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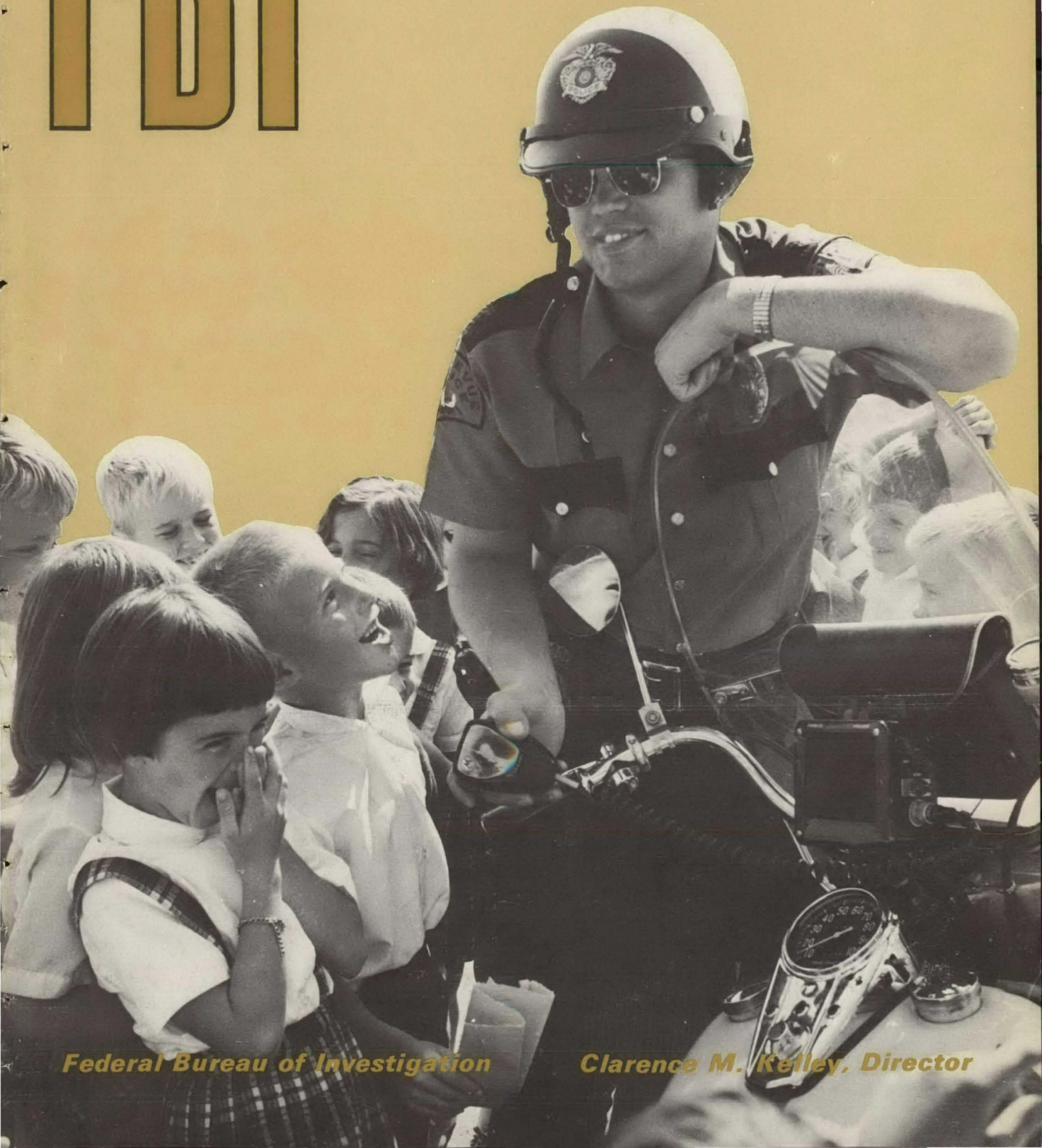
FBI Law Enforcement Bulletin

OCTOBER 1975



Federal Bureau of Investigation

Clarence M. Kelley, Director

FBI Law Enforcement Bulletin

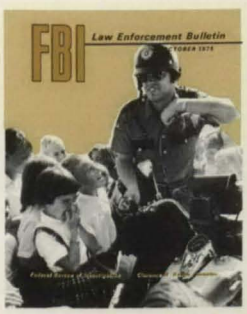
OCTOBER 1975
VOL. 44, NO. 10

Published by the
FEDERAL BUREAU of INVESTIGATION
UNITED STATES DEPARTMENT of JUSTICE
Washington, D.C. 20535

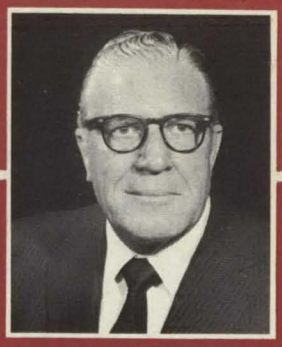
CONTENTS

THE COVER

Basic to building a more lawful society is greater citizen involvement in crime resistance—a process that should begin at an early age. See Mr. Kelley's comments on facing page and related article, beginning page 16. Photo courtesy of Bellevue, Wash., Police Department.



Message from the Director . . .



A RECENT POLL REVEALED that residents of the Nation's largest cities consider crime as the worst problem facing their communities. This was in sharp contrast to a similar poll taken in 1949 when big-city dwellers ranked crime far down among the items on their lists of major civic problems.

The findings of this poll are, I believe, not at all surprising to most law enforcement officers. We have been inclined for many years to perceive crime as the number one problem of most communities, regardless of their size. After all, lawlessness has reached unprecedented heights in rural, suburban, and metropolitan areas alike, and the volume of serious crimes has risen awesomely in all these regions during the past 25 years.

What is surprising—indeed, what is encouraging—to the law enforcement profession is the fact that the public's awareness of the fearsome dimensions of crime has matured at a time when the country is faced, according to many knowledgeable observers, with some of the gravest problems in its history. To have assigned it this top priority convinces me that the public is not only troubled by crime but is truly alarmed by it.

Perhaps this alarm is a blessing in disguise! If anything good can come from pernicious criminality, it is when the public has had its fill and becomes solidly arrayed against it. For in the public's attitude is found the environment in which crime will either flourish or subside. If people are unconcerned with lawlessness other than at their own doorstep, patronize illegal activities, look the other way when wrongdoing occurs, do not come forward to testify concerning offenses they witnessed, give meager or no support to criminal justice agencies, consciously break laws themselves, and are indifferent to issues that affect the well-being of persons and communities, then crime will certainly thrive.

On the other hand, if citizens express their outrage at crime and report its occurrence promptly to police, cooperate fully in its investigation and prosecution, give unflinching support to criminal justice system programs, demand realistic punishment for serious or repeat offenders, set an example themselves of law-abiding citizenship, and become involved in correcting the inequities that exist in their communities, then crime will surely be contained.

No successful attack on crime can be made without the backing of an informed and aroused citizenry. It is the bedrock upon which a determined assault on lawlessness must be built.

C. M. Kelley

CLARENCE M. KELLEY
Director

OCTOBER 1, 1975

". . . the application of knowledge of forensic pathology is primarily in the administration of justice."

Forensic Pathology in Crimes of Violence

By
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While knowledge of general pathology provides valuable information in the diagnosis and treatment of diseases and injuries, the application of knowledge of forensic pathology is primarily in the administration of justice.

Forensic pathology is not just another subspecialty of pathology; it is practiced outside the usual scope of hospital medicine. The forensic pathologists take an active part in the criminal investigations.

Unfortunately, the basic difference between forensic pathology and general hospital pathology has not been appreciated by many physicians, lawyers, and law enforcement officers and post-mortem examination on medicolegal cases is too often carried out by overzealous hobbyists who have no formal training in forensic medicine. It is true that many hospital pathologists are capable of recognizing certain lesions produced by criminal violence and able to describe their findings accurately and elaborately. It is not difficult for any pathologist to demonstrate a stab wound or bullet wound of the body, if he is careful enough, but his work is usually confined to an autopsy alone.

The autopsy is not synonymous with post-mortem examination, or "P.M." as many people call it. While essential to the investigation, the autopsy is only a part of the post-mortem examination that includes a wide range of investigatory procedures. The investigation of the scene of death and a critical analysis of the circumstances surrounding the death are important parts of the post-mortem examination. The autopsy reveals merely what it is but does not provide the information concerning how it occurred. The same finding at an autopsy may be interpreted quite differently under different circumstances. The autopsy provides answers but not the answer.

Legal Medicine

Elderly people invariably show a certain degree of arteriosclerotic disease (a condition marked by loss of elasticity, thickening, and hardening of the arteries) in the heart and blood vessels at an autopsy. Sometimes the vascular change and the resultant myocardial damage (damage to the heart muscle) are quite severe. There may be some other types of natural disease present. When the circumstances are not taken into consideration, any of these changes can be considered as the cause of death. But when the circumstances are accounted

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for, these findings begin to have different meanings. Until all the competing causes can be eliminated, the presence of any preexisting disease or condition has only a limited value. In legal medicine, the circumstances far outweigh the amount of damage present at the autopsy. A forensic pathologist has to be a good listener, as well as a skilled pathologist. A purist has no place in legal medicine. This is perhaps the major difference between the role of hospital pathologists and that of forensic pathologists.

Recently, I handled a case of a 40-year-old woman who had been stabbed by her boyfriend. She was brought to a hospital "almost dead." A stab wound to her heart was heroically sutured by a surgical resident on duty. She was soon up, moving around the hospital ward in a wheelchair, chatting and laughing, etc. But one morning, 5 weeks after the stabbing, she was found dead on her bed. She had a moderate fever and coughed occasionally on the evening before her death. The autopsy revealed a granulation tissue-filled stab wound of the heart and a slight degree of bronchopneumonia. I certified her death as stab wound of heart and bronchopneumonia and classified it as homicidal.

The case went to trial, and I testified that the primary cause of her death was the stab wound of the heart and that, if she had not been stabbed 5 weeks ago, she would not have died of a minor bronchopneumonia. I also testified that the stab wound could have been a factor in the cause of bronchopneumonia. The defense attorney then called in a pathologist from a medical school who had previously reviewed both the hospital records and my autopsy protocol. The pathologist testified that the stab wound of the heart was healing nicely and there was no clinical indication that the patient had heart failure; therefore, the stab wound could not be the cause of death. When he was pressed by the prosecuting attorney to tell what he thought was the cause of death, he said it was undetermined. The jury brought the guilty verdict because the stab wound of the heart was the only cause of death that anyone could provide.

While the analysis of circumstances is important, the information is not always readily available, and quite often the stories supplied to the forensic pathologist are erroneous. The forensic pathologist does not always have the advantage other physicians have of obtaining a history of the case. Those unlabeled and mislabeled cases require close teamwork among the forensic pathologists, law enforcement officers, and prosecuting attorneys, without one agency necessarily having any administrative responsibility to another. In some jurisdictions, there still exists the concept that such teamwork biases the investigation and that the forensic pathologist should work without a history and describe the anatomical findings without interpretation. While it is true that a forensic pathologist should be totally unbiased in giving an opinion, he should not act as a mere anatomist. The courts have wasted much time and funds because of those "mechanical purists."

"The forensic pathologist must be alert for the unsuspected."

Interpretation

One winter morning, the body of a man about 40 years old was brought to our office. According to the report prepared at the scene of death by one of the medical investigators, the man had been assaulted on the street the night before. A bachelor, he returned to his boardinghouse. The landlady told the investigators that she helped the man to bed and tried her best to comfort him. Later during the night, she found him moaning but, before she could obtain medical help, he died. The medical investigator commented that there was a small wound on the chest wall but very little blood around it. The autopsy revealed a narrow, yet deep stab wound on the anterior chest wall that penetrated his heart. In addition, there were also several superficial linear scratch marks: four on his left cheek, two on the back of his right hand, and one on the medial aspect of his left thigh.

Along with the body were the man's clothes, which consisted of a T-shirt, undershorts, and trousers. When I examined these clothes, I was unable to find a hole corresponding to the stab wound of the chest on the T-shirt. I called the detective on the case and told him that I would like to have the clothes which the deceased had been wearing at the time of the assault on the street. The detective called me back a short while later and told me that the three items I had examined were the only clothes the man had been wearing at the time of the assault and that there was no other clothing in the boardinghouse. I told the detective about the absence of the hole corresponding to the stab wound of the chest and also reminded him that it had been a cold night and, therefore, the man must have worn more than just a T-shirt. It would be most unusual for an assailant to pull off his victim's clothing before stabbing him. The person who commits suicide, on the other hand, often rolls up his jacket and shirt before stabbing or shooting himself to make certain of causing death. I also hinted to him that the superficial linear marks found on the face, the hand, and the thigh were consistent with fingernail marks, and one on his left thigh was probably inflicted while the man was undressed.

Later I interviewed the brother of the deceased who came from the South to identify his brother's body. He was

surprised when told of the assault and even more surprised when he heard the landlady's story, for he knew that his brother had been living with this woman for years.

The post-mortem examination made the entire investigation relatively simple. The woman was soon apprehended and she confessed. The man was stabbed and scratched in his bed. The motive—jealousy. There had been a triangular love affair among the deceased, the woman, and her daughter for some time. The blood around the stab wound had been well cleaned but she didn't realize that the medical examiner would examine his T-shirt as well. The simple examination of this small item provided a crucial answer in this case. Otherwise, the police department might have gone through an exhaustive and pointless manhunt.

The Unsuspected

The forensic pathologist must be alert for the unsuspected. Fatal injuries to the cervical spine must not be overlooked because someone provided a history of heart disease. It is not unusual to find extensive internal injuries on the body whose outer surface is entirely free from any mark of violence.

In some cases, the deceased may have taken some drugs prior to the assault. A complete toxicological analysis of the organs should be included in the post-mortem examination even if there is a severe injury.

