



1973

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### Recommended Citation

Stephen L. Wasby, *The Communication of the Supreme Court's Criminal Procedure Decisions: A Preliminary Mapping*, 18 Vill. L. Rev. 1086 (1973).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol18/iss6/9>

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THE COMMUNICATION OF THE SUPREME COURT'S  
CRIMINAL PROCEDURE DECISIONS:  
A PRELIMINARY MAPPING

STEPHEN L. WASBY†

*The policeman is supposed to protect your life, rights,  
and property in that order; in fact, he protects life and  
property, and doesn't know your rights.*

— a police training officer

I. INTRODUCTION

**W**HY THE POLICEMAN does not know our rights, why the Supreme Court's "criminal procedure revolution" of the 1960's apparently did not reach him, or if it reached him, had little effect, is of considerable theoretical and practical importance. It is theoretically important to understand the processes of communication in a complex society; it is practically important to know whether our police follow the law, at least as declared by our highest courts, or are a law unto themselves.

As one examines the available studies of the actual impact of decisions of the United States Supreme Court,<sup>1</sup> one finds that the rates at which local officials carry out what the Court has determined to be "the law" are often relatively low. In some instances, it is clear that the officials are aware of the Court's decisions. However, there are other instances where one cannot easily attribute the lack of impact to conscious resistance. It may be, one realizes, that the decisions have never reached the place where they might be applied. One such area is that of criminal procedure, where the doctrinal con-

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1. THE IMPACT OF SUPREME COURT DECISIONS: EMPIRICAL STUDIES (2d ed. T. Becker & M. Feeley 1972) and S. WASBY, THE IMPACT OF THE UNITED STATES SUPREME COURT: SOME PERSPECTIVES (1970), are respectively, a collection of studies and a synthesis of writing on the subject.

tent of some cases is quite unambiguous. For example, the requirements of *Miranda v. Arizona*<sup>2</sup> on the use of confessions are so clear that they can be reduced to the four (or five) warnings of a "Miranda card" carried by policemen. But *Miranda* seems to be an exception. The area of unreasonable search and seizure is, to put it mildly, a morass of complicated and tangled rules. One might argue that local law enforcement officials, caught up in the "law 'n order" mentality of the late 1960's and early 1970's, might refuse to follow the Supreme Court's pronouncements even if they knew of and understood them. We should, however, be careful not to let left-wing views of policemen interfere with our analysis. It seems important to know whether the Court's pronouncements are ever reaching the police who could then decide whether or not to follow them, whether they are available to the police who wish to know about them, or whether other factors exist which interfere with pressures toward compliance.

While we have begun to learn something about the means by which Court decisions are transmitted, we still know very little of the process by which they get "from here to there," from the Court to the ultimate consumer of the Court's message. The increasing number of impact studies of the Court's decisions have concentrated more on the ultimate effect of the decisions than on the linkage between the process of implementation and resultant policy.<sup>3</sup> We have been concentrating on what comes out of the pipeline rather than with what goes on in the pipeline or how the pipeline affects the product. While communication and impact are inextricably connected, it is important to distinguish analysis of communication of decisions from analysis of the impact of those decisions or of compliance with them.

What follows is a preliminary treatment of the transmission of Supreme Court criminal procedure decisions to those concerned with law enforcement. Its purpose is to present an initial inventory of the means which might be used to move the decisions from their point of origin to their point of utilization, and of a set of factors which might affect the communications process through these channels.

Existing studies of the impact of criminal procedure decisions which directly affect law enforcement officers<sup>4</sup> tell us a little about the communications process. For example, a substantial increase in police education appears to have resulted from *Mapp v. Ohio*,<sup>5</sup> which

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2. 384 U.S. 436 (1966).

3. See Wells & Grossman, *The Concept of Judicial Policy-Making: A Critique*, 15 J. PUB. L. 287, 293 (1966).

4. For a more complete discussion of these studies, see WASBY, *supra* note 1, at 158-68.

5. 367 U.S. 643 (1961).

imposed the exclusionary rule on the states, and this education seems to have been related to increased compliance with the rules of search and seizure.<sup>6</sup> When *Miranda* was handed down, police officials in a number of major cities made efforts to inform their subordinates, particularly detectives, about the decision.<sup>7</sup> Even when improved procedures for transmitting materials developed, changes in police techniques, *e.g.*, interrogation, did not necessarily occur.

The principal available study in this area, that by Milner of *Miranda* in four Wisconsin middle-sized cities,<sup>8</sup> suggests that information about the Court's decisions reaches law enforcement officials through a variety of different sources, but that the officers themselves rate training and conference as the best source of information. The source of information rated best did not differ significantly between those approving and those disapproving of the decisions; however, those who approved were more likely to have received information at a training session than were those who disapproved. "The number of sources of information and the percentage who received information from training session var[ied] directly with professionalization and participation."<sup>9</sup> However, contrary to Milner's expectations, the more highly professionalized departments did not rely more heavily on outside sources for information, unless they were law enforcement sources (*e.g.*, the attorney general) which shared the department's basic ideology. As Milner put it, "a highly professionalized organization [is] more likely to have its own professionals as important reference groups."<sup>10</sup>

Other aspects of the communications process have been illuminated by other studies. Important criminal procedure decisions are likely to be buried in a deluge of Supreme Court opinions on "Decision Monday,"<sup>11</sup> making the work of the press, the prime agent for the initial transmission of the messages to the public, extremely difficult.

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6. On retraining, *see* Murphy, *The Problem of Compliance by Police Department*, 44 TEXAS L. REV. 939 (1966); on compliance and changes in attitude, *see* S. Nagel, *Testing the Effects of Excluding Illegally Seized Evidence*, 1965 WIS. L. REV. 283, in THE LEGAL PROCESS FROM A BEHAVIORAL PERSPECTIVE 294 (1969).

7. *See* Medalie, Zeitz & Alexander, *Custodial Police Interrogation in Our Nation's Capital: An Attempt to Implement Miranda*, 66 MICH. L. REV. 1347 (1968); Seeburger & Wettick, *Miranda in Pittsburgh — A Statistical Study*, 29 U. PITT. L. REV. 1 (1967); and Wald, *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519 (1967).

8. N. MILNER, *THE COURT AND LOCAL LAW ENFORCEMENT: THE IMPACT OF MIRANDA* (1971).

9. *Id.* at 224.

10. *Id.*

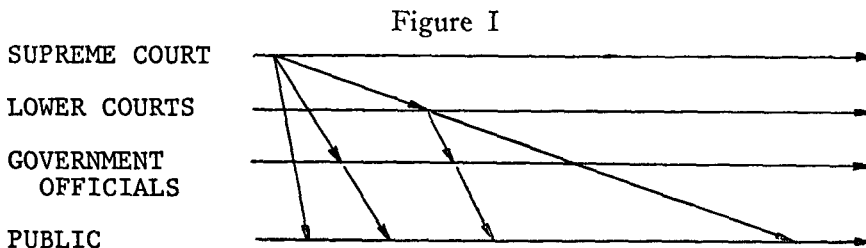
11. Gregory & Wasby, *How to Get an Idea from Here to There: The Court and Communications Overload*, 3 PUB. AFF. BULL. (S. Ill. U.) 1 (1970); MacKenzie, *The Warren Court and the Press*, in THE WARREN COURT: A CRITICAL ANALYSIS 114 (R. Saylor, B. Boyer & R. Gooding, Jr. ed. 1969).

The reporters, who until recently have lacked training in the law, are "on their own" because the Court's press officer merely hands out decisions and does not explain them.<sup>12</sup> Distortions — inaccuracies, oversimplifications, and overattention to the parties rather than to legal issues — occur as a result. While the Court's decisions may have been complex and not unambiguous, the decisions are thus further confused in the process of communication.

However, all of this does not carry us very far. We need to know much more. The process of developing more data may be assisted by identifying the channels of communication through which decisions might flow, and thus providing a framework within which to gather and organize that data. It is these channels, and then the factors which affect communication, to which we now turn.

## II. AN INVENTORY OF MEANS

In attempting to determine the various means by which Supreme Court decisions might be communicated to their ultimate audience, we might, using a model (Figure I) developed by the author, begin "at the top" and work our way "down" channels of communication from the Court, to lower courts, to governmental officials, to the public.<sup>13</sup>



The Supreme Court's opinions themselves obtain circulation, at least among some attorneys and a few laymen interested in the work of the Court. They are available in a number of forms, from their early publication in various unofficial reporters to the "slip opinions" published by the Government, and ultimately to the bound volumes produced both by the Government and private publishing companies. Some newspapers, but only a very few, print excerpts from what are thought to be the most important decisions. The decisions are also available in publications specializing in criminal law matters such as the *Criminal Law Reporter* which reports Supreme Court criminal procedure holdings.

12. D. GREY, *THE SUPREME COURT AND THE NEWS MEDIA* (1968); Newland, *Press Coverage of the United States Supreme Court*, 17 *WEST. POL. Q.* 15 (1964).

