



Volunteerism

FBI LAW ENFORCEMENT BULLETIN

JANUARY 1982, VOLUME 51, NUMBER 1

Contents

- | | | |
|-------------------------------------|-----------|--|
| Administration | 1 | Developing Police Disaster Preparedness Plans
By James B. Corcoran |
| Personnel | 5 | Psychological Preparation of Female Police Recruits
By Debra Furman Glaser, M.A., and Susan Saxe, Ph.D. |
| Investigative
Techniques | 8 | Obtaining the Bitemark Impression (Mold) From Skin: A
Technique for Evidence Preservation
By Richard Souviron, D.D.S., A.B.F.O., Roger E. Mittleman, M.D.,
and John Valor |
| Firearms | 12 | The Multiple Integrated Laser Engagement System—A
Realistic Tactical Training Tool
By Martin E. Strones |
| Management | 16 | Volunteerism—A Police Department's Response to
Changing Times
By Maria B. Taylor |
| Cooperation | 22 | Swiss-American Cooperation in Criminal Investigations
By Dr. Lionel Frei and Special Agent Leonard H. Ralston |
| The Legal Digest | 26 | Age Discrimination and Law Enforcement
By Daniel L. Schofield |
| | 32 | Wanted By the FBI |



The Cover:
A team of police department volunteers illustrates the cross section of the community attracted to this type of work. See article p. 16.

**Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535**

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through December 28, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

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



ISSN 0014-5688

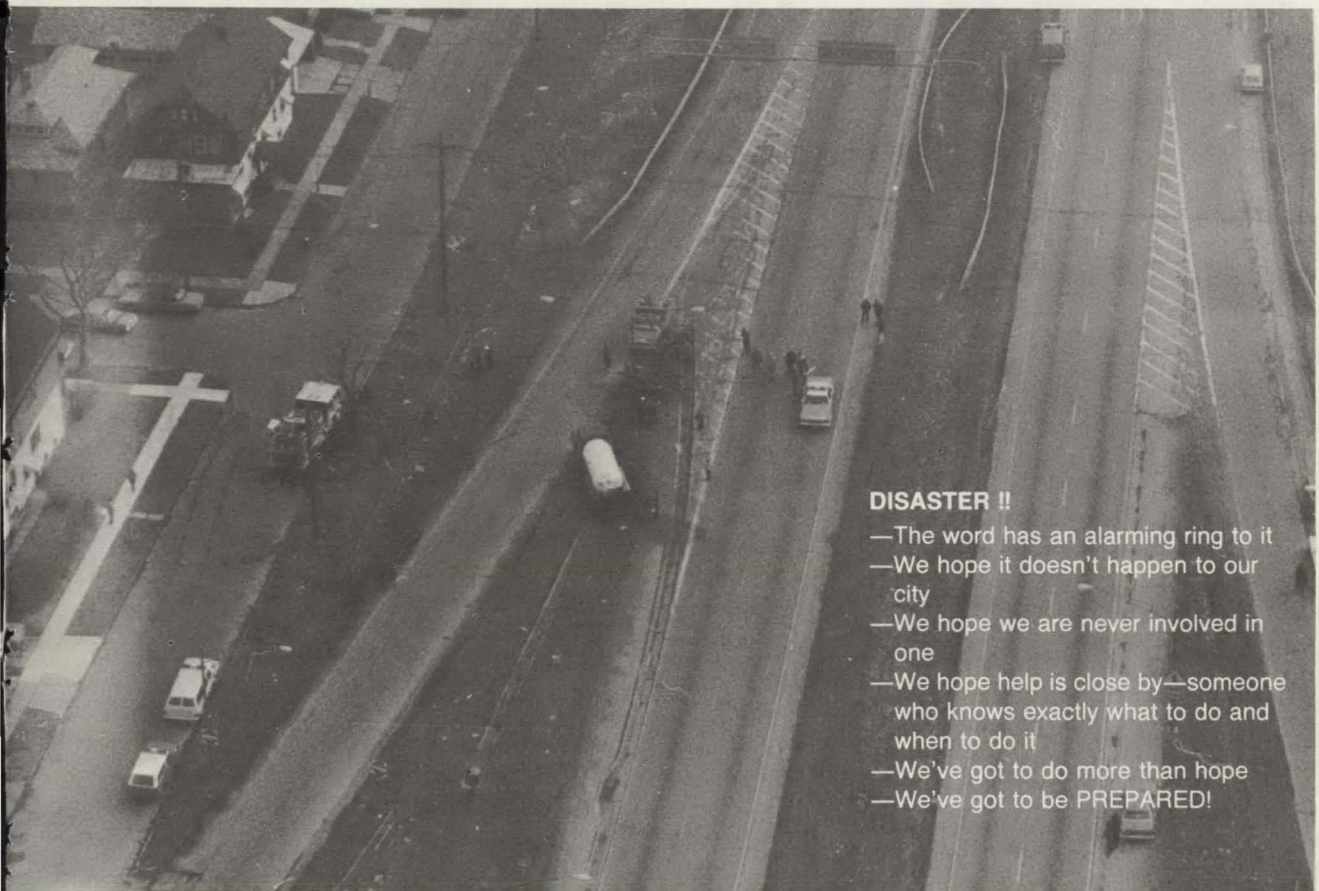
USPS 383-310

Developing Police Disaster Preparedness Plans

By
LT. JAMES B. CORCORAN
*Commander of Bureau of
Planning and Analysis
Disaster Coordinator
Police Department
Buffalo, N.Y.*

A disaster strikes suddenly and without warning. If a disaster is to be properly handled, the key is preparation through planning, organization, training, and acquisition of equipment.

Because of the daily pressures of operating a department and a city, the enormous potential for widespread disruption of a city by a disaster is often overlooked by most police administrators and other members of the city management team. It is difficult for a police administrator to conceptualize that a disaster could cause a total breakdown in transportation, communications, power supply, and other public services against the backdrop of loss of life and property. Therefore, little or no thought is given to disaster planning in many departments.



DISASTER !!

- The word has an alarming ring to it
- We hope it doesn't happen to our city
- We hope we are never involved in one
- We hope help is close by—someone who knows exactly what to do and when to do it
- We've got to do more than hope
- We've got to be PREPARED!



Lieutenant Corcoran



James B. Cunningham
Commissioner

Preparedness and response planning must become key objectives for the Nation's police departments. Preparations must be made for natural disasters usually equated with extreme weather conditions or technological disasters such as Three Mile Island. The list of potential disasters should include chemical accidents, fires, explosions, disturbances, transportation of nuclear waste, and even enemy attacks. Based on geographic location, individual departments add to the list by preparing for earthquakes, hurricanes, floods, or other potential disasters most likely to strike a given region. Planners must also be alert to possible disasters that might relate to new industries that have moved into their communities.

The City of Buffalo, N.Y., is geographically positioned at the gateway to Ontario, Canada, and serves as the principle conduit for shipments of chemicals and other hazardous materials to and from Niagara Falls, N.Y., as well as to Canada. The city's position as a major Lake Erie port has further influenced Buffalo's growth into a multimodal transportation center.

The increase in the number and toxicity of hazardous materials being shipped through Buffalo's 14 police precincts daily and increasing public awareness of the potential threat to public health and safety have promoted a merging of ideas and efforts by the city's police and fire departments. This effort has been coordinated by the Mayor's Office of Disaster Preparedness.

The police department has established guidelines to insure the coordinated efforts of the department, and plans and aids were developed to allow command officers to concentrate their energies on stabilizing and assisting the community's recovery from a disaster.

Disaster Operational Procedures Manual

The Disaster Operational Procedures Manual is a compendium of:

- 1) Existing emergency procedures covering such calamities as snow, floods, riots, airport disas-

ters, multiple-alarm fires, hazardous materials accidents involving the railroad, tractor-trailers, or tanks, and other serious emergencies;

- 2) A multiadaptable procedural plan that is applicable to a number of catastrophes; and
- 3) Resource reference lists of key personnel and equipment.

Emergency Operations Handbook

The Emergency Operations Handbook is a timesaving planning device for command officers. This handbook contains step-by-step instructions on how to plan, suggestions on planning, and referral worksheets which list operational orders, manpower and equipment resources, outside resources, command post needs, communications, security, intelligence, press, and onsite operations.

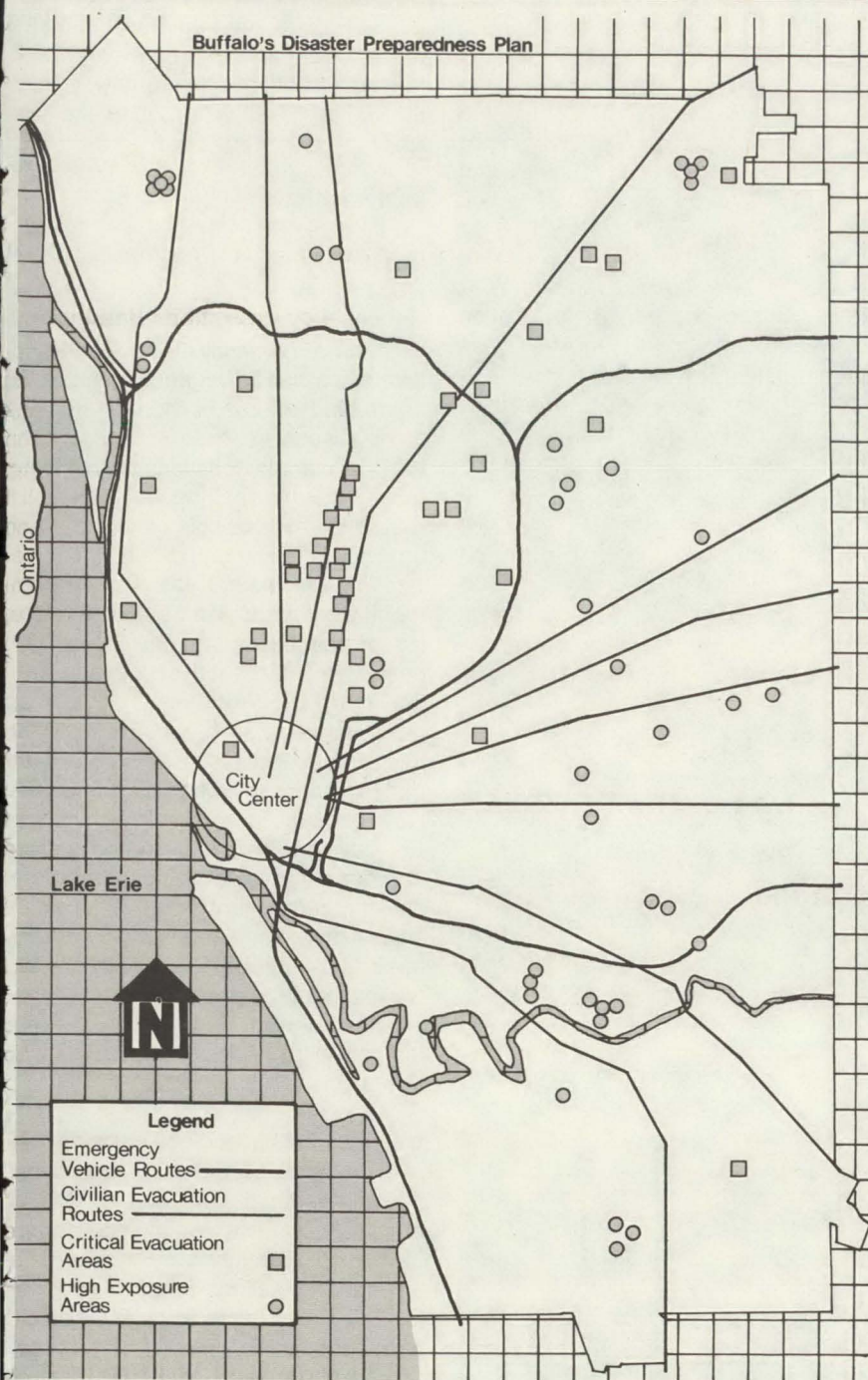
Emergency Mobilization Plan

The emergency mobilization plan is a computerized personnel roster batch report of all sworn personnel who will be assigned to "precincts of residency" if there is a need to activate the emergency mobilization plan. When disaster strikes, all department members will report to duty in full uniform. Members who live in the city will report to their normal assignments; members living outside the city limits have been assigned by computer to report to "precincts of residency."

Precinct Disaster Preparedness Map

A precinct disaster preparedness map was developed for the city of Buffalo. This map is grid-coordinated and is presently being used by the Conrail Railroad System, Buffalo Police and Fire Departments, and other city departments. By having a collective map and using grid coordinates as reference points, all city departments share a common language in pinpointing disaster sites. The map also includes all the plotted railroad tracks and railroad identification points within the city of Buffalo.

Buffalo's Disaster Preparedness Plan



A coded legend lists:

- 1) Emergency vehicle routes. When disaster strikes, civilian traffic is restricted, allowing emergency vehicles to move freely in, out, and around the city without the hindrance of congested civilian vehicle traffic.
- 2) Civilian evacuation routes. During a disaster requiring evacuation of persons from the city, some or all of the designated civilian evacuation routes will be employed. These predetermined routes will become one-way, outbound from downtown to the city limits.

For clarity, this map is a simplified version of the original developed for the city of Buffalo.

- 3) High-exposure areas. Hazardous materials concentration that have been identified in each precinct.
- 4) Critical evacuation areas. Nursing homes and hospitals in each precinct that would be targeted for evacuation, if necessary.
- 5) Stationhouses. Precinct stationhouses are identified.

The map legend lists the names of emergency and evacuation routes, as well as the names, addresses, and precincts of high-exposure and critical evacuation areas. To facilitate the development of the precinct disaster preparedness map, each precinct commander was given the task of identifying the precise location of potential hazards within his precinct. Buildings difficult to evacuate, such as nursing homes and hospitals, were also identified.

In order to educate and involve all 1,100 sworn members of the department, the Buffalo Fire Department provided instructional training classes to every member of the police department on handling hazardous materials and boiling liquid expanding vapor explosion (BLEVE) incidents.

Coordinating City/County Disaster Plans

Before finalizing the city's comprehensive disaster plan, it was of paramount importance to provide the evacuation route information to the communities that adjoin the city. Coordinating of city/county disaster plans was handled by the city of Buffalo and Erie County Offices of Disaster Preparedness. They addressed the problem of identifying the county's evacuation routes of the surrounding communities so as not to conflict with the city's evacuation routes which would carry the traffic flow from the city through their community.