A victim may have had a physical defect, a latent weakness, or an undeveloped condition. For instance, a person may have had a diminished cardiac reserve (a reduction in the amount of work which the heart is able to perform beyond that required under the ordinary circumstances of daily life) prior to the time of an assault. It is reasonable to think that the extra workload imposed upon his heart by excessive physical exertion and emotional stress from injury further deteriorated his health or caused death to occur earlier than it would have had the person not been assaulted. Homicide, therefore, may be adjudged under such circumstances.

The relationship between natural disease and a minor injury is sometimes difficult to establish. Coronary arteriosclerosis (loss of elasticity, thickening, and hardening of the vessels of the heart) may be so severe and fully developed that an injury cannot be considered even as a contributory factor in the cause of death. A middle-aged man was running breathlessly away from a mugger for three blocks. He finally met a police officer patrolling the area, but collapsed and died in the arms of the officer. On one cold winter night, an elderly man was held up in his apartment by a robber. The robber took everything he wanted and, before he fled the apartment, ordered the old man to strip completely and go outside the window on the balcony. A few hours later, the old man was found dead on the balcony by his daughter. In each case, the only autopsy finding was severe coronary arteriosclerosis. There wasn't even a trace of injury on the body. Fear must have been the precipitating factor in the heart attacks.

"A negative finding is just as important as a positive finding at an autopsy."

The rupture of a cerebral aneurysm (a sac, filled with blood, formed by the dilatation of the walls of an artery or vein in the brain) may occur incidental to head trauma. Although the impact may cause a sudden rise of blood pressure which the weakened vessel wall cannot sustain, the aneurysm itself is usually so far in its advanced stage that its rupture is almost unavoidable. Sometimes a person who has a slow leakage from such an aneurysm shows personality changes due to the destruction of the brain tissue and engages in arguments or fights. There have been cases where the person who argued with such a person was charged with homicidal assault. For example, two men were fighting in an apartment. The girl friend of one of the men was trying to separate them. She became quite agitated. While doing this, she collapsed and died shortly thereafter. The man on the other side was arrested for homicidal assault. The autopsy revealed massive hemorrhage from a ruptured aneurysm at the circle of Willis (base of the brain). There was no injury.

A person may collapse or fall when he is dying from a natural disease and sustain conspicuous injuries to his body surface. There may be a very nasty looking bruise or even a laceration on the body and, when it is observed by an inexperienced police officer or doctor, a homicidal assault is often suspected. We call these lesions "perimortal injuries." The perimortal injuries are mostly superficial, and a complete autopsy easily demonstrates the lack of deep-seated injury.

In many jurisdictions, an autopsy is performed only if there is reason to believe that traumatic injury or poisoning has played a part in the death, or where there is reasonable suspicion of criminal violence. The word "suspicion" is a vague one, and it depends on the sensitivity of the investigating individual. An autopsy not only reveals diseases and injuries but also serves to clear doubts. Without it, there may be too much speculation. A negative finding is just as important as a positive finding at an autopsy.

The forensic pathologist has much to contribute to many investigations concerning crimes of violence. Law enforcement officers should be alert for those investigative circumstances which require his specialized expertise.

WOOD AS EVIDENCE

The probative value of wood is often overlooked in the reconstruction of a crime, negating an alibi, or associating a suspect with a crime scene. The wide use of wood in building construction, furniture, packaging, poles, tool handles, toys, and woodenware brings it within the investigative sphere of nearly every type of crime.

Wood Identification

In most cases, the variation in wood structure between species is sufficient to afford a reliable means of species identification. In some instances, this can be done on the basis of the gross features of the wood; in other instances, the examination of the microscopic structure of the wood is essential. Sometimes positive identification of a wood is possible only by means of the botanical features of the tree itself; i.e., the flowering parts or leaves.

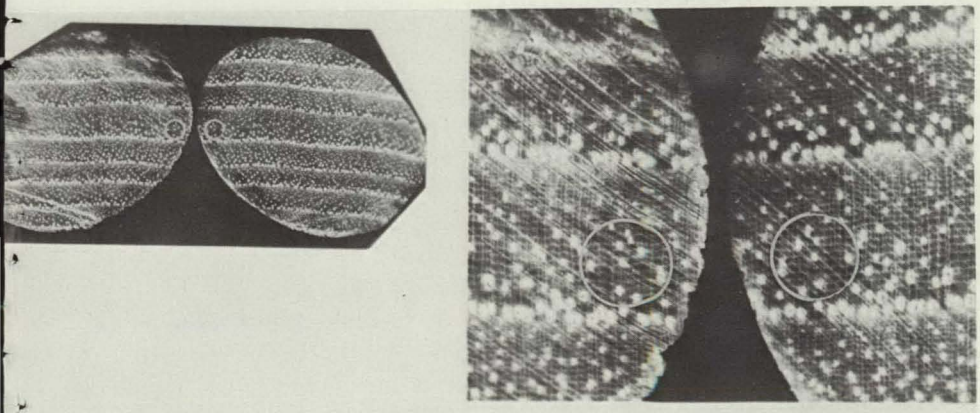
In this regard, it should be pointed out that bark is not wood and is not specifically identifiable. In many cases, however, wood may be adhering to the inner surface of the bark which may be of value for identification purposes.

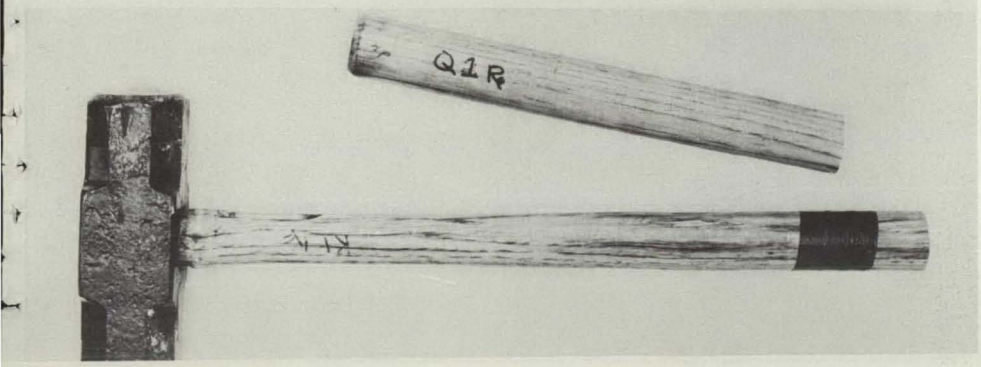
Individualizing Characteristics in Wood

Woods of different species may vary widely in appearance and in physical and chemical properties. The most obvious and readily recognizable properties are characteristics of appearance, such as color, texture and grain, or figure. A considerable number of other variations may be introduced through the presence of paint or varnish, bonding agents or glue, such as in plywood, or merely by exposure to natural elements. Natural variations, as well as introduced variations, may serve to individualize a particular specimen and enable the laboratory examiner to associate it with a suspect source. Variations in wood structure and appearance due to individual growth patterns and environmental conditions such as climate, soil, moisture, and growing space may enable the laboratory examiner to distinguish between trees of the same species.

Investigative Possibilities

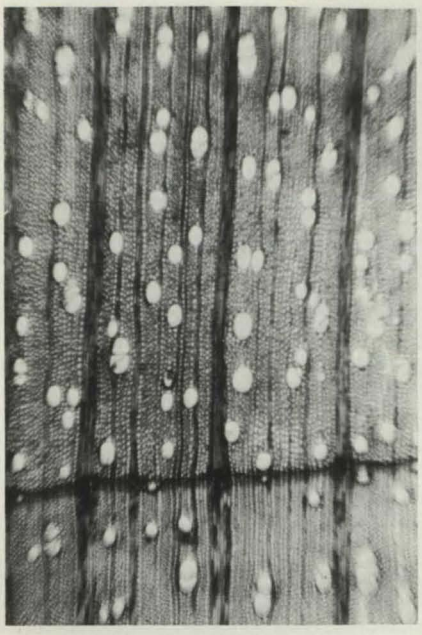
When dealing with wood, comparisons of marks, such as those produced by planing mills, auger bits, prybars, hammers, punches, axes, and knives,



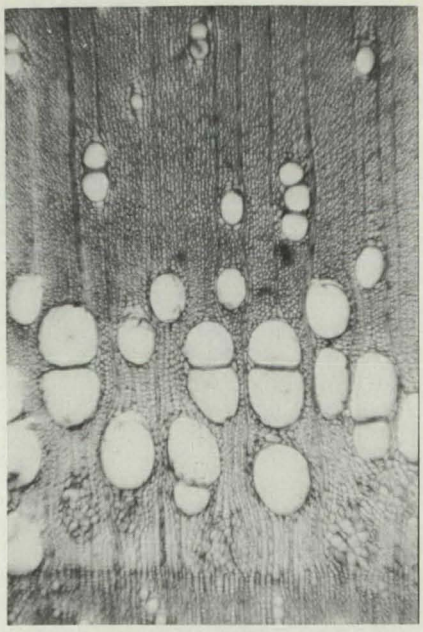


Saw marks on sledgehammer found at burglary scene were not sufficient to associate it with portion of tool handle found at suspect's residence. However, the arrangement of pores and other random growth features were found to be identical on both segments of the tool handle.

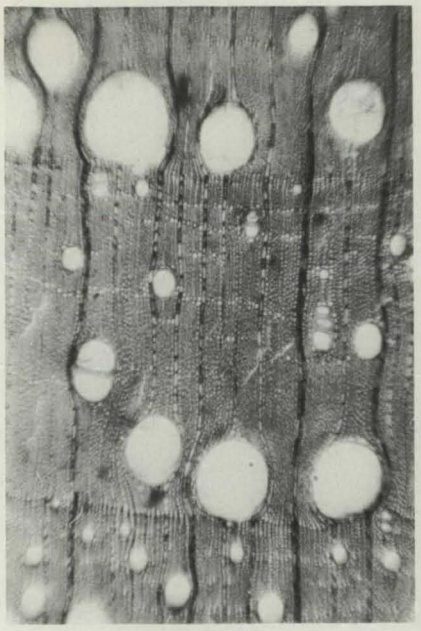
Patterns formed by pores or vessels in wood are important characteristics for specific identification. The photographs below and at right (magnified approximately 42 times) show some softwood and hardwood samples.



Hard Maple



White Ash

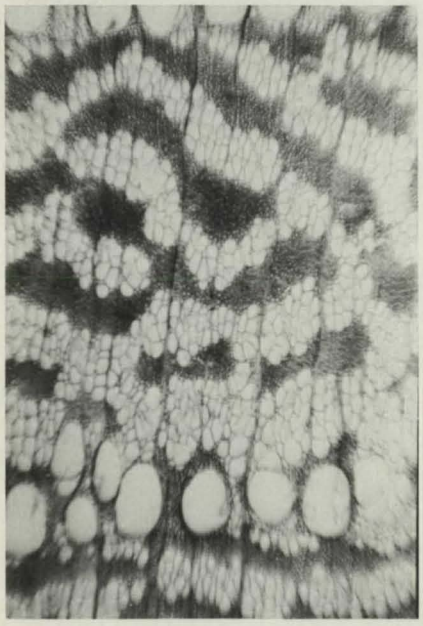


Shagbark Hickory

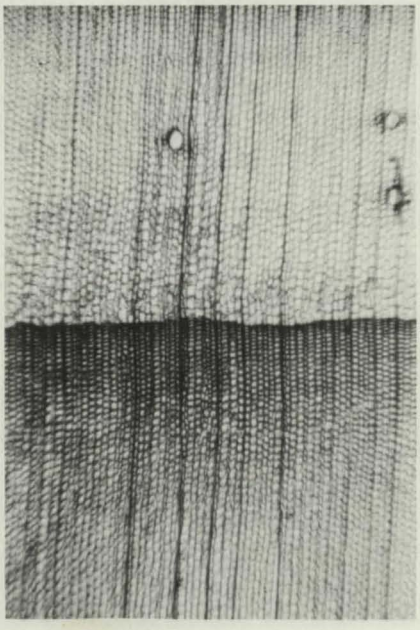
are obviously prime targets of the crime scene investigator. Frequently, these marks may be identified as having been produced by a particular size and type of tool; however, due to the texture and compressibility of wood, markings such as these are generally of limited value for association with a particular tool to the exclusion of all other similar tools.

In those situations where toolmarks are of no apparent significance to the case, consideration should be given to the possibility of matching the fractured edges of wood from the scene and wood from a suspect source. A fracture match may be feasible even with splinter-sized specimens. Accordingly, care should be exercised in the collection and preservation of wood particles from suspects and suspect sources so as not to disturb the contours and features of the fractured edges.

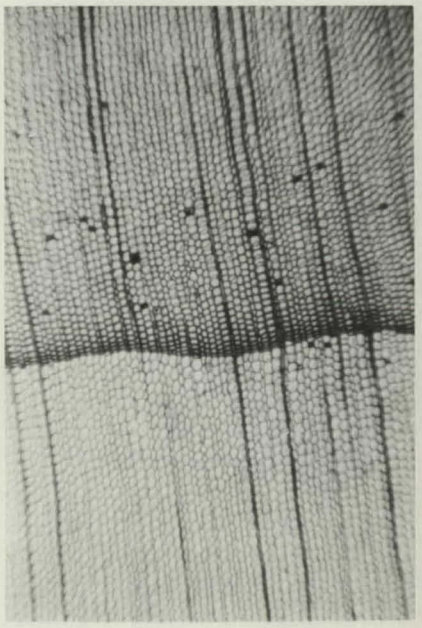
American Elm



Eastern Spruce



Port Orford Cedar



The significance of smaller wood particles may not be apparent when first viewed by the investigator at a crime scene. However, through a detailed microscopic examination of even sawdust-sized particles, it may be possible to identify the particular wood species. Thus, if a suspect is found to have woodchips and sawdust of white pine and Douglas fir on his clothing and it is determined that a shattered doorframe and molding are constructed from the same two species, this could indeed be pertinent information. When this type of evidence is coupled with other evidence which may also be present, such as soil, paint, or glass, a strong circumstantial case is developed.