13. See WASBY, *supra* note 1, at 35.

Despite the multiplicity of forms in which the decisions are printed, the actual availability of the decisions at the city and county level, where law enforcement officials, whether prosecuting attorneys or policemen, might want to avail themselves of direct reference to the Court's pronouncements, is less than satisfactory. This appears to be particularly true in the more rural states, where there may be a set of *United States Reports* only in the larger cities (of which there may be only a few). For example, it has been estimated that, in Wyoming, the Reports are not available except in Casper, Laramie, and Cheyenne.<sup>14</sup> A survey of clerks of the circuit court in Illinois, conducted by the author, showed that only about half of the counties had the Supreme Court's decisions available; far less had access to decisions of either the courts of appeals or the district courts. In fact, there are instances where even large-city police departments have been unable to easily obtain copies of decisions directly affecting them. When the *Escobedo* decision<sup>15</sup> was handed down, the Chicago Police Department obtained a copy when someone at the University of Wisconsin Law School xeroxed the advance sheets and mailed the copy to the department. It appears that two weeks after the decision, there was no adequate copy of it in the department from which the case originated.

The court structure, a multi-level one in this country, is one way in which decisions are communicated. Not only is there a dual court system, with a separate structure of courts for the federal and state governments, but each has several levels. Supreme Court decisions may not be communicated directly to the lowest, or trial, level, but may work their way down through intermediate appellate courts. Thus, a Supreme Court holding may be communicated to the federal district courts by being cited in a decision of the court of appeals for the circuit in which the district court sits. At the state level, it may take a decision of a state supreme court, and then of an intermediate appellate court, before the holding reaches the state trial level, at least through this particular means of communication. In a particular case, the decision and relevant orders are generally sent by the Supreme Court to a lower court for "proceedings not inconsistent with this opinion." As a result, "[t]he formal judicial structure . . . provides an important channel through which a ruling is transmitted to those *directly under obligation to act.*"<sup>16</sup> However, for those lower courts in which no pending cases are affected by a Supreme Court decision,

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14. This information was obtained through interviews by the author.

15. *Escobedo v. Illinois*, 378 U.S. 478 (1964).

16. R. JOHNSON, *THE DYNAMICS OF COMPLIANCE* 61 (1967) (emphasis supplied).

it is probably time enough to wait until the published reports become available.

Despite this picture, the court structure, or the relationship between the highest court and those below it, is *not* bureaucratic, with communications passing regularly down through channels.<sup>17</sup> Even a lower court judge's knowledge of cases is not automatic, and may not come from following the actions of superior courts. The decision of the Supreme Court in a relevant case may come to the attention of a judge only by being cited by a lawyer arguing a case before him. While some judges may regularly follow what the Supreme Court does, others may wait until attorneys bring matters to their attention. Given the nature of our adversary legal system and the apparently inescapable time pressures on the judiciary, this may be a perfectly natural way for communication to occur. However, if attorneys do not cite the cases because *they* are unaware of them, the judges may never hear of them. Where the bar in a state is relatively small and unspecialized, at least as to criminal matters (*e.g.*, Rhode Island or Wyoming), this is particularly likely.<sup>18</sup> To be sure, in deciding a matter presented to them, judges may do research on their own, but even then they may have waited for the issue to be presented in court rather than doing "independent research" on the off-chance that the issue might be raised before them.<sup>19</sup> Of course, both methods may operate simultaneously — that is, a judge may have read about a Supreme Court holding and then also have it called to his attention, and his concern reinforced, by a lawyer arguing a case before him, a version of the "two-step flow" within the legal system. This interplay of formal (printed/published) media and personal communication is not uncommon. This method of judges' finding out about cases may also mean that diffusion of court decisions may be horizontal — from one state or lower federal court to another court at the same level. While such decisions have no binding legal effect in a foreign juris-

17. Murphy, *Lower Court Checks on Supreme Court Power*, 53 AM. POL. SCI. REV. 1017 (1959).

18. Professor Frank Remington of the University of Wisconsin, School of Law, has pointed out in conversations with the author that model jury instructions prepared at the state level may be another way in which some judges find out about the substance of cases. He cited the instructions arising out of *Boykin v. Alabama*, 395 U.S. 238 (1969), which required that the record show a guilty plea to be voluntarily made, as a case in point.

19. It has recently been pointed out that state supreme court judges, because of the press of business, must wait until summer recess to read advance sheets from other jurisdictions, thus creating a "lag" between announcement of a decision by the Supreme Court and the judges' becoming aware of what the Court has said. Edward N. Beiser, *Decision-Making in the Rhode Island Supreme Court; Judicial Behavior, Attitudes, Norms and Role Perceptions*, Sept. 7, 1971 (unpublished paper presented to the American Political Science Association).

diction until adopted, lawyers utilize them, and the decisions of some state courts are adopted more often than others.<sup>20</sup>

Lawyers also serve as an important means of communication by helping to transmit decisions to other attorneys. Where a community contains a substantial number of criminal defense attorneys, they may be organized, either informally or formally, into a "defense bar" which circulates information about relevant cases. More formally organized bar associations, through publications, meetings, and continuing legal education "short courses," also assist in the communication process. However, the bar does not usually take upon itself the task of widely disseminating information about cases. Only a few lawyers are concerned about improving the public's awareness about Court decisions, perhaps because very few lawyers deal with constitutional law and, therefore, may not be any more competent to interpret what the Court has done in that area than some well-read laymen.

Although the organized bar may do little to disseminate information about such decisions, some other interest groups do provide information, at least to their own members, about what the Court has done. However, only a limited number of cases are publicized in this fashion. For example, in the area of obscenity, the Motion Picture Association of America (MPAA) has sent memoranda to attorneys for local motion picture groups concerning the Supreme Court's movie censorship holdings.

The advisory opinion of the state attorney general is of considerable importance. Usually available only on request by a public official, these documents, while not having the force of law in the courts, are given great weight by application of Supreme Court holdings to their own work. In recent years, a number of attorneys general have begun to publish bulletins prepared specifically for law enforcement officials, covering both Supreme Court cases and related state court opinions.<sup>21</sup> These documents have the advantage both of coming from a state official rather than a distant federal court, thus making the decisions more "immediate," and of tying Supreme Court decisions to matters of more immediate concern to local law enforcement officers, who may not be sure of the possible relationship between the Court's pronouncements and the law in their own jurisdiction.

While the prosecutor could be a major means of communication, "the prosecutor assigned to [a] case rarely assumes it to be his duty to inform the police department of the meaning of [a] decision or of

20. S. Nagel, *Sociometric Relations Among American Courts*, 43 Sw. Soc. Sci. Q. 136 (1962), in *THE LEGAL SYSTEM FROM A BEHAVIORAL PERSPECTIVE* 59 (1969).

21. *E.g.*, *The Prosecutors' Bulletin*, published by the Attorney-General of Wisconsin.



its intended impact upon current police practice,"<sup>22</sup> partly because he was never taught that he should do so and partly because there is little pressure from a defense-oriented bar to do so. While there are exceptions to this rule, it has been noted that prosecutors are "sometimes . . . not able to take on the task of interpreting and instructing police."<sup>23</sup> District attorneys also vary in their knowledge of higher court decisions. If they have lost cases, at trial or on appeal, they will, perhaps, have more motivation to instruct police in the law. Prosecutors' knowledge of court decisions depends in part on whether or not they are full- or part-time, the former having more time in which to become informed,<sup>24</sup> and on whether or not they handle their own appeals, since district attorneys who must do so are much more likely to know about relevant appellate court holdings than are district attorneys where the attorney general's office takes appeals to higher state courts. In California, the attorney general and district attorneys hold "zone meetings" for law enforcement officers to keep them posted on important legal developments. *Miranda*, decided June 13, 1966, was discussed at zone meetings in three cities throughout the state in July 1966. This was followed by instructions, prepared in the attorney general's office, for distribution to local agencies through the district attorneys. In addition, in California, the district and city attorneys are responsible for advising police of legal problems stemming from their procedures. Thus, with *Miranda*, "[e]ven before the promulgation of instructions from the Attorney General, most local police agencies had been informed by district attorneys of the *Miranda* requirements."<sup>25</sup> More common is the situation in which one man in the attorney general's office provides liaison with judges and district attorneys in the state. Perhaps an extreme case of this is Wisconsin, where trials have been recessed so that prosecuting attorneys might consult with the assistant attorney general who is their "contact man" in the attorney general's office. Even when the district attorneys are well-informed about the law, there is still the need for a link between them and the police department — one which often does not exist. Some prosecutors, however, including some United States Attorneys, who clearly have no responsibility for the

22. LaFave & Remington, *Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions*, 63 MICH. L. REV. 987, 1005 (1965).

23. Murphy, *supra* note 6, at 940.

24. One solution to the problem of lack of expertise with respect to the criminal law in "low-volume" jurisdictions would be the development of a multicounty district attorney's office, whose personnel roam from county to county trying criminal cases. One such program has been established in Southern Illinois with Illinois Law Enforcement Commission funds.