During a total or sectional evacuation of Buffalo, the traffic flow patterns of certain city streets would be altered, forcing all traffic to flow one-way from the center of the city out to the city limits.

Implementation

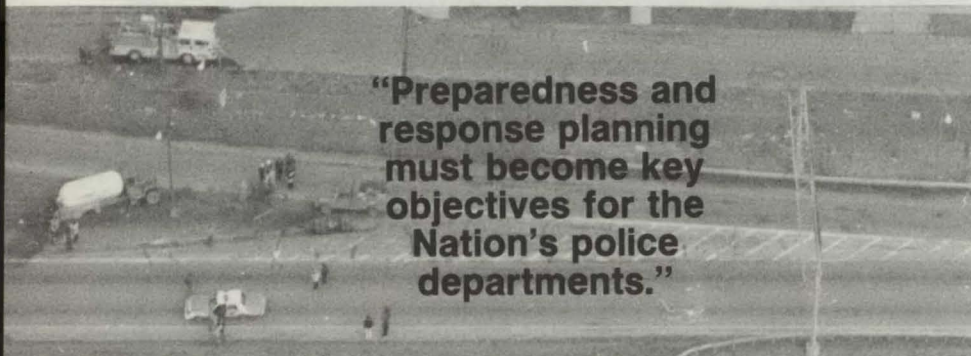
In March 1981, a portion of the disaster plan was put to trial when a propane tank truck lost a set of wheels and crashed to the pavement of a local expressway. A small amount of highly flammable vapor began to leak from the truck. Because of the high density of population in the immediate area, the expressway, which winds its way through the heart of the city of Buffalo, was the worst possible place for such an accident.

The existence of the disaster plan facilitated the quick and efficient closing of the expressway. A command post was established and evacuating the immediate area was considered; however, because the leak was small and winds dispersed the fumes that had leaked, evacuation was not necessary.

Cooperation between the police and fire departments and emergency crews was excellent. The propane was successfully transferred to an undamaged truck. During this entire period, the immediate area of the expressway was sealed off from traffic, minimizing the possibility of personal injury should any adverse incident occur.

The importance of disaster planning in meeting our obligation to the public cannot be stressed too highly. No police department can be totally prepared for every type of disaster, but planning is the keystone in providing the decisionmakers with the information they must have to be effective in periods of crisis. The time spent in developing a disaster plan will be repaid a thousandfold should tragedy strike, and success may be measured in the number of lives and amount of property saved through preparation.

FBI



Photos: William M. Shephard

The role of women in law enforcement has changed dramatically in recent years. In many agencies, the "policewoman" classification no longer exists. Females are hired as "police officers" and are required to meet the same hiring and training criteria as their male counterparts. They are also expected to be able to perform the same law enforcement duties.

In spite of efforts to employ women in patrol duties across the country, the number of women in patrol cars nationwide is low and the average tenure is brief. In addition, police administrators have difficulty recruiting qualified female applicants. Many applicants are unable to pass background and physical agility requirements. Of those who enter the academy, a high percentage drop out or are terminated for a myriad of reasons. And those who do reach patrol are quickly transferred to undercover, juvenile, or administrative assignments where the need for their services is often perceived as greater.

Statistics revealed that the academy attrition rate for female recruits was 50 percent between 1976 and 1980, as compared to a 17-percent attrition rate for male recruits during the same period. In an effort to resolve this problem, a preliminary program was developed which was aimed at increasing the number of women who would enter the police academy and complete the training program.

The Crime Prevention Assistance Program (CPA) was conceived originally as a "holding pattern" for female recruits. After successfully completing the selection process and while waiting for an academy class to begin, female recruits were put on the payroll and assigned clerical duties in various divisions within the police department. Thus, potential recruits became familiar with department operations, earned money while they waited to enter the academy, and provided a service to the department. Later, a portion of their time was allotted for physical training as preparation for the rigorous acad-

By
DEBRA FURMAN GLASER,
M.A.

Psychology Intern

and

SUSAN SAXE, Ph. D.

Staff Psychologist

Behavioral Science Services

Los Angeles Police Department

Los Angeles, Calif.

"Psychological Preparation" of Female Police Recruits

Although the Los Angeles Police Department has had a vigorous program aimed at the recruitment of female officers for several years, a 1980 court-imposed hiring injunction made increasing the percentage of female officers in the department a top priority. However, it soon became obvious that the recruitment of women was only half the battle. The problem of high attrition from the academy had to be addressed.

emy demands. While this program provided a head start, it soon became apparent, however, that lack of physical ability was not the only or primary reason so many women dropped out. Misconceptions about the police training academy and police work and an unrealistic assessment of the time commitments involved, as well as personal and interpersonal problems unique to female recruits, were all contributing factors to attrition.

As a result, a new and innovative phase of preacademy training was instituted. The department's Behavioral Science Services Section developed and implemented a program designed to address psychological stumbling blocks that prevent women from successfully completing academy training. This program serves as a complement to the physical training regime.



Ms. Glaser



Dr. Saxe

Psychological Stressors

Upon investigation, certain psychological stressors emerged as being particularly disruptive to female police applicants and recruits. Once these stressors were identified and defined, counseling sessions were initiated in order to "psychologically prepare" the CPA women for the police academy and police work.

The Perception of a Woman in a "Man's Job"

Police organizations and law enforcement occupations have been traditionally male. As a result, females sometimes have underlying feelings that their job choice is somewhat inappropriate. Such feelings, often stemming from early sex role identification and socialization, can lead to doubts about competence and self-worth.

Along with questioning the appropriateness of females in police work, in general, many women often question themselves and their individual motivations. The role of a police officer is a difficult and sometimes dangerous role for anyone. A police officer is an authority figure, and in our society, for the most part, authority figures are male. Thus, some women need to reconcile their femininity with their career choice. This issue may also affect a woman's relationship with her spouse and other prominent males in her life. Many men see women as wives, mothers, secretaries, and nurses. They do not see "feminine" women as capable of such a "masculine" job.

A Lack of Support

Compounding the problem is the lack of support they encounter both on and off the job. Husbands, boyfriends,

and friends, male or female, may feel threatened by their career choice. Any self-doubt a woman may have will be exacerbated by skeptical friends and police personnel. Despite the overall commitment of police agencies to hire women, some police personnel are less than supportive of this effort and make their feelings known in subtle and sometimes direct, ways.

Assertiveness

Along with socialization to be "ladylike," we have found that somehow or other ladylike connotes passive and submissive. Such qualities are anathema to police work. Many women need to work on becoming more assertive, that is, developing authority of voice and stature or developing "command presence."

Romanticism of the Job

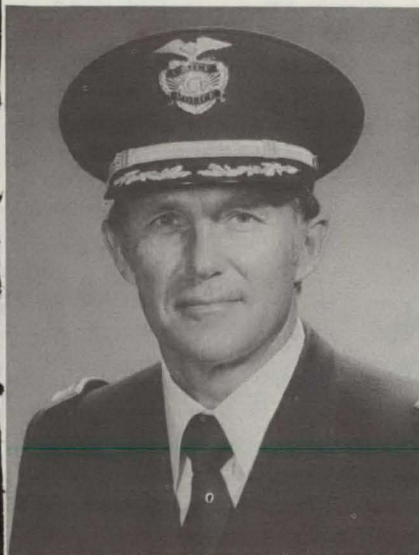
Unfortunately, some women are attracted to the job of police officer because they expect policework to be like an adventure as those portrayed on television. Inappropriate or incorrect expectations about job requirements, such as physical training, odd hours, and the quasi-military environment, may result in confusion and even anger.

Two Roles—Recruit and Housekeeper

Many women who enter police academy training continue to assume responsibility for maintaining a home, preparing meals, and child care. By definition, recruit training is more than a full-time job. Recruits must study at home, clean and polish their equipment at home, and keep a schedule which often involves 15-hour days. Traditionally, married male recruits have been able to come home to a prepared meal, clean children, and private time to study. Female recruits are less likely to have partners who will assume housekeeping responsibilities.

Inappropriate Defense Mechanisms

Psychological defense mechanisms are methods used against stress and anxiety. Each person develops a set of defense mechanisms that works for them. Women entering academy



Chief Daryl F. Gates

training and police work are subject to numerous stressors. In many cases, defense mechanisms that had worked in the past are inappropriate in law enforcement. New approaches must be developed. For example, a female who becomes tearful when under stress would have a difficult time exhibiting command presence with suspects while crying. New methods for defending herself against stressful situations would need to be developed.

Group Counseling

As a means to alleviate the effect of these psychological stressors, weekly 2-hour group counseling sessions were conducted by a psychology intern. The sessions gave the CPA's an opportunity to discuss the identified stressors in confidence and share information on the realities of academy training and police work.

During the 4- to 6-week program, the women were able to discuss feelings about their experiences since becoming a CPA. Typical experiences would include riding with an officer who tells the CPA, "Women shouldn't be cops," or "I don't want a female partner"; negative reactions from family and friends about her new career; or a child's tearful question, "Mommy, are you going to get shot?"

The fostering of group cohesiveness through weekly meetings is an important part of the CPA program. If cohesiveness and mutual support can be maintained throughout academy training, female recruits tend to succeed in greater numbers.

Role playing during group meetings is a valuable tool in allowing the CPA's a preview of how they might respond or what they might feel as a police officer. Scenarios include off-duty situations, such as explaining to a husband specific assignments and overtime obligations. Group confidentiality allows the women to feel comfortable in discussing personal problems. Most often they find they share many feelings.

POWER—Positive Orientation for a Winning Response

The most recent addition to the program is the POWER training. Aimed at relaxation and positive suggestion, the POWER sessions are presented daily for an hour immediately prior to physical training. Audio tapes are played presenting progressive relaxation instructions and suggestions for imagining the successful completion of a task or a proud feeling on graduation day.

The rationale behind the POWER sessions is to help women deal more effectively with the stress and tension that comes with the anticipation of chin-ups and long runs. The tapes were designed specifically for the program. After each session, the tapes are discussed and evaluated for their effectiveness in relieving tension.

Conclusion

Preliminary data for 1981 show a decrease in the attrition rate for female recruits from 50 percent to 7 percent. This substantial decrease after the implementation of the CPA "psychological preparation" program is encouraging. Because of the program's apparent success, a similar program within the LAPD has been planned that will address the relatively high attrition rate of male minorities. In addition, a research project will be designed to evaluate the long term effect of psychological training programs on both academy completion and success in the field.

FBI

Obtaining the Bitemark Impression (Mold) from Skin

A Technique for Evidence Preservation

By

**RICHARD SOUVIRON, D.D.S.,
A.B.F.O.**

and

ROGER E. MITTLEMAN, M.D.

*Associate Medical Examiners
Dade County Medical Examiner
Department
Miami, Fla.*

and

JOHN VALOR

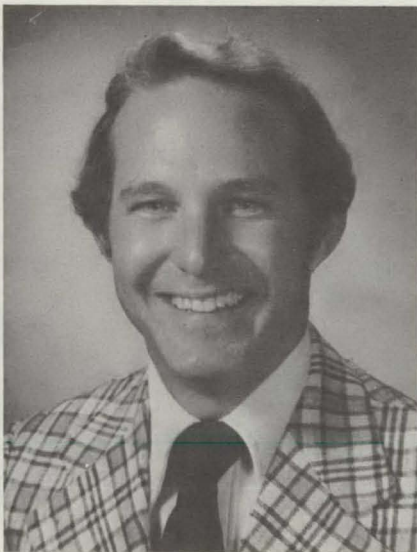
*Forensic Illustrator and Photographer
Police Department
Miami, Fla.*

Bitemark evidence is becoming increasingly useful to the criminal justice system. Both prosecutors and defenders realize the significance of bitemarks and are using this evidence more frequently. Although bitemarks left in human flesh are not uncommon, it is estimated that fewer than 5 percent are ever recognized or worked up. Forensic dentistry in the United States goes back to the days of Paul Revere; however, bitemark evaluation has only been used in the United States to any extent within the last 10 years. More bitemark cases were evaluated in 1979 than in all preceding years.

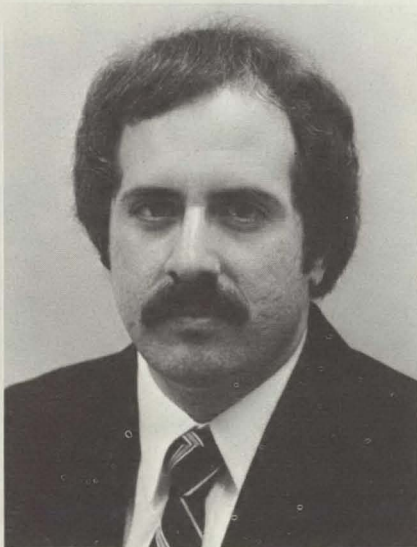
Bitemark evidence is a true scientific analysis of the wound, not just a comparison between the inflictor's teeth and the marks in the skin. It may be possible from the marks to describe the attacker's teeth. For example, it is possible to tell whether his teeth were crowded, whether there was a space between the front teeth, or whether a specific tooth was out of line. Bitemark impressions are valuable in both analyzing the bite and making a match.

Bitemarks have been described by some experts as toolmarks and impressions are valuable, if not indispensable. A classic case of bitemark comparison and the value of a bite mold is *People v. Walter E. Marx*.¹ In this 1975 case, a bitemark was left on the nose of the victim. A mold was taken, and a preliminary cast of the attacker's teeth was made. These pieces of evidence proved to be invaluable to the State in obtaining a first degree murder conviction against the defendant. The case was sustained through the Second District Court of Appeals in California.

This article presents a standard, simple, and accurate method of reproducing a bitemark pattern. The rubber base impression on the stone positive model may be made and used in analysis and comparison and later during courtroom presentation.



Dr. Souvion



Dr. Mittleman

Obtaining A Bitemark Impression From Skin

Materials (See fig. 1.)



Figure 1

- 1) Light-bodied permlastic base and catalyst;
- 2) Spatula;
- 3) Paper mixing pad;
- 4) Rubber base syringe;
- 5) Gauze (3-x-3-inch square); and
- 6) Dental dye stone

Supplies for steps 2-6 can be purchased at any dental supply house.

Method

- 1) Squeeze a 2-inch line of both permlastic base and catalyst onto a sheet of paper mixing pad so that the two lines are parallel to each other, about 1 inch apart. (See fig. 2.)