Laboratory Examination

When a specimen of wood is received in the FBI Laboratory, it is first examined in its undisturbed state for the presence of foreign debris such as hairs, fibers, blood, safe insulation, or other potential evidence. The specimen is then observed to determine if it can be physically associated with the suspect source through a fracture match. Other features of the wood specimens are studied such as patterns formed by the seasonal growth rings, coarseness of grain, color, and finish which may be of value for a direct association with the suspect source.

The wood specimens are then identified as to specific origin; i.e., white oak, sugar pine, southern hard pine, Douglas fir, hard maple, etc. This determination can normally be made with relatively small specimens. Depending on the orientation and type of the individual wood cells composing the recovered specimen, a species determination may be made with samples of only a few cells such as might be found in compressed particle board or sawdust.

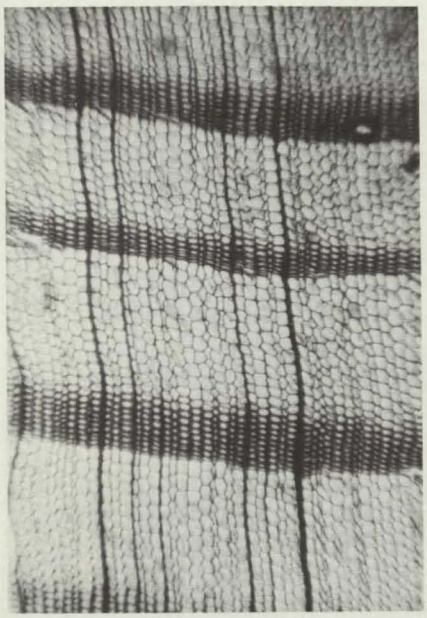
Evidence Collection and Sampling

For optimum results from wood examinations, it is recommended that reasonably large samples be obtained and thorough sampling techniques be exercised. For example, it may be desirable to compare bit turnings which may have fallen into a burglar's toolbag with plywood or other door material. In such an instance, there should be obtained a piece of the door which was cut out by the burglar. Care should be taken to secure samples of each type of wood which the burglar drilled; i.e., the frame, panels, doorjamb, etc. There should also be collected additional drillings from the ground or floor at the crime scene.

In recovering wood debris from the suspect's clothing, the investigator should be alert to large or splinter-sized wood particles. These particles should be removed by the investigator and preserved for possible fracture matching with sections of wood from the point of the break-in. These splinters should be forwarded to the laboratory along with logical sections of wood selected from the entry point where these wood fragments or splinters could have originated.

Each specimen must be marked for identification showing the date collected and the initials of the person who recovered the evidence from the suspect. Subsequent handling must be in a manner which will insure the admissibility of the material as a trial exhibit.

Douglas Fir



Longleaf Pine

Conclusion

The evidentiary value of wood may not, at first, be apparent. Wood evidence may consist of two or more pieces with cut or fractured surfaces that can be physically matched, thus positively identifying a questioned piece of wood with a known source. Toolmarks in wood may be associated with a particular tool. Wood evidence may consist of minute particles from tools or clothing which at most can be identified as the same species as wood from a known source. Regardless of which category it falls in, wood as evidence can make a significant contribution to the successful solution and prosecution of a crime. Care should be taken to insure that wood evidence is recognized and that full advantage is taken of its probative potential.

Central Operations for Police Services

By
ANTHONY L. KENNEY
Chief of Police
Muskegon, Mich.

The Muskegon County area, the various police agencies, and their jurisdictional boundaries.

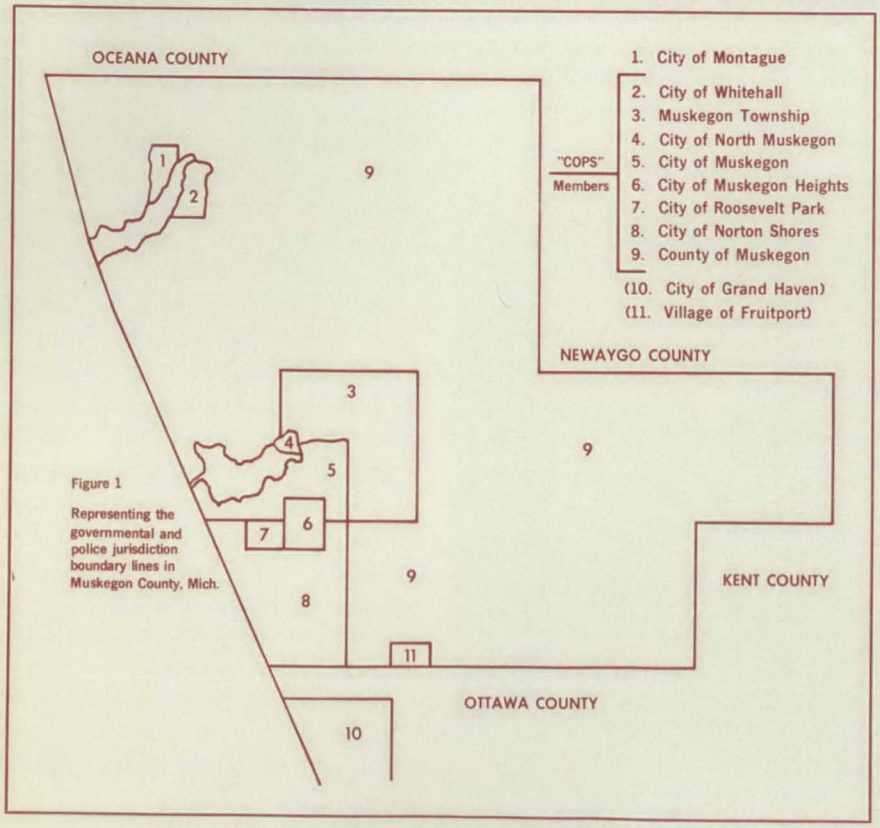


Figure 1
Representing the governmental and police jurisdiction boundary lines in Muskegon County, Mich.

Many police agencies throughout the Nation decry the need for centralized services to better serve their needs. This concept, initially involving centralized communications, was voiced time and time again within the area of Muskegon County, Mich. Today, an auspicious start has been made, progress has been realized, and it is fitting to look back on the problems that were solved and, perhaps, to project plans for the future.

Muskegon County has a population of 157,426 with an area of 514 square miles. There are 10 independent law enforcement agencies within its boundaries. A centralized service function was initiated in Muskegon County in 1969 and culminated in the formation and operation of a central police dispatch agency early in 1970.

From the outset, there were a number of problems such as suspicion and mistrust between the police agencies involved as to motives, control, and utilization. Competition among the agencies for leadership was a factor. Initially, progress was stymied by a mistrust of political leaders, and hesitancy in assuming responsibility was

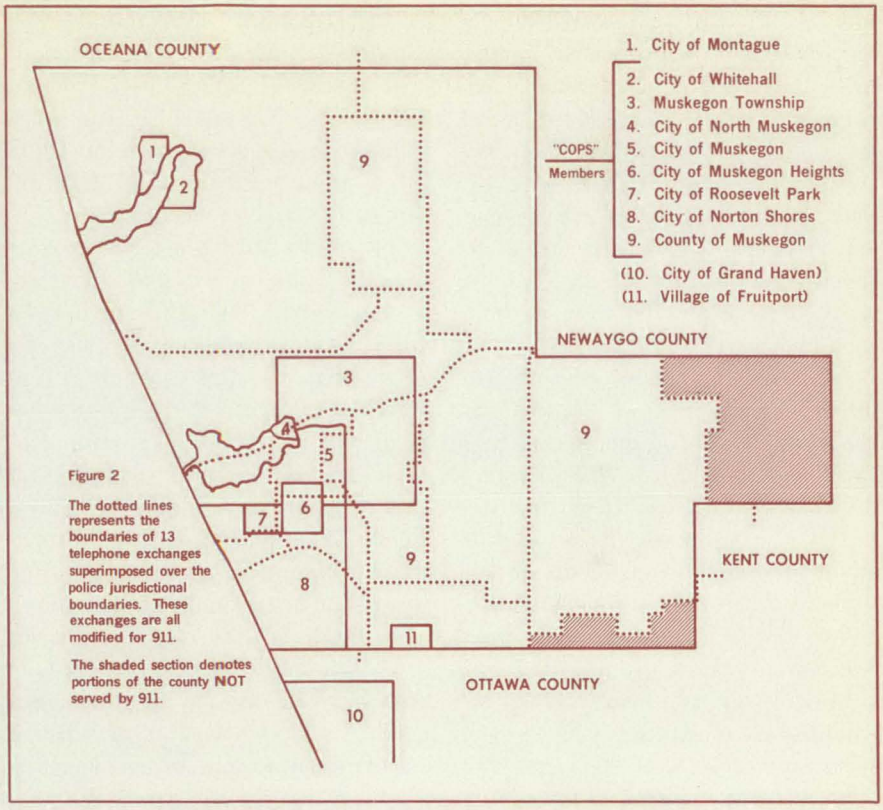
encountered. Of particular sensitivity was suspicion by the smaller police agencies of their prerogatives being usurped by the larger departments and a very real concern over a possible loss of identity. Perhaps most significantly, there was ineffectiveness of the controlling board at the very beginning, and there was difficulty in setting sufficient meetings to realize effective direction due to divergent interests of police officials and political administrators.

At first, the controlling board for the centralized service function was composed of law enforcement agency heads and political leaders. The administration of the solitary body was ineffectual, and many of the surfacing problems could be attributed to it.

Early in the deliberations, the organization was restructured to the Centralized Operations for Police Services (COPS), consisting of two boards: a board of directors composed of governmental administrators with the responsibility of budget approval and the ultimate authority on any matters of major inportance; and a board of administration composed of the department heads of the participating law enforcement agencies with the responsibility of the administration and operation of the centralized service.

Central Police Dispatch in Muskegon County was the first unit of this particular concept in the Nation and has been used as a model by a national communications consultant firm. The dispatch division is staffed with 1 director, 4 supervisors, and 10 dispatchers, who receive all incoming messages via 911 and relay them to the individual jurisdiction involved. Currently, Central Police Dispatch services 99 percent of the population and land area of Muskegon County, excepting only the villages of Montague and Fruitport.

Central Police Dispatch was recently selected by the Law Enforcement Assistance Administration as an exemplary project that can be replicated throughout many areas of the Nation. The validation report notes that, even though the overall costs of the system have been increasing each year because of increased usage, the cost effectiveness is apparent, inasmuch as the relative cost per delivered service has actually decreased.



Boundaries (dotted lines) of the 13 telephone exchanges within the county superimposed over police jurisdictional boundaries.

The relationship between a central dispatching agency and implementation of the emergency number 911 becomes very meaningful when the implications of installing the 911 number are understood.

Factors To Be Considered

Prior to implementation of 911, a number of major factors should be considered: (1) the coincidence of telephone exchange boundaries with police jurisdictional boundaries; (2) the establishment of some type of centralized answering service or an effective method of rapid, accurate transfer of information from one police jurisdiction to another; (3) political or governmental agency rivalry relative to utilizing a type of centralized answering service; (4) cost factors of implementation—including any additional personnel requirements; and (5) a public education program for the proper use of 911.

Of extreme importance is the coincidence of telephone exchange boundaries with police jurisdictional boundaries. Present technology does not allow for multiple answering points with any one telephone exchange. It must be clearly understood that, if 911 is utilized in an exchange, all such calls must be routed to one central answering point.

Cost factors to be analyzed in implementing the emergency number 911 in a central dispatch service include many circumstances, including the

number of additional trunklines required. There must be a determination made whether the major telephone companies can accomplish the necessary modifications within their exchanges and absorb these costs. Finally, additional features, such as hold and ring back capabilities, are additional cost factors of 911 to be weighed as opposed to the benefits such features will provide.

Without doubt, public education to the proper utilization of the 911 system is essential, and ample time and effort must be given to this. One factor not to be overlooked is stressing that 911 is an emergency number—administrative type calls should go through the regular agency number. Although this goal may never be fully realized, an effective educational program will eliminate many calls of an administrative nature to the emergency number.

Locally, the implementation of 911 in February 1972 was fortunate in many respects in that a central answering and dispatch service was already in existence. Interestingly, no additional personnel were required in Central Police Dispatch because of 911. Exchange boundaries coincided with county boundaries quite well, and the amount of information necessarily relayed to the areas of Montague and Fruitport is negligible and can be easily handled.

The cost factor in implementation of 911 consisted primarily in the addition of trunklines and was not great. There were no independent telephone exchanges and the cost of modifying existing exchanges, which ran into thousands of dollars, was absorbed by the telephone company. Its cooperation and support were of enormous assistance in planning, implementing, and carrying out the project.