25. Lynch, *Added Burdens for Law Enforcement Officials*, in A NEW LOOK AT CONFESSIONS: ESCOBEDO — THE SECOND ROUND 68 (B. George, Jr. ed. 1967).

behavior of county or municipal police, do extend themselves to carry out some teaching programs.

Even when a Supreme Court decision is utilized at the state trial court level, it often is not effectively transmitted to the police. Few departments have set up a method of having a specifically designated police officer report to the department on what has occurred in trial court, where many, if not most, of the rulings are unpublished. In most departments, no one has the responsibility to report back to the department why a particular case was lost. Even if someone were assigned the responsibility, much might not be accomplished, for "[t]he trial judge seldom explains his decision in a way likely to be understood by the police officer."<sup>26</sup> When the police officer does understand what has gone on, he does not systematically transmit it, although he is likely to talk about it with some fellow officers. Thus, while some law enforcement officers read all the Court's decisions, it has been noted that:

to the average police officer "the law" concerning arrest, search, and other police practices is in large measure represented by his direct and indirect knowledge of the attitudes of the local judiciary. . . . Most policemen, if asked to define the limitations on their authority, would respond on the basis of: (a) their understanding of judicial rulings in cases in which they have appeared; and (b) their understanding of the rulings, often passed on by word-of-mouth, in cases involving their fellow officers.<sup>27</sup>

Thus, a police administrator is likely "to have to rely primarily upon the newspaper as a source of information about judicial decisions, even those involving an officer of his own department."<sup>28</sup>

Of some note is the development in some police departments of a special position for lawyers, that of police legal adviser, to remedy the lack of communication between district attorneys and city attorneys on the one hand, and sheriff's officers and policemen on the other. These advisers work within the department providing legal advice, including interpretation of Supreme Court decisions. As one commentator has pointed out "[t]he legal adviser could assume a large, perhaps a primary, role in recruit and in service training; or he could limit himself to preparing specific aids such as an annotated manual on the criminal code or rollcall training bulletins on recent judicial

26. LaFave & Remington, *supra* note 22, at 1005. Through personal interviews the author learned of a small town police chief in Wisconsin who lost six consecutive cases because of motions to suppress evidence which were never explained to him.

27. LaFave, *Improving Police Performance Through the Exclusionary Rule — Part I: Current Police and Local Court Practices*, 30 Mo. L. Rev. 396-97 (1965).

28. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 33 (1967) [hereinafter cited as THE POLICE].

decisions and legislative enactments.”<sup>29</sup> Without such a member of the staff, the police department must often rely on its own nonlegal resources for assistance in interpreting cases, because “most police forces receive only sporadic counsel from the prosecutor’s office or from individual prosecutors who have developed a special relationship with certain squads or officers,”<sup>30</sup> as in situations where officers have their “own” favorite assistant district attorney to whom they turn for advice. In New York City, police are supposed to be able to utilize five district attorneys as well as the city’s Corporation Counsel for advice on legal matters. However, these sources are often overburdened, throwing the department back on its own resources. In that case, however, the department has its own legal bureau — a number of police officers all of whom are also attorneys — charged with keeping members of the force instructed on changes in the law. In Oakland, California, a member of the department reads the advance sheets and prepares memos for the members of the department. However, such a procedure is probably rare. Most departments have methods of communication of decisions which can only be called random; in other words, they have no regular system of communication.

Printed sources other than the Court decisions themselves abound. The mass media, particularly the newspapers, have been mentioned in connection with the communication of decisions, and the predominant role of the wire services in such transmission has been stressed. Television generally plays a lesser role than newspapers, because there is altogether too little time in a 30-minute newscast to say more than a few words about even major Court decisions. The substance of some of the more important decisions may also find its way into the entertainment side of television, and appear in dramas about defense attorneys and detectives. Educational television (ETV) can play a particularly important role in the communication of decisions, either to the general public (including law enforcement personnel) or to special groups. If ETV can be used to beam particular programs to elementary and secondary schools, it could also be used to transmit police training materials to policemen at the stationhouse to supplement the meager facilities of most departments.

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29. Caplan, *The Police Legal Adviser*, 58 J. CRIM. L.C. & P.S. 303, 304 (1967). For an example of what a police legal adviser can do, see Carrington, *Speaking for the Police*, 61 J. CRIM. L.C. & P.S. 244 (1970). In order to meet the challenge to investigative fingerprinting posed by *Davis v. Mississippi*, 394 U.S. 721 (1969), Carrington, as counsel for the Denver Police Department, drafted a proposed rule of criminal procedure to govern the issuance of court orders for fingerprinting which was subsequently adopted by that state’s supreme court. He then prepared training materials — not only for the Denver Department, but for more general distribution — based on the change in procedure. *Id.* at 272.

30. Caplan, *supra* note 29, at 305.

Media of general circulation are only one source of information about Court decisions; specialized magazines are another. There are quite a number of journals aimed particularly at law enforcement officials.<sup>31</sup> Some of these are nationwide, and some are produced by state associations of police chiefs or sheriffs. Many of these are full of "how-to-do-it" information for law enforcement officers, and may contain columns on recent Court decisions and what they mean. Handbooks and manuals, including training materials, for either prosecutors or policemen, have appeared in increasing numbers over the last several years, as people have attempted to pull together material on criminal procedure in such a way that it will be more easily accessible. These handbooks are, like the specialized magazines, action-oriented. In addition, the International Association of Chiefs of Police (IACP) publishes a monthly bulletin, *Legal Points*, intended directly for the policeman rather than for those with more legal training or sophistication concerning legal matters, and the more recent *Law Enforcement Legal Review* with concise summaries of cases. Cassette tapes for lawyers summarizing the work of the Supreme Court are being used by some prosecuting attorneys as a way of keeping police departments within their jurisdictions posted on current legal developments.

Beyond these materials, there is much material of a more scholarly sort. The law reviews published by law schools include much discussion of what the Court has said, although usually there is little to link this discussion to day-to-day problems of the policemen, and the intended audience is generally other lawyers. There are, however, some more specialized types of law reviews, of which the *Journal of Criminal Law, Criminology, and Police Science*, published at the Northwestern University School of Law, is the best known; newer journals, like the *Criminal Law Bulletin*, further increase the range of available material. All the above types of materials are now, in some places, being pulled together in special collections, such as the University of Wisconsin Criminal Justice Reference Collection, so that they will be more easily available to those who need and might want to utilize them.

Printed materials and individuals tend to come together in a variety of types of training programs for law enforcement officers. For some individuals who will enter law enforcement work, the route to such work includes a 2-year — and increasingly a 4-year — college degree program. Such programs usually contain courses in criminal law and American government in which there is some exposure to

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31. For a review of materials available to the police if they read their own periodicals, see Wasby, *From Supreme Court to Policeman: A Partial Inventory of Materials*, 8 CRIM. L. BULL. 587-615 (1972).

what the Supreme Court has said. In the larger cities, the police departments have police academies through which all recruits pass. As relatively few policemen have college degrees, far more pass through this form of training than are exposed to 2- or 4-year degree programs. For people already in law enforcement work, in-service training is extremely important. Some in-service training is no more than the reading of a bulletin at line-up before the policemen go out on the beat, the traditional method of communicating "the law" to police officers. One of the drawbacks of this roll-call training, however, is that "little time is actually available for training after administrative matters have been disposed of, and those who conduct the roll-call sessions are not necessarily trained instructors."<sup>32</sup> For others, in-service training is an occasional night of meetings without interruptions of regular assignments. There are, however, larger programs, in which officers are detached from their agencies for 2 or 3 days, or perhaps several weeks, to receive specialized training. Some may even take leave from their jobs to return to school for an extended period. Many of these programs, however, are about everything but criminal procedure, and some have argued that, since policemen spend most of their time on noncriminal law matters ("people-helping"), training in these other areas needs to be increased. That may be so, but one must be careful of making the unwarranted assumption that criminal law training is presently adequate. For one thing, there is little follow up. Thus, officers who have completed training are not usually provided with materials to up-date information learned in training programs, whether pre-service or in-service. The problem is compounded by the fact that some training materials are outdated at the time of their initial use.<sup>33</sup>

Instructors in police academies, college programs, and in-service work can play a crucial role in the transmission of information about the law in general and the Supreme Court in particular. Once that information has been transmitted to some policemen, it is then further transmitted, within the law enforcement agency, to others. Milner notes that superior officers and fellow officers were major sources of information about the *Miranda* decision.<sup>34</sup> Some departments rely on a particular officer to follow decisions and develop departmental material about them. The Federal Bureau of Investigation (FBI) bulks quite large in the in-service area, because of the programs

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32. WISCONSIN COORDINATING COUNCIL FOR HIGHER EDUCATION, LAW ENFORCEMENT EDUCATION IN WISCONSIN: A COORDINATED APPROACH 19 (1968).