Figure 2



- 2) Using the spatula, mix the base and catalyst until there is a homogeneous brown color.

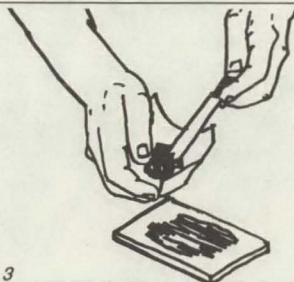
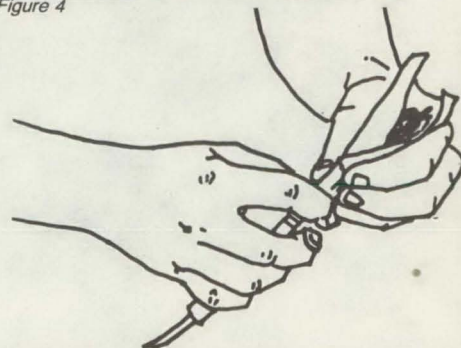


Figure 3

Quickly apply to the properly folded sheet from the paper mixing pad and squeeze into the syringe. The syringe package contains instructions for folding, or the syringe barrel may be filled by scraping the barrel across the mixing pad. (See figs. 3 & 4.)

Figure 4



- 3) Using the rubber base syringe, apply the mixture to the bitemark indentations in the skin. It is crucial that air bubbles be avoided. This is accomplished by slowly and methodically beginning at one point within the bitemark ring and continuing the application around the entire ring without stopping. If this is done correctly, the mixture will cover the skin between and around each individual bitemark. (See fig. 5.) It is important to insure that

Figure 5





Mr. Valor

there is a reasonable amount of mixture above the skin level since the mixture will later be smoothed over the remainder of the skin surface with the spatula.

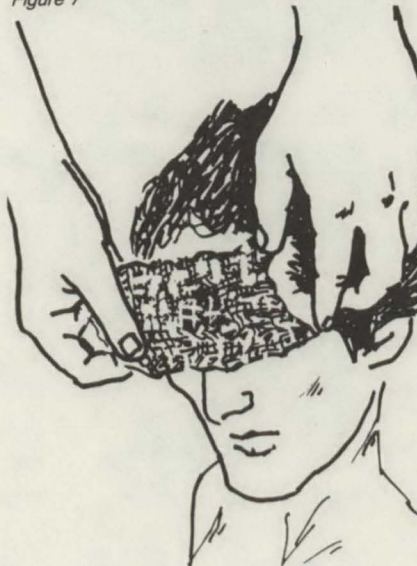
- 4) Spread mixture over the bitemark area and at least 1/4 inch of the adjoining skin from the outer perimeters of the teethmarks. (See fig. 6.) Completely cover the region by spreading the rubber base remaining in the syringe on the spatula and on the mixing paper.

Figure 6



- 5) Immediately place a single layer of gauze mesh over the area. (See fig. 7.) The gauze should be

Figure 7



cut to the appropriate size either before or after placement. It is important that steps 1-5 be completed in a few minutes.

- 6) Allow the mixture with the gauze to harden for approximately 5 minutes.

Figure 8



- 7) Mix dental dye with a small amount of water and place on top of entire surface of gauze. (See figs. 8 & 9.) The mixture should

Figure 9



be the same consistency as a heavy pancake mix, and the depth of the overlay on the gauze should be about 1-inch thick. Allow to dry for 15 minutes.

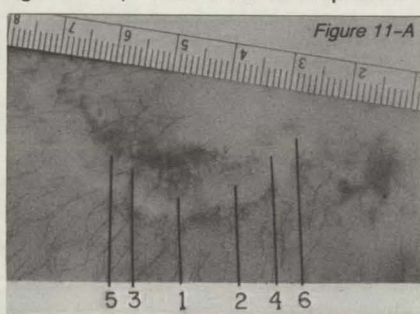
- 8) The mold should be carefully removed by gently lifting at one end until it is completely removed from the skin surface and should then be stored at room temperature. (See fig. 10.) If there is any evidence of air bubbles, the collecting process should be repeated.

Figure 10

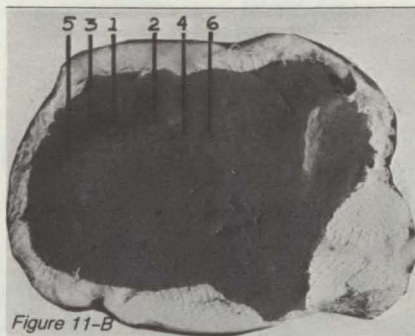


The bite mark mold may be of great value when there is a depression in the skin from the attacker's teeth. The mold provides a description of the inflictor's teeth, allows a match or positive comparison to be performed, and is an excellent demonstration aid for later presentation to the jury.

The entire process of obtaining bite mark evidence is demonstrated photographically in figure 11, using a human bite mark as an example. (See fig. 11-A.) The rubber impression



shown in fig. 11-B is a negative (mirror image) of the original bite mark, and in this model, the teeth imprints are somewhat raised, making them much



easier to see and evaluate. In order to make a positive model as shown in fig. 11-B, spread a thin layer of lubricant, such as automatic transmission fluid, over the rubber and pour in a heavy creamy mixture of dye stone. Allow to set for 15 minutes. When separated, there is a positive of the bite mark. This model can be compared to the suspect's teeth as shown in fig. 11-D and can be prepared for use in court. (See fig. 11-E.) The model may also be compared with the suspect's wax bite impression. (See fig. 11-F.)

Figure 11-C

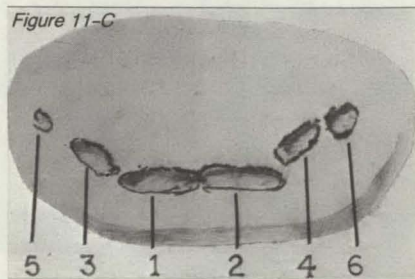
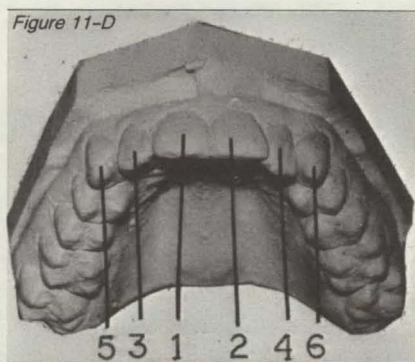


Figure 11-D



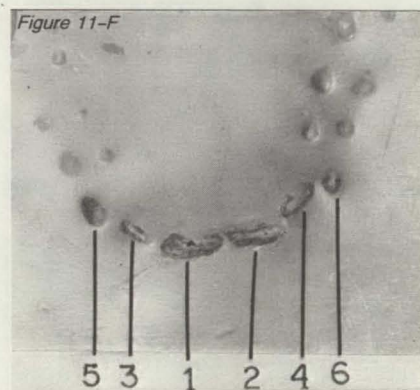
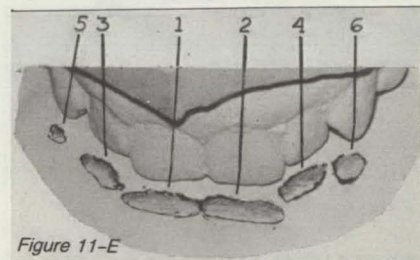
Conclusion

This is an attempt to show an easy step-by-step method of preserving the bite mark for future analysis. Crime scene personnel who recognize and preserve bites may find this article helpful and may wish to modify and improve on the technique for their special situation.

FBI

Footnote

People v. Walter Edgar Marx, 54 Cal. App 3d. 100, 126 Cal. RPTR 350, 77 ALR 3d 1108.



The Multiple Integrated Laser Engagement System

A Realistic Tactical Training Tool

An eye-safe laser unit and blank firing adapter are affixed to the muzzle of an M-16.

By
MARTIN E. STRONES

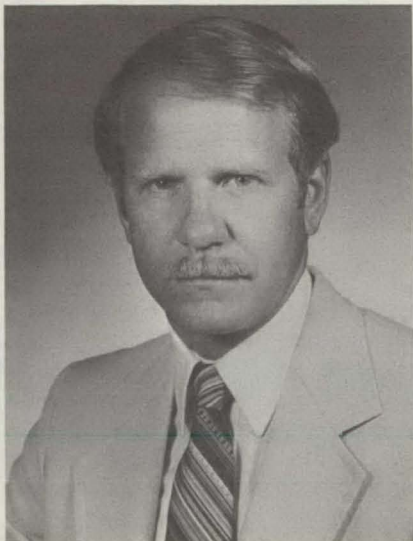
*Branch Chief of Training
Department of Energy
Kirtland Air Force Base
Albuquerque, N. Mex.*

EDITOR'S NOTE: Material published in the FBI Law Enforcement Bulletin is solely for the information and assistance of law enforcement personnel. While brand names and companies may be mentioned from time to time, this is done in a strictly objective manner to help present articles in their entirety from authoritative sources. In such instances, publication of the article in the BULLETIN should not, under any circumstances, be construed as an endorsement or an approval of any particular product, service, or equipment by the FBI.

Training of individuals who must be prepared for combative or tactical situations is frequently inadequate. As a result, an individual's first tactical situation is often approached without the experience needed most—the basic details of a common human experience in a tactical engagement. As a result, what can be one of the most critical experiences in an individual's life is approached with almost total inexperience.

In my own case, I was a young Air Force captain, commanding several hundred Air Force Security Police defending Bien Hoa Air Base during the 1968 Tet Offensive in the Republic of Vietnam. My only experience at that time was a 1-week school in tactics. Prior to that, my field experience consisted of two exercises in which blank rounds and several artillery simulators were used in an attempt to duplicate the stress of combat. After the Tet experience, I attended every training session I could and developed my own tactical training exercises. Until that first enemy engagement, I did not have the needed knowledge or experience.

My experience was not unlike many others. In the past, tactical training efforts made use of the best tools available at the time—usually cap pistols or blanks and simulators. Another method was using blanks with participants wearing numbered shirts and caps. If the individual called out the number of an opposing player and shot a blank in his direction, an umpire would declare the appropriate individual killed. Variations of these methods produced more realism, but the basic problem with all these approaches was the use of a third party, usually called an umpire or controller, who was called upon to decide who won or lost an exercise. The use of umpires caused several other problems. First, since umpires needed to see activity to make decisions, they eliminated surprise and assisted in target detection. Secondly, while making the necessary decisions as to who shot whom and who was dead and who was not, they got in the way, hindering the exercise. Despite these problems, there seemed to be no solution. Other training devices, such as "shoot—don't shoot" pro-



Mr. Strones

grams, popup targets, shooting decision alleys, and extensive combat qualification shooting were available; however, the desired effect of tactical training—the basic details of a common, tactical engagement—was missing. What was needed was a method to simulate realistically a total combat experience. Until recently that was simply impossible—impossible until the invention of the multiple integrated laser engagement system (MILES).

MILES, designed and marketed by Xerox Electro Optical in Pasadena, Calif., is a battery-powered laser transmitter and detection system adaptable to a variety of firearms. The system was designed to allow realistic tactical engagement simulation without the hazards of live ammunition.

The heart of the system is a small transmitter which fits on or in several weapons, including M-16's, shotguns, handguns, M-60 machine guns, and light antitank weapons (LAW). The transmitter fires eye-safe laser signals instead of bullets. Every participant in a tactical exercise wears ultralightweight detectors mounted on a harness somewhat similar in appearance to

suspenders. Detectors may also be mounted on vehicles or fixed facilities to register hits and/or near misses.

The transmitter, operating at a wavelength of 9040 anstroms, is a gallium arsenide laser diode which emits invisible pulses of coded infrared laser energy. The laser transmitter does not affect weapon aiming or balance, and in the case of the M-16 or M-60, it is quickly and easily removed and reinstalled on any service weapon. It works in either a semiautomatic or automatic mode. Handguns and LAW weapons must have MILES transmitters built into the barrel, and therefore, are used only for training blanks, or in the case of the LAW, a weapons-effect simulator called ATWESS provides an acoustic report that instantaneously triggers a laser "bullet." A microphone inside the transmitter housing is the connection between the sound of the blank or ATWESS and the firing of the laser bullet.

Silenced weapons may also be part of the exercise with a special adapter. A coded laser pulse identifies the weapon type to the electronic decoding device connected to the detectors. This weapons coding eliminates unrealistic kills. For example, a .357 magnum handgun obviously cannot penetrate an M-113 armored vehicle. If the coded signal is correctly received by the detectors, a kill or a near-miss signal is issued.

The detector harness worn by participating individuals has four detectors in the front and four in the rear. In addition, a headband that incorporates 5 detectors is worn. The head array used by U.S. Department of Energy (DOE) is easily adjustable and is directly attached to the head or around any hat or helmet. Four of the five head detectors are positioned at 90° intervals from the center front position. The fifth head detector is mounted on top of the head to accommodate prone positions. The entire detector array is powered by a standard 9-volt battery that lasts up to 3 days.



An instructor demonstrates the use of MILES equipment prior to a field operation.

Probably the most important feature of the harness is the kill/near-miss sound indicator that is located on the left side of the harness, near the wearer's ear. After the coded laser signal is received by the detectors and the signal is verified by the circuits in the small electronic decoding device mounted on the rear of the harness, a signal is sounded if the shot is a kill or near miss. The hear-miss feature allows each participant to detect close shots and initiate subsequent evasive action. The near-miss signal is a series of rapid beeps. One beep sounds if a laser "bullet" passes at approximately one arm's length. As the near-miss laser "bullets" get closer, the number of beeps increases. Several laser "bullets" fired very close to the participant can produce a continuous series of beeps that have caused individuals to run through bushes and dive off hills with unbelievable vigor!



Instructor checking MILES receiving harness with a controller gun.

The final signal—the signal indicating that you are dead—is a continuous tone that cannot be silenced without removing a yellow plastic key attached to the rear of the laser transmitter. Removal of the key disables the laser transmitter. After it is removed, the key is inserted into the harness to silence the ear-piercing "kill" signal. Any attempt to subsequently remove the key from the harness will result in the continuous tone recurring. This feature insures that a "killed" player is out of action until the system is reset by a special key that is held by the training staff.

One of the most significant impacts of MILES is its effect on individual learning curves.