Summary

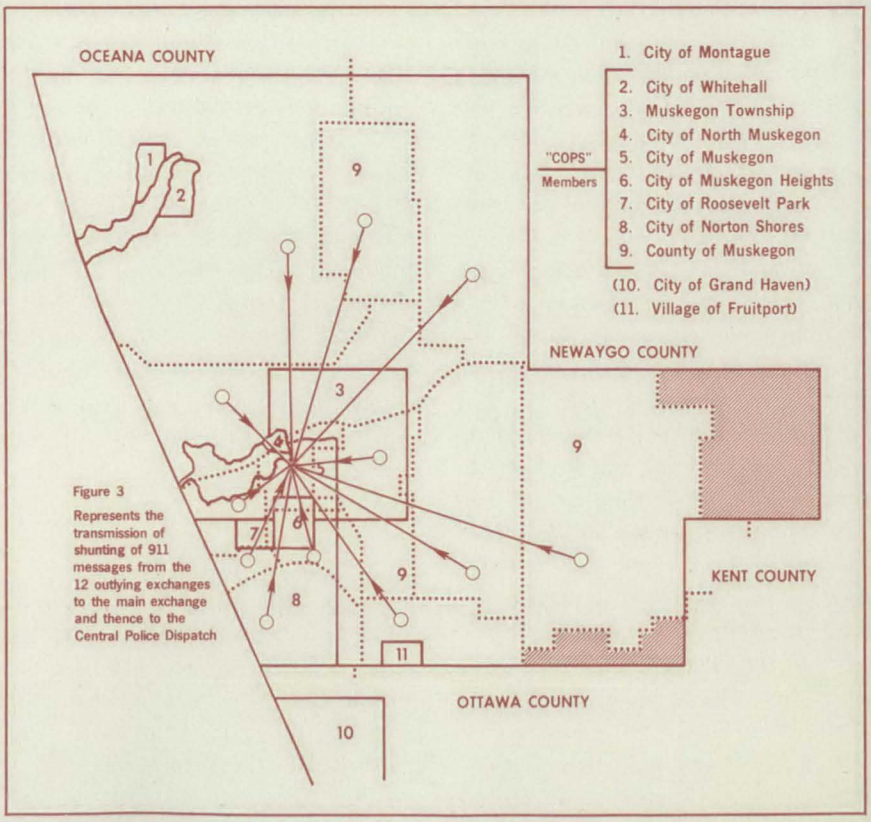
In summary, restructuring of the administrative body to head up the centralized service overcame the vast majority, if not all, of the objections that appeared at the outset. The existing organizational structure provides a proven workable model that other areas can adopt without enduring the trial and error method encountered by Muskegon. The existing structure still permits individual department and political subdivision identity while enjoying the benefits of specific centralized service. A central dispatch agency simplifies the implementation of 911. The concept in Muskegon has proven so successful that currently, in addition to Central Police Dispatch, the additional functions of central narcotics and crime prevention have been implemented.

In today's society, confronted on all sides with ever-increasing costs of governmental operations, the centralized concept with a good organizational structure will assist police agencies in coordinating services, in presenting more justifiable application for funding, and in developing a cohesiveness between agencies that leads to additional centralization of services and harmonious relationships. Because all political subdivisions within an area do not belong to such an organization, it does not prohibit the function of such centralized operations even though it may impair to some degree the total coordination sought.

Finally, in the last analysis, credit for the formation of the centralized service concept must be accorded to both political leaders and the law enforcement administrators of the political units involved.

With decisive leadership and harmonious cooperation of political and police leaders, centralized service effectively serves the people of Muskegon County, and at the same time, achieves significant savings.

The emergency number 911 is shunted from all outlying exchanges to the main exchange and then to Central Police Dispatch.



"The battleline between criminology and the criminal law is over the question, to what degree is man responsible for his criminal acts?"

CRIMINAL LAW V. CRIMINOLOGY:

A Question of Responsibility

By
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The impact of criminology on Anglo-American criminal law over the is so, notwithstanding the fact that the past century has been negligible.[1] This study of crime, criminals, and the criminal justice system has proliferated over the same period. In 1968, 270 colleges and universities found room in their curricula for programs in criminology and police science.[2] Today, there are 1,245 criminal justice degree programs in 664 colleges throughout the United States.[3] Even with the scholastic refinements in criminological theory, criminologists have been unable to make their voices heard or put their theories to the test in the judicial arena. Reacting to this lack of influence, behavioral scientists and criminologists have severely criticized lawyers, jurists, and the criminal justice system in general.[4]

The battleline between criminology and the criminal law is over the question, to what degree is man responsible for his criminal acts? The criminal law still clings to the precept that man is largely culpable for his acts because he has rational choice. The criminologists, on the other hand, believe that man is determined to act as he does, that he has no real choice of action. They further believe that concepts such as "free will" and "guilt" are medieval superstitions which should be relegated to the trash bin of history in the same manner as possession by demons and witchcraft.[5]

The Law and Responsible Man

Generally speaking, the criminal law of both the United States and England holds the offender guilty of a crime if he knew what he was doing and intended to do it at the time of the act. Under the common law, this concept

"The criminal law has developed its rules for dealing with the individual criminal by a slow evolution using as a data base the insight gained in criminal trials going back many centuries."

has been described in legal shorthand as *mens rea* or as more fully stated, *actus not facit reum, nisi mens sit rea* (an act does not make one guilty unless his mind is guilty).[6] This concept came into the law in about 1600. Prior to that, judges often ignored *mens rea* and judged the conduct itself criminal.[7] The *mens rea* concept, in those States which have abolished the common law, appears in various State statutes as "willfully," "maliciously," "corruptly," "designedly," "wantonly," "feloniously," etc., all indicating that the defendant must have a "bad mind" before he can be convicted of the crime.[8]

The criminal law, therefore, postulates that man himself carries the burden of responsibility for his criminal acts. Man has a free will, and he can choose between right and wrong, good and evil. The law has maintained this stance with few exceptions up to the present day, unless it can be shown that the defendant for reasons of infancy or defect of reason was unable to form the requisite intent to commit a crime.

Early Reforms of the Criminal Law

The primary impetus to the reform of the criminal law was the harshness of the law in the 18th century. During that time, there were 222 offenses punishable by death in England, including pickpocketing, falsification of marriage licenses, and the theft of five shillings worth of goods from a merchant.[9] This, plus the slow thawing of Victorian indifference and the beginnings of a social consciousness, resulted in dramatic changes in the criminal codes of Europe.[10]

In the mid-18th century, the Italian jurist Cesare Beccaria recognized the brutality of the system and was one of the early voices of reform. He called for sentencing procedures, humane treatment of convicts, and the abolition of capital punishment. In his "Trattato dei delitti e Delle pene" (Essay on Crimes and Punishments) published in 1764, he stated:

> In order that every punishment may not be an act of violence committed by one man or by many against a single individual, it ought to be above all things public, speedy, necessary and the least possible in the given circumstances, proportioned to its crime, dictated by the laws.[11]

For the time in history, this was truly daring rhetoric.

Jeremy Bentham led the movement for reform in England and was its intellectual heart.[12] Sir Robert Peel was the practical engineer of the new penal code and gained its passage largely through his famous speech on the floor of the House of Commons

"The M'Naghten doctrine . . . is the sole test for insanity in over half the States of the United States."

when he introduced the reform bill in March of 1826. The English code was completely revised between 1820 and 1861 and retained only three capital crimes, murder, treason, and piracy.[13]

The year 1843 in England marked a slight retreat by the criminal law from the concept of the totally responsible man. This resulted from the attempted assassination of Sir Robert Peel, then Prime Minister, by one Daniel M'Naghten who mistakenly killed Edward Drummond, Peel's private secretary. M'Naghten was suffering from delusions, believing that Peel wanted to turn the country over to the Pope and further that Peel was a threat to his life.[14] The murder trial of M'Naghten was eventually appealed to England's highest appellate body, the House of Lords, which resulted in the formulation of the famous M'Naghten insanity test. M'Naghten was found not guilty of murder because:

> at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.[15]

The M'Naghten doctrine has survived largely intact and is the sole test for insanity in over half the States of the United States.[16]

Under this doctrine, the trier-of-fact is to determine if the defendant was mad or merely bad when he committed the criminal act.

The Growth of Criminology

Up through the mid-1880's, the study of criminology, specifically crime causation and criminal responsibility, cleaved fairly harmoniously with the criminal law. The theories of Beccaria, Bentham, Peel, and others had an impact on the criminal codes, not only in England but also on the continent of Europe. The high watermark for the criminological reformers was probably 1861, the year which marked the final passage of the more humanitarian criminal code in England.

The uneasy marriage of the reformers and the jurists was not to last for long. With the rise of Darwinism toward the end of the 1800's, the theory of biological determinism was the first of many to assault the fortress which defined man as a rational animal possessed of a free will.

The Responsible Organism

Cesare Lombroso (1835–1909), often referred to as the father of mod-

ern criminology, found the responsibility for crime in the biological nature of man. Lombroso, an Italian physician and anthropologist, was deeply influenced by Darwin, and he postulated the theory of the atavistic criminal. Many criminals, according to Lombroso, are born criminals, they are biologically different from noncriminals. This biological difference manifests itself in certain physical anomalies or stigmata, such as protruding jaw, large outstanding ears, asymmetrical skull, etc. The physical differences are noticeable to the criminologist, and these criminals form a special criminal type. They are atavistic beings, throwbacks to an earlier, more primitive state of existence.[17] Free will in this biological criminal is severely limited. He is anthropologically determined to be a criminal.

Even though this simplistic, purely biological, school of criminology was disproved in 1913 by a massive scientific study in England,[18] Lombroso's theories of atavism and biological determinism lasted for many decades* and created bitter controversy in the field of criminology both in the United States and England. A major defense of Lombrosian theory was undertaken by two American criminologists as late as 1939, when they claimed to have discovered new proof for its efficacy.[19]

Theories attempting to find criminal responsibility preordained by biological accident still comprise a major focus within the rather loosely structured discipline of criminology. In 1910, Henry H. Goddard, a psychologist, administered intelligence tests to convicts and found 25 percent of them to be feebleminded, thus finding criminal responsibility in congenital feeblemindedness.[20] It appears that

*Lombroso himself, prior to his death, tempered his biological views considerably and rejected much of the "criminal atavism" theory and looked more for a multicause approach to crime. Unfortunately, he is best remembered for "criminal atavism."

"The brain itself has often been suggested as the offending organ responsible for criminal behavior."

Goddard gave little thought to the brighter criminals who escaped detection and/or conviction for their crimes. Goddard's theory of feeblemindedness strongly influenced criminological thought well into the 1930's before it started to decline.[21]

Several efforts have been made to relate criminal behavior to body structure, attempts to correlate physique to personality. Thus relating behavior, criminal or otherwise, to physical build and postulating that behavior can be predicted by making careful measurements of the human body.[22] Such theories have met with few, if any, practical results.

With the advance of medical knowledge over the past several decades, a theory of glandular dysfunction as the cause of crime has been advanced. Between 1928 and 1955, biological researchers found criminal causation in biochemical deficiencies, endocrine imbalance, and various other types of malfunctioning physiological systems.[23] However, further research showed that convicts seemed to suffer no more from such maladies than those in the nonconvict population.[24]

The brain itself has often been suggested as the offending organ responsible for criminal behavior. This is especially true for those who rely on the electroencephalograph, an instrument for measuring electronic activity in the brain, as a diagnostic tool. Some researchers have found a high incidence of abnormal brain waves among criminals, something akin to epilepsy, especially in the more violent offenders.[25] Yet the electroencephalograph is an imprecise diagnostic tool, and contradictory studies have shown a lower percentage of abnormal brain waves among criminals.[26]

The most current biological theory concerns the possibility of an extra Y chromosome causing potentially violent, antisocial behavior in certain male criminals.[27] This errant chromosome has also been linked to Lombrosian-like stigmata such as extreme tallness and facial acne.[28] Although an interesting hypothesis, it has yet to be proven scientifically, even though it has found some limited acceptance in the criminal codes of France and Australia. Its thesis seems to lie in the assumption that the possession of this extra Y chromosome somehow makes its possessor unable to control his violent antisocial acts and, therefore, renders him biologically insane. Such a defense has been proposed in the courts of the United States, but thus far, has found no acceptance.[29]

The Responsible Society

Gabriel Tarde (1843–1904), considered the father of social psychology and a severe critic of Lombroso's simplistic views, proposed that crime was a result of imitation. He used smoking as an example. The lower classes see the upper classes smoking and imitate them, thereby causing the proliferation of smoking throughout the population. Tarde saw crime in much the same light, the imitation of socially unacceptable behavior.[30]

The Dutch criminologist William Adrian Bonger (1876–1940), like Karl Marx, finds the capitalistic system as the root cause of crime. He says that an economic system based on exchange weakens the natural bond that unites people and, thereby, gives rise to cupidity thus fostering crime.[31]

The question then becomes one of the normality of crime. Crime in the sociological view is only abnormal when compared to the restrictions layed down by the criminal law. It is perfectly normal and rational when the various societal pressures which affect man are understood.[32]

It is therefore not man, but society, which is sick. The difference between criminal and noncriminal man is that the criminal has been exposed to an excess of learning experiences favorable to the violation of the law over learning experiences unfavorable to the violation of the law.[33] This, roughly stated, is Edwin Sutherland's theory of "differential association" [34] which has had a major impact upon American criminological thought. Sutherland reflects the pressures of modern American culture where vast social changes are occurring, including the phenomena of technological advancement, congested cities, economic upheaval, and large powerful corporations, all of which tend to magnify the relative helplessness of the individual caught up in the maelstrom of the various environment pressures. In this view, the individual criminal can indeed be seen as a victim of the sick society in which he finds himself.

". . . the psychiatric approach has had the only noticeable impact on the criminal law in the United States."

According to many of the prevailing sociological theories, the devil to be exorcised is not the criminal brain, atavism, or the feebleminded, but poverty, broken homes, slums, and criminal associations.[35]

The Responsible Psyche

The basis of this theory is that early childhood and family experiences shape the personality for deviant or nondeviant behavior, and behavior after these early childhood years is merely acting out tendencies formed at that time.[36]

Although there are many models, Sigmund Freud, the father of modern psychiatry, conceived a three-part human personality consisting of the id, ego, and superego. The functions of these components as conceived by Freud are as follows:

> The id is man's expression of instinctual drive without regard to reality or morality. It contains the drive for preservation and destruction, as well as the appetite for pleasure.
>
> The ego functions to satisfy the basic forces of the id in practical ways or tolerates the id drive until such times as these drives can find realistic expression.
>
> The superego dictates to the ego how the demands of the id are to be satisfied. It is in effect the conscience usually developed by parental ideals and prohibitions formed during early childhood.[37]

Crime, for the psychoanalyst, is the result of the conflict between the id, ego, and superego. The drives of the primitive id are not under sufficient control by the ego and come into conflict with the restrictions of society. The proper interactions of these three components are usually learned prior to the child's 5th year. Since every man is born with criminal potential in the sense that he is selfish, hateful, spiteful, and mean, being under the control of the id, his early experiences must be loving, kind, and sympathetic in order to develop the proper ego structure. If this is not accomplished in early childhood, antisocial behavior is the result.[38]

This theory is not only the explanation of abnormal behavior, but of all behavior, yet the overwhelming amount of research in the field has been done on the abnormal, not the normal personality.[39] The psychoanalytic theory decries the dogma of free will, yet it substitutes the dogma of id drives which appears to be an equally mysterious force and equally unpredictable.[40] The psychoanalytic view has undoubtedly increased our knowledge of the workings of the mind and added much to the treatment of mental disorders, but to totally accept it as yet another panacea for the understanding and treatment of all antisocial behavior is unrealistic and would be as difficult to accept among the many disciplines within the behavioral sciences as the free will theory.