33. See LaFave & Remington, *supra* note 22, at 1007; Wasby, *Police Training and Criminal Procedure*, 139 THE POLICE CHIEF 24 (1972).

34. N. MILNER, *supra* note 8, at 91-93.

run by its agents, some of whom are assigned full time to teaching. Perhaps more important than its national academy are the materials distributed by its agents throughout the country. The FBI played a very large role in post-*Miranda* training of officers, and people began to refer to its program as "the lecture."<sup>35</sup>

In addition to what instructors provide, what the law enforcement official himself brings to his law enforcement education is also relevant. General education — civics and problems of democracy classes — may have acquainted police, just as anyone else, with information about the Supreme Court and civil liberties. Yet, as studies suggest that only a small portion of the American public knows much about the Supreme Court and what it has done<sup>36</sup> — much less about specific decisions — many law enforcement officials may not bring much to their work from this source. For example, Milner found no effect of formal education on approval/disapproval of *Miranda*.<sup>37</sup> However, such education does provide part of the general background against which later attempts to communicate must be made. In the same way, the whole process of political socialization up to the time a person becomes involved in law enforcement work is relevant.

Before we leave this preliminary inventory of means of communication of Court decisions, we might look briefly at the question of which methods might be most effective. Milner's study suggests that training-and-conference is considered by the policemen themselves to be most effective,<sup>38</sup> and another writer reinforces this by indicating that smalltown policemen like conferences because of the prestige attached to attending them.<sup>39</sup> Discussion about means of communication with a number of knowledgeable people brought a variety of estimates as to effectiveness.<sup>40</sup> There was emphasis on the role of training programs, just as in the Milner study; one informant, a police chief, stressed the importance of radio and television, the newspapers, and the state attorney general as the most current sources. Indicating the lack of consensus, another individual suggested that radio, television, and the newspapers are the least effective. Perhaps the fullest answer to

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35. *Id.* at 64-65.

36. For some interesting studies, see Dolbeare, *The Public Views the Supreme Court*, in *LAW, POLITICS, AND FEDERAL COURTS*, 194 (H. Jacob ed. 1967); Murphy & Tanenhaus, *Public Opinion and the United States Supreme Court: Mapping of Some Prerequisites for Court Legitimation of Regime Changes*, in *FRONTIERS OF JUDICIAL RESEARCH* 273 (J. Grossman & J. Tanenhaus ed. 1969).

37. N. MILNER, *supra* note 8, at 197-98.

38. *Id.* at 94-95.

39. L. Berkson, *The United States Supreme Court and Small-Town Police Officers: A Study in Communication* (1970 unpublished manuscript written under the author's direction).

40. The following material regarding the effectiveness of various means of communication was drawn from personal interviews conducted by the author.

the question of which means are most effective was this: "A combination of the state attorney general, defense attorneys, plus a superior police officer in a training program making use of carefully prepared materials." One who has trained businessmen in commercial law said that if instructors are available to the policemen on a regular basis after the formal instruction has taken place, and especially if they are part of the same department or are located nearby, the opportunity for informal relationships in which the policemen can inquire about the application of the general material from the training sessions to particular situations with which they are faced, as they are faced by them, would tend to make the training more effective. Two officials regularly involved in training policemen and prospective policemen remarked that recruit training is the best, but has no lasting effect, unless supplemented by in-service training. They observed that even if one can get materials into the hands of the police, the materials are useless unless a training officer and tests accompany them. These remarks suggest the interrelationship of printed materials with verbal presentation, as well as the flow from state officials to police officials and the input from the legal community. The need for a combination of written and oral presentations was also stressed by a police chief who indicated that, if the material is only stressed orally, a person may misinterpret it and there is no way to check up on him. The need for a combination is further reinforced in the comments of the President's Crime Commission: "If adequate policies exist, they can best be communicated to the individual officer by a problem approach to training rather than the more traditional lecture form of police training."<sup>41</sup> Suggestions of the need for a problem-solving approach and for field experience as part of training also point in the same direction.

There was far less willingness to indicate "least effective" methods. One informant nominated the mass media. Another suggested that the printed decisions by themselves are the least effective device. And yet another indicated that methods other than the mass media, the attorney general, and training programs are not useful because they are outdated by the time they are known. Thus, there seems to be little consensus on what is least useful, indicating, perhaps, the primitive "state of the art" with respect to the subject under study.

That some of the methods reformers have long thought to be effective may not be so should be kept clearly in mind, in light of Milner's finding that "greater formal education — a favorite remedy for all sorts of police response to social change — was only weakly

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41. THE POLICE, *supra* note 28, at 27.

related to approval of *Miranda*,"<sup>42</sup> and was far outweighed by on-the-job influences. As one commentator has noted:

Academy training teaches policemen when an arrest is lawful. But a roust does not result from ignorance; rather it follows from an officer's deliberate decision to violate a person's rights for reasons which seem to him sufficient at the time.<sup>43</sup>

At the beginning of this section, a very simplified model of the steps or levels down which a Supreme Court decision might pass was indicated. The means inventoried here suggest the need for a more fully developed model of the communications process. Figure II is an attempt in that direction, an attempt to portray the complexity of the relationships without totally cluttering the diagram. A number of comments may be in order about the diagram. Although there is no adequate indication of a time scale, it should be recognized that some events precede others in time. Political socialization, while a continuing phenomenon, and general background are clearly distal factors, and any police training occurring before the announcement of a particular Supreme Court decision is also a prior matter. While the court system has been shown as a vertical column, there is little question that it might also be portrayed as a series of steps, running from the Supreme Court at top left to the state trial courts at bottom right, as some indication of the time lag in transmission of a decision "down" the various levels of courts. Of the influences on the policeman outside the court system, the media, particularly those of general circulation, will be the first to have an effect, to be followed up by communications from interest groups in the police field, from his superiors, and from instructors during in-service training. These will, in turn, have received communication from agencies like the FBI and the state attorney general. The policeman will also have some contact with a case through trial judges before whom he must testify — another form of direct learning and experience for him. His reaction to all these communications is also affected by the social environment in which he is immersed. The effect of that environment may be both immediate and cumulative, making it both a distal and proximal factor.

While contact between lawyers and police departments is shown in the model, the crucial role of attorneys (other than those publicly employed) in the process is to help "move" the decisions down the various levels of the court structure, by citing the decisions to lower

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42. N. MILNER, *supra* note 8, at 205.

43. Gerard, *St. Louis Police Plays Politics with Law*, in *GOVERNMENT LAWLESSNESS IN AMERICA* 350 (T. Becker & V. Murray ed. 1970).

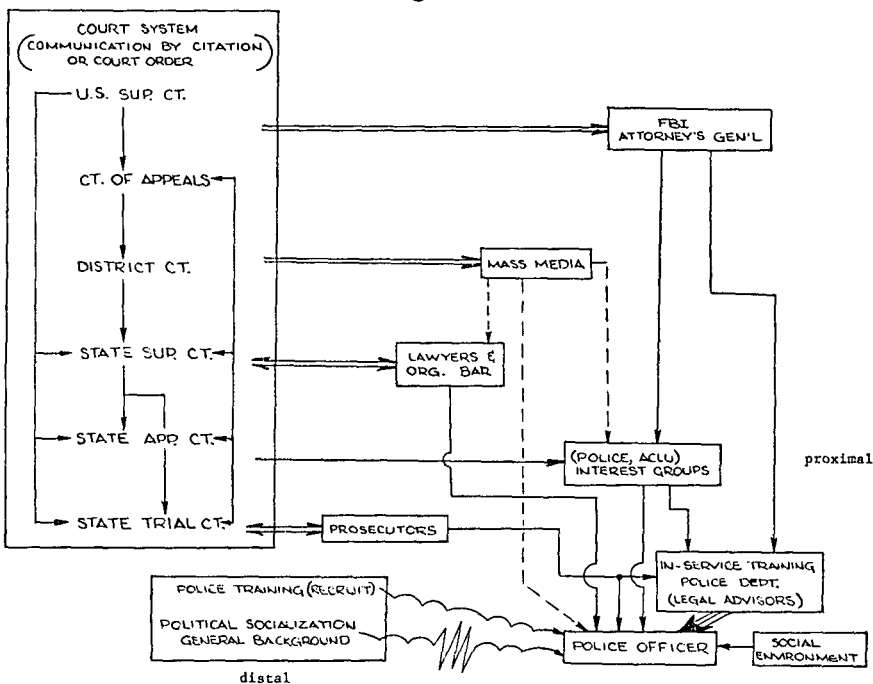


court judges before whom they argue cases. Clearly, defense attorneys will use particular court decisions in negotiating with prosecutors over the fate of defendants, but it would seem that the primary role of the lawyer in this process is vis-à-vis the courts, not the police directly.

The strength of the various relationships in the diagram is hard to portray at this early stage of our exploration of the subject, but a few suggestions are made by indicating basic relationships in single unbroken lines, with weaker relationships in either wavy or broken lines, and stronger ones in multiple lines.

