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# *The* QUILL

*The Magazine for Journalists*

Convention Issue

## THE BUDVILLE MURDERS: Reardon Rules in Action

By TONY HILLERMAN



# The QUILL

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THE QUILL for October, 1968

## The Editor's Column Write

• Mike Wiener, a teacher in the Los Angeles city schools, recently asked 62 of his high school students about their newspaper reading habits. Here is what he found out, as told by Wiener to this editor:

"In an unsigned, written questionnaire, 20 of them said they read a newspaper less than once a week. Another 25 students read a newspaper one to three times every week. Only 17 students, or roughly 27 per cent, read a newspaper more than three times a week.

"Those in the first two categories were asked why they did not read a newspaper more often. Answers generally fell into two categories:

"Newspapers are too dull; and  
 "Television news is a better alternative."

Wiener says that roughly two-thirds of these students were college-bound. Some 20 per cent were Negro and another 20 per cent were Mexican-American. His conclusion: "Since this approximates the young generation as whole, the conclusions should make some of our editors think a bit."

We're inclined to agree with Wiener that the so-called generation gap is spilling over to bring a non-newspaper reading audience of the future and it represents the biggest threat to the newspaper profession.

George Beebe, senior managing editor of the Miami *Herald*, undoubtedly has pointed up the whole problem when he says: "I sense that young people, disturbed by the world in which they live are reading good newspapers, and turning to the news-weeklies where there are bad newspapers."

• • •

• Don W. Anderson (Wis. Prof. '30) has retired as publisher of the *Wisconsin State Journal* at Madison. And there goes to Red Rock at Gallatin Gateway, Mont. one of journalism's finest gentlemen and practitioners. The Lee Syndicate, which knew Don as the guiding spirit in the purchase of the Anaconda Co. papers in his home state, gave him a retirement dinner in Billings, Mont. recently. This was a mark of affection which his associates felt for a man who gave each newspaper in the Lee organization editorial independence. His credo:

"No editor ever is told what issues he should support, which candidates he should try to elect or defeat. No two communities have the same opportunities or problems. The man on the scene is best qualified to decide what is best for his city and his newspaper."

Don regarded newspapering as "something special." We'll give QUILL readers a glimpse at his philosophy in the November *Careers in Journalism* issue.

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COVER PHOTO . . . Larry E. Bunton, central figure in Tony Hillerman's searching article on how the Reardon rules operated in a New Mexico murders' investigation. Bunton was victim of mistaken identity.

# THE BUDVILLE MURDERS:

## Reardon Rules in Action

By TONY HILLERMAN  
Professor  
Journalism Department  
University of New Mexico

ON FRIDAY, NOV. 18, 1967, the paths of two strangers crossed near Budville in the lonely West Central New Mexico Indian country where strangers are noticed and remembered. Because they were remembered — but not quite well enough — New Mexico witnessed effects of the Reardon Commission rules not generally anticipated in the free press-fair trial arguments these rules provoke. The so-called “Budville Case” showed that enforced police secrecy may not — as intended — protect the accused.



LARRY E. BUNTEN . . . for this chief petty officer, husband and father “the longest weeks of my life.”

One of the strangers was a 23-year-old Navy first class petty officer named Larry E. Bunten. On leave after completing an accounting course on the East Coast, Bunten was visiting relatives of his wife (an Acoma Indian) on the nearby Acoma Reservation. The other stranger, John Doe for our purposes, came to Budville on business. He had bought a “set-up” on the Budville Trading Post from a source in the Albuquerque underworld and made the 60-mile drive from the city to rob the establishment. Both men wore black trousers, black shirt and black jacket and — to stretch the coincidence — even an unusual type of jodhpurs with high tops and pointed toes. Doe was about Bunten’s age, Bunten’s height and Bunten’s weight. And, to strain coincidence further — his hair, eyebrows and face are remarkably like those of the petty officer. Even with their police file photographs side-by-side, it is hard to tell which is which.

These look-alikes didn’t meet. Bunten, with his wife and son and daughter, aged three and one, spent Friday night at the home of Acoma relatives. Doe spent part of Friday evening (police now believe) hunting the Budville Trading Post — which is far enough off Interstate 40 to be invisible from the highway. He then drove back to Albuquerque without finding

*I no laws abridging freedom of speech or of the press -  
VI accused shall enjoy the right to a speedy & public trial, by an impartial jury, of the State & district wherein the crime shall have been committed.*

it. Saturday afternoon, with better directions, Doe drove back to Budville.

