Investigation

Second Class Mail
Postage and Fees Paid
Federal Bureau of Investigation
ISSN 0014-5688

Washington, DC 20535

Official Business
Penalty for Private Use $300
Address Correction Requested

The Bulletin Notes

Trooper Jellison

On April 13, 1984, Troopers Leo C. Jellison and Wayne H. Fortier of the New Hampshire State Police were responsible for the apprehension of Christopher Wilder, an FBI Top Ten Fugitive being sought for the murder of at least eight females and the sexual assault of four more. Wilder fired his weapon twice when he was tackled by Trooper Jellison, wounding the trooper and mortally wounding himself. Troopers Jellison's and Fortier's actions were in keeping with the highest traditions of the New Hampshire State Police and the Bulletin joins their superiors in commending these officers' bravery.

Trooper Fortier