That most of the lines are unidirectional, pointing toward the law enforcement officer as the ultimate recipient, while in part a result of the purpose of the diagram, also suggests one of the problems in communicating to the police. Those in the field of cybernetics have suggested that communication will be most complete when all the lines in a diagram of this sort have arrows pointing in both directions, indicating bilateral rather than unilateral communication. For the time being, however, given the public concern about police lack of knowledge regarding Supreme Court decisions, more attention seems to have been paid to the lines as drawn than to communication running in the other direction.<sup>44</sup>

Figure II



44. For suggestions to the contrary, see generally Carrington, *supra* note 29.

III. FACTORS AFFECTING COMMUNICATION  
REGARDLESS OF MEANS

We move next to an attempt to identify additional factors which might influence the communication of Supreme Court decisions through the indicated channels. Characteristics of the Court's decision itself, and where it fits in a pattern of decisions, give us a starting point. Whether or not a decision is unanimous is one of its most relevant characteristics; the existence of dissenting, as well as concurring, opinions increases the amount of information which has to be transmitted, in addition to giving potential opponents of the majority's view a "handle" on which to hang their opposition. If the majority cannot agree on a line of argument, leaving only a plurality of "prevailing" opinion, it becomes very difficult for those who wish to understand the case to determine what the Court has held. This has been most notable in recent years in the area of obscenity law where the majority has, in Justice Clark's irritated words, "[been] like ancient Gaul . . . split into three parts."<sup>45</sup> However, dissenting opinions often serve the function of helping to illuminate and clarify what the majority has said, perhaps by forcing the majority to take the dissenter's view into account. The apparent norm of minimal dissent in state appellate courts means that this function of dissent is less present at that level, an important datum for those who might rely more on state court than federal court opinions for their information about the law of criminal procedure.<sup>46</sup>

The clarity of the Court's decision is a characteristic to which most students of the Court point, although they are not agreed upon its effect. The need for clarity — and of law enforcement policy generally — is easily recognized:

The major challenge in the formulation of policy is to deal adequately with the complex problem involved and to do so in terms that are clear, sufficiently precise, and meaningful to the officer at the operating level whose job it will be to implement it.<sup>47</sup>

But it is also recognized that such policy is not often clear, precise, and meaningful. A basic rule, like the exclusionary rule, may be clear by itself, but the circumstances under which it is to be applied may be so myriad that transmitting them is difficult. There are few decisions

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45. *Manual Enterprises v. Day*, 370 U.S. 478, 519 (1962) (Clark, J., dissenting).

46. Similarly, the pressure created by a heavy workload, when state courts have no discretion to decline to hear cases, means shorter opinions, further decreasing the amount of illumination which the judges can cast on the law of the state in question or that laid down in decisions of the Supreme Court.

47. *THE POLICE*, *supra* note 28, at 27.

which, like *Miranda*, can be reduced to four (or five) warnings to be put on a "Miranda card." However, even with a decision apparently as clear as *Miranda*, there is divergence of opinion among law enforcement officials as to its meaning, and its clarity. How one perceives the clarity may very well be related to one's approval of the decision. Among the Wisconsin law enforcement officers studied by Milner, "[t]he approvers [were] . . . more likely to think that the *Miranda* decision [was] quite clear in its pronouncements."<sup>48</sup>

Not only may a particular decision be vague and ambiguous, but a set of decisions in juxtaposition may be collectively unclear, particularly if the Court seems to move back and forth rather than following a clear doctrinal line. Certainly, the addition of more and more cases, particularly if decided on a case-by-case approach or on the basis of the "totality of the circumstances," will by itself increase the amount of "noise" in the communication system.

Effects of ambiguity in communication may be several. The most orthodox position is that there is a direct relationship between clarity and compliance; the greater the clarity, the greater the compliance, so ambiguity increases noncompliance. However, it has also been suggested that ambiguity in the Court's language forces people to come back to the courts to obtain further elucidation of what the Court has been trying to say, thus increasing the Court's hold over the contestants. Still a third possibility is that ambiguity may be more likely to produce a minimal level of compliance because each recipient of a communication can perceive the decision as favoring his own cause.

Related to clarity is the visibility of a decision. The Court's decisions need to be perceived by those who might implement them. Sometimes this perception will occur only after a lower federal court or a state court has included them in its decisions. If state courts apply federal court decisions, the latter will be made more visible to law enforcement officials and may be more likely to be observed. Some cases, like *McMann v. Richardson*,<sup>49</sup> on counseled guilty pleas, and *Illinois v. Allen*,<sup>50</sup> on courtroom disruption, are of greater importance to lawyers, while others, like *Escobedo* and *Miranda*, affect on-the-beat and stationhouse officers as well. If a decision has to be communicated well down the various steps in the communication process, its visibility has to be high, because the more steps in the communication net through which a communication must travel, the more garbled it will become, as well as the longer it will take to reach its ultimate destina-

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48. N. MILNER, *supra* note 8, at 199.

49. 397 U.S. 759 (1970).

50. 397 U.S. 337 (1970).

tion. Decisions like *McMann* and *Allen* may be transmitted more quickly because they are favorable to the law enforcement community, and may become more visible for that reason. We may hypothesize that decisions like *Escobedo* and *Miranda*, although widely publicized in the media, would be less quickly disseminated — at least less quickly than favorable decisions receiving equal publicity.

The information the Court has about the practice about which it is deciding, as reflected in its opinions, is another factor. Many law enforcement officers felt that the Court's knowledge of police procedures, or at least of the actualities of police life, vital to the *Miranda* decision, was very meager. While the Court did quote the Inbau-Reid interrogations manual,<sup>51</sup> there was little data about interrogations to back up the Court's flat assertions as to their invalidity. When the Court seems to be acting without reference to the actualities of the police situation, it is easier for the police to ignore what it has said. "[T]he likelihood that both personal and organizational goals will differ from Court goals" increases, leading to a questioning of the Court's competence (and legitimacy), and hence to an increase in noncompliance.<sup>52</sup>

A Supreme Court decision occurs in a broad, on-going situation. Whether or not the Court plans to affect the existing social milieu, or takes the current situation into account in handing down its decisions, situational factors can affect their communication. For example, if the decision is handed down in the midst of a nationwide crisis, it is likely to receive less coverage than might otherwise be the case. If the decision is perceived as contributing to a crisis, as when it affects an emotion-laden area like race relations or perhaps law enforcement, communication about the decision may be greater. Ironically, however, communication may then be greater about reaction to the decision than about the decision itself, leading to no greater communication of what the Court has said. If changes have occurred in the law shortly before the Supreme Court's decision, obtaining further change may be quite difficult. As one author observed about the un-

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51. 384 U.S. at 449, citing F. INBAU & J. REID, *CRIMINAL INTERROGATIONS AND CONFESSIONS* (1962).

52. N. MILNER, *supra* note 8, at 230-31. Carrington has suggested ways of communicating the police perspective to the Supreme Court and other courts, citing the amicus brief of the Americans for Effective Law Enforcement in *Terry v. Ohio*, 392 U.S. 1 (1968), as a successful example. Carrington, *supra* note 29, at 261. *Compare*:

The Supreme Court is not in the business of running police departments . . . [It] cannot independently inform itself about the dimensions of the general law enforcement problem, or identify and choose among the range of particularized solutions that may be available. It cannot frame a program, much less carry one out. Packer, *Policing the Police*, *NEW REPUBLIC*, Sept. 4, 1965, at 18.

likelihood that *In re Gault*<sup>53</sup> would affect juvenile court procedure in California:

[When] law has settled into a period of normalcy . . . for the time being [it] makes it more or less invulnerable to radical changes. . . .

. . . [S]ocial action for revolutionary change in law must of necessity be timely. It must be roughly in phase with the tide of relevant events that have been set down as necessary factors in such change. Reforms undertaken too soon after revolution seem destined to failure. . . .<sup>54</sup>

Another part of the general situation which may affect the receipt of communication is the occurrence of relevant events in the community which may attune potential recipients to what the Court has said.<sup>55</sup> A community with few major crimes may not feel that the Supreme Court's criminal procedure pronouncements are particularly important, but a murder may make policemen wake up to relevant decisions, so that they can be sure of not ruining the case they may have against the defendant. As Milner noted with respect to Kenosha, Wisconsin, "[a] change in procedure involving one highly visible case can have more important implications than the sum total of change as reflected in the total statistics."<sup>56</sup>

Included in the situation into which a decision is injected would also be the community's history and its general belief systems. Some communities seem to have a more liberal ethos than others. Some communities pride themselves on being more "up-to-date" and professional in the way they run their governments. Officials in those communities might be more likely to engage in search behavior to be sure that government actions in the community were in accord with recent court decisions. Even if the search behavior did not occur, such communities might be expected to be more attuned to the Supreme Court's current pronouncements than others. However, as Milner suggests, they may not be more open unless the "outsiders" have a professional ideology much like their own.<sup>57</sup> On the other hand, one may find communities which pride themselves in having police forces with *no* training; after all, the village fathers may say, "police have never gone to school before and they are not going to start now." Communities may also be unwilling to have their policemen trained

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53. 387 U.S. 1 (1967).