Bunten and his family left the Budville area Saturday afternoon and drove to the duplex apartment of Mrs. Bunten's brother and sister-in-law in Albuquerque. At 7:30 p.m. Saturday Bunten was making a home movie of his children having a pillow fight in the living room. At 7:30 p.m. Saturday, Doe was walking into the trading post operated by H. N. "Bud" Rice. He drew a 9-millimeter pistol from his belt, shot Rice to death, then turned the pistol on Miss Blanch Brown, 81, and killed her with two bullets. Doe walked out with about \$150 in bills and an assortment of old coins—leaving Rice's widow bound and gagged. Another woman witness hid in the bathroom and survived.

At the beginning of the Budville case, police cooperation with newsmen was good. Despite some deadline pressure the Albuquerque *Journal* managed a detailed account of the incident in its first edition for Sunday, including a description of the suspect and the information that Mrs. Rice had noticed a tattoo on his stomach. Cooperation continued Sunday as the hunt for this man developed. In the story he wrote for the Monday morning edition, Pat Lamb of the *Journal* reported police roadblocks were watching for a sedan driven by a young man accompanied by an "adult Indian female and a small child." He also reported that an Alabama parole violator sought in Louisiana for robbery and attempted murder and in Albuquerque for a loan company robbery was "wanted for questioning" in the case.

He followed this with a guarded paragraph:

"There were unconfirmed reports that Mrs. Rice, a witness to the double murders, had made positive identification of a suspect from a photo."

WHAT LAMB KNEW of this at this first-edition deadline was what he picked up from monitoring the police radio—the call to arrest Doe on the strength of a photo identification. He didn't have time to confirm details before the early edition. Within the hour he couldn't confirm for another reason. The "light-colored sedan" had stopped at a roadblock not far from Budville, an arrest had been made and, with the arrest, police were automatically operating under the secrecy strictures of the pre-trial publicity rules.

Newsmen learned of the capture about midnight and contacted the manhunt headquarters set up by state police at Budville. They were told by a deputy state police chief that officers had the man they wanted, that he was being taken to Valencia County jail at Los Lunas, where he would be arraigned in court Monday morning. The manhunt, they were told, was over. Roadblocks were being called in and some 50 officers involved were released from duty to get some overdue rest. The deputy police chief provided information allowed by the guidelines—the age and identity of the suspect, and the fact he was unarmed and offered no resistance to arrest.

The *Journal* had time to delete from its last edition

story the reference to the Alabama parole violator—which now seemed pointless—and to insert a bulletin reporting the arrest and the end of the manhunt. Since the suspect was not yet formally charged, it withheld the name. The name was Larry E. Bunten.

Bunten had fallen victim to an odd combination of fast, competent police work, freak circumstances, and a police error. Only a few hours after the murder, police had matched the method of operation of the crime and the description of the gunman with the habits and appearance of John Doe. A photograph of Doe was shown to Mrs. Rice, who identified the man pictured as the killer of her husband. Police then used copies in attempting to pick up Doe's trail. Instead, they picked up the crossed trail of Larry Bunten. Shown the Doe photograph with the description of his size and black attire, several witnesses remembered Bunten. By Sunday afternoon roadblocks were supplied with accurate descriptions of Bunten's car and his family.

Bunten's luck was to improve later, but through Sunday it was all bad. Chance made his arrest almost inevitable and another chain of circumstances led to a blunder which made filing of charges equally inevitable.

AS IT HAPPENED a high ranking state police official who had been a personal friend of Rice for 17 years was in the area when the murders were committed and had taken personal command of the investigation. When Bunten was arrested this official—a nationally recognized authority on traffic control—had him driven to the Budville Trading Post. It was after midnight. The official went inside. Mrs. Rice, who had been given a sedative earlier, was roused, brought to the front window of the store, and asked to look through the window into the police car where Bunten was seated with a flashlight shining on his face. She was asked if she "saw anything familiar." Under these peculiar circumstances Mrs. Rice identified Bunten as the gunman.

In New Mexico, the release by law enforcement officials of information after an arrest (or the filing of charges) is theoretically governed by guidelines issued by the state attorney general. These guidelines are identical in effect to the Reardon Commission rules. They specifically bar law enforcement officials from revealing

#### THE AUTHOR



Tony Hillerman is chairman of the department of journalism at the University of New Mexico. His qualifications as a newsman include 17 years as police reporter, news editor and city editor on papers in Oklahoma and Texas; New Mexico manager of United Press and editor of the *New Mexican* at Santa Fe.