Yet, of all the theories thus far reviewed, the psychiatric approach has had the only noticeable impact on the criminal law in the United States. In 1954, Monte Durham, a petty thief who had been convicted of housebreaking in the District of Columbia won reversal of this conviction on his appeal to the U.S. Circuit Court of Appeals.[41] Judge David Bazelon stated in that case:

> an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.[42]

There is some question whether the above *Durham* or "Product" test is actually an improvement on the old M'Naghten "Right-Wrong" test. It has been criticized by judges and lawyers for being too vague and nebulous to be of any use to the jury, which is charged with making the final determination of criminal responsibility.[43] The obvious confusion arises in the definition of "mental disease or mental defect." *Durham* remains a distinct minority rule, but it does, for perhaps the first time, acknowledge that the psychiatrist has a role in the judicial arena,[44] which role has been denied to his more disgruntled brothers in biology, anthropology, sociology, and genetics.

In Defense of the Responsible Man

The law in general is extremely pragmatic and conservative. It must

be so if it is to give a modicum of certainty concerning the rules which govern human behavior. The criminal law has developed its rules for dealing with the individual criminal by a slow evolution using as a data base the insight gained in criminal trials going back many centuries. From this base of experience, it has developed the presumption of the rationality of man. The detractors of this presumption represent disciplines which were in their infancy a mere 50 years ago.

The writer has attempted to briefly analyze the nature of the assaults on free will and rationality, and it is clear that if the law were to accede to any of the panacea-like conclusions of the reformers discussed it would have to surrender itself to a system to control brutes, man merely being the most highly adaptable brute in the hierarchy. This is not to imply lack of value in the various theories or their contribution to science, but to point out that the affairs of society cannot be conducted on a scheme of materialistic, biological, or sociological determinism except at the risk of denying the free will and essential rationality of man. To strip man of rationality and free will is also to strip his actions of moral value and his nature of nobility.

FOOTNOTES

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[11] Barnes, et al., *New Horizons*, p. 323.

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[15] English Reports 722.

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[18] Charles Goring, *The English Convict*, His Majesty's Printing Office, London, pp. 9–33.

[19] E. A. Hooton, *Crime and the Man*, Harvard University Press, Cambridge, Mass., 1939, p. 152.

[20] H. H. Goddard, *Processing of the American Prisons Association*, 1912, p. 355.

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Press Release 8-6-75.

LAW ENFORCEMENT OFFICERS KILLED

During the first 7 months of 1975, 72 local, county, State, and Federal law enforcement officers were killed due to criminal action in the United States and Puerto Rico. Seventy-seven officers were slain during the same period in 1974.

According to information collected through the FBI's Uniform Crime Reporting Program, 9 officers were killed in July compared with 16 slain in July 1974.

During the first 7 months of the year, 34 officers were killed in the Southern States, 16 in the North Central States, 12 in the Northeastern States, 7 in the Western States, and 3 in Puerto Rico.

Seventeen officers were slain while attempting arrests for crimes other than robbery or burglary, 15 in connection with robbery matters, 13 while handling disturbance calls, 7 while investigating suspicious persons, 6 in unprovoked or premeditated ambush-type attacks, 6 while making traffic stops, 4 in connection with burglary matters, 3 while handling mentally deranged persons, and 1 while handling prisoners.

All but 1 of the 72 officers were killed through the use of firearms. Handguns were used in 54 of the slayings.

The Federal Bureau of Investigation and the Police Foundation have launched a new program with the police departments of Wilmington, Del.; Birmingham, Ala.; Norfolk, Va.; and DeKalb County, Ga.; which seeks to mobilize greater citizen involvement in efforts to resist crime.

The purpose of the Crime Resistance Program is to determine through planning and study at a local level how communities can mount successful efforts to resist and, thereby, reduce crime.

"Crime in the United States is predominantly a local problem and can be successfully combated at the local level if citizens become involved," said FBI Director Clarence M. Kelley, Police Foundation President Patrick V. Murphy, and the communities' chiefs in a joint statement announcing the program. "The Crime Resistance Program will team local police officers and FBI Agents in planning and initiating steps to encourage self-help, low-cost citizen efforts to deter crime through their own actions."

Under this program, the FBI will provide two Agents to each of the four communities to work with two local police officers in determining methods by which police chiefs can develop citizen interest in resisting crimes against the elderly, crimes against women, crimes against youths, and combating trafficking in stolen property; the Police Foundation will provide planning and training assistance in the development of the program; distinguished police chiefs will lead the development of Crime Resistance Programs in their communities.

The police chiefs are A. J. Brown of Norfolk, Va., whose department will focus on crimes against women; F. D. Hand of DeKalb County, Ga., crimes against youths; James C. Parsons of Birmingham, Ala., trafficking in stolen property; and John McCool, together with Commissioner of Public Safety Norman E. Levine, of Wilmington, Del., crimes against the elderly.

"The Crime Resistance Program," continued the joint statement, "at small cost to the Federal Government, will weld the best FBI thinking about crime to local knowledge and experience in analyzing the particular crime problem under study in each of the four communities. Planning task forces of Agents and local officers will recommend to each chief actions he might practically consider to reduce the size of the particular crime problem. These recommendations will suggest ways to plan, organize, and implement a continuing citizen Crime Resistance Program. We hope that successful efforts will be copied by other communities in designing their own self-help crime resistance activities."

The initial stage of planning for Crime Resistance Programs will last at least 4 months at which point the local police departments, the FBI, and the Police Foundation will assess the progress of the programs.

FBI Director Clarence M. Kelley appears above with John McCool, Wilmington, Del., Police Department; tion; Chief F. D. Hand, Jr., DeKalb County, Ga., Po

Crime Resistance

The following has been statement of the Honorable Federal Bureau of Investi July 22, 1975, announcing

...ants at the Crime Resistance Workshop, Washington, D.C. Shown, left to right, are: Chief A. J. Brown, Norfolk, Va., Police Department; Mr. Kelley; Patrick V. Murphy, Police Foundation; ...epartment; and Chief James C. Parsons, Birmingham, Ala., Police Department.

In our democratic society, effective countermeasures to national problems must begin with the people. The people must truly want, demand, and be willing to actively support, these countermeasures if they are to be effective.

The National Advisory Commission on Criminal Justice Standards and Goals recognized that. After an extensive study on crime prevention, a Commission Task Force reported that *responsible citizen involvement* is the *key factor* in reducing crime nationally.

Today the Attorney General announced that serious crime in the United States for the first quarter of this year jumped 18 percent over the first quarter of 1974, according to figures compiled by the FBI under the Uniform Crime Reports program.

The violent crimes of murder, forcible rape, robbery, and aggravated assault, as a group, increased 18 percent.

You might well ask, so what else is new?

The soaring rate of crime has become as constant in our society as birth and death; yet, truly, the most disastrous thing that could happen would be for Americans to continue to yield ground to it—to continue to permit their lives and their freedoms to be narrowed by it.

We have witnessed four decades of Homeric efforts at various levels of government to elevate both the professionalism and the effectiveness of law enforcement; yet crime persists in eroding our communities and our way of life.

And I'm convinced crime will continue to do so until the American people become so outraged they resolve to become involved in lawful, carefully structured programs to resist crime.

They must resolve to give up some of their time in this effort.

One often hears the expression that time is money. It is also true that *money*—property—represents time. An individual's material losses to criminal predators cannot be reckoned solely in terms of dollars and cents. A value must be placed, too, on the irreplaceable human hours, days, months, and years that it takes to earn these material things.

It isn't uncommon for people in major cities to spend as much as 3 hours a day commuting to and from their places of employment. It would be much more convenient for them to reside in the urban areas in which they work; but many of them dare not

...apted from the prepared ...rence M. Kelley, Director, ...n, at a news conference, ...Crime Resistance Program.

Director Kelley addresses the news conference.

because they fear crime. And so they surrender these daily hours of their lives to criminals as tribute—so that they may enjoy a modicum of security in their suburban homes.

And if there is any compassion in us, we must grieve for those hundreds of thousands of honorable people who are locked into crime-infested inner-city and urban areas by the limitations of their income.

We who have not suffered their anguish can only imagine their fear of crime. We can only conjecture the extreme limits they must place upon their lives in order to survive the ravages of crime.

A study conducted recently showed that an urban American boy born in 1974 is more likely to die by murder than an American soldier in World War II was to die in combat.

We live in a society in which the spheres of our lives grow ever smaller because of fear of crime.

Our children no longer are free to go where they wish, and neither are we.

The significance of this and what it portends for the future must not elude us, particularly as we approach our bicentennial celebration of liberty under law.

Unless we Americans do something about crime's continuing tyranny, it will reign over our lives ever more cruelly in the future. And when I say "future" I mean from now until universal oblivion.

This Nation simply must understand and recognize the reality of this hazard. Americans who want a safer and more tranquil life for their children must understand that crime will persist as long as they permit it to do so.

Resistance to crime must be approached with the same fervor and commitment that we Americans have given to conquering other menaces to our existence—lethal hazards such as disease, fire, and drowning.

Some of the techniques we have used to minimize the risk of disease, death and injury by fire, and drowning, can and must be used in resisting crime.

Permit me to illustrate.

With regard to disease, we do not rely entirely on the medical profession to enable us to survive; we teach personal hygiene and good nutrition to our young, and practice it ourselves.

As for the menace of fire, we are taught from an early age basic precautions to avoid tragedy. We reprimand our children for playing with matches.

We teach and practice good water safety habits and thereby many lives have been saved.

We do not turn the entire matter of our personal health over to professionals. We do not rely entirely on firemen to keep us safe from fire. And we do not neglect good water safety practices simply because lifeguards and the Coast Guard may be able to save our lives.

And neither should we leave the entire matter of crime resistance to the criminal justice system and expect to be immune from crime.

Today's child is tomorrow's potential crime victim. The child must be taught crime safety—crime resistance.

We in law enforcement by no means have kept crime a secret. We've made sincere efforts to awaken citizens to the reality of crime.

But I think we must redouble our efforts to make them aware of how criminals operate, what tactics they employ, on whom they prey—and citizens themselves must resist crime.

We urge you in the news media to help us in that endeavor. Help us overcome that small voice within people that cries "don't get involved."

The fact is, we are *all* involved. Each crime against another member of our community diminishes our freedom by increasing our fear.

This is *our* Nation. And it is every American's heritage of freedom that is endangered by rampant crime.

Each and every one of us has an obligation to preserve and to pass on to the next generation those freedoms we inherited from our forefathers.

Crime places that heritage in deadly danger. And every American must resist crime as we resist other perils common to mankind.

It is to further that end that we enter upon this Crime Resistance Program.

Camp Win-A-Friend

By
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Baton Rouge, La.

"The goals of this camp are multiple, but the primary one is to create a constructive relationship between law enforcement officers and the youth of Louisiana."

It seems that the only thing new about crime is that it continues to grow. With an ever-expanding population, crime will most likely continue to increase. And, it will sadly spread further into the ranks of the Nation's youth, adding to the already heavy burden of law enforcement officers everywhere.

The Louisiana State Police (LSP) for several years has embarked on a long-range program of crime and accident prevention and more recently has begun a police-community relations program. One of the projects in the area of police-community relations is the Louisiana State Police boys' camp. The construction of this camp, known as Camp Win-A-Friend, built and maintained by the troopers themselves, has demonstrated our sincere interest in the youth of today. The goals of this camp are multiple, but the primary one is to create a constructive relationship between law enforcement officers and the youth of Louisiana. Members of the LSP visualized that reaching across the generation gap to the State's youngsters would bring about much better understanding between the youth and the troopers. The troopers wanted these youngsters to know that the troopers, deputies, and policemen were their friends—not their adversaries.

It was hoped from the beginning that this camp would become a common ground for the troopers and the boys, so that they might live, work, and play together, building a new relationship and harvesting a lasting favorable rapport, fully aware of their individual identities. It was hoped all would carry this experience back to their place in the community with a common bond of dignity and respect for one another.

Another reason for this camp is to combat and perhaps prevent an increase in juvenile crime. Ordinarily, the law enforcement officers come in contact with only a small percentage of the youth and for only a short period of time. LSP troopers and administration thought that a more concerted effort should be made toward negating those situations which

breed crime or nefarious temptations. Through this effort, more of our talents would be dedicated to reaching our modern-day youth so that they might be guided into more rewarding paths of society.

Some may submit that this endeavor is not a police function; we submit this is not a matter for debate. This is a program established with the primary function of reaching youth for the strict purpose of changing their ideas and attitudes toward law enforcement.

Building a Camp

With the financial support and outstanding cooperation of the Louisiana State Troopers Association, this camp grew out of an original experimental program wherein the troopers hosted 40 boys from throughout the State for a 1-week camp at the YMCA Camp near Holden, La., with the hope of creating a constructive relationship between law enforcement officers and the youth of our State. This initial endeavor was such a surprising and unqualified success that the decision was made to build a permanent camp. With tremendous enthusiasm and the administration's encouragement, the search was begun for a suitable location and the trooper team planning the camp approached a corporation which owned land near Holden, La. They showed corporation officials a slide presentation of their pilot program and so convinced them of the worthiness of a boys' camp that the corporation made available the 25-acre tract of land on which the camp is now built, on a 5-year lease arrangement. The camp program is governed by an 11-member board composed of troopers, civilians from various walks of life, and a corporation representative.