54. E. LEMERT, SOCIAL ACTION AND LEGAL CHANGE 221-22 (1970).

55. *Cf. id.* at 166-67.

56. N. MILNER, *supra* note 8, at 219.

57. *Id.* at 204-05.

for fear that they would become more "saleable" and move on to other positions because their new salary demands could not then be met.

Related to the on-going situation is the "followup" to a case. As indicated earlier, much of what is communicated about a decision is the reaction of prominent officials to a decision, even if they have not yet read it. *Who* responds is extremely important. If the dominant interests in a community respond with immediate opposition, communication about the decision will fall, if not on deaf, at least plugged, ears; on the other hand, if elites indicate support for a decision, "average citizens" in the community and government employees, including policemen, may listen far more closely to communications about it. Support by an elite does not guarantee compliance, or even that communication will be adequate, because of all the other possible interfering factors, but the substantial effect of countermanding commands or comments is clear. At a Chicago Police Department staff meeting held several weeks after *Escobedo*, someone asked the Chief Judge of the Criminal Courts, the speaker at the meeting: "Judge, the Supreme Court handed down this *Escobedo* decision. What do you recommend we do?" The judge replied: "Boys, that's a decision of law. You let us lawyers worry about that sort of things. You're overworked as it is." As the person telling this story to the author remarked, when a memorandum about the case later comes to the level of the division commander who was at that meeting, "do you think he will pay attention to it?" The judge was telling policemen to ignore what the Supreme Court had done. On the other hand, given the criticism of *Miranda* by many law enforcement officers, refusal by a leading law enforcement officer to criticize could be quite important in setting the "atmosphere." For example, in Milwaukee:

The chief of the . . . department . . . specifically refused to criticize the [*Miranda*] decision. He insisted that the crime rate would not be affected by the decision and refused to question the Court's wisdom. [Thus] Wisconsin had no police chief who, like Orlando Wilson of Chicago . . . spoke often, if not eloquently, against the Supreme Court's criminal law decisions.<sup>58</sup>

Another part of "followup" is the degree to which the government enforces, or attempts to enforce, the standards the Court has enunciated. Such standards are clearly not self-enforcing, and, while executive branch officials do not often directly attack Supreme Court decisions, they may kill them by ignoring them, or by refusing to

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58. N. Milner, *The Impact of the Miranda Decision on Four Wisconsin Cities* 233, (1969 unpublished Ph.D. dissertation, University of Wisconsin).

take "affirmative action" to implement them. Similarly, for example, if law enforcement officials see no effort by prosecutors to enforce the exclusionary rule internally (instead, leaving it to defense attorneys to raise the issue of illegal search) or if they see no penalty attached by their own superiors for illegal searches, they are not likely to be deterred from those practices the Court has outlawed, nor are they likely to see much need to pay attention to the Court's decisions. Even when Supreme Court decisions have been specifically communicated to the police, supervision is necessary to see that implementation takes place. As former New York City police official Michael Murphy has observed, "[w]hen the information is disseminated, there must be continuous supervision of the activities of that particular unit of law enforcement as to the field application of the instructions."<sup>59</sup> Again, if the policeman knows that what he has been taught will not be followed up once he leaves the classroom, he may be less likely to listen intently to what is being conveyed to him. More than that, there are no sanctions, or only limited ones, for not knowing the law; the police officer is likely to find no reward in following Court-established procedure and no punishment for failing to do so; in fact, he may be complimented for trying his hardest *despite* the barriers the Court has established.

When messages pass through any communications network, distortions are likely to occur; the channels of communication are not "clean" and contain distortion-creating "static." "[T]he formal legal channels through which decisions are transmitted are not necessarily neutral ones which would ensure the application of a rule substantially similar to that enunciated by the Supreme Court."<sup>60</sup> Among the distortions is inaccurate reporting of decisions in the media — inaccuracies which, on occasion, have been acted upon, perhaps because of the concept that decisions of the Supreme Court, the "highest court in the land," are meant to be *the law of the land* and thus final. Oversimplification, particularly, but not only, in headlines, is another distortion which occurs. That oversimplification includes not only broad overgeneralizations but also failure to report why the Supreme Court did what it did. Thus, the "*Miranda* rules" were transmitted, but not the interrogation methods which had led the Court to invalidate confessions given in the absence of the warnings. Individuals involved in cases often get more attention from the press with its "human interest" orientation than the legal substance of the cases. Also, individual cases get overemphasized, particularly in the "roundup" stories sent

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59. Murphy, *supra* note 6, at 940.

60. R. JOHNSON, *supra* note 16, at 62-63.

out by the wire services, so that equally important cases get less visibility, are buried at the bottom of a story, and are often clipped by an outcountry copy editor pressed for space. One further distortion is that reaction to the cases — immediate impact — often gets more attention than the Court's decision itself, so the public has a hard time trying to ascertain to what people are reacting.

Beyond these distortions, we can specify some others. The Police Task Force of the President's Crime Commission commented on the spirit and tone of the communication and the communicator. "The extent to which [subordinates] conform with policy formulated at the top levels will be determined, in large measure, by the spirit and tone in which it is communicated to them by their more immediate superiors."<sup>61</sup> Whether those who communicate the Court's decisions stress the need for compliance may also be crucial to what happens after the communication has been received. Who the communicator is — in terms of his credibility to the recipient — would also play a part, as would his legitimacy, in the case of a Supreme Court decision being seriously questioned by many policemen. Thus Milner stressed that the executive director of the National District Attorneys Association had, in *NDAA*, the Association's publication, attempted "to make law enforcement officials aware of the necessity of obeying these decisions, despite these officials' personal objections."<sup>62</sup> He apparently went so far as to suggest that police should prepare cases with the Supreme Court in mind, even if lower courts applied less stringent standards.<sup>63</sup> If those who communicate a decision are ambivalent about it, their ambivalence is likely to show up in their communication, either through the perfunctory way in which the decision is communicated (just as policemen unhappy about *Miranda* will give the warnings in a more formalistic tone than the general pleasant conversational tone they might use to elicit a confession) or through lack of forceful assertion that compliance should be forthcoming.

Whether or not methods are provided by which policemen can actually comply with a decision is another factor related to the effectiveness of communication. As LaFave has asserted with respect to the exclusionary rule:

(1) the requirements of the law on search and seizure and related practices must be developed in some detail and in a manner sufficiently responsive to both the practical needs of enforcement and the individual right of privacy; (2) these require-

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61. THE POLICE, *supra* note 28, at 28.

62. N. Milner, *supra* note 58, at 199.

63. *Id.*



ments must be set forth in a manner that can be understood and applied by the front-line lower-echelon police officer and must be effectively communicated to him . . . .<sup>64</sup>

This position is reinforced by remarks by Judge Timbers of the Second Circuit: "The tools the police most need and deserve to cope with this emergency are guideline decisions from the courts telling them what is right as well as what is wrong with their procedure so that they may get on with their job intelligently."<sup>65</sup> One criticism of the *Criminal Law Reporter's* collection of important criminal decisions, is that it misses the "administrative aspects" of law enforcement, the "administrative law of law enforcement." It does not include information as to how to comply with the decisions reported. It has been suggested that a section in which police departments might communicate with each other, through the *Reporter*, about ways to comply, might help to alleviate the problem. Failure to communicate means of compliance can also be true of judges:

In a formal sense the Wisconsin [Supreme] Court lay in an intermediate position between the local police official and the Justices in Washington and might indeed have a certain amount of supervision over police activities. Initially, however, it offered little information about the type of supervision to be expected.<sup>66</sup>

Whether the details of a decision are communicated and whether communication goes beyond the details to explain the underlying philosophy, have been pointed out as other relevant factors. Thus, much of the legal writing on *Miranda* stressed "the possible broader consequences" the decision would have;<sup>67</sup> on the other hand, for example, much of the training of New York City policemen has consisted of "stating or memorizing page after page of laws and the conditions associated with different laws," with only a few instructors presenting general history and philosophy.<sup>68</sup> It has been observed that trying to explain a single decision to a group without knowledge of the legal background of the case is extremely difficult, and that the audience has not usually been provided with a general background on either the law or governmental institutions.<sup>69</sup> If the communication

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64. LaFave, *Improving Police Performance through the Exclusionary Rule — Part II: Defining the Norms and Training the Police*, 30 Mo. L. Rev. 566, 567 (1965).

65. *United States v. Thompson*, 356 F.2d 216, 221 (2d Cir. 1965).

66. N. MILNER, *supra* note 8, at 60.

67. N. Milner, *supra* note 58, at 193.

68. MacNamara, *Uncertainties in Police Work: The Relevance of Police Recruits' Backgrounds and Training*, in *THE POLICE: SIX SOCIOLOGICAL ESSAYS* 208 (D. Bordua ed. 1967).