## . . . THE BUDVILLE MURDERS

information concerning character or prior criminal record of the defendant; concerning statements, admissions, alibis or confessions attributed to him; concerning fingerprints, ballistic tests, lie detector examinations, laboratory findings, etc., or "any evidence or arguments in the case, whether or not they might be used in trial." The guidelines were issued in the form of recommendations and their enforcement has varied. But Monday, after ordering Bunten held without bond for trial for murder, District Judge Paul Tackett specifically ordered the secrecy ban into effect. Judge Tackett had previously sentenced a newsman who commented on a pending case to 30 days in jail for contempt of court. His orders are not lightly ignored.

The arraignment stories carried in the afternoon editions of the Albuquerque *Tribune* Monday and on Tuesday morning by the Albuquerque *Journal* reflected the effects of the ban. They reported the court's action; the naming of a court-appointed attorney to defend Bunten; Bunten's complete identification, including his service rank and marital status; the complete circumstances of his arrest, including the information that he was traveling with wife and children, was not armed and had not resisted; and a detailed but brief recapping of the nature of the crime. Obviously this information left the reader with a key question unanswered. Why was this chief petty officer, husband, and father charged with murder?

UNDER THE REARDON rules no answer is allowed since it would bear on the guilt of the defendant. Reporters, however, managed a partial answer when tidbits of information leaked through the secrecy regulations. They learned that Bunten had been identified as the killer by Mrs. Rice and that he had been identified in a police lineup "by persons who saw him in the vicinity of the holdup." They were told by another officer that Bunten had declined to talk after his arrest and thus were left with the impression that he had offered no alibi. And they were told that the tattoo Mrs. Rice had reported seeing was probably not a tattoo at all but an impression left on the skin by the butt of the pistol carried under the gunman's belt. (Bunten, unlike John Doe, had no tattoo.)

The nature of these leaks is significant. Only information which indicated police had arrested the right man slipped through the guidelines. Information which might have raised doubts didn't leak. The Reardon rules did not modify the human nature of police.

Had the Reardon rules not been in effect, *Journal* and *Tribune* reporters would have learned that police—as of Monday afternoon—had no physical evidence linking Bunten to the crime. Their routine questions would have established that the charge was based on the testimony of three persons who identified him as a man who stopped in a bar near the Trading Post just before the crime, and on Mrs. Rice's eyewitness identification. The obvious questions about how Bunten first came to be suspected would have led them back to John Doe, to confirmation of Mrs. Rice's identification

of Doe's photograph, to the information that other witnesses looked at this photograph and confused the face with Bunten's and—almost inevitably—to the highly irregular nature of Bunten's identification at Budville. Much more important, they would have learned—contrary to their leak—that Bunten had offered a detailed alibi.

As soon as he was booked into the jail at Los Lunas about 1:30 a.m. Monday, Bunten had given officers a step-by-step account of his activities on Friday, Saturday and Sunday. His wife, questioned at the Grants jail, provided an identical account. State police made a partial check immediately. At approximately 3 a.m. Monday an officer arrived at the duplex apartment of Bunten's brother-in-law in Albuquerque. He and his wife confirmed that Mr. and Mrs. Bunten had been at the apartment when the crime was being committed in Budville. At this point state police also had testimony of two witnesses who had seen the murders and identified Bunten as the killer and of three persons who identified him as the nervous, black-clad stranger who left the bar near the trading post a few minutes before the crime. In the face of this contradiction, authorities discounted the testimony of Bunten's interested relatives in favor of the accounts of disinterested witnesses.

Any experienced newsman aware of these facts would have scented the possibilities of an unusual and important story. The duplex was within a five-minute drive of both newspapers. A check would have been easy and quick. It would have shown that in addition to his wife's relatives, whose testimony might be discounted, several other persons living in the block remembered seeing either the young sailor, or his car, or both at the apartment at the time of the crime. The left rear window of the car was covered with a colorful array of tourist stickers, which people remembered. They also remembered seeing him unloading luggage. Even more persuasive, the occupants of the adjoining duplex had not only seen Bunten at the duplex but heard him—through the thin walls of the partition—chatting with his wife and in-laws at dinner, making the movie of his children, even—such is the privacy of duplexes—taking a bath.

If a clincher was needed the movie was it. When finally developed, the film showed the apartment television set tuned to *Mannix*, a detective program aired Saturday night shortly after Rice was shot to death.