Vehicle detector systems are very flexible in their coverage of vulnerable areas, greatly adding to the realism of the exercise. The detectors can be placed anywhere on a vehicle and connected to an electronic evaluation control mechanism (EECM). This device can be adjusted to vary the "hardness" and the number of shots necessary to disable the vehicle. Other options include "killing" the vehicle's engine and/or activating explosive simulators. The weapon coding device makes evaluation by the EECM very realistic. For example, receipt of a kill signal from a LAW will immediately disable a responding vehicle and signal the occupants killed. This type of a beginning to a tactical operation can give even a seasoned veteran cold chills!

The maximum effective range of firearms equipped with MILES is very representative of each weapon. During sniper exercises, marksmen using scoped M-14's or M-16's have effectively demonstrated the realism of MILES at the maximum effective range of each weapon.

To guarantee absolute firearms safety, each weapon used in MILES exercises is equipped with features that ensure that live rounds cannot be accidentally introduced into the weapon. For example, M-16 magazines are modified so that they will accept only short blank rounds, not the longer live service rounds. These magazines are specially colored so they are immediately identifiable as training units. Remington 870 shotguns are equipped with barrel blocks that prevent loading of live rounds. These safety features are considered by the DOE to be an *absolute* necessity because of the realism that develops during training exercises. Training with MILES is never conducted unless all safety equipment is available and functioning. As an additional safety requirement, live service rounds are never permitted at the training site during any MILES exercise.

Weather has little, if any, effect on the MILES equipment. Tactical exercises have been conducted at temperatures 20° below zero and over 100° Fahrenheit. The only problem noted is that during severe cold periods, battery life is greatly reduced. Limited visibility limits the shooting ability of each participant and MILES does not detract from or aid this condition.

MILES-equipped firearms fitted with night vision devices have been used extensively during night operations with great success. Since the laser signal is invisible and darkness has no effect on the laser equipment, night operations are extremely realistic and training exercises of this type give much needed experience during the relatively unfamiliar hours of darkness.

The \$2,300 price tag for each MILES set (M-16 transmitter/harness) may initially seem expensive; however, the price becomes reasonable when the results of MILES tactical training are considered. Other pieces of MILES equipment are even more costly. At the time of this writing, the handgun and shotgun MILES units are not yet off-the-shelf items.



Instructor directing operation prior to actual deployment of tactical teams.

DOE's Albuquerque Operations Office's Transportation Safeguards Division (TSD) has been using MILES equipment since 1978 to train the courier force that transports Government-owned nuclear material and nuclear weapons from the DOE production center to the military. Realistic exercises are run during courier advanced tactical training conducted at Kirtland Air Force Base. During this training, convoy vehicles and couriers equipped with MILES devices are routed through a road system on the small force engagement range. Instructors assigned to TSD's Training Branch attack the convoy using tactics representative of various terrorist or malevolent organizations. The free-play exercises pit the ingenuity of the convoy commander and couriers against a terrorist ambush. Each exercise is video taped and an after-action review (AAR) immediately follows each operation. It is during this AAR that the participants explain their actions and problems, review the video tapes, and learn the weaknesses or strengths of their defensive actions. This indepth analysis by all participants builds the tactical skills of all those involved.

One of the most significant impacts of MILES is its effect on individual learning curves. Each subsequent exercise with varied attacks and courier responses reinforces what has been learned from previous exercises. Ammunition use, weapon malfunctions, cover and concealment, and response to ambush dynamically improve after each MILES exercise. Empirical results to date indicate that a courier who has received MILES tactical training should have a significantly better chance of survival in the event of an attack. More importantly, couriers have realistic experience to draw upon in the event that an actual tactical situation should occur.

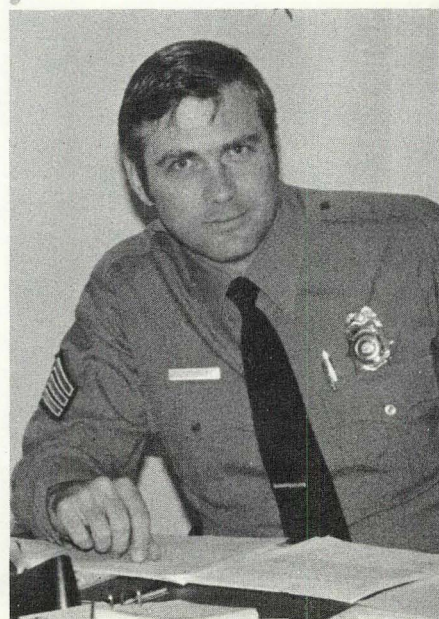
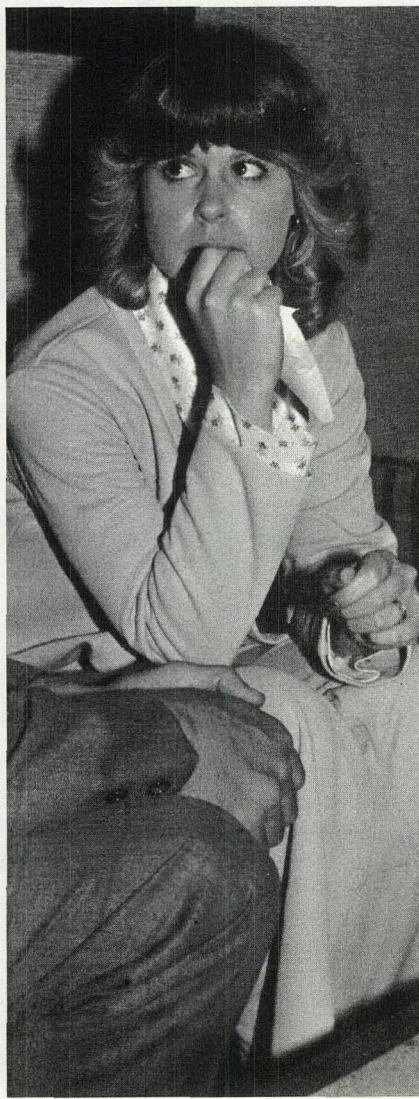
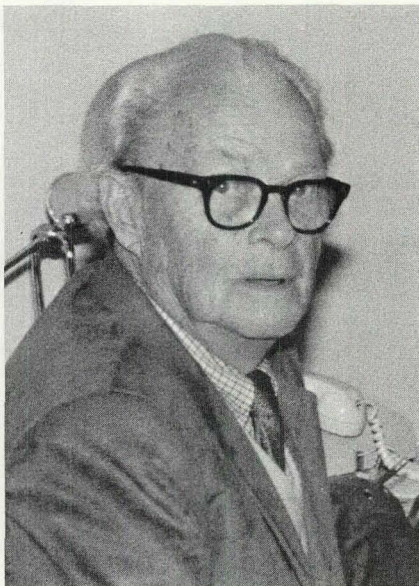
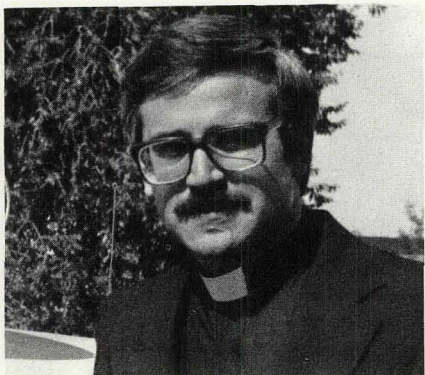
Another important asset of MILES training is the effectiveness testing of procedures, equipment, and manpower. Extensive testing at the Albuquerque Operations Office using MILES has resulted in changes in some weapons and tactics. More extensive evaluations are planned for future tactical training sessions.

Because TSD would call upon State law enforcement agencies and the FBI in case of attack, it has an important liaison program with those agencies. To improve this cooperative effort, DOE will conduct joint training exercises and make use of MILES equipment to simulate realistically possible hostile situations. Participating agencies include the California Specialized Training Institute, the Oklahoma Highway Patrol, and the Albuquerque, Las Vegas, El Paso, and Phoenix FBI field offices.

The military also has an interest in MILES. The U.S. Army took delivery of MILES equipment in 1978, the U.S. Air Force began using MILES equipment early in 1980, and during 1981, the Air Force Office of Security Police used MILES in a tactical evaluation event.

What lies ahead for laser training devices? The bottom line is more realism, and for the first time, effective training for individuals using firearms in performance of their duties. Research into new roles for laser devices continues. The next major hurdle appears to be development of indirect fire weapons. Almost sure to follow is real time casualty assessment, featuring a unique identifier for each player. This will enable even more detailed effectiveness evaluations. The end result will be individuals with the necessary experience to face their first tactical experience with the necessary training to react correctly.

FBI



Volunteerism

A Police Department's Response to Changing Times

By

MARIA B. TAYLOR

*Coordinator of Volunteer Services
Police Department
Colorado Springs, Colo.*



The decade of the 80's, the most scientific and educated in recorded history, also looms as the most violent. Crime threatens to become our greatest public concern.

This concern is also coupled with increasing public pressure for lower taxes and improved productivity. Recent Federal budget cuts eliminating needed programs and resources have complicated the situation even further by gradually reducing capital resources to law enforcement agencies. Clearly, it is time for those in law enforcement to examine alternative resources.

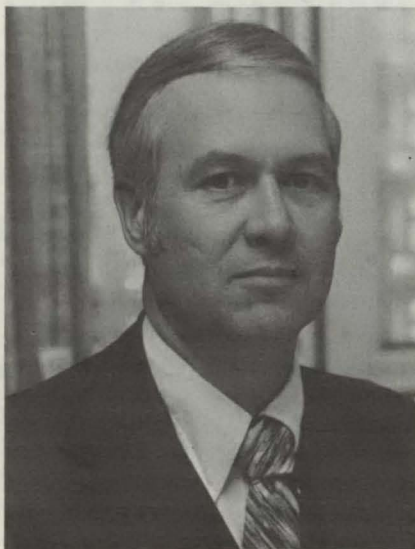
The Colorado Springs Police Department (CSPD) started developing an alternative to both its own and the surrounding community's frustration over climbing crime rates and decreasing dollars when, 8 years ago, the department's first volunteer program was introduced.

The motivation for using volunteers was not based on economic factors but on very human ones. Through exposure to daily police activity, the volunteer develops a realistic perspective of the law enforcement system and a resulting positive regard for the police agency and its personnel.

Photos: Don Macmurdo



Ms. Taylor



Chief John L. Tagert

Rather than internalizing all law enforcement problems, police agencies can share these problems with the community. The public relations impact and advocacy role developed through such citizen involvement is invaluable. The traditional communication gap between the police and the community begins to close.

The CSPD's volunteer program challenges other traditions. In the past, police volunteers throughout the Nation were usually reserve officers and posse members, emphasizing direct law enforcement assistance and field activity. The current law enforcement volunteer in Colorado Springs is of a new breed. The emerging portrait of this volunteer is that of a serious citizen advocate who provides the agency with a host of support services that extend and enrich the delivery system. It has been repeatedly shown in Colorado Springs that the volunteer is motivated out of genuine concern for and commitment to the law enforcement agency's purpose and function. As one volunteer succinctly explained, "We are all angry about crime, and this is one way we can positively channel our anger." In this decade of alarming crime rates, the realization is growing that law enforcement is no longer just the responsibility of the police officer but is a partnership between the public and private sectors.

This two-pronged realization that involvement fosters ownership and that personal contact increases awareness and understanding has given birth to what has become an expansive program in the CSPD, using a broad cross section of citizens in voluntary capacities. The 100 volunteers include all age, socioeconomic, racial/ethnic, religious and educational strata. Ages of volunteers range from 18 to 80, with the average age being 45. Fifty-one percent are male, 61 percent are employed, 25 percent are 55 or over, and some are handicapped and disabled.

In 1980 alone, volunteers donated over 12,000 hours—equal to about \$100,000 in services and over five full-time positions. Volunteers can be found in all four major bureaus of the department. (See fig. 1.)

Overseeing the voluntary staffing of these units is a full-time paid volunteer services coordinator who serves as an advocate for both the law enforcement agency and the volunteer. He need not be employed in law enforcement but must be knowledgeable in human relations skills and volunteerism.

In managing these volunteers the coordinator/director uses the same fundamental skills and principles as personnel managers. Although unpaid, the volunteer is "hired," trained, integrated, evaluated, recognized, and even "fired" in a parallel process to paid department personnel. The result is the cultivation of professional volunteers in an established professional environment. Incorporation of an unpaid staff in this manner not only lends importance and significance to the volunteer's role but also, from the staff perspective, lends credence to volunteer work and creates acceptance.

Since staff resistance to volunteers is the primary problem facing volunteer programs today, professionalism of a program is a valued goal. In the CSPD, the term "professional volunteer" is not contradictory. A close look at a few of the volunteers is perhaps the most illustrative method of documenting this point.

—The 80-year-old retired civil servant who assists running the extra-duty office by scheduling 80 officers per month and keeping a statistical log that documents and supports the need and increasing priority for extra-duty personnel to help alleviate an on-duty manpower shortage.

—The priest who loaned his expertise on "aging" to help develop, teach, and be a consultant to the Senior Victim Assistance Program, which was selected by the Law Enforcement Assistance Administration (LEAA) as an exemplary project.

Figure 1

Operations Bureau	Support Services Bureau
Police Substation	Youth Services
Traffic Hit & Run	Victim Services
Robbery	Crime Prevention
Narcotics	Volunteer Services
Juvenile	Chaplaincy Corps
Missing Persons	Senior Victim Assistance Team
Fugitive	Range
Check Fraud	
Auto Theft	
Special Task Force	
Inspection Services	Staff Services Bureau
Intelligence	Business Office
Organized Crime Strike Force	Communications Center
Legal Office	Records and Identification
	Crime Analysis Unit
	Extra-Duty Office
	Evidence

- The middle-aged housewife in transition from a confined domestic role provides needed clerical assistance to the department's business office, while developing valuable marketable skills.
- The nurse who deals with crime victims in distress and provides emotional and physical comfort, followup, and referral.
- The 36-year-old criminal justice student who, while exploring a career shift, edits the weekly warrant information newsletter, which updates personnel in the patrol and investigative divisions on current fugitive information.
- The disabled volunteer who works in public relations by manning the substation police desk for case reporting and making public presentations on the subject of the police department to community organizations.
- The volunteer who, in her third career, manages the office of the Organized Crime Strike Force, goes undercover to type confidential reports, and receives and records information from informants.
- The volunteer crime analyst who reviews approximately 250 criminal mischief cases per month and provides statistical data reflecting

crime patterns, areas of concentrated activity, and M.O.'s. The information alerts the police officer to the possible relationship between criminal mischief crime patterns and other crime patterns in his sector.