69. Personal communication by Professor Herman Goldstein, University of Wisconsin, School of Law, to author.

of a decision in a given case is to have more than an extremely particularistic effect, the rationale must also be communicated so the police officer can apply it to new situations. One commentator has suggested that the transmission of a perspective of adhering to the letter of the rules — reinforced by merely transmitting the doctrine of a decision — may result in the policeman seeing the law as unchanging, so that he becomes less able to cope with the situation when laws do change as, for example, when the Court announces a new criminal procedure standard.<sup>70</sup>

Many of the materials available to police stress how they can avoid the standards enunciated by the Supreme Court.<sup>71</sup> (However, this may bring added compliance if it allows law enforcement officers to accept the decision more readily.) Stress is on how to get around and “live with” the decision, with little transmission of what the Court actually said. One critic has suggested that the Northwestern University Police Legal Adviser Program, now transferred to the International Association of Chiefs of Police, operates in this “negative advocacy” tradition — indicating what is wrong with a decision, rather than discussing positive compliance within the bounds of law enforcement goals.<sup>72</sup> Other materials are merely doctrinal (“this is what the Court has said”), avoiding comment on the decisions. Because the application to the law enforcement officer’s situation is not made, the material is *conveyed*, but not *communicated*. Another commentator went further, stating that failure to talk about counter-arguments — positions at variance with the policy one is attempting to convey — “does not immunize the recruits against the sort of changes that academy personnel would find undesirable” once the recruits have left their training.<sup>73</sup>

Whether factual details or underlying philosophy, or both, are presented, the communications embodying Supreme Court decisions have often seemed to be written more for a lawyer or law-trained person than for the average policeman, likely to have no more than a high school diploma and little special training. The lawyer’s style makes it very difficult for the line officer to know what is meant. What makes this worse is that the officer seldom has lawyers available to whom he can turn for advice. The difficulty of the lawyer-written communication was well put, a number of years ago, by Victor Thompson, writing about Office of Price Administration (OPA) regulations:

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70. MacNamara, *supra* note 68, at 215.

71. *See* note 31 *supra*.

72. This information was obtained through interviews by the author.

73. MacNamara, *supra* note 68, at 215.

The attorneys appeared not to be concerned at all with ease in reading but only with the accuracy of the statement. . . . Consciously or subconsciously, the drafting attorneys wrote for readers who were trained or disposed to squeeze the last drop of a conventionalized logic out of a word. . . .<sup>74</sup>

Professor Remington, University of Wisconsin, School of Law, has suggested that lawyers, because defense attorneys outnumber prosecutors, may *want* to keep police ignorant. While prosecutors may dislike Supreme Court decisions, they have an interest in having police forces well versed in current law. The slant of opinion to legal writing about Court decisions may also stem from the stereotype of the "dumb cop." Presumably because lawyers believe that the police could not understand the material, they do not even try to write for them, thus reinforcing their image of the police. Frantz Fanon's comments about the masses are quite relevant here:

It is true that if care is taken to use only a language that is understood by graduates in law and economics, you can easily prove that the masses have to be managed from above. But if you speak the language of every day; if you are not obsessed by the perverse desire to spread confusion and to rid yourself of the people, then you will realize that the masses are quick to seize every shade of meaning and to learn all the tricks of the trade. If recourse is had to technical language, this signifies that it has been decided to consider the masses as uninitiated.<sup>75</sup>

The training of police officers, during which material about Supreme Court decisions might be communicated, is another factor. Among the general factors which limit the effectiveness of training mentioned by LaFave are: competing demands for local resources, which result in little input for training in the first place; competing demands on available training time (how much is allotted to weapons practice rather than to criminal law, for example); a failure to know current training needs; a lack of personnel qualified to give training; and a lack of effective training materials, even if one had the personnel and the time.<sup>76</sup> Both the proportion of training time spent on criminal law and criminal procedure matters and the total time involved in police training are minimal in most jurisdictions. Most discussion of criminal law involves the definitions of crimes (often simply a reading

74. V. THOMPSON, *THE REGULATORY PROCESS IN OPA RATIONING* 384 (1950), quoted in L. FRIEDMAN & S. MACAULAY, *LAW AND THE BEHAVIORAL SCIENCES* 793, 801 (1969).

75. F. FANON, *THE WRETCHED OF THE EARTH* 151 (2d printing C. Farrington transl. 1963).

76. LaFave, *supra* note 64, at 594-95.

from the statute book) rather than criminal procedure, about which the Supreme Court has been saying so much in the last decade. In addition, very little time is required for police training. For example, in Illinois, the minimum amount of training time required for police is now (only recently) 240 hours. By comparison, it takes approximately 3500 hours to become a beautician and 5500 hours to become a mortician. As one police-community relations expert has put it, "[w]ith that time allotment, how can the policeman know your rights?"<sup>77</sup>

Another category of variables affecting the communication of criminal procedure decisions is the structure of law enforcement agencies. The way in which a police department is structured — or, perhaps one should say, all police departments are structured — is important in terms of the training people bring to that department. If, as is generally the case, the only method of entry is at the lowest level, those with substantial amounts of education may be quite unwilling to start there and may thus be lost to police work. "The development of associate and bachelor degree programs for pre-recruits cannot be entirely meaningful unless graduates of those programs can be assured of responsible police positions at higher pay."<sup>78</sup> Beyond that, the police system as a whole is highly fragmented.<sup>79</sup> While departments may have a clear set of bureaucratic, hierarchically-arranged channels through which orders can travel, it is submitted that the relation between various police units is certainly far from bureaucratic, even within a particular state, let alone between federal and state, or federal and local, agencies.

There are substantial differences between police departments in central cities in metropolitan areas, suburban police departments in the same metropolitan areas, and departments in small towns. One of these differences is the degree to which the departments are bureaucratized. It has been suggested that "[i]t was in counties most removed from the bureaucratic model . . . that the revision of the juvenile court law brought up problems of 'compliance,'"<sup>80</sup> a statement applicable to the implementation of Supreme Court decisions as well. The amount of bureaucratization is clearly related to size.

77. Professor James Eisenstein, Pennsylvania State University, has suggested to the author that the 3500 hour figure is more a monument to the pressure group abilities of the beauticians than a reasoned social judgment as to the time required to become a competent cosmetologist. His point is well taken. However, no group has required a similar "standard" for the police, by pressure group tactics or reasoned social judgment.

78. WISCONSIN COORDINATING COUNCIL, *supra* note 32, at 11. There are some departments in which all members have an undergraduate college degree, *e.g.*, the Multnomah County, Oregon, Sheriff's Department, but these are the rare exceptions.

79. *See THE POLICE: SIX SOCIOLOGICAL ESSAYS*, *supra* note 68, at ix.

80. E. LEMERT, *supra* note 54, at 168.

In smaller departments, there is not enough differentiation to be able to give to one person the responsibility for following what the Supreme Court has said and transmitting it to the rest of the men (although the problem of transmission may be less because of the possibility of face-to-face communication). In large departments, some officers may be trained in the law and/or be given specific responsibility for dealing with legal matters, although the department may be so large, and there may be so much distance (both geographical and social) between headquarters and the "field" that even the most elaborate communications system may not accomplish much. However, larger departments can clearly commit more resources to training and education, one part of which would be communication of Supreme Court decisions. As those studying police education in Wisconsin remarked:

The type and amount of education and training given to officers will be influenced by the size of the department. It is not feasible to assign separate functions to officers in small departments and train them to specialize in the performance of those functions. They must, of necessity, be equipped to perform all police functions.<sup>81</sup>

It is for this reason, among others, that the consolidation of small departments has been suggested by a number of people; however, such plans have generally encountered substantial political resistance, paralleling resistance to consolidation of school districts, one of the more remarkable phenomena of government reorganization in this century.

Size, however, does not account for all of what we have been discussing; the location of a community in relation to a major metropolitan area is another important variable. Law enforcement officials may see Supreme Court decisions as being meant only for large cities with high crime rates, certainly not for themselves, just as judges and probation officers in California's "cow counties" could ignore California's new juvenile code<sup>82</sup> "with a sure conviction that they were changes primarily meant to serve the needs of large counties."<sup>83</sup> Suburban police departments may be able to draw on the training resources of a "big-city" department, resources not available to a city of the same size in the hinterlands. Similarly, location near a university may provide access to that facility's faculty and library.

The "work situation" in which the individual policeman finds himself is related to the structure of police agencies. The man in the police department with the largest amount of discretion is not, despite

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81. WISCONSIN COORDINATING COUNCIL, *supra* note 32, at 10.

82. CAL. WELF. & INST'NS CODE, § 500 (West 1972).

83. E. LEMERT, *supra* note 54, at 169.

the military model on which police departments are built, the man at the top, but the policeman on the beat. He must make split-second decisions, in the words of one FBI agent, as he "rounds the corner to the sound of tinkling glass." Or, in the words of another police official:

[T]he municipal police officer is called upon to take action alone, on the street, in the face of violently developing situations, without law books, without ready authorities, without legal advice, and quite often in an atmosphere of latent or overt hostility . . . .<sup>84</sup>

While there are "squad-car lawyers" in a few states and cities for such things as "drug busts," the policeman is usually on his own. Some parts of his work, like the writing of traffic tickets, are more subject to "guidance from above," but his discretion on most matters is quite broad.