"The camp was constructed [by troopers themselves] in a scenic retreat in a peaceful section of the countryside. . . ."

Last year, a full summer program of 12 weeks was initiated at the LSP boys' camp. Camp Win-A-Friend is for boys who would not normally have the opportunity to attend camp. It is based on need; the attendees, ages 11 to 13, are chosen from families whose economic situation otherwise prohibits this type of recreation. The boys must be enrolled in school full time and are chosen from each of the 12 police troop divisions located throughout the State so that representation is statewide.

The camp was constructed in a scenic retreat in a peaceful section of the countryside in Livingston Parish, unmarred by the unpleasant reminders of civilization. Members of the LSP team who readied the boys' camp for occupancy found no road, not even a path, in the 25 acres of dense woodland. Two team members were directly responsible for the physical construction of the camp inasmuch as they did the actual carpentry work. Their dedication is reflected in the fact that their duty station, from which they commuted until the construction was completed, was nearly 200 miles round trip from the camp.

Scenic Retreat

In the clearing at the approach to the site, whether afoot or by helicopter, one has a panoramic view of the

The baseball diamond doubles as a heliport, and redwood cabins which provide sleeping quarters are built around it.

A log bridge links the administrative area and the cabin area.

entire camp layout, and the immediate impression is how unlike a typical boys' camp it seems. Three triangularly connected, adjacent, dome-shaped buildings are most noticeable. Contained therein are the director's office, lounge, TV room, kitchen, and main dining hall. The dome roofs were donated by a New Orleans firm before the buildings were erected, therefore, the trooper-carpenters constructed the buildings "in the round" to coincide with the roofs. The dome shape of the roofs allows much needed attic storage space which is easily accessible by stairs and has proven to be a valuable asset to camp planning by providing numerous interim expansion possibilities, while tentatively slated to accommodate future bunking space. Nearby this triple structure, across a drive, is another domed building, presently used as a storage area. This dome, also a gift from a New Orleans company, initially presented a transportation problem inasmuch as it was of metal construction and impossible to dismantle. Highway transportation was not feasible due to the width of the structure. The problem was resolved with the assistance of the National Guard which airlifted it from New Orleans to Holden by a "crane" (CH–54) helicopter.

A small lake separates the administrative area from the cabin area; a log bridge links them. Nine redwood cabins laid out rectangularly around a baseball diamond provide sleeping quarters for the boys, each accommodating one trooper-counselor and eight boys. In addition to sleeping quarters, one cabin is used for a trading post, another for the director, cook, and staff members. All cabins are labeled with the names of Indian tribes indigenous to Louisiana. Nearby the cabin area, adjacent to the baseball diamond, is the camp's swimming pool, constructed through the generosity of another company. It is permanently surrounded by a 5-foot fence, and while in use, a lifeguard is posted on a tower overlooking the pool for additional, necessary safety. The bathhouse serving the pool is a myriad of colors inasmuch as the plumbing and building accessories, donated by various individuals and businesses, are of every imaginable color. Given the variety of materials available, the ingenuity of the troopers lent a unique accent to this structure.

Located beyond the outfield of the baseball diamond and extending into the forest is a small firearms range where the boys are taught firearms safety by the troopers with .22 rifles. One of the impressive sights during this active week is to witness the boys being coached in the proper use of a hunting weapon by the trooper-counselors.

A nature trail winds through the adjacent woodland of the camp for 1½ miles. The trail is a means of education as well as recreation because the Louisiana Forestry Commission has tagged the various trees along the route by their proper botanical nomenclature, so that the boys, especially city boys, may learn to know and recognize them.

". . . a swinging suspension bridge . . . gaps the space from shore to an island midriver whereon the boys hike and spend one night."

Located in the forest adjacent to the camp clearing are two hills separated by a small gully and roofed by a cover of coniferous trees forming a natural setting for outdoor classrooms. Benches and a rostrum have been built on each hill allowing regularly scheduled simultaneous classes to be conducted during each camp session covering such topics as first aid, water safety, highway safety, accident prevention, fire prevention, and responsibility of citizenship, i.e., basic rights, respect for flag and country, etc. Guest speakers frequently handle topics of particular interest to the boys. Nearby a large hill overlooks

A trooper-counselor instructs boys in safety rules for a hunting weapon.

the Tickfaw River. The hillside is thick with lush vegetation to the peak where the trees part for a magnificent view of the river below, forming a fitting site for an interdenominational "A-frame" chapel which is to be constructed here. For the present, a chaplain comes to the hill each morning at 8:30 a.m. to speak to the boys.

A Week at Camp

Farther down the bank of the winding Tickfaw River, a swinging suspension bridge, constructed by camp personnel and highly popular with the boys, gaps the space from shore to an island midriver whereon the boys hike and spend one night. Each night, boys from a different cabin and their trooper-counselor make this trip, supplied with necessary food and equipment. This is one of the many highlights of the week at camp.

The LSP boys' camp officially opened its doors for the first time in June 1974 to 40 anxious boys. Each week commences as each boy is welcomed to Camp Win-A-Friend on Sunday by the trooper-counselors in full uniform. He is assigned to a cabin, immediately introduced to the camp's rules, and receives his first lesson in making up his bunk.

A typical day begins with a hearty breakfast in the dining hall. Most noon meals are eaten outdoors in an area ideal for barbecuing. A dinner bell announces mealtime, and each day those boys who won first place in the cleanest cabin contest for the previous day are privileged to eat first. Throughout the day, the lads compete in swimming, fishing, canoeing, hiking, softball, volleyball, and badminton. Physical fitness is stressed by participation in calisthenics, tumbling, boxing, track, etc. One of the most popular activities is a canoe race down the Tickfaw River with the trooper-counselors in canoes constructed of unsinkable styrofoam. Trophies are presented to the winners in all categories of activities so that by the termination of camp each boy has received a trophy representing success in some endeavor.

On Wednesday morning, the boys receive an LSP boys' camp T-shirt before departing by bus to Baton Rouge, La., where they receive a tour of the State police headquarters to learn various functions of law enforcement and are introduced to the mechanics and hardware of the profession. After the tour of headquarters, the boys visit the State Capitol and are introduced to legislators in both the Senate and House of Representatives. A visit to the Governor's Mansion, hosted by the State's First Lady, is also included in this busy day. Almost equally important to the boys on this day is a treat of hamburgers, french fries, and cokes, made possible through the generosity of a large hamburger chain. Naturally, Wednesday is one of the most memorable

days, however, Thursday is another day for which the boys wait with anticipation because it is then that they team up against their trooper-counselors in a tug-of-war over one of the largest mudholes in permanent existence, prepared and kept especially sloppy for this occasion. All hands enjoy a hilarious time with much good-natured teasing and camaraderie, not to mention that half the crew enjoys a free mud bath.

Camp ends on Saturday morning, when the boys depart with many happy memories. It may have been the very first time a lad has ever fished or hiked or gone swimming or participated in any of the activities that compose a camp week.

Something To Remember

Perhaps it was best summed up by a grateful mother who, after her son's attendance at camp, wrote, "You cannot imagine what you have done for my son. It has given him something to cherish and remember for many years to come." Many other lucky boys are and will be building and cherishing memories in years to come at the LSP boys' camp.

We feel this camp is unique and shall continue in our efforts to bring to the youth a camping program which will attempt to create, restore, and reinforce morals and good citizenship. We are convinced that the time spent with these young people on a close personal basis will have a desirable effect on their thinking and beliefs. We hope to convince them that the police are to help and not to hurt them and that laws are written for their protection and are not designed to punish them.

We believe that the greatest asset that we have in America is the youth of this country and it behooves all of us to develop this asset. Also, we hope this will encourage others to extend a helping hand in their direction.

". . . we of the LSP believe in getting involved to assist and guide these men of tomorrow toward a meaningful relationship with society."

Therefore, we of the LSP believe in getting involved to assist and guide these men of tomorrow toward a meaningful relationship with society. The benefits derived from this camp may be slow to materialize; however, as years go by, the relationships developed between the youthful campers and the troopers, we feel, will prove the worth of the camp. We have seen lives change; the price has not been minimal for either trooper or camper, but through the troopers' dedication, desire, time, and effort beyond normal duty expectations, the LSP has "won friends" today who will hopefully continue to be our friends tomorrow.

Soccer is one of the many activities available during a typical week at camp.

Community Service

By
HAROLD H. GRAHAM
Commissioner
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"... police officers are not a law unto themselves but rather act on the will of the people."

It is a well-established fact that the members of every police organization are indeed servants of the citizens in their respective communities. In 1829, Sir Robert Peel was credited with founding the first organized police force. In that year, the British Government established the Metropolitan Police in London. At the inception of that force, Sir Robert said: "The police should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police."

That statement is no less valid today than it was almost 150 years ago. In the light of our changing times, it is incumbent upon each police force to pursue this end with vigor. The public has too often erected barricades of dissension between themselves and the police. By stimulating

communication with people, this lack of understanding can be remedied. Our citizens must be made aware that police officers are not a law unto themselves but rather act on the will of the people.

The Ontario Provincial Police (OPP) has responsibility extending over 387,874 square miles. The area covers approximately 1,000 miles from the Great Lakes to Hudson Bay and an equal distance between the Provinces of Quebec and Manitoba. They patrol all Provincial highways and police many of Ontario's rural and isolated communities. The majority of the 185 detachments of the force are located in or near small towns. The detachment staff is encouraged to reside in the community it serves. Historically, this fact has enabled the force personnel to develop those channels of communication so necessary to effective police work.

Urbanization, the movement from country to city, however, has impeded this process and many personal contacts now come about only through enforcement. Changing social patterns have dictated that organized police-community relations must be employed in order that contacts can be made in an atmosphere conducive to good will, cooperation, and mutual understanding.

Information Functions

For many years, the information functions of the Ontario Provincial Police were separated into several widely dispersed branches of the administration. Recently, a definite need was identified to unify these efforts. This resulted in the formation of the Community Services Branch which is wholly responsible for force-community and force-media relations. The Community Services Branch responsibilities comprise public information, press liaison, feedback, complaints bureau, safety, crime prevention, The OPP Review (magazine), and the Commissioner's Citation Program.

For more than 10 years, the OPP has pursued a policy of meaningful contact with the media and the public. A news bureau was set up in a district headquarters in the Toronto suburbs. Using a simultaneous-broadcast system, the bureau receives information from detachments across the Province and channels it to newspapers, radio and TV stations, and national wire services. Members of the staff are also available to answer public inquiries.

Uniformed community services coordinators have been stationed in each of the 17 district headquarters. Part of the coordinator's job is to maintain close contact with the media in his respective district. At the detachment level, designated force members are responsible for this role within their own area. In this way, each of the hundreds of local newspapers and radio and TV stations has an immediate contact on the force. If a story breaks, members of the media know who to contact. They will also usually know their contact on a personal basis. Conversely, when the force wishes to impart information to the public, such as a crime bulletin or safety announcement, that same spirit of cooperation is reciprocated and the subject is given maximum coverage.

> ***"The public is told repeatedly that we depend on them."***

Another contact mechanism is well established after being in operation for a number of years. Every classroom in every school within the jurisdiction of the force is visited regularly by a uniformed member. The officer, using the vehicle of safety, also visits community groups and service clubs. While he preaches the gospel of safety, an underlying stress is always placed to establish closer ties between police and citizens in the community.

Presently, there are over 100 uniformed community services officers at field locations. The headquarters-based Community Services Branch supplies resource material on safety and crime prevention and arranges training for field personnel, not only in the prime subjects, but in teaching methods. In addition, the staff compiles and edits the force magazine, The OPP Review.

Two large trailers are utilized as traveling showcases for the force. These units are equipped with telephones, teletype, radios, and personnel accommodations. The trailers also double as emergency mobile offices when the need arises. In addition to arranging the trailer displays and traveling schedules, members of the Community Services Branch design, construct, and schedule the appearance of large static displays. The display units are exhibited together with patrol cruisers, motorized snow vehicles, four-wheel drive vehicles, boats, etc., in shopping malls, fairs, and police expositions.

Members of the branch act as liaison between the media and the executive of the force at general headquarters. Chief Inspector Fred R. Blucher, director of the branch, is the official spokesman for the force in communicating with the media.

Citizen Assistance

The prevention of crime has always been a prime objective of every police force. The OPP Crime Prevention Program was instituted in mid-1974. The community services officers were provided with support material and trained for this additional duty. These officers are responsible for imparting this knowledge to their colleagues as well as the general public. They are not limited to making formal presentations at schools or to community

groups. Both local residents and local businessmen are also visited and advice is given on the security of their premises. Victims of many crimes are contacted and advised how best they can try to prevent a recurrence. Young people ask for and are given help on how to maintain their bicycles and make them safe. Information on fraud schemes is available and directed particularly to elderly people. Everyone is told: "Prevention is in your hands." The police can only do so much. The public is told repeatedly that we depend on them. The police will never be able to man a cruiser on every block of the 78,000 miles of roads in the Province. The public must be our eyes and ears.

Any organization that counts service as its raison d'etre must always be ready to accept criticism as well as praise. It must be handled in such a way that public confidence and police morale will not be undermined. As communication is a two-way street, public-to-police contact is as much a community relations function as lectures on accidents. Following this logical concept, a Complaints Bureau was incorporated into the OPP Community Services Branch in July 1974.

Unfamiliarity with the law, a seemingly complicated court system, and just plain ire at having been given a summons or charged with an offense can all result in complaints from citizens. Many of these can be resolved by establishing a realization of why and how police function. How many times have you heard misunderstanding explained as "lack of communication"?