This variety of examples indicates that volunteers, when well-matched with their personal goals, needs, and interests, can perform a voluntary job with professional quality. These examples also challenge the frequently encountered myth that "if the volunteer were competent, he/she would acquire a paying job." The success of the volunteer program in the Colorado Springs Police Department demonstrates that the primary motivator for work is the intrinsic value of work itself. Remuneration for the volunteer comes from the performance of challenging work, the satisfaction of achievement, increased responsibility, recognition for accomplishment, and personal growth and development through use of skills, talents, and creativity. For these reasons, volunteers are self-motivated and possess a personal commitment to the task at hand.

Job Design

The process of matching CSPD volunteers and duties begins with the development of a written job description that states the reason and specifications of recruitment. Frequently, organizations, in a frenzied attempt to supplement manpower shortages, will enlist volunteers with little or no knowledge of where or how they will be used. In *The Effective Management of Volunteer Programs*, Marlene Wilson points out that recruiting before designing jobs is rather like trying to dance before music begins. The possibility of ending up out of step is very good.¹

A well-developed job description should include the title and objective of the position, major responsibilities, qualifications, time required, length of commitment, training provided, the supervisor or to whom the volunteer is accountable, and benefits (optional). The job description is drafted either by the requesting unit supervisor or jointly with the director of volunteers. The initial impression the potential volunteer develops about the agency is based primarily on the job description. When carefully and imaginatively written, a job description invites participation; when concretely and specifically developed, the description indicates the value of the position in context with the overall agency goals and objectives. It is the cornerstone of a well-managed volunteer program—the fundamental tool on which to recruit, motivate, and eventually evaluate.

Recruitment

Recruitment naturally follows job design. It is a "selling" job and requires careful thought in targeting the audience and marketing the product—the job. This selective recruitment is preferable to general and widespread solicitation. A common mistake in recruiting is "looking in the wrong place for the right people."²

The key to effective recruitment is *marketing*. It not only is necessary to sell the job to the volunteer but also provide and promote benefits—it is an exchange or barter system. Since the potential volunteer will not receive fi-

financial compensation, an effective marketing approach must be used to meet psychological needs and personal goals. Volunteers themselves can play a large part in the recruitment process. Satisfied volunteers sharing their experiences by word-of-mouth are a program's richest asset. Volunteers with specific professional skills can also provide technical savvy for recruitment activities. Presently, the CSPD draws from the expertise of a retired advertising executive, a commercial artist, and a graphics company. Clever and attractive publicity to establish the program's visibility and credibility in the community furnishes a sound base on which to begin recruiting.

An additional aspect that must not be overlooked is that recruitment is a highly individualized task, and therefore, needs to be tailored to the situation. There are many variables, such as the number of positions being filled, the type of job(s), the number of people needed for the job(s), and the types of skills required. An agency needs to be adequately equipped for a host of recruitment situations by maintaining a large "tool box" with a variety of "tools." According to the situation, a different tool may be selected and used, alone or in combination with other tools, to accomplish the task. Since recruitment strategies vary widely, pinpointing a successful formula is virtually impossible. The best recruitment tools, however, are a good sound volunteer program and meaningful jobs.

Screening, Interviewing, and Placing

With the foundation laid in job design and recruitment, the screening, interviewing, and placement process becomes the next crucial step in volunteer program management. This selection process provides a built-in mechanism to determine appropriateness and suitability of the potential volunteer and to ensure quality control. For law enforcement agencies, most particularly, this is of paramount concern.

"The motivation for using volunteers was not based on economic factors but on very human ones."

Ivan Scheier, Ph.D., noted consultant in the field of criminal justice volunteerism, states that we must "screen out those candidates clearly unsuited for certain jobs and redirect them to appropriate placements whenever possible." This is essential for several reasons:

- 1) The agency must be protected. It must be helped, not hindered, by volunteer involvement;
- 2) The agency's reputation is greatly affected by its volunteers;
- 3) Morale of paid staff and other volunteers declines when inappropriate or poor volunteer placements occur; and
- 4) The volunteer himself suffers when misplaced.³

As important as screening out these "high risk" volunteers is the screening *in* of "high potential" candidates. Each potential volunteer has something to contribute—the volunteer director's task is to *discover* what that contribution is and put it to work effectively on behalf of the agency. This takes time and an ability to listen, probe, and "try on for size." If the interview process accomplishes its purpose, the candidate and agency will be able to make a fairly accurate assessment of mutual needs, expectations, and goals.

It follows, then, that the bottom line of the volunteer director's job is *human resource development*. One of the saddest mistakes made by volunteer administrators is not efficiently using a person's talents and abilities. Marlene Wilson points out that there are three concerns repeatedly expressed by volunteers:

- 1) Their volunteer work will be a waste of time;
- 2) Their skills and talents will not be used; and

- 3) They may be placed in jobs for which they are not suited.⁴

Effective interviewing and placing speaks to all these concerns, while ensuring that careful and deliberate steps have been taken to provide the most qualified person for the job.

The interview process should not end in the volunteer director's office but should proceed to the requesting unit supervisor and appropriate staff for final determination. To further ensure a successful placement, the selection process should include as many of the volunteer's potential co-workers as possible.

Training

Training is a concept with which law enforcement personnel are very familiar. It has received increased emphasis and has enhanced the officers' and community's respect for law enforcement.

Training experiences for the volunteer also need to be provided. The volunteer appreciates and derives satisfaction from training programs that are relevant and provide skills and personal growth. Good training, therefore, is a primary motivator of volunteers, as well as a way to share information. It is a valuable tool to use in retaining volunteers and furnishing incentives.

Training is also believed to be a primary factor in limiting the number of on-the-job injuries. Since the inception of the CSPD volunteer program, there have been no job-related injuries; however, all persons involved in the program are covered by the city's medical insurance company.

Manpower and funding shortages have brought patrol functions to dangerously low levels, thus increasing the importance of the volunteer's role. Properly trained, a volunteer can release an officer to do what he/she is trained to do in handling high-priority calls for service and demanding, detailed investigative tasks.

Volunteer training, when effectively implemented, is conducted in three stages:

- 1) Orientation—familiarizing the volunteer with the agency, its philosophy, functions, policies,

organizational structure, and goals. This may include a tour, a briefing session (formal or informal), and arranged observation opportunities in areas of interest.

2) Preservice training could include formal classroom instruction, required courses, suggested sessions of the police training academy, and/or informal on-the-job training by unit supervisor or appointee.

3) Inservice training—volunteers need and want ongoing training and continuing educational opportunities. The more knowledgeable and informed they are, the more proficient they become in absorbing the routine work burdens generated by increasing population and criminal activity.

The value of training is best illustrated by the CSPD senior victim assistance team and the CSPD chaplaincy corps. The senior victim assistance team, a 15-member team that works with elderly victims of crime, undergoes a 3-month preservice training program in crisis intervention, communication skills, and familiarization with referral resources. Monthly meetings are held for case information exchange and discussion, in conjunction with specialized inservice training.

The chaplaincy corps, composed of 30 local clergy, accompany patrol officers on a rotating basis during peak evening hours 7 days a week. They are also on call 24 hours a day through a paging unit for counseling, consultation, and crisis work in the community and within the department itself. Their monthly training deals with topics ranging from police crisis intervention, department policies and procedures, legal matters, safety, psychological profiles on suicidals, battered women and substance abusers to pastoral skills development.

As well as receiving training, chaplains also train. In keeping with the chaplaincy program's purpose of professional sharing, chaplains provide training at the police academy to rookies on job-related and material problems and community referral resources.

“Through exposure to daily police activity, the volunteer develops a realistic perspective of the law enforcement system and a resulting positive regard for the police agency and its personnel.”

A second dimension to training is staff training, a critical but often neglected element of a successful volunteer program. Considerable work needs to be done to develop a positive agency attitude that reflects the support of volunteers and enthusiasm for the program. Therefore, careful attention and continuous work is required to foster effective relationships between paid and volunteer staff.

Staff training also prevents potential problems by addressing topics such as resistance to volunteers; myths about volunteers; the philosophy of volunteer management, emphasizing a professional approach; supervision; evaluation and recognition of volunteers; and termination of volunteers. Failure to resolve barriers or to deal with issues, biases, and concerns can lead to poor and ineffective program implementation, negative public relations as a result of a volunteer's unpleasant experiences, and eventual program rejection.

Evaluation

Evaluation of both the volunteer's performance and the appropriateness of the placement assignment needs to be performed periodically. This review may be conducted formally at a prearranged time, working from the written job description, or informally and spontaneously according to the volunteer's needs and the coordinator's individual approach. Volunteers need to know on a regular basis how they are doing.

Conversely, they need to communicate beliefs and suggestions that may contribute to the overall improvement of the program.

Likewise, the staff needs the feedback and support generated from the evaluation interview in order to respond appropriately. The volunteer services coordinator as a volunteer/agency liaison person should, with diplomacy and insight, furnish information and ideas that will enhance the volunteer's job satisfaction while increasing effectiveness and productivity for the agency.

Volunteers Are Not Free

The development of a volunteer program is too often viewed as a panacea to an agency's budgetary problems. Implementing a volunteer program, however, is not cost-free. While it is both cost-effective and cost-beneficial, there are built-in expenses, such as the coordinator/director's salary, office equipment and supplies, staff time spent in training and supervision, and volunteer recognition. These expenses are eventually counteracted by the program's final product. As with many human services, quantitative measurement and documented results of a volunteer program are difficult to pinpoint. Cost-saving elements in donated manhours, teamed with the number of officers freed for priority calls, provide some numerical clues. However, the breadth of the public relations dimension, the impact of citizen participation as a deterrent to crime, and the trust gained from a team relationship between police and citizens are benefits that cannot be purchased through any budgetary process. Clearly, the volunteer is a positive and revitalizing response to the increasing demands of law enforcement today. It is a resource that must be explored. **FBI**

Footnotes

¹Wilson, Marlene, *Effective Management of Volunteer Programs*, Volunteer Associates, 1978, p. 52.

²Ibid.

³Scheier, Ivan H., "Using Volunteers in Court Settings." U.S. Dept. of Health, Education and Welfare, J. D. Publications, No. 477, (Washington, D.C.: U.S. Government Printing Office), p. 46.

⁴Wilson, Marlene, p. 132.

Swiss-American Cooperation in Criminal Investigations



By
DR. LIONEL FREI

Chief

*International Legal Assistance Section
Swiss Federal Office for Police Matters
Bern, Switzerland*

and

LEONARD H. RALSTON

Special Agent

*Federal Bureau of Investigation
Former Legal Attache
U.S. Embassy
Bern, Switzerland*

As the tourist and the businessman benefit from technological advances in communications and transportation, so do the criminal elements who can cross international boundaries with ease.

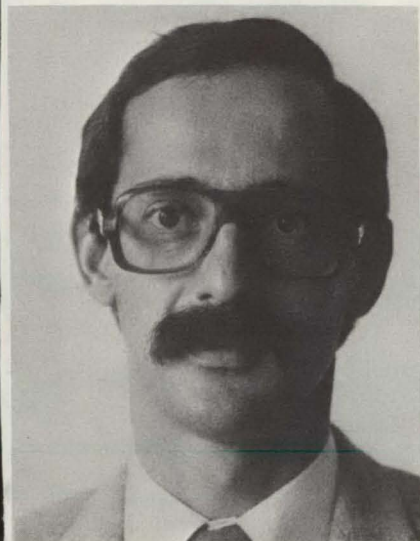
Without a corresponding increase in mutual assistance between law enforcement authorities, we would all be condemned to a losing battle. Fortunately, the United States and Switzerland not only have a history of law enforcement cooperation and legal assistance but since January 23, 1977, they also have a major tool to implement their national policies of cooperation. On that date, the Treaty on Mutual Assistance in Criminal Matters (hereafter referred to as the Legal Assistance Treaty) between the United States and Switzerland became effective after almost 10 years of negotiation and groundwork.

The practical problem confronting a U.S. investigator or prosecutor who needs information or evidence from Switzerland is whether to make a request for police cooperation or a formal request for legal assistance. However, before treating the factors which influence such decisions, it would be beneficial to describe briefly the structure and duties of Swiss authorities, since these facts could influence the decision of the U.S. investigator or prosecutor.

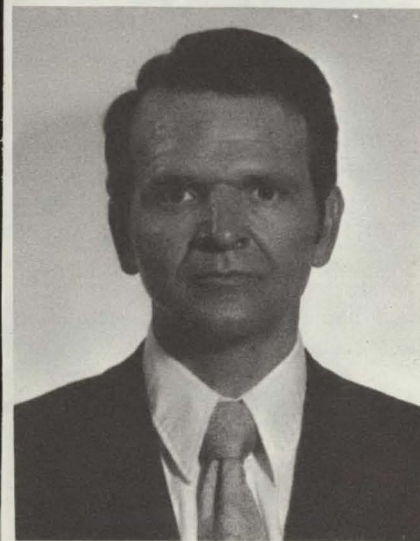
Swiss Law Enforcement Authorities

Two Swiss authorities, the Swiss Central Police Bureau and the Swiss Federal Office for Police Matters, deal with U.S. requests for assistance in criminal matters. Within the Swiss Central Police Bureau, the Swiss National Central Bureau (NCB) in the Interpol network handles foreign police requests. Its responsibility is the exchange of police information, including criminal intelligence information, between Swiss and foreign police forces.

There are three other sections within the Swiss Central Police Bureau, each having separate and distinct functions. The Central Registry of Conviction records all convictions in Swiss courts which result in a jail sentence or fine of more than 200 Swiss francs (approximately \$100). It also records similar sentences of Swiss citizens by foreign courts, if foreign authorities inform Switzerland of the conviction and



Dr. Frei



Special Agent Ralston

sentence. Information from the registry is furnished, upon request, to foreign police forces, investigative agencies, and courts.

The Identification Section is the central Swiss repository for fingerprints and performs functions similar to identification divisions worldwide; the Central Offices Section is a small investigative office which investigates white slave traffic, counterfeiting, narcotics, and illegal trafficking in war weapons.

Switzerland provides police cooperation through the Interpol network or through the FBI Legal Attache at the U.S. Embassy in Bern. Requests for police assistance to the Interpol Section, Swiss Central Police Bureau, are received from Interpol Washington, as well as other national central bureaus. The other U.S. requests for police assistance can be initiated by the local FBI field office, through FBI Headquarters, to the Legal Attache.