There are competing pressures on the police officer from the community he serves,<sup>85</sup> pressures which may affect his superior in a more organized way, but with which he must live from day to day. The reward structure of his work is keyed to arrests, traffic tickets, or the "clearance rate" for robberies, but not to implementation of Supreme Court decisions. He must be more attuned to what his superiors want and the criteria by which they will judge him. The bulk of communications from them concern "catching criminals," even though much of the policeman's work may involve "social service," like helping injured people and settling (or at least "cooling") family disputes. Where there is a desire to obtain convictions, or perhaps where "feedback" from the court has occurred as the result of a case lost, policemen will be more open to communication about the law, as confirmed by Jerome Skolnick's discussion of the use of the exclusionary rule with respect to narcotics cases.<sup>86</sup>

The cues which influence the policeman in his work come not only from his superiors, but also from his fellow officers, and if they are not much concerned about what the Supreme Court has said lately, or feel that the Supreme Court is hurting their work (making it easier for criminals to stay free, or making it more difficult for them to obtain the rewards available in their own departments), the officer is not likely to want to become a "sore thumb" or deviant by attempting to follow rules none of his colleagues are following. The basic uncertainties characterizing police work drive the individual officer

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84. Broderick, *The Supreme Court and the Police: A Police Viewpoint*, 57 J. CRIM. L.C. & P.S. 271, 274 (1966).

85. See *THE POLICE*, *supra* note 28, at 28.

86. J. SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY* 211 (1966).

to look for reinforcement of his views, for camaraderie, for a source of improved morale. He gets social reinforcement from people who, like him, do not pay much attention to communications about the Court even when they are available, who, at a minimum, do not look for ways to enforce them, or who may get social reinforcement from "knocking" the Court together, something which may be triggered by communication about that body's decisions. The increasing organization of the police subculture, and the resultant increasing militancy of the police organizations — like the Patrolmen's Benevolent Association — have reinforced this point within the last several years. This occurs even during the policeman's "social life," much of which is spent in the company of other police officers who constitute much of his social environment. Thus, even if all problems concerned with communicating a decision to the officer are solved, his response is likely to be greater to such informal pressures than to the communication.

The force of intradepartmental pressures is shown in the comment of two veteran law enforcement officers, now engaged in training work, that techniques of agencies do not change, even when good training has occurred.<sup>87</sup> If a well-trained agency (with police who are freshly trained and have college degrees) will not follow proper procedures, they ask, what about the policeman (they said "cop") with a sixth-grade education? "In Illinois the majority of cops don't have a high school diploma," they said, "and we expect them to be lawyers, to interpret the law." Supporting this is the remark of Judge Desmond that:

Until the American public and its leaders are ready with the resources and supply necessary to accomplish these improvements [increased status, pay, and training], present efforts to explain the new constitutional concepts and to adjust to them will be but temporary expedients awaiting a better day.<sup>88</sup>

The last category of factors involves characteristics of the individual policeman. His background, including his socio-economic status<sup>89</sup> and his education, would be one of the relevant characteristics. That many police come from the lower-middle or working class, precisely the stratum least happy about the Supreme Court's "criminal procedure revolution," is clearly relevant. Whether the policeman has

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87. Interviews conducted by the author.

88. Desmond, *Reflections of a State Reviewing Court Judge Upon the Supreme Court's Mandates in Criminal Cases*, 57 J. CRIM. L.C. & P.S. 300 (1966).

89. See THE POLICE: SIX SOCIOLOGICAL ESSAYS, *supra* note 68, at 191-207; J. WILSON, VARIETIES OF POLICE BEHAVIOR: THE MANAGEMENT OF LAW AND ORDER IN EIGHT COMMUNITIES 151-57 (1968).

been exposed to materials about the Supreme Court, and the sort of attitudes about the Court to which he has been socialized, would be distal factors having an effect on the immediate situation in which he receives a communication concerning a Court decision. These attitudes will affect his perceptions of what the Court has said, or of what is being said to him about what the Court has said. It is clear that education and socialization are not uniform, and that, despite internal departmental pressures, some policemen will, more than others, want to work to make their department conform to the commands of the courts. What number constitutes the "critical mass" of such men necessary to produce broad departmental adherence is unclear. However, there are noticeable uniformities in socialization within generations. Professor Remington has noted that judges receiving their law school training in the 1930's — judges who might have been sitting on the bench in the *Miranda* period — grew up with the Wickersham Commission's Report<sup>90</sup> on police third-degree methods ringing in their ears.

Another related matter which seems to be of some importance is the individual's expectations of what the Court will do, and what effect its decisions will have. An unanticipated decision is likely to be seen as having a far greater effect than one clearly anticipated, even if negatively valued.<sup>91</sup> Similarly, if a decision is seen as having substantial (particularly negative) effects, reaction will occur largely in terms of those expectations, even though, as in the case of *Miranda's* effect on use of confessions and conviction rates, such expectations are not borne out.<sup>92</sup> As one author has suggested, "resistance [will] var[y] depending on whether the changes sought [are] perceived as a revolutionary change in the conceptual design" of the law.<sup>93</sup> If some see a whole system of values in jeopardy, they will resist more forcefully than if they are only anxious about particular values.<sup>94</sup>

Among the characteristics police bring to their work are certain personality variables, such as an orientation toward conformity. While many have alleged that at least some enter police work because they enjoy exercising authority over others and/or are sadistic, we have little firm data on the subject. One recent study, relevant to the advanced training of police officers, suggests that those policemen in a

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90. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT (1931).

91. Milner seemed to find mixed results. In Racine, lack of anticipation led to perceptions that one's job had changed greatly; in Madison, the same lack of anticipation did not lead to such perceptions. N. MILNER, *supra* note 8, at 150-56, 180-84.

92. Wasby, *supra* note 1, at 156.

93. E. LEMERT, *supra* note 54, at 127-28.

94. *Id.* at 213.



large-city department (New York) who had gone to college were "significantly less authoritarian" than those who did not attend college.<sup>95</sup> The authors suggested that the college-attending police will be better able to function "in accordance with the guidelines set down by the Supreme Court with respect to arrests and search and seizure."<sup>96</sup> If personality is a predominant factor in police work, this may be so; however, if the *mores* of police work, and the structure of the work situation, mentioned above, predominate — which is more likely the case — this may turn out to be only of marginal significance. As one commentator has remarked, "[P]olice recruits are much like other young men of a similar background; it is police mores and the police role that make them adopt police attitudes."<sup>97</sup>

#### IV. CONCLUSION

In the interests of identifying the various steps through which the criminal procedure decisions of the United States Supreme Court might pass on their way to law enforcement officers at the local level, we have developed an inventory of means by which those decisions might be transmitted. While it is not bureaucratic in character, the judicial structure, both federal and state, serves as one way in which the decisions travel "downward," although lawyers often bring cases to the attention of judges, who do not always hear of cases directly from their judicial superiors. Thus, there is an interplay of formal structure and personal communication. State attorneys-general and local prosecutors help to bring decisions to the attention of the police; their work is supplemented by police legal advisers, within police departments. The mass media, specialized instructional materials, and law enforcement officers' general education are also means of communication, with police training, both recruit and inservice, being of particular importance.

Turning to factors which might affect communication, we have noted that characteristics of the Supreme Court's decisions, such as the unanimity of the vote, the decision's ambiguity, and the visibility it obtains, are important factors. The situation into which the decision is injected, particularly if of a crisis nature, and the extent to which reforms in the law have taken place shortly before the decision is announced, also affect its acceptance. The "followup" to the case, through actions taken either in support or in defiance of the decision,

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95. Smith, Locke & Walker, *Authoritarianism in College and Non-College Oriented Police*, 58 J. CRIM. L.C. & P.S. 128, 132 (1967).

96. *Id.*

97. P. CHEVIGNY, *POLICY POWER* 137 (1969).

will affect the degree to which it is communicated to law enforcement officials. As relatively few of these officials read the Court's opinion directly, the content of communications — often distorted — is quite important; for example, it is considered vital that ways of complying with the decision be communicated, along with the rationale behind the case, and not simply the bare standards the Court may have enunciated. That the communications not be written in legal jargon seems essential if they are to be understood. The limited time available for training, and the limited proportion of that time devoted to criminal law matters, serve as "natural" barriers to the communication of much information about the decisions to the individual policeman. The location of the department in which he works may assist or hinder his ability to get access to more thorough types of training. Finally, the policeman's "work situation" was stressed as a factor which, because of lateral pressures from the community and his fellow officers and the nature of the reward/sanction system in the department, may offset or neutralize any communication which may ultimately reach him through the many channels which we have identified.