The OPP Complaints Bureau, in taking speedy action and sympathetically listening to criticism, has helped change the thinking of many persons whose initial reaction to an enforcement contact had been one of antagonism and aggression. The bureau has discovered that all complaints are not unfounded. When a legitimate complaint is filed, prompt remedial action is taken. If disciplinary action is indicated, the matter is referred to a committee appointed for that purpose.

Newspapers and the electronic media are barometers of public opinion. Editorial comment must be closely examined if any police force is to keep pace with the way it is seen by outside observers. "Feedback" is a force-wide system of newspaper scanning. An uncomplimentary statement in the press can be brought to the attention of the branch director and thence to the executive level. The Ontario Provincial Police forms part of the Provincial Ministry of the Solicitor General. Therefore, criticism by the public may need to be answered by the Minister in the Provincial Legislature. Relevant comment in the printed media or on radio and TV is transcribed and forwarded to the Solicitor General in order that remedial action may be considered and/or rebuttal prepared.

Another recently inaugurated program is the "Commissioner's Citation." This is an award which may be presented to citizens or organizations whose members have directly assisted the Ontario Provincial Police in a significant way. Force members in field locations are responsible for reporting any meritorious assistance from the public. Each case is evaluated by an executive committee. A bronze medallion is presented by the commissioner at an official force ceremony. This program helps to give credit when and where credit is due. Citations presented in the public spotlight demonstrate to the community that citizens who are honored do not suffer from apathy and lack of concern.

Good Will Ambassadors

In unifying these eight separate functions, the force established a system unique among police departments in Canada. Each section, although different in many ways from the others, has common denominators which promote free flowing dialogue and the exchange of data with the employees in other sections. Duplication of effort is avoided, resulting in the saving of time and money.

It takes many years of training and experience before a police officer reaches his maximum effectiveness. Members of the public cannot have the same understanding of all that our profession entails. We must make a concerted and determined effort to bring the message to them. We must let people know just what information is helpful to the police. We must tell them what cooperation they may expect from their police department. We must explain how they can help to police their community by prevention.

"Each police officer . . . is an ambassador for his department."

Public relations has almost become a rude word in these days of advertisement and promotion. But a police force must employ all means within its power, not only to enhance its image, but rather to create a receptive attitude for principles of cooperation and acceptance. Public relations methods will be very effective, but we have one inherent advantage that even the most well-thought-out ad campaign cannot offer. Each police officer as he drives his cruiser, walks a beat, or teaches children traffic safety is an ambassador for his department. Personal contact to improve mutual respect and understanding is the key to the whole endeavor. If every member of our profession exhibits a belief in sound community relations, our job will become easier. Members of the Ontario Provincial Police are making a concerted effort to embody these precepts in our programs. I am convinced we will succeed.

Miranda and Misdemeanors

By
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Definition and classification of lesser crimes vary widely among the States. There are high misdemeanors, petty misdemeanors, infractions, violations, and petty and summary offenses. All have one thing in common—they are the less serious crimes. Punishment for such offenses is generally less than for felonies. Yet some crimes characterized as misdemeanors provide for harsh penalties. For example, in Pennsylvania, violation of Pa. Stat. Ann. Tit. 75, § 1037 (1959), driving under the influence of liquor or drugs, a misdemeanor, subjects a violator to fine and "imprisonment for not more than three (3) years."

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

The Miranda *Rule*

In the landmark decision of *Miranda* v. *Arizona*,[1] the Supreme Court held that in order to effectively protect the fifth amendment right of an accused against compulsory self-incrimination during custodial interrogation, police are required to provide certain procedural safeguards prior to any questioning aimed at eliciting a confession.[2] These consist of the familiar advice of fifth and sixth amendment rights, coupled with the obtaining of a waiver of such rights.[3] Any confession secured without adherence to the *Miranda* mandate is subject to exclusion.[4] The principal thrust of

Miranda is to "dispel the compulsion inherent in custodial surroundings. . . ." [5]

An issue raised by *Miranda* and as yet unresolved by the Supreme Court is whether its procedural requirements apply to interrogation of misdemeanants. The following discussion considers the response by Federal and State courts to this question. In analyzing *Miranda* and misdemeanors, two preliminary observations concerning the *Miranda* decision should be remembered: (1) at no point in the opinion did the Court distinguish between felonies and misdemeanors; (2) irrespective of the classification of the crime, the prerequisites of *Miranda* warnings and waiver must be present before an officer is obliged to comply. There must exist both *custody* and *interrogation*. Absence of either obviates the need for advice of rights and waiver.

"An issue raised by* Miranda *. . . is whether its procedural requirements apply to interrogation of misdemeanants."

Traffic Stops and Custody

A. Federal Decisions

Officers most frequently encounter misdemeanors in the context of a traffic code violation. While most courts would agree that a "traffic stop" is a restraint imposed on a citizen's right to free passage on the highways—some would say a "technical arrest"—few would hold that such a temporary restraint amounts to custody as that term is defined in *Miranda*. The detention is usually brief, the indicia of formal arrest are noticeably lacking, the stop occurs in a public place, the citizen is not held incommunicado. In short, the coercive atmosphere of station house interrogation is conspicuously absent. Accordingly, the majority of court decisions hold that traffic stops alone do not create custody for *Miranda* purposes.

Perhaps the leading case involving *Miranda*, traffic misdemeanors, and the problem of custody was decided in 1969 by the U.S. Court of Appeals for the Ninth Circuit. In *Lowe* v. *United States*,[6] an Arizona deputy sheriff stopped a vehicle being driven erratically on the highway. Lowe was behind the wheel, accompanied by one passenger. He was asked by the officer for driver's license and car registration, but was unable to produce either. However, he did present his Social Security card. The officer then asked Lowe a series of questions about himself and the vehicle. Lowe stated the car belonged to his employer in Ohio, but could not remember the employer's name. He said further that he had permission to use the vehicle, that he was without funds and was headed for California to find work. Lowe was not told during this time that he was under arrest, although the deputy sheriff later testified that "he intended to keep [Lowe] where he was." Lowe was arrested and later convicted in Federal court of transporting a stolen vehicle interstate, based in part on statements made to the deputy sheriff during the highway stop. He appealed on grounds that responses made to the officer and later introduced at trial should have been excluded as having been obtained in violation of *Miranda*. More precisely, he claimed he was "in custody" when stopped and questioned by the deputy sheriff.

The court held that Lowe was not in custody for *Miranda* purposes when stopped and questioned. Rather, this was an example of "general on-the-scene questioning" specifically exempted from the *Miranda* strictures. The court further ruled that the questioning of a driver of a stopped car on an open highway by one policeman, without more, cannot be characterized as a "police-dominated" situation or as "incommunicado" in nature. Of particular interest is the court's observation regarding traffic-type stops:

> When a law enforcement officer stops a car and asks the driver for identification, a vehicle registration slip, and upon receiving unsatisfactory answers further asks the driver's destination and business, no 'in-custody' interrogation, as discussed in *Miranda*, takes place. . . . The statements made by appellant Lowe were a product of 'general on-the-scene questioning' which is not subject to the warning requirements of *Miranda*.[7]

A year later the Fifth Circuit Court of Appeals reached the same result. In *United States* v. *LeQuire*,[8] it was held that nothing in *Miranda* or in any other decision requires that following a stop for speeding an officer is required to confer warnings and obtain a waiver prior to asking for a driver's license and proof of ownership of the vehicle. The court noted this kind of questioning was "specifically excluded" in *Miranda*.[9]

B. State Decisions

State courts have generally followed the approach taken in *Lowe* and *LeQuire*. For example, in *People* v. *Pullum*,[10] the defendant was stopped for running a red light. He was unable to produce a driver's license or proof of ownership, and in response to questioning by officers, made statements later used against him at trial. Shortly thereafter, and while the defendant was still detained, the officers were informed the car was stolen. The defendant was arrested and a search

". . . a number of courts have found that statements made by a detained person at the scene of a [routine traffic] stop are not in response to 'interrogation,' but rather are volunteered declarations falling beyond the ambit of Miranda."

uncovered marihuana in his possession. He was convicted of armed robbery and unlawful possession of marihuana, and appealed.

Concerning the admissibility of statements made during the traffic stop, the Illinois Supreme Court held that such statements were made before the defendant was "in custody," and the *Miranda* warnings "were not necessary with reference to interrogation concerning the defendant's driver's license, ownership of the car, or running of a red light." [11]

A Pennsylvania court came to the same conclusion recently in a case where officers responded to a call that a car was parked on a highway. Upon arrival, they noticed a vehicle with motor running, lights on, and windows shut, blocking the road. The driver was slumped against the door, apparently asleep. The officers aroused him, and when asked what he was doing there, the defendant made an incriminating statement, admitted later at his trial for driving while under the influence of intoxicants. The issue before the court was whether *Miranda* was applicable in such circumstances. It was held that *Miranda* warnings were not required as this was general on-the-scene questioning, not interrogation, and such temporary detention to issue a ticket for illegal parking was not custodial.[12]

The foregoing cases illustrate situations in which persons detained have not been arrested. Several State courts have held *Miranda* inapplicable even though the suspect has been formally taken into custody.

One of the leading decisions is *State* v. *Macuk*,[13] a 1970 New Jersey Supreme Court case in which police officers were dispatched to the scene of a car accident. They discovered no sign of an accident, but found an unoccupied vehicle partly in a ditch. Nearby they noticed defendant Macuk on the porch of a house. In response to an officer's questions, he identified himself, admitted to driving the car, and stated that he had "been drinking." His breath smelled noticeably of alcohol, his speech was slurred, his gait unsteady. Macuk was arrested and accompanied the officers to headquarters for the purpose of taking a drunkometer test. While there, he was asked further questions which yielded inculpatory information. On appeal of his conviction for operating a vehicle while under the influence of intoxicating liquor, Macuk argued that the limited headquarters questioning should have been prefaced by *Miranda* warnings and waiver.

The court held that "in view of the absence of any indication to the contrary by the United States Supreme Court, the rules of *Miranda* . . . [are] inapplicable to all motor vehicle violations." It reasoned that motor vehicle violations are not sufficiently serious in New Jersey to warrant *Miranda* application, that the type of police questioning involved in vehicular violations is not ordinarily the lengthy, incommunicado inquisition at which *Miranda* was aimed, and finally, that as a practical matter it would be a manifest impossibility to afford appointed counsel to indigent motor vehicle violators.[14]

The Ohio Supreme Court carried the New Jersey view a step further and perhaps reached the outer limits with its 1969 decision of *State* v. *Pyle*.[15] In *Pyle*, the defendant also was arrested for driving while under the influence of intoxicants and interrogated thereafter without *Miranda* warnings. An appeal on *Miranda* grounds was rejected. The court ruled flatly that the holding of *Miranda* "is not applicable to misdemeanors, as . . . presently defined in Ohio." [16] *Pyle's* broad limitation on *Miranda* has been followed in few jurisdictions.[17]

Absence of Interrogation

In addition to the general view that *Miranda* "custody" is not imposed during a routine traffic stop, a number of courts have found that statements made by a detained person at the scene of a stop are not in response to "interrogation," but rather are volunteered declarations falling beyond the ambit of *Miranda*. One such case is *State* v. *Brandon*,[18] in which a defendant stopped for speeding and reckless driving was asked to take a breathalyzer test. In response the driver made a "gratuitously volunteered" comment indicating he had been drinking. The court pointed out that the rules of *Miranda* have no application to such a case, as there was no interrogation.[19]

The Iowa Supreme Court in 1974 applied this same principle in a nontraffic case. The defendant entered a police station uninvited and of his own volition described how he broke a window in a downtown business building. The statement was later used at trial for criminal trespass, a misdemeanor. Answering the contention that warnings were necessary prior to the statement, the court held that "[t]he crucial admission was volunteered and not in response to interrogation." The defendant was not entitled to the *Miranda* protections.[20]

Custodial Misdemeanor Interrogation—Majority View

Notwithstanding the restrictive view of *Miranda* expressed by the New Jer-

sey and Ohio Supreme Courts in *Macuk* and *Pyle*, respectively, most courts hold that *Miranda* controls all custodial interrogation whatever the charge. This position is best illustrated by a 1971 decision of the Arizona Supreme Court in yet another drunken driving case.

In *Campbell* v. *Superior Court*,[21] it was held that although *Miranda* is not applicable to a routine traffic offense where the driver is detained no longer than necessary to make out the citation, the warnings "must be given when the officer determines that . . . an arrest for a misdemeanor or felony is to be made." Thus the warnings were required in *Campbell* before any interrogation concerning his state of intoxication, even though it appears from the opinion that the questioning occurred at the scene of the stop rather than at the station house.

More recently, the Wisconsin Supreme Court decided a *Miranda* case in which an arrest for a traffic misdemeanor led to the prosecution of the defendant for a felony. The defendant driver was transported to a hospital emergency room following an accident in which the operator of another vehicle was killed. Shortly after his admittance, the defendant was placed under arrest and cited for driving while intoxicated and for not having a valid driver's license. About an hour after the arrival at the hospital, while the defendant was unable to move from his bed, and with three officers present, the defendant was interrogated without *Miranda* admonitions. His responses were admitted at trial for homicide by intoxicated use of a vehicle, a felony. On appeal of his conviction, the court held that conditions necessary to trigger *Miranda* application were present at the hospital, and use of the defendant's statements at trial violated his fifth amendment privilege against self-incrimination. Though the error was of constitutional dimension, the court nevertheless considered it harmless in light of other evidence, and affirmed the conviction.[22]

In 1973, the International Association of Chiefs of Police published the results of a survey of all State police and highway patrol agencies in the United States concerning the application of *Miranda* in nonfelony cases.[23] Of fifty (50) jurisdictions responding, forty-six (46) apply *Miranda* in "high misdemeanors" (possible 6–12 months' imprisonment); forty-one (41) in "petty misdemeanors" (possible 0–6 months' imprisonment); and thirty-eight (38) in driving-while-intoxicated cases. The manner of the survey is not known. Nor does it reflect responses of municipal police departments. Nonetheless, the results suggest that in most jurisdictions today, *Miranda* safeguards are provided by State officers whenever an accused is subjected to custodial interrogation in connection with minor offenses, at least where those violations are punishable by a jail sentence.