Switzerland also provides formal legal assistance to the United States in accordance with the provisions of the Legal Assistance Treaty. These requests and responses are handled directly between the two central authorities—The Office of International Affairs, U.S. Department of Justice, and the Office of the Central Authority in the International Legal Assistance Section, Swiss Federal Office for Police Matters.¹

The International Legal Assistance Section is responsible for submitting requests from Swiss cantons (any of the states in the Swiss Republic) for legal assistance to countries throughout the world and for receiving foreign requests and transmitting them to the appropriate cantonal authorities. A special office in this section, the Swiss Central Authority, was created to handle requests from the U.S. Department of Justice under the treaty provisions, and in return, makes Swiss requests to the United States on behalf of cantonal authorities. This office decides whether American requests meet the formal requirements of the treaty, whether U.S. representatives should be permitted to be present when the request is executed, and whether compulsory process

can be employed. It can also issue decrees ordering that business or bank records be produced, for example, to seize evidence or to block the removal of assets which might be fruits of the crime or other evidence.

Practically all police matters in Switzerland are within the jurisdiction of the cantons, although there is only one penal code for the whole nation. Thus, in matters of legal assistance and police cooperation, the requests are transmitted by the Swiss Central Authority to the appropriate cantonal authority for processing.

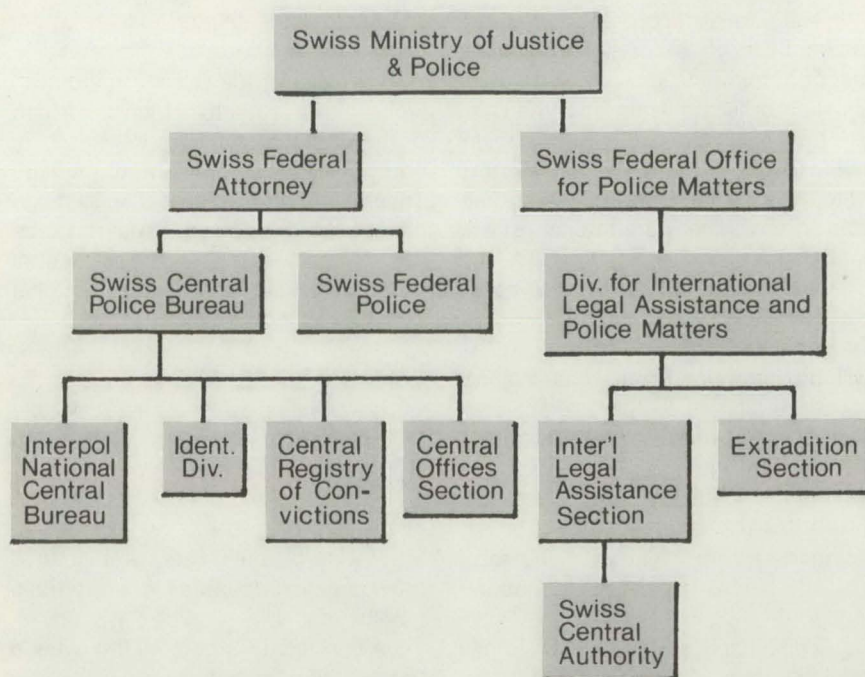
Requests for Assistance

In deciding which channel to use to make a request for assistance, the U.S. law enforcement officer or agency should bear in mind the capabilities of each.

Swiss police officers are able to provide police cooperation which does not involve any compulsory process. They can locate a person, interview a witness who voluntarily submits to interview, check public information, check hotel registration records, identify telephone subscribers, provide from registers of commerce, interview a suspect or victim, verify alibis, locate persons, place lookouts for stolen goods, etc. Such requests can be submitted either through the Interpol or Legal Attache channel. Swiss federal authorities prefer the Legal Attache channel because his extensive knowledge of Swiss law enforcement procedures and individuals results in easier, more efficient, and more reliable handling of the case.

However, if the U.S. authority requires a higher level of assistance, it is necessary for the Office of International Affairs, U.S. Department of Justice, to file a formal request under the Legal Assistance Treaty. Examples of higher level assistance are obtaining bank or business records (because a subpoena must be issued), taking sworn testimony (because it must be done by a magistrate), serving compulsory process, compelling a witness to testify, requesting execution of search warrants, or requesting seizure of evidence or fruits of a crime.

An Organizational Overview of Swiss Authorities



These requests are carried out according to the Code of Criminal Procedure of the canton where executed and returned to the Swiss federal authority, which examines it to insure the execution was proper and complete, prior to returning it to the requesting foreign authority.

In fact, requests for the most extreme form of legal assistance—extradition—are also processed through the Office of International Affairs but are then formally made through diplomatic channels to Switzerland in accordance with our Extradition Treaty to the Extradition Section of the Swiss Federal Office for Police Matters. It decides whether the request will be granted and issues the necessary warrants. In addition, it handles requests for tracing offenders and stolen vehicles. Its decisions can be appealed only directly to the Swiss Supreme Court.

The procedure for sending a formal request for legal assistance might be regarded by some as a cumbersome process which will bring no results whatsoever. However, experi-

ence to date shows that this is not true.

To appreciate the Legal Assistance Treaty, one has only to consider that since January 23, 1977, the United States has formally submitted 119 requests to Switzerland. Of these, 89 were executed, 3 were denied, 6 were withdrawn, and 21 were still pending as of May 1, 1981. Of these requests, 90 involved various kinds of white-collar crime, such as fraud, embezzlement, or receiving stolen property.

It is important to note that the Office of International Affairs, U.S. Department of Justice, was merely the formal requesting agency. Most of the requests were made on behalf of U.S. attorneys' offices, but many were also made for the FBI and State and local prosecutors, as well as other U.S. Federal agencies.

In about 75 percent of the cases, the purpose of the request was to obtain Swiss business or banking records. The persistent and widely spread myth that Swiss banking and business secrecy laws were impenetrable was, in fact, never true; Swiss

magistrates could always issue a process to compel production of business and banking records for a Swiss criminal investigation. Such a process takes legal precedence over business and bank secrecy laws. What is new is that the Legal Assistance Treaty grants the United States access to this compulsory process provided, of course, that the other requirements of the treaty are met.

However, it is practical cases which give deeper meaning to the above statistics and which underline what the statistics say about the Legal Assistance Treaty.

An important example was the case of Mark Stanley Rifkin, who allegedly transferred fraudulently \$10.2 million from the Security Pacific National Bank in California to a Zurich bank and used most of the proceeds to buy Russian diamonds in Geneva which he then smuggled back into the United States. Pursuant to a request under the Legal Assistance Treaty, evidence and sworn testimony were taken in Zurich and Geneva in the presence of U.S. attorneys, counsel for defense, and U.S. court reporters.

In another similar case, not only were bank records furnished, but a bank account was blocked which contained over \$1.5 million in funds defrauded from investors. Although the treaty does not provide for the return of such funds, the damaged parties have the right to obtain them through civil process in Switzerland. In this case the funds were released to the bankruptcy referee.

It is beyond question that the Italian financier Michele Sindona could never have been convicted of numerous counts for his role in the collapse of the Franklin National Bank in New York without the bank records from Zurich and Geneva which were obtained under the treaty. The importance of this case is demonstrated by the 25-year sentence imposed.

But assistance under the treaty is not limited to business and banking records. Pursuant to such requests, for example, Switzerland has also formally questioned witnesses and made formal

service of court documents upon Swiss residents.

However, Switzerland will not grant legal assistance for political crimes, and as a general rule, will not grant legal assistance for violation of tax or fiscal laws or regulations, although the Legal Assistance Treaty provides an important exception. To assist in the prosecution of organized crime figures, Switzerland will also furnish legal assistance in tax and fiscal cases. Starting in 1983, Switzerland may also be able to furnish legal assistance in other cases of tax or customs fraud.

The offenses for which legal assistance will be furnished under the treaty are contained in an annex to the treaty. Basically, they are commonlaw crimes which must also meet the standard of dual criminality—the acts must be considered criminal in both countries. In order that this standard is met, it is necessary that the request include specific information regarding the laws under which prosecution is contemplated, as well as detailed information regarding the criminal acts alleged and the pertinence of the assistance requested to those acts.

Other formal requirements are that the request contain identifying data regarding the subjects of the investigation: Date and place of birth, citizenship, and address, at a minimum; similar information regarding any person who might be affected by the request; and a translation of the request into the language of the area where it will be executed—French, German, or Italian.

As a general rule, the requesting authority should count on at least 3 months between the time the request is first formulated and results are received. However, it is more likely to take between 6 and 9 months.

It is in the interest of the requesting authority to insure that all necessary information is contained in the initial request so that unnecessary time is not wasted in asking for supplemental information.

The time necessary to process and execute a request makes it clear

that there is a basic problem with the Speedy Trial Act of 1974. This problem is compounded by the appeal rights that subjects or persons affected by the execution of a request have in Switzerland. In one case, the appeals lasted 2½ years.

Possible solutions to this conflict are filing the request at a preindictment stage and/or having the case designated as complex and obtaining judicial exemptions from the time limits imposed by the Speedy Trial Act. It is likewise advisable that the requesting authority consider from the beginning stages how the information requested will be introduced and received into evidence during trial.

U.S. authorities have made rather frequent and effective use of the provisions of the treaty whereby a U.S. attorney, district attorney, FBI Agent, the Legal Attache in Bern, or other law enforcement official can be authorized to be present when the request is executed. Such requests are granted if their presence is required by U.S. law in order to obtain admissible evidence, if it is likely to facilitate substantially the investigation or prosecution because the case and inquiries to be conducted in Switzerland are very complicated, or for other substantial reasons. However, it must be clear that authorization to *attend* the execution of the request is merely that. Control of the proceedings must remain in the hands of the Swiss official, and acts of the foreign officials present may be performed only through the Swiss magistrate's acting as an intermediary. However, authorization to attend the hearing also carries the advantage of the American participants being permitted to suggest supplementary questions for the Swiss magistrate to ask the witness and otherwise assist the Swiss magistrate.

For clarity's sake it is perhaps best to spell out what is implied from the above. No foreign officials may conduct official acts in Switzerland without *prior* authorization; to do so would be a serious violation of the Swiss Penal Code, Article 271. However, in some cases, such authorization will be granted, provided the circumstances justify

it. Requests for such authorization are also made through the Swiss Federal Office for Police Matters.

If an indictment has been returned, the defendants have a right to be present at the time of execution, and if they exercise that right, the U.S. prosecuting authority also has a right to attend. However, a frequent problem in such cases is the lack of court reporters in Switzerland, as they are known in the U.S. legal system. A witness' statement is recorded in summary form in a "process verbal," which is then signed by witness, magistrate, and clerk. This is not a verbatim recording of the hearing as is frequently required in America. Added to this is the fact that the hearings are conducted in the official language of the area where it is held. The meaningfulness of such hearings for American participants is directly proportional to their own language ability or that of a translator.

If a verbatim record of the hearing is necessary, some solutions are having U.S. court reporters at the hearing, making a tape recording (only possible with witness agreement), or possibly making a video tape. (The latter solution has been discussed, but never attempted.)

Finally, it is necessary to note the obvious: Requests for assistance under the Legal Assistance Treaty are complicated and intricate. However, there are three sources of experience and assistance which are available to all prosecutors and investigators in the United States and Switzerland: The Office of International Affairs, U.S. Department of Justice; Central Authority, Swiss Federal Office for Police Matters; and the Legal Attache, U.S. Embassy, Bern.

Both legal assistance and police cooperation between Switzerland and the United States are alive and well. The means are available for use in the common goal of combating international crime—they need only to be used.

FBI

Footnote

The Swiss Federal Office for Police Matters should not be confused with the Swiss Federal Police, which investigates internal security matters.

AGE DISCRIMINATION AND LAW ENFORCEMENT

By

DANIEL L. SCHOFIELD

Special Agent

Legal Counsel Division

Federal Bureau of Investigation

Washington, D.C.

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

This article examines the law concerning age discrimination claims in the context of law enforcement employment. Employment policies which either mandate retirement at a certain age or establish a maximum hiring age have been challenged under both the Age Discrimination in Employment Act of 1967¹ (ADEA) and the Equal Protection Clause of the U.S. Constitution. Some important provisions of the ADEA will be discussed in general terms, including recent litigation addressing two important issues: (1) When age may be considered a bona fide occupational qualification (BFOQ) for law enforcement employment and (2) whether the ADEA is constitutional when applied to State and local law enforcement agencies. The article will

then analyze age discrimination claims based on the Equal Protection Clause.

It is important to emphasize at the outset that the article is directed specifically at those issues which are important for law enforcement employment. Accordingly, it does not purport to address the full range of issues that might be raised in the context of an age discrimination case.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

Purpose and General Provisions

The ADEA is generally worded Federal legislation designed to eliminate both the conscious and unconscious stereotypes about the employment capabilities of workers between the ages of 40 and 70 and to promote the employment of those persons based on their *ability* rather than *age*.² The ADEA reflects a national awareness of the injustice that age discrimination imposes upon "elderly" citizens. Its central purposes are to reduce unemployment, welfare, and waste which accompany the underutilization of experienced workers and to alleviate the economic, psychological, and health problems faced by the individual victims of age discrimination.³

Since 1979, the primary responsibility for administering and enforcing

the provisions of the ADEA has rested with the Federal Equal Employment Opportunity Commission (EEOC) and its State counterparts.⁴ The legislation provides that the EEOC or appropriate State agency be given an opportunity to remedy a claim of age discrimination by informal methods, such as education and conciliation, before a private lawsuit is initiated.⁵ In this regard, the U.S. Supreme Court has ruled that an employee must resort to the administrative remedies provided by a State before initiating suit in Federal court.⁶ Moreover, lower courts have held that a failure to follow the specific procedural requirements of the ADEA constitutes grounds for dismissal of a claim.⁷

Establishing a Prima Facie Case

In order to establish a prima facie case⁸ of age discrimination under the ADEA, an individual within the protected age range need only show by a preponderance of the evidence that age was a motivating factor in a refusal to hire or mandatory retirement.⁹ In response, an employer may rebut a prima facie case by arguing that age was not the real reason for the decision and that some reasonable factor other than age motivated the action.¹⁰ Where an employer successfully rebuts a prima facie case, a plaintiff still has an opportunity to prove that the reasons offered by the employer are merely a pretext for discrimination.¹¹ While the employer has the burden of producing evidence rebutting a prima facie case, the plaintiff generally bears the ultimate burden of persuasion to establish a case of age discrimination by a preponderance of evidence.¹²

An employer can also respond to a prima facie case by admitting that age was, in fact, a motivating factor and then assert in the form of an affirmative defense that age is a BFOQ



Special Agent Schofield

reasonably necessary to the normal operation of his particular business.¹³ On the issue of a BFOQ defense, the employer bears both the burden of production and persuasion.¹⁴ The burden of persuasion shifts to the employer in this instance, because in asserting a BFOQ, the employer is really admitting that he made an employment decision based on age. Such decisions are prohibited by the ADEA, and in order to avoid liability, the employer must produce empirical data to support the BFOQ.¹⁵ Moreover, the employer is not permitted to rely on mere stereotypes or untested assumptions.¹⁶

In view of the fact BFOQ's are frequently asserted by law enforcement agencies in defense of their maximum hiring age and mandatory retirement policies, a discussion of some recent cases involving such claims is pertinent.