Had the Albuquerque *Tribune* reported Bunten's alibi, the wealth of evidence supporting it, and the peculiarities surrounding his identification in its Monday afternoon edition, it seems extremely likely that he would have been freed within 48 hours. But Bunten was being protected by the secrecy rules which hide innocence even more effectively than guilt. Reporters believed Bunten had offered no alibi. They had not a hint of his stop in Albuquerque. Two of them who tried to find his wife were left with the impression that she was either out of contact somewhere on the Acoma Reservation or that she was en route to San Diego. Another reporter contacted Mrs. Rice and found she did not want to talk about the case. After the arraignment

wrap-ups, the Budville story died of malnutrition. Larry E. Bunten sat in his cell, his innocence hidden by efforts to assure him an unprejudiced jury.

He might have sat for months. On the crowded court calendar in New Mexico (and most other states), it usually takes more than a year to bring such a case to trial. Police and prosecutors, with a fresh supply of crime daily, have no reason to hurry investigations after an arrest. Nor do court-appointed defense attorneys, who get no pay for their labors. But Bunten finally had change in luck. The man picked to defend him was Jim Toulouse, a vigorous and highly respected young attorney. Equally important, District Attorney Alexander Sceresse is not one of those prosecutors who rates his performance on his percentage of convictions. Sceresse was dismayed by the irregular identification. He arranged a meeting with Toulouse, explained some of the oddities of the case, and suggested they cooperate. Toulouse talked to his new client, concluded he was innocent, and agreed that he and Bunten would work with the district attorney's office. Bunten volunteered to submit to a lie detector test and to be questioned under narcosis.

ON TUESDAY, a warrant was issued allowing state police to search Bunten's car. They were looking for a black shirt with three white buttons missing, blood-stained black trousers, a 9-milimeter pistol, a wrist-watch with a broken crystal, or part of the loot from the trading post. They found only the Bunten family luggage, toys and Bunten's movie camera, and they didn't know about the pillow fight film in its magazine. By Tuesday night, Albuquerque police picked up the trail of John Doe, finding he had attempted to rent an Albuquerque motel room some four hours after the Budville murders. On Wednesday a check was started with the Navy to establish Bunten's reputation and determine if he owned a pistol. (He didn't.) On Friday, Bunten took the lie detector test. It indicated he had no knowledge of the crime and that his alibi was true. Questioning under the influence of "truth serum" was equally conclusive. Early the next week Bunten was informed that authorities were convinced of his innocence. But he still faced a problem. When the real murderer was brought to trial, the blundered identification procedure would allow the defense to point to Bunten in an effort to raise "reasonable doubt" in the mind of the jurors.

Sceresse, with the all-out help of Toulouse, set about to undo this damage by accumulating what was needed to prove beyond any doubt that Bunten was innocent. On Nov. 29, 10 days after his arrest, the FBI laboratory reported that prints picked up in the Trading Post did not match Bunten's fingerprints. On Dec. 5 laboratory studies of other evidence was completed with negative results. On the same day, reporters, acting on a tip from Toulouse, found Mrs. Bunten in Albuquerque. The story reporting his alibi appeared Dec. 6. At the same time Bunten was again brought before the court. On motion of the district attorney, Judge Tackett dismissed the murder charge



LARRY E. BUNTEN, Navy first class petty officer, his Acoma Indian wife, with son and daughter, aged three and one, face microphone and questioning following Bunten's release in the Budville murders' case where secrecy and mistaken identity trapped an innocent man.

against him. He had faced execution in the gas chamber for 18 days. They were, he said, the "longest weeks of my life."

In the Budville case it's obvious the Reardon rules did not accomplish their intended effect—the protection of the defendant. Indications of Bunten's guilt leaked. Evidence of his innocence did not.

They did accomplish side effects:

1. The public was comforted with the erroneous impression that a dangerous gunman was in jail when in fact he was living—still armed with his murder weapon—in an Albuquerque apartment.

2. State police were spared a modest amount of embarrassment. Reporters learned of their blunder by interviewing Bunten on his release, but the details of how it came to happen are still covered by the secrecy rules—which now in theory "protect" John Doe. They may be brought fully to public attention if Doe is tried in New Mexico for the Budville murders (and not in Louisiana or Alabama for one of the other killings with which his name is connected) and if his attorney decides to resurrect the identification of Bunten.

3. Friends and relatives of Mrs. Bunten spent 18 days (instead of one) digesting the thought that her husband was probably a cold blooded killer. Mrs. Bunten told newsmen just before her husband's release that "even when the truth comes out, the stories will go on."

4. An innocent man was denied his freedom substantially longer than he would have been had police-press cooperation been normal.

These unpleasant effects of secrecy occurred under near-ideal conditions—with a vigorous defense attorney on the job, the district attorney more interested in justice than in a conviction, and a police force not intentionally involved in a cover-up operation.

What happens when the situation is less ideal? ■