". . . recent decisions of State courts would suggest that there should be no distinction drawn at this stage between felonies and lesser offenses punishable by imprisonment."

Impact of Argersinger *v.* Hamlin

The key to *Miranda* and misdemeanors may lie in the Supreme Court decision of *Argersinger* v. *Hamlin*.[24] The defendant, an indigent, was tried without jury in Florida for carrying a concealed weapon, a misdemeanor punishable by fine and imprisonment up to 6 months. He was not represented by counsel at this trial. Upon conviction and sentence of 90 days in jail, the defendant sought and was denied habeas corpus relief by the Florida Supreme Court on grounds that his Federal constitutional right to counsel extended only to trials for nonpetty offenses punishable by imprisonment for more than 6 months. On appeal from this decision, the Supreme Court reversed, holding that no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at trial or made a knowing and intelligent waiver of such right.

Argersinger was decided solely on sixth amendment grounds. The defendant was denied the right to counsel at trial for a misdemeanor. No custodial interrogation was involved. No confession was obtained. There was no fifth amendment self-incrimination issue. And yet what can be seen in *Argersinger* is a deep concern about an accused being deprived of his liberty even for short periods of time without adequate constitutional protection. The Court noted: ". . . the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or 'petty' matter and may well result in quite serious repercussions affecting his career and his reputation." [25]

Anything beyond the holding of *Argersinger* that a misdemeanant faced with possible imprisonment is entitled to a lawyer at his trial is speculation. However, when the case is examined in the light of prior Supreme Court pronouncements on self-incrimination and the right to counsel, *Argersinger* could portend an extension of the right to counsel from the trial of misdemeanants to the earlier stage of custodial interrogation, where possible impairment of the fifth amendment privilege warrants the protection of the "guiding hand of counsel." The steps taken by the Court in guaranteeing the right to counsel at felony trials in *Gideon* v. *Wain-*

wright [26] and later in broadening the protection to embrace custodial interrogation of accused felons in *Escobedo* v. *Illinois* [27] and *Miranda*, might well find a parallel in misdemeanor cases. In short, given the Court's view that for sixth amendment purposes there is no distinction at trial between felonies and misdemeanors carrying jail sentences, a logical next step would be to hold that at such a critical stage as postarrest misdemeanor interrogation both the right against compulsory self-incrimination and the right to counsel attach. As one writer stated with respect to felonies: "The right to the assistance of counsel at trial would be of little value or effectiveness if police interrogation could produce confessions or elicit incriminating evidence that could make the trial a mere formality." [28] There would seem to be no sound reason why such a statement should not apply equally to misdemeanors.[29]

Conclusion

Because there is no custody (and frequently no interrogation), *Miranda* warnings and waiver are generally not required in street detentions where a misdemeanant is given a citation—traffic stops, jaywalking, littering, failure to move on, etc. In several jurisdictions, *Miranda* is not applicable in misdemeanor cases involving operation of motor vehicles even if custody has been imposed and interrogation carried out. However, most States have taken the position that where a full-custody misdemeanor arrest is effected, and is followed by interrogation on the street or at the station house (e.g., driving while intoxicated, driving with revoked license), an advice of rights should be conferred and a waiver obtained. This is especially true of misdemeanors punishable by a jail or prison term. Although the Supreme Court has yet to address the issue of *Miranda* application to custodial interrogation of misdemeanants, recent decisions of State courts would suggest that there should be no distinction drawn at this stage between felonies and lesser offenses punishable by imprisonment.

FOOTNOTES

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

[2] U.S. Const. Amend. V states in part: ". . . nor shall any person . . . be compelled in any criminal case to be a witness against himself. . . ."

[3] *Miranda* requires that the accused be warned prior to custodial questioning that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Thereafter an individual may waive his rights, but the waiver must be demonstrated by the prosecution at trial. 384 U.S. at 479.

[4] The state will be barred from using a confession taken in violation of *Miranda* to prove guilt, but it may be used under certain circumstances to impeach the author's credibility if he testifies at trial. *Oregon* v. *Hass*, 43 L. Ed. 2d 570 (1975); *Harris* v. *New York*, 401 U.S. 222 (1971).

[5] *Miranda* v. *Arizona*, *supra* footnote 1 at 458.

[6] 407 F. 2d 1391 (9th Cir. 1969).

[7] Id. at 1394.

[8] 424 F. 2d 341 (5th Cir. 1970).

[9] Cf. *United States* v. *Smith*, 441 F. 2d 539 (9th Cir. 1971) (passenger in car stopped for traffic violation need not be warned before routine questions, though passenger was not free to leave).

[10] 309 N.E. 2d 565 (Ill. 1974).

[11] Id. at 567.

[12] *Commonwealth* v. *Kloch*, 327 A. 2d 375 (Pa. Super. Ct. 1974). Also see *State* v. *Dubany*, 167 N.W. 2d 556 (Neb. 1969) (no custody established where car stopped and driver asked if he had been drinking); *People* v. *Phinney*, 239 N.E. 2d 515 (N.Y. 1968) (questioning of driver at hospital shortly after traffic accident and prior to issuance of summons "not the sort of . . . custodial interrogation at which the *Miranda* rule is aimed"); *State* v. *Tyndall*, 197 S.E. 2d 598 (N.C. App. 1973) (*Miranda* not applicable to stop for driving while intoxicated); *Goodney* v. *State*, 501 S.W. 2d 311 (Tex. Crim. App. 1973) (no *Miranda* warnings required where subject stopped for driving erratically and asked if he had been drinking); *State* v. *Darnel*, 508 P. 2d 613 (Wash. App. 1973), cert. denied, 414 U.S. 1112 (1973) (temporary detention for traffic violation not synonymous with in-custody interrogation requiring *Miranda* warnings).

[13] 268 A. 2d 1 (N.J. 1970).

[14] Id. at 9. Also see *County of Dade* v. *Callahan*, 259 So. 2d 504 (Fla. App. 1971) (*Miranda* warnings need not be given following arrest for violation of municipal traffic ordinances); *State* v. *Neal*, 476 S.W. 2d 547 (Mo. 1972) (*Miranda* warnings need not be given as a prerequisite to testimony as to admissions made to investigative officers by persons involved in motor vehicle offenses, regardless of whether the questions are asked before or after the arrest).

[15] 249 N.E. 2d 826 (Ohio 1969), cert. denied, 396 U.S. 1007 (1970), followed in *State* v. *Cupp*, 304 N.E. 2d 598 (Ohio App. 1973), and *City of Dayton* v. *Nugent*, 265 N.E. 2d 826 (Dayton Munic. Ct. 1970).

[16] At the time of the *Pyle* decision, a misdemeanor was defined according to Ohio law as a crime for which a person could not be imprisoned in the penitentiary and could not be imprisoned for more than 1 year. Ohio Rev. Code Ann., §§ 1.05, 1.06 (1953). Sec. 1.05 has since been amended and Sec. 1.06 repealed and replaced by Ohio Rev. Code, § 2901.02 (1974).

[17] In a decision which predated *Pyle* by 2 years, the Louisiana Supreme Court held *Miranda* inapplicable to the custodial interrogation of misdemeanants. *State* v. *Angelo*, 203 So. 2d 710 (La. 1967). In *State* v. *Gabrielson*, 192 N.W. 2d 792 (Iowa 1971), cert. denied, 409 U.S. 912 (1972), the Iowa Supreme Court, citing *Pyle*, held *Miranda* inapplicable to "simple misdemeanors," those providing a penalty not to exceed 30 days in jail or a $100 fine, but reserved judgment on its application to more serious (indictable) misdemeanors. While notice is taken of the *Pyle* decision in *County of Dade* v. *Callahan* and *State* v. *Neal*, *supra* footnote 14, neither reaches the same result.

[18] 201 S.E. 2d 234 (N.C. App. 1973).

[19] Also see *Manning* v. *State*, 287 So. 2d 248 (Ala. Crim. App. 1973) (statement "purely exclamatory," not the result of custodial interrogation, *Miranda* does not apply); *State* v. *Lowery*, 197 S.E. 2d 27 (N.C. App. 1973) (volunteered statement at time of misdemeanor arrest for driving with revoked permit).

[20] *State* v. *Rank*, 214 N.W. 2d 136 (Iowa 1974).

[21] 479 P. 2d 685 (Ariz. 1971).

[22] *Scales* v. *State*, 219 N.W. 2d 286 (Wis. 1974). Also see *United States* v. *Hatchel*, 329 F. Supp. 113 (D. Mass. 1971) (*Miranda* advice of rights necessary following full-custody arrest for driving without a license); *People* v. *Scharle*, 302 N.E. 2d 663 (Ill. App. 1973) (incumbent upon officer arresting for driving while intoxicated to give *Miranda* advice of rights); *State* v. *Flaucher*, 223 N.W. 2d 239 (Iowa 1974) (by implication, *Miranda* warnings required after full-custody arrest and questioning by agent of police leading to drunk driving conviction); *State* v. *Hill*, 178 S.E. 2d 462 (N.C. 1971) (one detained by police under a charge of driving under the influence of an intoxicant has the same constitutional rights as any other accused); *State* v. *Pollock*, 206 S.E. 2d 382 (N.C. App. 1974) (*Hill* followed; *Miranda* applicable where postarrest questioning takes place in police vehicle); *State* v. *Blakely*, 206 S.E. 2d 352 (N.C. App. 1974) (patrol car interrogation, *Miranda* applicable); *Byers* v. *Oklahoma City*, 497 P. 2d 1302 (Okla. Crim. App. 1972) (*Miranda* warnings required before patrol car questioning following full-custody arrest for public drunkenness); *Commonwealth* v. *Bonser*, 258 A. 2d 675 (Pa. Super. Ct. 1969) (warnings and waiver essential prior to station house interrogation of misdemeanant arrested for driving under the influence of liquor—no distinction between felon and misdemeanant facing potential 3-year prison term).

[23] Source: The Police Chief, Sept. 1973, pp. 34–35.

[24] 407 U.S. 25 (1972).

[25] Id. at 37, citing *Baldwin* v. *New York*, 399 U.S. 66, 73 (1970).

[26] 372 U.S. 335 (1963).

[27] 378 U.S. 478 (1964).

[28] Bassiouni, Criminal Law and Its Processes 433 (1969).

[29] In citing *Argersinger* v. *Hamlin*, *supra* footnote 24, the North Carolina Supreme Court in 1974 made this interesting and instructive comment: "The Supreme Court of the United States in *Miranda* does not limit the rights it sets forth to persons *charged* with felonies or misdemeanors, and neither does this Court . . . rather both Courts relate those rights to any individual being subjected to custodial interrogation concerning a criminal charge." The court proceeded to hold *Miranda* applicable to custodial interrogation of a person arrested for public drunkenness who was subsequently convicted of driving while intoxicated. *State* v. *Lawson*, 204 S.E. 2d 843 (N.C. 1974).

WANTED BY THE FBI

Date taken unknown. Photo taken 1971.

VICTORIA ELLEN BURKETT, also known as Victoria E. Burkett, Vickie O'Brien, Victoria Ellen O'Brien, Diane, Vickie

Interstate Flight—Murder, Conspiracy To Commit Murder, Burglary, False Imprisonment

Victoria Ellen Burkett is currently being sought by the Federal Bureau of Investigation for unlawful interstate flight to avoid prosecution for murder, conspiracy to commit murder, burglary, and false imprisonment.

The Crime

On June 12, 1974, Burkett, in the company of her husband, Garry Louis Burkett, also being sought by the Federal Bureau of Investigation, and a second female, met with an individual for the alleged purpose of delivering stolen goods. During the meeting the subject's husband became involved in a fight with the victim at which time Victoria Burkett reportedly shot and fatally wounded the victim. A Federal warrant was issued on July 15, 1974, at San Jose, Calif., charging Burkett with unlawful interstate flight to avoid prosecution for murder, conspiracy to commit murder, burglary, and false imprisonment.

Left thumb print.

Description

Age	24, born July 12, 1951, Des Moines, Iowa.
Height	5 feet 7 inches to 5 feet 9 inches.
Weight	120 to 130 pounds.
Build	Slender.
Hair	Brown.
Eyes	Brown.
Complexion	Fair.
Race	White.
Nationality	American.
Remarks	She may be traveling with her 2-year-old daughter who answers to the name "Baby Girl."
Social Security No. used	563-92-6678.
FBI No.	351,699 L8.

Fingerprint classification:

18 L 17 W r 13
M 1 U r

NCIC classification:

18 PO 55 21 13 14 12 54 13 16

Caution

Burkett, a reported cocaine user, is being sought in connection with a murder in which the victim was stabbed and shot to death. She may be traveling with her husband, Garry Louis Burkett, Identification Order No. 4647. Both Burkett and her husband should be considered armed and dangerous.

Notify the FBI

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

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Can You Identify This Print?

Numerous specimens of evidence located in connection with the investigation of a large number of related bombing incidents in the San Francisco, Calif., area have been examined for latent prints. A series of six latent prints, all made by the same finger, have been developed on evidence in four of these bombing matters. An enhanced tracing of the clearest and most complete of these six latent prints is shown below. The size, pattern structure, general contour of the ridges, and position on the items of evidence all indicate that these double loop whorl-type latent prints were made by the right thumb of the individual handling the various items. Extensive searching of the fingerprint files of the FBI and comparison with fingerprints of suspects and members of various extremist groups have failed to identify the latent prints to date.

Anyone finding a possible match of this tracing is requested to immediately contact the nearest FBI Office or the Latent Fingerprint Section of the FBI's Identification Division, in Washington, D.C.

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INTERESTING PATTERN

The pattern appearing at left presents no problem as to the classification. It is classified as a plain arch. The interesting aspect is that the ridges wave downward, thus making the pattern appear as if it were upside down.