The BFOQ and Law Enforcement

In a sense, BFOQ's may require older workers who are individually competent to suffer because of the risk that others in the same age range are probably not competent. Courts will therefore carefully evaluate the reasons offered in support of a BFOQ exception to the ADEA's prohibition against age discrimination.

The generally accepted standard for a BFOQ is set forth in the case of *Arritt v. Grisell*.¹⁷ In that case, the plaintiff applied to be a police officer in

Moundsville, W. Va. His application was denied on the sole ground that he was 40 years of age and the maximum hiring age was 35 as set by a State statute. The U.S. Court of Appeals for the Fourth Circuit ruled that the burden is on an employer who wishes to rely on a BFOQ to establish (1) that the BFOQ is reasonably necessary to the essence of the business (here the operation of an efficient police department for the protection of the public) and (2) that the employer has reasonable cause, i.e., a factual basis, for believing that all or substantially all persons within the class would be unable to perform safely and efficiently the duties of a police officer or that it is impossible or impractical to deal with persons over the age of 35 on an individualized basis.¹⁸

With respect to maximum hiring age policy for law enforcement, courts appear to have reached different results. For example, in *EEOC v. County of Allegheny*,¹⁹ a State statute which mandated that the county refuse to consider applicants over the age of 35 for positions as police officers was challenged by the EEOC. The court concluded that the policy was in violation of the ADEA and that the county had failed to produce sufficient evidence to justify its hiring policy as a BFOQ.²⁰ However, in *Stewart v. Civiletti*,²¹ the court ruled that a maximum hiring age of 35 for law enforcement positions in penal institutions operated by the U.S. Bureau of Prisons could qualify as a BFOQ.²²

On the question of mandatory retirement, several courts have concluded that the mandatory retirement of law enforcement officers is not in violation of the ADEA. For example, in *EEOC v. State of Wyoming*,²³ a Federal district court upheld a State requirement that mandated the retirement at

“... litigation involving the assertion of a BFOQ for law enforcement employment indicates that an employer has the burden of proving a factual basis for his age policies.”

age 55 of game wardens with law enforcement responsibilities. The court noted with approval a prior decision of the U.S. Court of Appeals for the 10th Circuit, where it was held that minimum and maximum ages could validly be set for Federal officers.²⁴ The court therefore reasoned that the sovereign State of Wyoming should also be able to establish age requirements similar to those used by Federal employers for their law enforcement officers.²⁵

In another case, *Beck v. Borough of Manheim*,²⁶ a Federal district court said that where the risk of harm runs high and alternative measures lack certainty and adequacy, the ADEA countenances a greater degree of arbitrariness in establishing a BFOQ for mandatory retirement.²⁷ In *Beck*, a police officer challenged his forced retirement at age 60. His department consisted of a chief and five officers who were assigned to regular patrol duties. The court found that the physical condition of the police force was particularly important not only because of the difficulty in arranging for substitute coverage in the event of illness but also because the small size of the police force often made backup help unavailable to an officer responding to an emergency.²⁸ Because the inability of any officer to perform could result in serious adverse consequences to the personal welfare of fellow officers and the community, the court concluded that the mandatory retirement policy of 60 was reasonably necessary to accomplish the purpose of safely and efficiently running the department.²⁹

The court observed that the scant human resources of the Manheim Police Department imposed burdens upon individual members of the force that larger police departments may not confront. The court said that public safety merits paramount concern under the ADEA and that where the safety of fellow employees and third parties is threatened, an employer must be afforded substantial discretion in selecting specific age standards.³⁰

Moreover, the U.S. Court of Appeals for the Seventh Circuit has ruled that the ADEA permits a city to establish a BFOQ for the generic class of law enforcement personnel employed by the city to operate its police department.³¹ The court rejected the argument that the city had to establish a BFOQ for each particular occupation within the police department.³²

A summary of the litigation involving the assertion of a BFOQ for law enforcement employment indicates that an employer has the burden of providing a factual basis for its age policies.³³ The list that follows includes some of the factors courts are likely to consider relevant in assessing whether a particular law enforcement employer has presented a sufficient justification for a BFOQ:

- 1) How physically demanding and stressful is the job in question? Has the employer produced empirical evidence to show that as a person ages there is a decline in ability which creates a substantial safety risk or reduces markedly the efficiency of the agency? Has the employer produced medical evidence that physical qualifications cannot reliably be determined on an individualized basis?

Is decreasing physical ability offset by increased experience and knowledge?

- 2) How large is the agency? Are human resources sufficient so that the illness of one would not put a substantial strain on the manpower requirements of the employer in the event of an emergency? Should the age requirements be the same for all positions within a particular agency?
- 3) What are the past age policies of the employer? If older workers were permitted to work in the past, how did they perform? Has the employer made any exceptions to the age policy being defended as a BFOQ?

Remedies for ADEA Violations

The remedial section of the ADEA provides for the recovery of back pay and other appropriate legal and equitable relief.³⁴ Such relief could encompass an order to hire or reinstate a person who is individually victimized by age discrimination.³⁵ Moreover, the ADEA provides for the recovery of liquidated damages (double the amount of lost wages) in instances where the discrimination is deemed to have been willful.³⁶

The remedies available for an ADEA violation in the context of law enforcement employment was an issue confronted by the Third Circuit Court of Appeals in the case of *Rodriguez v.*

Taylor.³⁷ In that case, the court concluded that Philadelphia's policy of refusing to hire anyone over the age of 41 as a security officer constituted a willful violation of the ADEA and could not be defended as a BFOQ. With respect to remedies, the court said the ADEA encompasses a "make whole" objective and that victims of age discrimination are entitled only to be restored to the economic position they would have occupied but for the discrimination.³⁸ Once a violation is established, the plaintiff has the burden of producing evidence of his entitlement to damages in the amount of lost wages.³⁹ The employer may respond by proving the employee would not have been hired or would have been retired even absent the discriminatory age barriers.⁴⁰

In another case involving damages under the ADEA, a Federal district court ruled that damages for pain and suffering or other psychological injuries are not recoverable.⁴¹ The court said that liquidated damages were intended by Congress to remedy willful violations and are in effect an alternative to compensatory and punitive damages.⁴² The court noted that Congress intended to restrict the penalty provisions of the ADEA to a doubling of the amount of lost wages for willful violations and that this liquidated damages provision represents adequate compensation to the victim and provides a sufficient deterrent against willful violations.⁴³

The most persuasive view seems to be that an employer has committed a willful violation only if the plaintiff has produced proof that an employer intended to take action knowing such action was prohibited by the ADEA.⁴⁴ Moreover, a plaintiff is entitled to a jury trial on the issues of lost wages and liquidated damages for willful violations.⁴⁵

Waiving ADEA Rights

Two cases have recently addressed the question of whether an employer can defend an age policy by arguing that an employee previously waived rights under the ADEA through participation in a collective bargaining agreement or retirement program. Both courts rejected this waiver argument.

For example, in *Johnson v. Mayor and City Council of Baltimore*,⁴⁶ the city claimed that employees waived their rights under the ADEA by previously agreeing (in the 1960's) to retire pursuant to the city plan. However, the court rejected this claim by noting that the ADEA was amended in 1978 to preclude the involuntary retirement of an individual because of age pursuant to an established pension or seniority system.⁴⁷ Thus, the court concluded that the employees could not have waived their Federal rights under the ADEA by joining a plan at a time when those Federal rights were unknown. Moreover, the court ruled that a statutory right conferred upon a private party but affecting the public interest may not be waived or released if such waiver contravenes public policy.⁴⁸

Another Federal court rejected a county's argument that a collective bargaining agreement contained an implied consent that in exchange for the county's payment into a retirement fund, employees agreed to retire at a particular time.⁴⁹ The court said the ADEA prohibits forced retirements pursuant to such retirement plans and that rights under the act cannot be waived through collective bargaining agreements.⁵⁰

Constitutional Challenges to the ADEA

Several courts have considered challenges to the constitutionality of the ADEA as applied to State and local governmental employers. The prevailing view on that issue was expressed in *Arritt v. Grisell*,⁵¹ where the court ruled that the ADEA is constitutional. The court acknowledged a prior decision of the U.S. Supreme Court in *National League of Cities v. Usery*,⁵² which held that the 10th amendment to the U.S. Constitution protects certain areas of a State's traditional governmental functions from congressional action pursuant to the Commerce Clause.⁵³ However, the *Arritt* court concluded that the ADEA was extended to the States pursuant to the power of Congress under section 5 of the 14th amendment and that its constitutionality is not affected by the decision in *National League of Cities* or any constitutional limitations on the power of Congress under the 10th amendment.⁵⁴

Moreover, in *U.S. E.E.O.C. v. County of Calumet*,⁵⁵ the court said that Congress may forbid employment discrimination by State and local governments despite the 10th amendment's protection of State sovereignty.⁵⁶ The court said that employment discrimination is not a function that is essential to a State's separate and independent existence and therefore does not need to be protected from congressional interference.⁵⁷

"While the employer has the burden of producing evidence rebutting a prima facie case, the plaintiff generally bears the ultimate burden of persuasion to establish a case of age discrimination by a preponderance of evidence."

In contrast to the view adopted in the above cases, a Federal district court recently concluded in the case of *EEOC v. State of Wyoming*⁵⁸ that the ADEA was passed pursuant to the power of Congress under the Commerce Clause and not the 14th amendment. Thus, the court ruled that the ADEA constitutes an unconstitutional intrusion into important State policies and functions which are essential to a State's separate and independent existence.⁵⁹

AGE AND THE EQUAL PROTECTION CLAUSE

In addition to the ADEA, the Equal Protection Clause of the U.S. Constitution also furnishes a basis to challenge employment decisions which are premised on a person's age. An analysis of several cases involving equal protection challenges to law enforcement age policies suggests that such challenges are not likely to succeed where a law enforcement agency can demonstrate a rational basis for those policies.

For example, the U.S. Supreme Court in *Massachusetts Board of Retirement v. Murgia*⁶⁰ held that the forced retirement of uniformed State highway patrolmen at age 50 is not violative of equal protection because it is rationally related to legitimate State interests. The Court said:

"Through mandatory retirement at age 50, the legislature seeks to protect the public by assuring physical preparedness of its uniformed police. Since physical ability generally declines with age, mandatory retirement at 50 serves to remove from police service those whose fitness for uniformed work presumptively has diminished with age. This clearly is rationally related to the State's objective. . . . That the State chooses not to determine fitness more precisely through individualized testing after age 50 is not to say that the objective of assuring physical fitness is not rationally furthered by a maximum age limitation."⁶¹

In accordance with the *Murgia* decision, other courts have found a "rational basis" for a Federal statute which requires that Federal law enforcement officers be retired at age 55,⁶² and for the policy of the U.S. Postal Service that fixed the maximum age for a beginning postal inspector at age 34.⁶³

However, in *McMahon v. Barclay*,⁶⁴ a Federal district court ruled that a New York civil service law which prohibited the hiring of persons over 29 as police officers constituted a denial of equal protection because the statute bore no rational relationship to any legitimate State purpose. The court said the statute permitted exceptions for veterans and transferees,⁶⁵ and constituted a blanket disqualification for relatively sound and physically fit persons from pursuing a career for many years as a police officer.⁶⁶

Conclusion

An analysis of the cases discussed in this article reveals that the courts are somewhat divided over several important issues involved in age discrimination litigation. One significant question that remains to be resolved is whether the exacting standards for a BFOQ exception to the prohibition against race or sex discrimination contained in Title VII of the Civil Rights Act of 1964 (Title VII) should apply with equal force to cases under the ADEA. Courts that automatically apply Title VII precedent in construing provisions of the ADEA may be failing to address some distinctive aspects of age discrimination litigation.⁶⁷ For example, it seems fair to suggest that at some point age, unlike race or sex, is inherently related to a person's ability to function as a law enforcement officer. This fact seems implicit in the Supreme Court's decision in *Murgia* and may result in less demanding standards for employers in instances where discrimination is allegedly based on age rather than race or sex.

Additional litigation is inevitable as the courts continue to delineate the precise contours of protection to be afforded law enforcement employees against age discrimination. To the extent law enforcement age policies are deemed discriminatory in subsequent litigation, a fair conclusion is that they result from inaccurate estimates of older workers' abilities rather than from any feelings of hostility or prejudice.

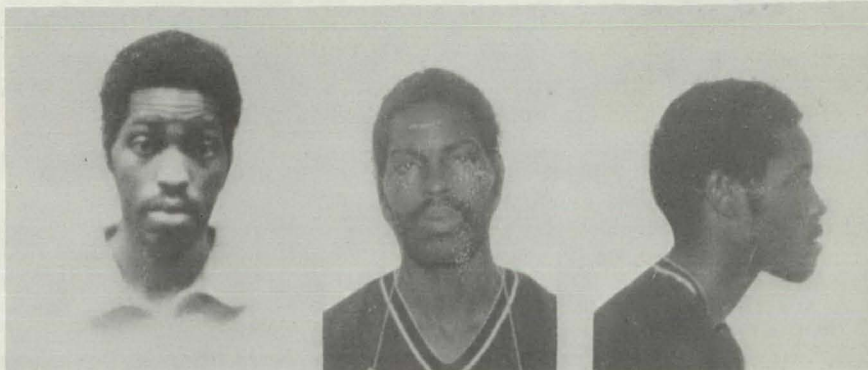
In view of the complex nature of age discrimination litigation, law enforcement age policies should be carefully and periodically reviewed to insure they are operationally sound and legally defensible. It is also recommended that professional legal advice be considered when age policies are formulated.

FBI

Footnotes

- ¹ 29 U.S.C. § 621-634 (1978).
- ² *Id.* at § 621(b). It should be noted that the statute does permit the compulsory retirement of any employee who has attained 65 years of age and who for the 2-year period immediately before retirement is employed in a bona fide executive or a high policy position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension or deferred compensation plan which equals, in the aggregate, at least \$27,000. *Id.* at § 631(c) (1) and (2).
- ³ *E.E.O.C. v. County of Allegheny*, 519 F.Supp. 1328, 1331 (W.D.Pa. 1981).
- ⁴ 29 U.S.C. § 625 (1978).
- ⁵ *Id.* at § 626(b).
- ⁶ See *Oscar Mayer & Co. v. Evans*, 441 U.S. 750 (1979).
- ⁷ For a detailed discussion of the procedural provisions of the ADEA and citations to cases interpreting those provisions, see note, "Recent Issues in Litigation Under the Age Discrimination in Employment Act," 41 Ohio State Law Journal, 349 (1980).
- ⁸ The term "prima facie case" merely constitutes a sensible and orderly way to evaluate the evidence in light of common experience. A prima facie case raises an inference of discrimination only because the employer's conduct is presumed to be based on impermissible factors in the absence of another explanation. A prima facie case of age discrimination is established where an employee demonstrates that (1) he belongs to the protected class, (2) he applied for or was qualified for a particular position, (3) he was not selected, and (4) the position was filled by a younger employee. See *Smithers v. Bailer*, 629 F.2d 892, 895 (3d Cir. 1980).
- ⁹ See *Allegheny*, *supra* note 3, at 1331 and 1335.
- ¹⁰ 29 U.S.C. § 623(f)(1) (1978). Reasonable factors other than age might include: (1) Physical fitness requirements, so long as the minimum standards are reasonably necessary for the specific work to be performed and are uniformly applied; (2) evaluation factors, such as quantity or quality of production or educational level; (3) refusal to hire relatives of current employees; (4) lack of training for a particular job; and (5) chronic tardiness. *Id.* at 1335.
- ¹¹ See *Allegheny*, *supra* note 3, at 1331.
- ¹² *Texas Department of Community Affairs v. Burdine*, 67 L.Ed.2d 207 (1981). Shifting evidentiary burdens and presumptions are merely tools employed to facilitate the plaintiff's task of proving liability in certain cases. See also *Smith v. Farah Manufacturing Co. Inc.*, 650 F.2d 64, 67 (5th Cir. Unit A 1981).
- ¹³ 29 U.S.C. § 623(f)(1).
- ¹⁴ *Houghton v. McDonnell Douglas Corp.*, 553 F.2d 561 (8th Cir. 1977), cert. denied, 434 U.S. 966 (1978).
- ¹⁵ *Marshall v. Westinghouse Electric Corp.*, 576 F.2d 588, 591 (5th Cir. 1978).
- ¹⁶ *Aaron v. Davis*, 414 F.Supp. 453 (E.D.Ark. 1976).
- ¹⁷ 567 F.2d 1267 (4th Cir. 1977); see also *Usery v. Tamiami Trail Tours*, 531 F.2d 224 (5th Cir. 1976).
- ¹⁸ *Id.* at 1271. The court remanded the case to the district court with instructions to apply this test. Thus, the fourth circuit did not decide the validity of this BFOQ claim.
- ¹⁹ 519 F.Supp. 1328 (W.D.Pa. 1981).
- ²⁰ *Id.* at 1334.
- ²¹ 25 FEP Cases 1703 (D.D.C. 1980).
- ²² *Id.* at 1704.
- ²³ 514 F.Supp. 595 (D.Wyo. 1981).
- ²⁴ *Id.* at 597. The court's reliance on the 10th circuit's opinion in *Thomas v. U.S. Postal Inspection Service*, 647 F.2d 1035 (10th Cir. 1981) is questionable in view of the fact the *Thomas* decision was not based on the ADEA, but rather on the equal protection clause. See *Thomas* at 1036.
- ²⁵ *Id.* With respect to Federal law enforcement officers, Congress in 1974, recognizing the hazardous nature of the work of law enforcement officers and others, amended the retirement provisions relating to such employment. P.L. 93-350, 2 U.S. Cong. & Adm. News 1974, 3698. This act requires retirement at the age of 55 years. 5 U.S.C. § 8335(b). It also establishes a procedure authorizing the head of any agency to determine and fix minimum and maximum ages within which law enforcement officers may be employed. 5 U.S.C. § 3307(d).
- ²⁶ 505 F.Supp. 923 (E.D.Pa. 1981).
- ²⁷ *Id.* at 925.
- ²⁸ *Id.* at 926.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *E.E.O.C. v. City of Janesville*, 630 F.2d 1254 (7th Cir. 1980).
- ³² *Id.* at 1258. At issue in this case was the forced retirement of the chief of police at age 55.
- ³³ Two courts have recently decided cases involving challenges to age requirements for fire department personnel. In *Johnson v. Mayor and City Council of Baltimore*, 515 F.Supp. 1287 (D.Md. 1981), the court concluded that the forced retirement of firefighters before age 65 was a violation of the ADEA and not justified by a BFOQ. The court said the burden on an employer to establish a BFOQ is substantial and that the BFOQ exception should be narrowly construed and applicable in very few cases. *Id.* at 1295. In *U.S. E.E.O.C. v. City of Saint Paul*, 500 F.Supp. 1135 (D.Minn. 1980), the court ruled that age was a BFOQ justifying the forced retirement at age 65 for captains and firefighters, but not for the positions of district fire chiefs and higher level positions within the fire department. *Id.* at 1143. The court said the stressful nature of the job of firefighter should be viewed differently from higher level positions where experience and judgment in directing firefighting activities may be possessed to a greater extent by older workers. *Id.* at 1145.
- ³⁴ 29 U.S.C. § 626(b).
- ³⁵ *Id.* See also *Allegheny*, *supra* note 3, at 1336.
- ³⁶ *Id.* For a detailed discussion of the remedial section of the ADEA, see note "Compensatory and Punitive Damages in Age Discrimination in Employment," 32 U. Fla. L. Rev. 701 (1980).
- ³⁷ 569 F.2d 1231 (3d Cir. 1977).
- ³⁸ *Id.* at 1238.
- ³⁹ Courts have ruled that the amount of lost wages is generally reduced by income earned from interim employment. *Id.* at 1243.
- ⁴⁰ *Id.*
- ⁴¹ *Placos v. Cosmair, Inc.*, 517 F.Supp. 1287 (S.D.N.Y. 1981).
- ⁴² *Id.* at 1288.
- ⁴³ *Id.* at 1289.
- ⁴⁴ *Loeb v. Textron Inc.*, 600 F.2d 1003 (1st Cir. 1979).
- ⁴⁵ See *Lorillard v. Pons*, 434 U.S. 575 (1978). In *Lehman v. Nakshian*, 69 L.Ed.2d 548 (1981), the Supreme Court ruled that Federal employees do not have a right to a jury trial under the ADEA.
- ⁴⁶ 515 F.Supp. 1287 (D.Md. 1981).
- ⁴⁷ *Id.* at 1293. 29 U.S.C. § 623(f)(2) (1978) reads in pertinent part: "It shall not be unlawful for an employer to observe the terms of a bona fide seniority or any bona fide employee benefit plan . . . except that no such plan shall require or permit the involuntary retirement of a protected employee because of age."
- ⁴⁸ *Id.* at 1294.
- ⁴⁹ *U.S. E.E.O.C. v. County of Calumet*, 519 F.Supp. 195 (E.D.Wisc. 1981).
- ⁵⁰ *Id.* at 203.
- ⁵¹ 567 F.2d 1267 (4th Cir. 1977).
- ⁵² 426 U.S. 833 (1976).
- ⁵³ *National League of Cities* held that the extension of the minimum wage and overtime provisions of the FLSA (29 U.S.C. § 206(a)(b), 207(a) (1974)) to State and local government employees could not be upheld as a constitutionally valid regulation of interstate commerce, because the 10th amendment limits exercise of the powers of Congress under the Commerce Clause (U.S. Const., art. I, § 8, cl. 3).
- ⁵⁴ *Armitt*, *supra* note 52, at 1271. See also *Johnson v. Mayor and City Council of Baltimore*, 515 F.Supp. 1287 (D.Md. 1981).
- ⁵⁵ 519 F.Supp. 195 (E.D.Wisc. 1981).
- ⁵⁶ *Id.* at 197.
- ⁵⁷ *Id.* at 202. The court noted the similarities between Title VII of the Civil Rights Act of 1964 and the ADEA, and that the Supreme Court had ruled in *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976) that Title VII's prohibitions against discrimination were constitutionally applied to the States pursuant to the power of Congress under § 5 of the 14th amendment.
- ⁵⁸ 514 F.Supp. 595 (D.Wyo. 1981).
- ⁵⁹ *Id.* at 600. A contrary view was expressed in *Carpenter v. Commonwealth of Pa.*, 508 F.Supp. 148 (E.D.Pa. 1981) where the court said that while the ADEA's legislative history does not clearly reveal the source of authority relied upon by Congress, the States ratification of the 14th amendment permits enforcement of the ADEA to a State agency despite the 10th amendment. *Id.* at 149-50.
- ⁶⁰ 427 U.S. 307 (1976). See also *Vance v. Bradley*, 440 U.S. 93, 97 (1979) where the court ruled that the forced retirement of a foreign service officer at age 60 did not violate equal protection.
- ⁶¹ *Id.* at 314-316.
- ⁶² *Bowman v. United States Dept. of Justice*, 510 F.Supp. 1183 (E.D.Va. 1981). The court said: "Because such a classification neither burdens the exercise of a fundamental right, nor functions so as to disadvantage a 'suspect class,' mandatory retirement does not violate equal protection if it is rationally related to a legitimate governmental purpose." *Id.* at 1185. Moreover, the court ruled that the policy was not in violation of the ADEA. *Id.* at 1186.
- ⁶³ *Thomas v. U.S. Postal Inspection Service*, 647 F.2d 1035 (10th Cir. 1981). The court said the policy was not only rational but sensible in that it acted to furnish the Postal Service with a continuous staff of young, moderately young, and experienced postal inspectors. *Id.* at 1037.
- ⁶⁴ 510 F.Supp. 1114 (S.D.N.Y. 1981).
- ⁶⁵ *Id.* at 1116.
- ⁶⁶ *Id.* at 1117.
- ⁶⁷ See note, "The Age Discrimination in Employment Act of 1967," 90 Harv. L. Rev. 380 (1976).

WANTED BY THE FBI



Photographs taken 1980.

James Allen Sheffield, Jr.

James Allen Sheffield, Jr., also known as James Sheffield, James A. Sheffield, and James Alvin Sheffield.

Wanted for:

Interstate Flight—Murder

The Crime

Sheffield is being sought in connection with the brutal murders of a married couple which occurred during the robbery of their home. The male victim was beaten to death with a blunt instrument and his wife was drowned in their bathtub.

A Federal warrant was issued for Sheffield's arrest on January 26, 1981, at Poughkeepsie, N.Y.

Criminal Record

Sheffield has been convicted of assault.

Description

Age24, born April 19, 1957, at New York, N.Y.

Height6'2" to 6'3".

Weight158 to 160 pounds.

BuildSlender.

HairBlack.

EyesBrown.

ComplexionDark.

RaceNegro.

NationalityAmerican.

OccupationsStudent, youth worker.

RemarksReportedly a talented basketball player.

Social Security

No. Used118-50-0564.

FBI No.994 007 N7.

Caution

Sheffield, a reported narcotics user, should be considered armed and dangerous.

Notify the FBI

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

Classification Data:

NCIC Classification:

PI56AA06101255TT1407

Fingerprint Classification:

6	I	1	Ra	10	Ref:	5
M	17		Rt			17



Left index fingerprint.

Change of Address

Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City

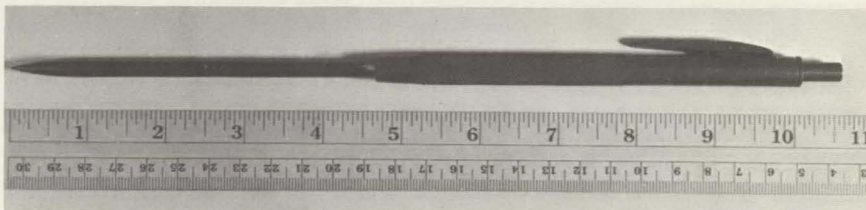
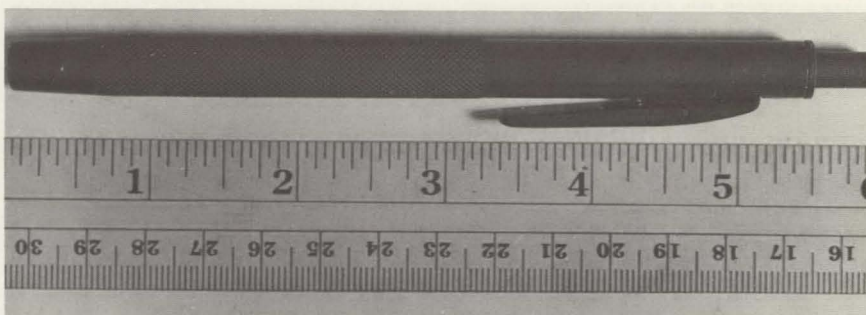
State

Zip

“Guardfather”

The June 1980, issue of the FBI Law Enforcement Bulletin featured on the inside back cover a “spiked pencil,” a commercially marketed mechanical pencil which contained a 3½-inch metal spike. A similar device is currently being sold nationwide. The “Guardfather” resembles a ballpoint or felt-tip pen. By pressing the spring-loaded pocket clip, a 4-inch hardened steel, round tapered shaft extends and locks; it is retracted by pressing the bearing near the base.

(Submitted by the Toledo, Ohio, Police Division)



**U.S. Department of Justice
Federal Bureau of Investigation**

Official Business
Penalty for Private Use \$300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS-432

Second Class



Washington, D.C. 20535

Unusual Pattern

The pattern shown here is unusual due to the appearance of the letter "S" in the central area of the pattern. The pattern is classified as a central pocket loop whorl with an inner tracing.

